



An  
Bord  
Pleanála

## Inspector's Report ABP-300214-17

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<b>Development</b>	A ground floor extension by the conversion of an exempt development garage to a study (24.75 sq.m.) and a store (10.5 sq.m.) to the rear of the study.
<b>Location</b>	"Tetherdown", 21 Dalkey Avenue, Dalkey, Co. Dublin.
<b>Planning Authority</b>	Dun Laoghaire Rathdown County Council
<b>Planning Authority Reg. Ref.</b>	D17A/0766
<b>Applicant(s)</b>	Iris O' Malley
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party v. Decision
<b>Appellant(s)</b>	Iris O' Malley
<b>Observer(s)</b>	No observers
<b>Date of Site Inspection</b>	13 <sup>th</sup> February 2018
<b>Inspector</b>	Erika Casey

## 1.0 Site Location and Description

- 1.1 The subject site, which has a stated area of 0.12 hectares, is located on the eastern side of Dalkey Avenue at the junction with Cunningham Road, approximately 400 metres to the south of Dalkey Village. Access to Hillside and other residential developments is located immediately opposite on the western side of the roadway. Access to 'The Flags' is located along its south-western boundary. The general character of development in the vicinity is low density mature suburban housing.
- 1.2 Permission was previously granted for demolition of an existing dwelling and the construction of three no. detached properties. The two houses to the south of the site referred to as Houses B and C are constructed. The current application relates to House A which is a large detached five bedroom dwelling. The site is well screened in particular along its boundary with Cunningham Road and north of the existing site entrance. The dwelling is served by a private enclosed rear garden and a large side garden.
- 1.3 House A has a contemporary design. Two extensions have been constructed to the east and south of the dwelling. The extension to the south comprises a single storey structure with a large bay window. That to the east is also single storey with a flat roof.

## 2.0 Proposed Development

- 2.1. It is stated by the applicant that the purpose of the application is to regularise some minor works at the site in response to a warning letter issued by the Council. The proposed development has an area of 35.25 sq. metres and comprises:
- Retention of extension to ground floor of dwelling through the conversion of a garage to a study (24.75 sq. m.).
  - Retention of a store to the rear of the study (10.5 sq. m.).

## 3.0 Planning Authority Decision

### 3.1. Decision

#### 3.1.1. To Refuse Permission for the following reason:

*“Having regard to the scale of the dwelling already permitted and constructed on the site, the planning history of the site and the development to be retained, it is considered that the development to be retained that further increases the floor area, would constitute over development of the site, would seriously injure the residential amenities of the area and would, therefore, be contrary to the proper planning and sustainable development of the area.”*

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Report (20.10.17)

- It is important to note that the previous application to the parent permission was refused planning permission on the basis of overdevelopment of the site due to scale and massing. The development permitted under Reg. Ref. D11A/0193 (parent permission) reduced the scale and height of the development with a reduction in the overall floor area by approximately 30%. It is considered that this planning history is relevant in terms of assessing any future development on site and in particular, attention should be paid to incremental increases in permitted floor area, scale and massing.
- Notes that under Reg. Ref. D14A/0467 permission was refused for a side extension to the east of the dwelling. A single storey extension now exists in the location of this refused development. In response to enforcement proceedings, the applicant has stated that this existing extension has an area of 33.5 sq. metres and is considered exempted development. This extension increases the floor area of the permitted dwelling to a total of 359.5 sq. metres. States that under Reg. Ref. D14A/0467 permission was refused for an extension to the south of the dwelling that would have increased the overall area of the development to 364 sq. metres.

