



An
Bord
Pleanála

Inspector's Report R29N.249080

Development

Retention and permission for house extension consisting of completion and extension of wall with erection of screen to enclose a balcony area.

Location

1 Boland's Cottages, East Wall, Dublin
3

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

3045/17

Applicant(s)

Sarah Pender

Type of Application

Permission

Planning Authority Decision

Refuse permission

Type of Appeal

First Party

Appellant(s)

Sarah Pender

Observer(s)

Michelle Ryan

Date of Site Inspection

12th October 2017

Inspector

Donal Donnelly

1.0 Site Location and Description

- 1.1. The appeal site is situated in a backland location between Shelmalier Road and Church Road in East Wall, Dublin 3. Boland's Cottages comprise a terrace of 3 no. 2-storey dwellings constructed to the rear of buildings on Church Road. The dwelling on the appeal site is the end of terrace unit at the south-western end.
- 1.2. There is a small area of open space (25 sq.m.) to the south-western side of the dwelling but the site and terrace is otherwise enclosed by the rear boundaries of surrounding properties. It would appear that the terrace would once have faced open ground to the south-east before the development of Shelmalier Road sometime around the 1940's. Boland's Cottage appears on historic 25-inch mapping (1897-1913).
- 1.3. The stated area of the site is 96.3 sq. m. and the 3-bed dwelling has a floor area of 66.19 sq.m. There is no vehicular access up to the dwelling. Pedestrian laneways approach the cottages from Shelmalier Road and Church Road.

2.0 Proposed Development

- 2.1. Planning permission is sought for the retention and completion of a first floor extension to the rear side of the property to provide for an enlarged bedroom and balcony comprising the following:
 - Increased height of first floor rear wall and extension along rear boundary;
 - Erection of new side wall to first floor room;
 - Creation of balcony with obscure screen to the rear and side;
 - The stated area of the proposed development is given as 5.44 sq.m. The floor area of the bedroom extension is measured at 4.8 sq.m. and the balcony has dimensions of 0.6m in width increasing to c. 0.8m. The length of the balcony is c. 2.2m. (approximate area: 1.5 sq.m.).

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Dublin City Council refused permission/ retention permission for the following reason:

“The Planning Authority considers that the development to be retained and completed would be incongruous to and significantly detract from the established character of the area which is zoned Z2 in the Dublin City Development Plan 2016-2022 with a zoning objective to protect and/or improve the amenities of residential conservation areas. The development as proposed to be retained and completed, would be visually obtrusive, would seriously injure the residential amenities of the area and would set an undesirable precedent for similar developments. The development would therefore be contrary to the residential zoning objective, would seriously injure the amenities and depreciate the value of properties in the vicinity and would be contrary to proper planning and sustainable development.”

3.2. Planning Authority Reports

- 3.2.1. The recommendation to refuse permission, as outlined in the Planner’s Report, reflects the decision of the Planning Authority.
- 3.2.2. It is stated under the assessment of the application that the Case Planner can find no record of planning permission for the original first floor extension to the rear. It is therefore considered that this is an application for extension to an already unauthorised extension.
- 3.2.3. With respect to the proposal to build on the boundary wall, it is noted that this is a civil matter and in any event a grant of permission does not entitle someone to carry out a development, as set out in Section 34(13) of the Planning and Development Act, 2000 (as amended).
- 3.2.4. There are concerns regarding the potential for adverse impact from loss of daylight and sunlight to the neighbouring property at No. 2 Boland’s Cottage; however, this is based more on the unauthorised nature of the existing first floor extension, which is proposed to be raised in height by 0.7m. It is considered that the planning status of this extension needs to be clarified and/ or regularised. Impact on sunlight and

daylight for properties on Church Road are considered to be minimal having regard to orientation.

