



An
Bord
Pleanála

Inspector's Report 29N.248586

| | |
|-------------------------------------|---|
| Development | Single storey log cabin to rear of property |
| Location | 310 Tonlegee Road, Raheny, Dublin 5 |
| Planning Authority | Dublin City Council |
| Planning Authority Reg. Ref. | 2178/17. |
| Applicant | Fran Brereton |
| Type of Application | Retention |
| Planning Authority Decision | Grant Retention |
| Type of Appeal | Third Party |
| Appellant | Deirdre Hanley |
| Observer | Cllr Alison Gilliland |
| Date of Site Inspection | 8 th August 2017 |
| Inspector | Dolores McCague |

1.0 Site Location and Description

- 1.1. The site is located at 310 Tonlegee Road, Raheny, Dublin 5. Tonlegee Road is a busy distributor road and the site, although it faces Tonlegee Road, is accessed from a road which runs parallel to Tonlegee Road. There are terraced dwellings and semi-detached dwellings along this short spur road, all two storey. The site is occupied by a two storey semi detached dwelling. The site is wider than the dwelling and is deep, given as 32.78m in depth from the rear of the house. It backs onto the rear of residential property on Woodbine Road. Side boundaries are formed by hedges.
- 1.2. To the rear of the dwelling there is a timber deck and beyond that, and accessible either by going through the house or along the side of the house, there is a single storey log cabin facing the rear of the dwelling with a timber veranda to the front. The log cabin occupies most of the width of the site with a narrow gap between the side of the cabin and the boundary to the east, and a wider passage between the side of the cabin and the boundary to the west. The cabin extends 9.5m in depth with windows to the front (north) and west only. To the rear of the log cabin an open area fronts a small shed and a secure enclosure for a dog. Attached to the rear of the log cabin there is a wooden frame supporting a water tank.
- 1.3. Within the cabin a small fitted kitchen occupies the area inside the front door on the western side, and a shower room, with toilet, adjoins the kitchen, also on the western side of the building. The kitchen is part of a large front room and the shower/toilet is accessed from this room. Also accessed from this front room are two rooms to the rear of the building, both of equal size, the one to the east is windowless. That to the west has a small double window. These rooms are currently used for storage.
- 1.4. From the footpath to the front of the dwelling it is difficult to see the log cabin.
- 1.5. The site is given as 381m² in area.

2.0 Proposed Development

- 2.1. The proposed development is the retention of a log cabin to rear of the dwelling. Indicated as containing a games room, storage areas and a toilet/shower. It is a single storey structure of 9,500mm x 5,916mm x 2,960mm high with a veranda extending 1,600mm to the front.

3.0 Planning Authority Decision

3.1. Decision

3.2. Planning Authority decided to grant planning permission to retain subject to 8 conditions, including:

Condition no 2 - This planning permission is granted for a limited period of two years from the date of this grant at which date the permission shall cease and

b) the structure(s) shall be removed and the land returned to its former state unless a further permission has been granted before the expiry of that date.

Reasons: In the interests of the proper planning and development of the area, and so that the effect of the development may be reviewed having regard to the circumstances then prevailing.

Condition no 3 - The shed shall not be used for human habitation, nor for the housing of animals or birds, domestic or otherwise, nor for any use other than as a use incidental to the enjoyment of the adjoining dwelling house.

Reason: In order to protect the residential amenity of the subject and surrounding properties.

Condition no 4 The fitted kitchen shall be removed from the structure and none shall be reinstated whether or not it would be exempted development. The external water tank and supporting wooden platform shall not be included as part of this planning permission.

Reason: In the interests of orderly development.

Condition no 5 The shed shall be used solely in conjunction with the main dwelling house and shall not be occupied other than as part of the overall site that includes this dwelling and its garden. The shed shall not be let, sold or otherwise transferred or conveyed except as part of the overall site that includes the dwelling house and its garden.

Reason: To ensure that the shed is retained within the overall site that includes the existing dwelling, and is not subdivided or separated from it, and that it is used solely in conjunction with the dwelling.

Condition no 6 The front and side windows shall be permanently fitted with opaque glazing.

Reason: In the interests of residential amenity.

3.3. Planning Authority Reports

3.3.1. Planning Reports

The first planning report requesting further information noted a pre planning phone call - where a beds in shed proposal would not normally be permitted. Ancillary family accommodation has to be linked to the main dwelling.