- It is now proposed to retain a study and store. The applicant states that the study (24.75 sq. m.) was originally built as a garage under exempted development provisions. The store to be retained has an area of 10.5 sq. metres. This development to be retained is located in the same location as that refused under D14A/0467. The floor area to be retained represents a reduction in floor area of 2.75 sq. m. from that previously refused.
- The study and store to be retained when taken together with the total permitted floor area of the dwelling and extension to the eastern side results in a total dwelling area of 394.75 sq. metres. This is a cumulative increase in floor area from that originally permitted under the parent permission (Reg. Ref. D11A/0193) of 140.75 sq. m. or approximately 55%.
- Having regard to the planning history of the site, the floor area of the permitted dwelling and already extended dwelling, it is considered that the resultant dwelling with a total floor area of 394.754 sq. metres – well in excess of that previously refused on site – is excessive in scale and constitutes overdevelopment of the site.

### 3.2.2. **Other Technical Reports**

**Transportation Planning (02.10.2017):** No objection.

### 3.3. **Prescribed Bodies**

- No reports received.

### 3.4. **Third Party Observations**

- No observations.

## 4.0 **Planning History**

- 4.1 The site has an extensive planning history. The most relevant history can be summarised as follows:

### **Planning Authority Reference D11A/0193**

This is the parent permission pertaining to the site. Permission granted in June 2011 for the demolition of a dwelling house and the construction of 3 new dwellings. The house subject of the current appeal was referred to a House A on the approved plans.

### **Planning Authority Reference D13A/0150**

Permission granted in May 2013 for a development comprising the conversion of attic space, associated dormer windows and second floor terrace.

### **Planning Authority Reference D13A/0317/An Bord Pleanála Reference PL 06D.242469**

Permission granted by An Bord Pleanála in January 2014 for a development comprising a change of house type (for House A – the subject site) from the approved two-storey plus roof level accommodation, five bedroom dwelling (305 sq. m.) with a second floor level terrace to a three storey with setback second floor level, five bedroom dwelling (326 sq. m.) also with a second floor level terrace and ancillary works including moving house northwards by c. 1.7 metres.

### **Planning Authority Reference D13A/0532**

Permission granted in December 2013 for modifications to the approved House A consisting of the relocation of the permitted dwelling within the site northwards by 1.7 metres.

### **Planning Authority Reference D14A/0098/An Bord Pleanála Reference PL06S.243356**

Permission refused by the Board in September 2014 for a development comprising a single storey extension (39 sq. m.) to the eastern side of the dwelling and a garden store of 10 sq. m. The reason for refusal stated:

*“Having regard to the scale of the house already permitted on site, to the planning history of the site, to the prominent position of the site at a corner location and to the proximity of the proposal to the nearby boundaries and the removal of landscaping, the Board considered that the proposal would seriously injure the amenities, or depreciate the value of property in the vicinity.”*

### **Planning Authority Reference D14A/0467**

Permission refused in September 2014 by Dun Laoghaire Rathdown Co. Co. for a development comprising a single storey extension and store to the southern side of the dwelling. The reason for refusal stated:

*“Having regard to the scale of the dwelling already permitted on the site, the planning history of the site and the extent of development proposed on this elevated and prominent site, it is considered that the proposed increase in floor area and altered site boundary between Houses A and B, would seriously injure the residential amenities of the area and would, therefore, be contrary to the proper planning and sustainable development of the area.”*

### **Section 5 Referral Reference 12115. An Bord Pleanála Reference RL3442**

A section 5 referral in relation to a single storey extension to the eastern side/rear of the dwelling was considered not to be exempt as no dwelling existed on the site at the time of the assessment. A subsequent referral to the Board was dismissed.

- 4.2 Other applications pertaining to the site include Planning Authority Reference D13A/0466/An Bord Pleanála Reference PL 06D.242698: Permission refused by the Board in March 2014 for a development comprising revisions to vehicular access arrangements; Planning Authority Reference D14A/0183/Appeal Reference PL06D.243437: Permission refused by the Board in September 2014 for a change in roof material from copper to zinc and Planning Authority Reference D15A/0030: Retention granted in March 2015 for a realigned boundary wall between house A and B.
- 4.3 It should also be noted that prior to the granting of the parent permission pertaining to the site, there were three previous refusals for the redevelopment of the site. The relevant reference numbers include: Planning Authority Reference D08A/0927/Appeal Reference PL06D.231593, Planning Authority Reference D09A/0547/Appeal Reference PL06D235122 and Planning Authority Reference D10A/0308/Appeal Reference PL06D.237414. Over development of the site was cited as a reason for refusal in all of these decisions.