- 3.2.5. The Case Planner is of the opinion that the extension at first floor level to be retained and completed is not subordinate to the existing dwelling in terms of scale and massing as it forms a largely obtrusive block directly onto the rear boundary of properties to the rear.
- 3.2.6. Finally, it is considered that the provision of a balcony area has the potential to create noise and nuisance due to its proximity to adjacent houses and their private open space. The restricted nature of the site is acknowledged and the fact that the proposal seeks to increase the area of the third bedroom; however, there are concerns regarding the design of the extension, the provision of the balcony, visual obtrusiveness and possible unauthorised development.
- 3.2.7. The report of the Drainage Division states that all private drain fittings are to be located within the final site boundary. It is suggested in a third party submission that a gutter overhangs No. 109 Church Road.

3.3. Third Party Observations

- 3.3.1. Three third party observations were received from the residents of No's. 107, 108, and 109 Church Road. The issues raised in these submission are broadly reiterated in submissions to the Board.

4.0 Planning History

- 4.1.1. No planning history.

5.0 Policy Context

5.1. Dublin City Development Plan, 2016-2022

- 5.1.1. The appeal site is zoned "Z2" where the objective is *"to protect and improve the amenities of residential conservation areas."*

5.1.2. It is stated under Section 16.10.12 that applications for planning permission to extend dwellings will only be granted where the Planning Authority is satisfied that the proposal will:

- Not have an adverse impact on the scale and character of the dwelling;
- Not adversely affect amenities enjoyed by the occupants of adjacent buildings in terms of privacy, access to daylight and sunlight.

5.1.3. Guidelines for residential extensions are included in Appendix 17.

5.2. **Natural Heritage Designations**

5.2.1. None relevant.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

6.1.1. A first party appeal against the Council's decision was lodged on behalf of the applicant. An alternative roof design is submitted with the appeal for the Board's consideration, which includes an angled profile. The grounds of appeal and main points raised in this submission can be summarised as follows:

- Architect's certificate provided with the sale of the house indicated that the rear extension, including first floor, was built between 47 and 57 years ago.
- First floor extension provided a small bedroom with low ceiling that would not meet any modern building standard.
- Boland's Cottages cannot be seen from Church Road and can only be glimpsed from Shelmalier Road.
- Proposed increase in the size of the proposed ope is to bring light into narrow room. The screen on the roof of the single storey element of the building is to prevent overlooking from the window. The appellant would accept a reduction in size of the proposed window if the Board is minded to grant permission.

- No balcony is proposed in the sense of an outdoor area – the remaining flat roof area at just 0.5m in width is to allow access for drainage, maintenance, etc.
- Reason for refusal does not indicate how the development would have any negative impact on a residential conservation area or negative impact on residential amenity of neighbouring properties.
- Established area is that of small properties significantly altered and extended to the rear – development cannot be considered incongruous with its surroundings.
- View of No. 1 Boland's Cottages at present and for the past decades from houses on Church Road includes a first floor extension with a window on the southern elevation.
- Houses fronting Church Street have erected significant extensions, some of which can be seen from the side garden of the appeal site.
- Reason for refusal fails to state on what grounds the development would be visually obtrusive, e.g. height, loss of sunlight, overbearing nature or overshadowing.
- The window at first floor southern side of the house in situ for c. 40-50 years was 0.8m wide and the proposed window is 0.6m wide and located behind a proposed screen – there will be no overlooking that was not there before.
- There will be no overshadowing due to the height of the existing development and orientation.
- It may be appropriate that a condition be imposed raising the window from ground level to ensure that there is no access to the flat roof area, other than for maintenance of guttering.

6.2. Observation

- 6.2.1. An observation on the appeal was submitted on behalf of the resident of No. 109 Church Road, which adjoins the appeal site to the north-west. The main points raised in this submission are summarised below.

- The proposed development would seriously disrupt properties on Church Road in respect of overlooking, overshadowing and overbearing impacts.
- Extensions to surrounding properties do not extend to the boundary line – proposal would cause severe dis-amenity to neighbouring properties and will not be subordinate to main dwelling.
- Windows in side walls should generally be avoided in extensions and should be kept as small as possible.
- Drawings show what looks like a door opening out onto a balcony – this would seriously disrupt the visual amenities of surrounding properties. Proposed obscure screen is not an appropriate solution to prevent overlooking.
- Proposed extension will result in overdevelopment of the site that will increase the level of overshadowing that is caused by the dwelling.
- Form and scale of the extension differs substantially from neighbouring houses and design and materials will not complement the existing building on site.
- Proposal results in a wall 5.1m in height at the rear of the observer's garden.
- Observer has concerns regarding the structural stability of the extension.
- Gutter at roof level overhangs adjoining properties.
- Observer does not allow consent to access their property to complete the development.
- Planning application form is inaccurate with respect to floor areas.

