



An
Bord
Pleanála

Inspector's Report ABP-300093-17

Development	Retention of conversion of attic to habitable accommodation / bedroom and a bathroom / storeroom, including extending the existing staircase, new internal walls and floor and 3no. velux roof-lights to the rear
Location	3 Blackwood Place, Ongar Chase, Dublin 15
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	FW17B/0077
Applicant(s)	Andrew Gilsenan
Type of Application	'Retention' permission
Planning Authority Decision	Granted with Conditions
Type of Appeal	First Party
Appellant	Andrew Gilsenan
Observer(s)	None
Date of Site Inspection	None
Inspector	LW Howard

1.0 Site Location and Description

- 1.1. The application site is located within an established housing development, Ongar Chase, located to the west of Blanchardstown Centre, within Clonee, County Dublin.
- 1.2. The application site comprises the third, of a row of four 2-storey detached houses, which face south onto an area of public open space.

2.0 Proposed Development

- 2.1. Proposed retention of works (area 26m²) to an existing 2-storey detached house as follows :
 - the conversion of the existing 2nd floor attic for use as a bedroom
 - provision of a bathroom at attic level
 - two velux type windows for use as fire escapes (located in the rear, northern pitch of the roof)
 - provision of a space adjoining the west of the house at 1st and 2nd floor level, accommodating a stairway to access the attic conversion.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Decision to grant planning permission, subject to 9no. Conditions
- 3.1.2. Having regard to the 1st party grounds of appeal, the following is considered noteworthy :

C9 Specify payment of €2,102.00 towards expenditure incurred / to be incurred by the Planning Authority, in respect of public infrastructure and facilities benefitting development in the area, "as provided for in the Contribution Scheme for Fingal County, made by the Council".

3.2. Planning Authority Reports

3.2.1. Planning Reports

The key planning issues considered as follows -

Principle

- The site is zoned “RS – Residential”, with the objective to provide for residential development and protect and improve residential amenity.
- The applicable zoning matrix designates residential land use as being permitted in principle within the zone, subject to a full planning analysis.

Residential Amenity

Overbearing and Overshadowing

- Whilst 2 ½ storeys and 1.4m from the site boundary, the existing development proposed for retention, does not negatively impact residential amenities by way of overshadowing, or overbearing presence.
- Having regard to set back from the front building line of the house, retention of development is acceptable, visually.
- The

Overlooking

- Objective DMS28 requires a minimum of 22m separation between directly opposing rear 1st floor windows.
- The distance from the rear site boundary to the rear house elevation wall is stated as 13.3m. No undue negative residential amenity impact will result due to overlooking.
- The window in the west facing elevation, will not result in overlooking of the neighbouring property.
- Floor to ceiling heights within the attic conversion, conform with Section 1.2.1.8 of the Building Regulations 2009 Technical Guidance Document F.

Appropriate Assessment

- Having regard to the nature of the proposed development, and to the location of the application site and proximity to the nearest European site, no appropriate assessment issues arise.

- 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.

Conclusion

- The proposed development :
 - is in keeping with existing development on site
 - does not detract significantly from the character or amenity of adjoining development
- Therefore, the proposed development is in accordance with the proper planning and sustainable development of the area.

3.2.2. **Other Technical Reports**

None

3.3. **Prescribed Bodies**

None

3.4. **Third Party Observations**

None.

4.0 **Planning History**

4.1. Relevant planning history on the application site :

None

4.2. Relevant planning history within the broader parent contextual residential estate :

F00A/0804 Permission granted to Manor Park Homebuilders Ltd. For development comprising revisions to residential scheme permitted under **Reg.Ref.F99A/1630**, as follows -

- 63no. 2-storey 5-bedroom detached houses
- 45no. 2-storey 4-bedroom detached houses,

all with optional attic conversion providing for an additional bedroom with ensuite bathroom and study (House Types A, B, C, D and F Total – 108no. houses).

See case history documentation included on file.

5.0 Policy Context

5.1. Fingal County Development Plan (2017-2023)

Relevant provisions incl. –

Ch3 Placemaking

3.4 Sustainable Design and Standards

Extensions to Dwellings

Objective PM46 Encourage sensitively designed extensions to existing dwellings which do not negatively impact on the environment or on adjoining properties or area.

Ch11 Land Use Zoning Objectives

Zoning Objective “RS” Residential

Objective: Provide for residential development and protect and improve residential amenity.

Vision: Ensure that any new development in existing areas would have a minimal impact on and enhance existing residential amenity.

Use Classes related to Zoning Objective

Permitted in Principle incl. – ‘Residential’

(see Map – Fingal Co. Dev. Plan 2017 Land Use Zoning Objectives).

5.2. Natural Heritage Designations

None

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. Restriction of 1st party appeal to Condition No.9. This Condition specified the payment by the applicant of a Development Contribution of €2,102.00.
- 6.1.2. Section 48(1) of the Planning and Development Act 2000, as amended, enables a Planning Authority, when granting a planning permission under Section 34 of the Act, to include Conditions requiring the payment of a Development Contribution in respect of public infrastructure and facilities benefitting development in the area of the Planning Authority.
- 6.1.3. Subsection 10 of the Fingal County Council 'Development Contribution Scheme 2016-2020' provides :
- 10(i) The following categories of development will be exempted from the requirement to pay development contributions under the Scheme :*
- (a) The first 40m² of domestic extensions. This exemption is cumulative and limited to 40m² total per dwelling.*
- (b) Attic conversions.*
- 6.1.4. As the area of the attic conversion for 'retention' is only 26m², this should be exempted in accordance with 10.1 above.
- 6.1.5. Accordingly therefore, Condition No.9 should be struck out from the Final Grant of planning 'retention'.