## 5.0 Policy Context

### 5.1. Development Plan

5.1.1 The operative Development Plan is the Dun Laoghaire Rathdown County Development Plan 2016-2022. The site is zoned Objective A: *To protect and/or improve residential amenity.*

5.1.2 There is a public right of way located along the south western boundary of the site. This right of way is known as 'The Flags' which forms part of the 'The Metals' pedestrian route which extends from Dun Laoghaire to the former Dalkey Quarry.

5.1.3 **Section 8.2.3.4 (i)** of the plan deals with extensions to dwellings. It is stated that *“side extensions will be evaluated against proximity to boundaries, size and visual harmony with existing (especially front elevation), and impacts on residential amenity.”*

### 5.2. Natural Heritage Designations

5.2.1 The nearest Natura 2000 site is the Dalkey Islands SPA located c. 0.9 km to the north east of the site.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- Permission for the subject dwelling was granted by the Board under Planning Application Reference D13A/0317/Appeal Reference PL06D.242469. The dwelling completed in February 2017 is substantially in accordance with the approved plans and particulars.
- Subsequent to completion, 2 exempted developments were constructed comprising an extension to the rear (east) and a garage to the side (south).
- The garage was then converted into a study with the garage door replaced by a bay window and a small store constructed to the rear of the study which comprises the application now being appealed.

- Notes that the current application is being lodged in response to a warning letter issued by the Council.
- Submits that the constructed dwelling on site comprises the dwelling permitted under Reg. Ref. D13A/0317/Appeal Reference PL06D.242469 and the subsequent exempt developments – the rear extension and garage. The only additional floor area is the 10.5 sq. m. store to the rear of the garage/study. The store represents an increase in the floor area of 2.5% in the floor area of the overall permitted and exempt development dwelling which is de minimus.
- The construction of the rear store retains a rear garden in excess of 135 sq. metres in addition to a substantial private garden of over 400 sq. metres between the house and Cunningham Road. The store is to the rear of the study and is not visible from any public vantage point and the design is compatible with the scale, character and layout of the main dwelling.
- To highlight that the development does not represent an overdevelopment of the site, a comparative analysis of the plot ratios approved at other nearby residential developments is presented. The approved plot ratios range from 0.41 to 0.74, with an overall average of 0.53:1. The plot ratio proposed on the subject appeal site is 0.36:1, substantially lower than all of the other approved developments.
- It is evident that the development would not seriously injure the residential amenities of the area. There is no overlooking or overshadowing from the study, the alteration is limited to a replacement window and the single storey height does not create any overbearing impact.
- There is no evidence that the Planning Authority have considered the extension in the context of section 8.2.3.4(i) of the Development Plan regarding residential extensions. It is considered that the development fully complies with this policy.
- It is evident that the planning officer had regard to other matters that do not form part of the planning application. Issues as to past failures to comply with a previous permission, which are denied by the appellant, are to be dealt with by the Planning Authority pursuant to section 35 of the 2000 Act.



- Notes that since January 2017, the Council have granted retention permission for 41 domestic extensions, many with floor areas well in excess of the current proposal.

## 6.2. **Planning Authority Response**

- A recommendation to refuse retention permission was based upon the site history, which, through the submission of multiple planning applications, has sought to incrementally increase the floor area of the permitted dwelling.
- Whilst the floor area of the development to be retained is considered by the Applicant to be minimal, its resultant increase in the overall floor area of the dwelling has been repeatedly refused permission by both Dun Laoghaire Rathdown County Council and An Bord Pleanála.
- Other concerns noted within the Planner's Report did not inform the recommendation to refuse retention permission. All such matters are dealt with separately through the enforcement section.