- 16.10.12
- 16.10.14
- Appendix 17
- The bona fides of the existing proposal to be used for ancillary use to the main dwelling have to be accepted at this stage and it is recommended that the appropriate standard condition be attached.
- While the stated floor area is 52m² the plans suggest 57m² and the veranda terrace would be c8.5m².
- Under 16.10.14 ancillary family accommodation can be developed in conjunction with an existing dwelling, subject to limitations; temporary, for relative, and attached to main dwelling.
- Further information request recommended on three points: intended use; justify size; clarify positioning.

3.3.2. Other Technical Reports

Engineering Department – Drainage Division, 3/2/2017, conditions

3.4. **Response to further information request**

3.5. Use – general store, children’s play area and gym/fitness room.

3.6. Size need for gym, children’s play area etc.

3.7. Position in the middle of the garden allows a reasonable distance and garden area to the home, and a small area on front of veranda for relaxation and external play.

3.8. **Planning Authority Reports**

3.8.1. Planning Reports

The second planning report following the receipt of further information accepts the proposed use. The applicant appears to have now added an external water tank on top of wooden platform to the rear of the log cabin. The justification of the location of the cabin is noted. There is no limitation on the size of storage space in the Development Plan.

Recommending permission subject to 8 conditions.

3.9. **Third Party Observations**

3.10. Third party observations on the file have been read and noted.

4.0 **Planning History**

E1073/16 file opened re alleged 2 bed bungalow under construction.

5.0 **Policy Context**

5.1. **Development Plan**

5.2. The Dublin City Development Plan 2016-2022 is the operative plan. Relevant provisions include:

Backland Development Dublin City Council will allow for the provision of comprehensive backland development where the opportunity exists. Backland development is generally defined as development of land that lies to the rear of an existing property or building line. The development of individual backland sites can conflict with the established pattern and character of development in an area. Backland development can cause a significant loss of amenity to existing properties including loss of privacy, overlooking, noise disturbance and loss of mature vegetation or landscape screening. By blocking access, it can constitute piecemeal development and inhibit the development of a larger backland area. Applications for backland development will be considered on their own merits.

Ancillary Family Accommodation - Ancillary family accommodation refers to an extension of a single dwelling unit to accommodate an immediate family member for a temporary period (e.g. elderly parent) or where an immediate relative with a disability or illness may need to live in close proximity to their family. Generally, the purpose of ancillary family accommodation is to provide an amenable living area offering privacy, manoeuvrability and accessibility directly connected to the main dwelling. Usually, there is no exterior difference in appearance between an extension and ancillary family accommodation. Dublin City Council will, in principle, favourably consider applications for such sub-division provided the planning authority is satisfied that: A valid case is made, including details of the relationship between the occupant(s) of the main dwelling house and the proposed occupant(s) of the ancillary family accommodation. The proposed accommodation is not a separate detached dwelling unit, and direct access is provided to the rest of the house. The accommodation being integral with the original family house shall remain as such when no longer occupied by a member of the family.

5.3. Planning and Development Regulations 2001 – 2015

Schedule 2 (article 6) part 1

Exempted Development — General, Development within the curtilage of a house

CLASS 3

The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure.

Conditions of exemption:

1. No such structure shall be constructed, erected or placed forward of the front wall of a house.
2. The total area of such structures constructed, erected or placed within the curtilage of a house shall not, taken together with any other such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres.
3. The construction, erection or placing within the curtilage of a house of any such structure shall not reduce the amount of private open space reserved exclusively for the use of the occupants of the house to the rear or to the side of the house to less than 25 square metres.
4. The external finishes of any garage or other structure constructed, erected or placed to the side of a house, and the roof covering where any such structure has a tiled or slated roof, shall conform with those of the house.
5. The height of any such structure shall not exceed, in the case of a building with a tiled or slated pitched roof, 4 metres or, in any other case, 3 metres.
6. The structure shall not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any other purpose other than a purpose incidental to the enjoyment of the house as such.

5.4. **Natural Heritage Designations**

- 5.5. The South Dublin Bay and River Tolka SPA site code 004024 is the nearest Natura Sites and is situated several kilometres away.