6.3. Applicant's Response

6.3.1. The applicant's agent submitted the following comments in response to the observations on the appeal:

- Existing first floor also extends to the rear boundary, as do the extensions to No's. 2 & 3 Boland's Cottages.
- Photographs submitted with the observation show the development unroofed and unfinished. Applicant proposes to finish the extension in a cladding, with

colour to be agreed. If observer wishes for the extension to be rendered and painted, the appellant would facilitate that.

- Sunlight Analysis Report and Shadow Study submitted with the response shows that there will be no overshadowing owing to the orientation and existing development in the vicinity. Level of impact on No. 109 would be imperceptible.
- Proposed extension at 5.4 sq.m. represents 8% of the overall area – this cannot be described as inconsistent with the subordinate objective.
- Applicant bought the property with the benefit of an architect's certificate that the historical extension was exempted development. It is reasonable to assume that many of the small historical extensions around East Wall preceded current legislation.
- Extension is being overseen by an engineer and will be constructed in accordance with Building Regulations.
- New guttering will be provided wholly within the site of the applicant.
- Within respect to invalid application form, the Development Management Guidelines advise that invalidating applications on very minor points should be avoided.

6.4. Planning Authority Response

- 6.4.1. In response, the Planning Authority states that the Planning Report justifies the decision to refuse permission.

7.0 Assessment

- 7.1. In my opinion, the main issues to be addressed in this appeal are as follows:

- Development principle;
- Unauthorised development;
- Visual impact;
- Impact on residential amenity; and

- Appropriate Assessment.

7.2. Development principle

- 7.2.1. The appeal site is zoned “Z2” where the objective is *“to protect and improve the amenities of residential conservation areas.”*
- 7.2.2. In normal circumstances, a proposal for a 2-storey extension to a dwelling would be acceptable in principle subject to an assessment of the proposal under relevant Development Plan criteria.

7.3. Unauthorised development

- 7.3.1. It is stated in the Planner’s Report that no record of planning permission exists for the original first floor extension that is now being extended further, and that aerial photography would suggest that this extension is not part of the original structure. The Case Planner is therefore of the opinion that this may be an application for retention of an extension to an already unauthorised extension. It is considered that the planning status of the original extension needs to be clarified and/ or regularised.
- 7.3.2. The planning application, as described on statutory notices, is for the *“retention and completion of increased height or first floor wall, extending wall to first floor room and erecting obscure screen to enclose a balcony area to the rear and site.”* The planning application form has been erroneously completed with respect to floor area to be retained (66.19 sq.m.) and this is acknowledged by the applicant in the response to the observation. The floor area of proposed buildings is 5.44 sq.m. and this relates to the newly constructed extension at first floor level. There is no doubt that the intention is to seek permission for retention of the small extension to the existing first floor extension only and not for all of the first floor extension.
- 7.3.3. With respect to the status of the older part of the first floor extension, the applicant claims that the architect’s certificate provided with the sale of the house indicated that the rear extension, including first floor, was built between 47 and 57 years ago. It may be the case, therefore, that the reason for there being no record of planning permission for the first floor extension is that it is a “pre 1963” structure. However, this is not substantiated in the planning application and appeal documentation. The

applicant's consultant merely states that it is reasonable to assume that many small historical extensions developed around East Wall preceded the current legislation.

- 7.3.4. Notwithstanding the above, the Council's reason for refusal did not refer to the pre-existing structure being unauthorised and there is no evidence on file that the extension was developed after 1963. I will therefore proceed to assess the development proposed for retention only.