6.2. Planning Authority Response

- 6.2.1. Distinguish that the 1st party appeal relates solely to the proper application by the Planning Authority, of the terms of the Development Contribution Scheme adopted under Section 48 of the Planning and Development Act 2000, as amended.
- 6.2.2. In compliance with Council's Development Contribution Scheme 2016-2020, the standard Section 48 development contribution was applied, as per Condition No.9.
- 6.2.3. The applicant correctly distinguishes that the first 40m² of domestic extensions, and attic conversions are exempt from the requirement for payment of Development Contributions under the Scheme (Section 10(i)(a) and (b) of the Scheme applies).

6.2.4. However, notwithstanding these exemptions, Council's Development Contribution Scheme 2016-2020 clearly distinguishes that exemptions and reductions shall not apply to permissions granted for 'retention' of development, as follows –

“10(ii) For clarification purposes :

(a) exemptions and reductions shall not apply to permissions for retention of development”.

6.2.5. Therefore, as this is a 'retention' permission case, it is considered entirely appropriate that a Section 48 Contribution is sought by Council. This is manifest by way of Condition No.9.

6.2.6. Request that the Board uphold Council's decision to grant 'retention' permission, “subject to Condition No.9 and the amount of €2,102.00 as calculated”.

6.2.7. The additional information was received dated 21/11/2017.

6.3. **Observations**

None.

6.4. **Further Responses**

None.

7.0 **Assessment**

7.1. I have examined the file and available planning history, considered the prevailing local and national policies, and assessed the proposal and all of the submissions.

7.2. The scope of the 1st party appeal was restricted to Condition No.9, included in the Planning Authority's notification of decision to grant 'retention' permission. Condition No.9 specified the required payment by the applicant of a Development Contribution of €2,102.00, towards expenditure incurred / to be incurred by the Planning Authority, in respect of public infrastructure and facilities benefitting development in the area, as provided for in the Fingal County Council 'Development Contribution Scheme 2016-2020'.

7.3. Accordingly, I have regard to this as an appeal under Section 48(10)(b) of the Planning and Development Act 2000, as amended. In my view, the sole question at hand, as

framed by Section 48(10)(b) of the Planning and Development Act 2000, as amended, is whether the terms of the Development Contribution Scheme 2016-2020, have been 'properly applied in respect of any Condition laid down by the Planning Authority. The Board does not have any jurisdiction to adjudicate on the merits of the Development Contribution Scheme itself.

7.4. The Fingal County Council 'Development Contribution Scheme 2016-2020' is, in my view, clear and unambiguous, with contributions for various categories of development set out therein.

7.5. Section 10 deals with 'Exemptions and Reductions'. Section 10(i) specifies the categories of development exempt from the requirement to pay development contributions under the Scheme 2016-2020. These categories include :

“(a) The first 40m² of domestic extensions. This exemption is cumulative and limited to 40m² total per dwelling”, and

“(b) Attic conversions”.

7.6. The applicant argues that as the area of the attic conversion for 'retention' is only 26m², this should be exempted from payment of a 'Development Contribution', in accordance with Section 10.1 of the Council's 'Development Contribution Scheme 2016-2020'. Accordingly therefore, Condition No.9 should be struck out from the Final Grant of planning 'retention'.

7.7. However, whilst this may in fact be a strictly correct application of the provisions of Section 10(i), such is in isolation from the supplementary clarity provided at Section 10(ii). Of relevance to the current application for 'retention' permission, is the following provision :

“10(ii) For clarification purposes :

(a) Exemptions ... shall not apply to permissions for 'retention' of development”.

This provision is clearly relevant, and applies in the current case.

7.8. Therefore, as this is a 'retention' permission case, I believe that it was entirely appropriate that a Section 48 Development Contribution is sought by the Planning Authority. This is manifest by way of Condition No.9. In my view, Condition No.9 is compliant with Councils Development Contribution Scheme 2016-2020.

- 7.9. As set out above, the Board is limited to consideration of whether or not the terms of the Councils Development Contribution Scheme 2016-2020, have been properly applied. The Planning Authority, and on appeal An Bord Pleanala, are legally obliged to apply the provisions of the Scheme in force, at that time.
- 7.10. Having regard to the above, I conclude that the provisions of the Scheme 2016-2020 have been properly applied, and that the applicant's argument that Condition No.9 be omitted from the Final Grant of planning 'retention', cannot be sustained.

8.0 Recommendation

- 8.1. I recommend that the Board do not delete Condition No.9, with regard to the Section 48 Development Contribution, for the reasons and considerations as set out below.

9.0 Reasons and Considerations

The Board considers that the requirement to pay the Development Contribution is in accordance with the requirements both of Section 48 of the Planning and Development Act 2000, as amended, and the Fingal County Council 'Development Contribution Scheme 2016-2020'. Being a modest attic extension (ie. 26m²), Section 10(i) of the Scheme would normally enable for the development to be exempted from the requirement to pay a Development Contribution under the Scheme. However, as the application is for the 'retention' permission of the attic extension, Section 10(ii) of the Scheme clarifies that "*Exemptions ... shall not apply to permissions for 'retention' of development*". Accordingly, the Board considers that the Development Contribution set out in Condition No.9 was correctly applied.

L. W. Howard
Planning Inspector

06th February 2018