6.0 The Appeal

6.1. Grounds of Appeal

- The property is intended for habitable use.
- Distance of 12.8m from appellant's bedroom, not 22m as required. The owners have chairs on the veranda which look into the appellant's bedroom. The condition re. opaque windows does not help re. veranda. There is no need for a veranda as the property has a large decking area.
- The structure is less than 1m from the appellant's boundary.
- Precedence & excessive size. 47% larger than the house footprint.
- It has been used to hold parties and barbeques, and created excessive noise from music and people.
- It blocks sunlight. It has an apex 3.2m high. The appellant's plan to build a 40sq m extension, and then it will impinge on their direct sunlight into their living space and patio even more.
- An exempted 40 sq m extension would leave only 7m between the structures.
- It is an eyesore.
- The site may have Japanese knotweed, and unauthorised work, including excavation, connection to electricity and public sewer, continued after enforcement visit.
- Fire hazard. The hedge went on fire due to a firework. Proximity to the hedge could cause the timber structure to go on fire. When the fire occurred a fireman chose to gain entry through their property, although they were not at home, they are concerned that access for the fire brigade to the structure is limited to a side pedestrian entrance.
- Conditions
 - Condition 2 for a limited period of 2 years – this will prolong the stress and invasion of the appellant's privacy.

- Condition 4 - wanting the kitchen removed and Condition 4 - not for habitual use, means they know it is intended as a dwelling.
- Condition 6 - shows that DCC feel their privacy is affected, but there is still a veranda which should be removed.
- Unauthorised – the appellant's understand that the developer was required to sign a waiver with the builder that they knew that it needed planning permission due to its size and intended residential use. They continued to work after the DCC Enforcement visit. They request the Board to refuse.

6.2. Applicant Response

A response to the grounds of appeal has been submitted on behalf of the applicant by Peter P Gillett & Associates, Town Planning & Development Consultancy. It includes:

- Justification for the need for additional space as the applicant's daughter is living with her parent's together with her two children. The log cabin will provide a play and recreational area and create privacy for her and her parent's.
- At 272m² it is 4 times the minimum garden size required in new development.
- Max height 2960mm is below the 4m cap.
- Location allows a good separation distance.
- Low profile and screening by side boundaries ensures that it does not impinge in visual or physical terms on adjoining properties.
- Planning decision took account of the zoning and residential amenity policies and objectives of the plan and the detailed objections and concerns.
- Residential property – it will not be used as a dwelling. Conditions apply.
- Privacy /overlooked – perceived loss of privacy can arise through normal use of a garden for sitting out, in good weather and with any normal use of an exempted garden shed, under 25m² in area.
- Boundary distance – not relevant, normally exempted.

- Precedence & Excessive size – this is a short term solution to give some restricted independence at certain times. Precedence is unlikely as a result of the decision.
- Noise – this is a civil matter.
- Blocking sunlight – no substantiated argument. Exempted structure could be 4m high.
- Future Plans – exempted development would allow similar structure to be placed as it is where the appellant argues it would interfere with her future plans.
- Eye sore – subjective view.
- Environmental concerns – concerns regarding the spread of Japanese knotweed are greatly exaggerated. The cultivation of this extensive rear garden would not be desirable if this view was adopted.
- Fire hazard – compliant with building regulations. Fire rating 1.2hr; letter from manufacturer attached.
- Conditions – applicant accepts them.
- Unauthorised – the purpose of this application is to comply.
- The response refers to letters of support being attached to the grounds, from a number of adjoining and adjacent house owners who support the application, which indicates that all but the appellant agree with the decision made by the planning authority.
- The purpose and use for a very limited period arises from a specific housing need of this extended family. The decision is balanced and equitable and contains enforceable conditions.

A letter re flame retardant supplied from the Lithuanian based manufacturer, is attached to the response.

A letter, with a list of signatures with addresses at 298, 300, 302, 306, 310 and 316 Tonlegee Road, is attached to the response, which states that they have no issue with the permission granted.

6.3. **Planning Authority Response**

- The planning authority has not responded to the grounds of appeal.

6.4. **Observations**

CLlr Alison Gilliland has submitted an observation which includes:

- Privacy and visual impact
- Precedent
- Capacity of planning enforcement to ensure adherence to the 2 year temporary nature of the permission. At no stage did the building work stall in response to enforcement, to allow planning processes to be followed.

7.0 **Assessment**

7.1. There are issues which arise in relation to this appeal are: appropriate assessment, residential amenity and Development Plan standards, and the following assessment is dealt with under those headings.