7.4. **Visual impact**

- 7.4.1. It is stated under the Planning Authority's reason for refusal that "*the development to be retained and completed would be incongruous to and significantly detract from the established character of the area which is zoned Z2...*". Furthermore, it is considered that the development would be visually obtrusive, would seriously injure the residential amenities of the area and would set an undesirable precedent for similar development.
- 7.4.2. The applicant has submitted an alternative design with the first party appeal, which shows the roof at first floor level sloping at an angle of approximately 40 degrees from a similar eaves height to the pre-existing roof. The applicant would also accept a condition to any grant of permission to reduce the size of the proposed window and to raise the window from ground level to limit access to the flat roof area.
- 7.4.3. In my opinion, the proposed alteration to the roof profile will help to reduce the visual impact of the first floor extension when viewed from the rear. The roof of the structure will become visible and this will alleviate the overbearing visual impact of the structure. The slope angle will be similar to that of the main roof (35-degree pitch), thus helping to assimilate the new structure with the main body of the dwelling.
- 7.4.4. I would nonetheless have concerns with the appearance of the proposed obscure screening to the small balcony area. As can be seen from the proposed side elevation, the screen will protrude above the level of the angled roof and in general this feature will appear incongruous. Furthermore, a balcony of such scale is unusable and superfluous.
- 7.4.5. Should the Board be minded to grant permission for the development, I consider that the screening should be omitted and access to the flat roof area should be restricted

for maintenance purposes only. The side wall should sit at a right angle to the main rear wall of the dwelling and the window opening to this elevation should be centrally positioned, fitted with obscure glazing and should have a similar style and dimensions to the existing first floor windows on the front elevation of No. 1 Boland's Cottages (top hung approximately 0.7m x 1.4m.). I would also be of the view that the external walls of the extension should match those of the existing dwelling.

7.5. Impact on residential amenity

- 7.5.1. The observer on the appeal has raised a number of issues regarding the impact of the proposal in terms of overlooking, overshadowing and overbearing impacts. A number of other concerns have been raised relating to boundary issues and structural stability which are outside the remit of planning.
- 7.5.2. As noted above, the proposed amendments to the roof profile will reduce the visual bulk and overbearing appearance of the as-built structure when viewed from the rear. I would also be satisfied that there will be no overlooking of adjoining properties subject to the suggested amendments.
- 7.5.3. With regards to overshadowing, the applicant's agent has prepared a Sunlight Analysis Report and Shadow Study which illustrates that the level of increased overshadowing of surrounding properties from the new extension would be imperceptible.
- 7.5.4. Overall, I would be satisfied that the new extension will not have significant adverse impacts on surrounding residential amenities over and above the pre-existing situation.

7.6. Appropriate Assessment

- 7.6.1. Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely an urban and fully serviced location, no appropriate assessment issues arise.

8.0 Recommendation

- 8.1. It is considered that the proposed development/ development for retention should be granted for the reasons and considerations hereunder.

9.0 Reasons and Considerations

Having regard to the zoning objective, the design, layout and small scale of the development, and to the pattern of development in the area, it is considered that subject to compliance with conditions below, the proposal would not seriously injure the visual amenities of the area or residential amenities of property in the vicinity, and would not adversely or materially impact on the character of the building or streetscape. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be retained and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by An Bord Pleanála on the 21st day of August, 2017, and on 18th day of October, 2017, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The proposed development shall be amended as follows:
 - (a) The side wall of the extension shall be constructed at a right angle to the main rear wall of the dwelling;
 - (b) The window opening to this elevation shall be centrally positioned, fitted with obscure glazing and shall have a similar style and

dimensions to the existing first floor windows on the front elevation of No. 1 Boland's Cottages (top hung approximately 0.7m x 1.4m.);

- (c) The obscure screening around the balcony area shall be omitted and access to the flat roof shall be for maintenance purposes only.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of visual and residential amenity.

3. The external finishes of the extension (including roof tiles/slates) shall be the same as those of the existing dwelling in respect of colour and texture. Samples of the proposed materials shall be submitted to, and agreed in writing with, the planning authority prior to completion of development.

Reason: In the interest of visual amenity.

4. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

Donal Donnelly
Planning Inspector

7th November 2017