7.2. **Appropriate Assessment**

7.2.1. Having regard to the nature and scale of the proposed development and nature of the receiving environment no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect, individually or in combination with other plans or projects, on a European site.

7.3. **Residential Amenity and Development Plan Standards**

7.4. The third party is concerned about the impact on residential amenity arising from the proposed development: the proximity of the windows facing the rear of their dwelling and the veranda which they consider will look into their bedroom.

7.5. The first party makes a counter argument regarding the low profile of the building, the screening provided by the side boundaries and the exemptions which would be

available for structures ancillary to the dwelling. The first party states that the use will be for purposes ancillary to the dwelling and points out that perceived loss of privacy can arise through normal use of a garden for sitting out, in good weather and with any normal use of an exempted garden shed, under 25m² in area.

- 7.6. I accept the argument that the use made of a rear garden could involve outdoor activity or use of exempted structures which could involve overlooking similar to that which would be experienced from the subject development, but the amount of activity which would be associated with a building of this scale would be unlikely to occur within a rear garden in other circumstances.
- 7.7. The development for retention is a log cabin stated to be intended for use for general storage, child's playroom and home gymnasium/fitness room. The planning authority's decision includes conditions: to ensure that the use shall be a use incidental to the enjoyment of the adjoining dwelling house and not for human habitation, (Condition no 3); that the fitted kitchen shall be removed (Condition no 4); and that the 'shed' shall be used solely in conjunction with the main dwelling house and shall not be occupied other than as part of the overall site that includes this dwelling and its garden and not let, sold or otherwise transferred or conveyed except as part of the overall site that includes the dwelling house and its garden, (Condition no 5). It is also a condition of the decision that the permission be limited to two years, (Condition no 2). These reasons have been imposed to protect the residential amenity of the subject and surrounding properties and in the interests of orderly development.
- 7.8. It would appear that one of the issues which arises is whether, on the basis of the information on this file, it is reasonable to consider this log cabin as an outhouse or shed associated with the dwelling, or as a separate dwelling.
- 7.9. Although the specification, with timber floors and timber walls etc is high for a shed this would not in itself indicate that it is not a shed, but the fitting of a kitchen and a shower/toilet room and the overall scale indicates that it is intended as a separate dwelling.
- 7.10. If it is to be considered as a separate dwelling the issue of backland development arises. The development plan states that applications for backland development will be considered on their own merits. It also states that the development of individual

backland sites can conflict with the established pattern and character of development in an area and can cause a significant loss of amenity to existing properties including loss of privacy, overlooking, noise disturbance and loss of mature vegetation or landscape screening. It can be said in this case that the proposed development will not inhibit the development of a larger backland area, since there is no potential for a more comprehensive backland development at this location.

- 7.11. In my opinion, in this case, the development would be out of keeping with the established pattern and character of development in an area and would cause a significant loss of amenity to adjoining properties and would also comprise substandard development and this is a reason to refuse permission.
- 7.12. I concur with the concerns expressed by the observer that this development could set a precedent for large scale log cabins being erected in back gardens, but rather than for day living purposes, in my opinion it could set a precedent for their use as dwellings.
- 7.13. If the Board were to consider the log cabin as a 'shed' it is excessively large, in my opinion, for the subject site. It's future use for habitation, for which it appears to have been designed, would be difficult to ensure against. The conditions attached by Dublin City Council to their decision could place an obligation on the planning authority for on-going monitoring of activity within the site which could be construed as an inappropriate level of surveillance of domestic activity within a domestic property.

8.0 Recommendation

- 8.1. In light of the foregoing assessment it is recommended that planning permission be refused for the following reasons and considerations.

9.0 Reasons and Considerations

- 1 The proposed development which would give rise to overlooking of the rear of residential properties and would seriously injure the amenities and depreciate the value of property in the vicinity.

- 2 Having regard to the pattern of development in the area, it is considered that the proposed retention of the log cabin, which is excessively large for the site, and which is designed for use as a dwelling, to the rear of existing dwellings with access through an existing dwelling site would be out of character with the pattern of development in the area, would negatively impact on the amenities of the area, and would accordingly be contrary to the proper planning and sustainable development of the area.

Planning Inspector

10th August 2017

Appendices

- 1 Photographs
- 2 Extracts from the Dublin City Development Plan 2016-2022