## 6.3. **Observations**

- No observations.

## 7.0 **Assessment**

7.1. The main issues are those raised in the grounds of appeal and it is considered that no other substantive issues arise. Appropriate Assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Overdevelopment of the Site.
- Impact on Residential Amenities.
- Appropriate Assessment.

## 7.2. **Overdevelopment of the Site**

7.2.1 The subject site has an extensive planning history. I consider however, that the most pertinent decision is Planning Authority Reference D13A/0317/Appeal Reference PL06D.242469 which was for amendments to the parent permission (P.A

Ref. D11A/0193). Under this application which relates to the subject House A, permission was granted for a 5 bedroom dwelling with a floor area of 326 sq. metres. In their assessment of the application, the Inspector noted the site is adequately large to cater for any additional exempted development which may occur.

- 7.2.2 There was a further application in 2014 (Planning Authority Reference D14A/0098/Appeal Reference PL06D.243356) comprising a single storey extension of 39 sq. metres to the east of the dwelling. Whilst this application was refused by the Board, the Inspector noted that the extension was located to the rear of the dwelling and that Class 1 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 states that the construction or erection of an extension to the rear of a house is exempted development where the floor area of the extension does not exceed 40 sq. metres. The report stated that there may be a valid argument that the proposed extension would qualify as exempted development.
- 7.2.3 Following this decision, an extension of 33.5 sq. metres was constructed to the east of the development. It is stated by the applicant that this extension was constructed under exempted development provisions.
- 7.2.4 Under the current application, the applicant now seeks retention for the change of use of a garage to a study (located to the south of the dwelling) and a small store to the rear of this study with an area of c. 10.5 sq. metres. Permission was previously refused by Dun Laoghaire Rathdown County Council under D14A/0467 for an extension consisting of a study and store with an area of 38 sq. metres to the south of the dwelling.
- 7.2.5 It is contended by the applicant that the subject garage was constructed as exempted development. It is noted that under Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 the construction of a garage within the curtilage of a house is considered exempted development subject to certain criteria including that the total area of such a structure does not exceed 25 sq. metres. It is contended that the current application, therefore, only relates to the retention of the change of use to study, associated elevational changes to the garage and the store which has an area of c. 10 sq. metres.
- 7.2.6 The concerns of the Planning Authority is that through the submission of multiple planning applications, the applicant has sought to incrementally increase the floor

area of the permitted dwelling and it is considered that the resultant increase in area constitutes the over development the site with consequent negative impacts on the residential amenities of the area. They consider that the subject garage may not constitute exempted development as the details submitted are unclear as to whether the stated area of the garage relates to its net or gross area.

7.2.7 It is evident that the applicant has increased the area of the house from that permitted under D13A/0317/Appeal Reference PL06D.242469 through the development of two extensions that are stated by the applicant to be exempted development. It is noted that there was no condition imposed either under the parent permission P.A Ref. D11A/0193 nor the subsequent amendment permission under P.A Ref. D13A/0317/Appeal Reference PL06D.242469 or indeed in any of the other decisions pertaining to the site that would preclude the normal exempted development provisions for domestic dwellings.

7.2.8 Whilst the Planning Authority are of the view that the subject garage may or may not be exempted development, it is considered that an assessment as to whether the extension constitutes exempted development or not is outside the scope of this assessment. Such a matter rests with the Planning Authority to be pursued under their enforcement powers should this be deemed appropriate. What is currently before the Board is an application for retention for the change of use of a garage to a study and a store of c. 10.5 sq. metres. The merits of this application must, therefore, be considered in the context of the existing house and the two extensions that have been constructed to date.

7.2.9 It is noted that the Planning Authority cite concerns that the development represents an overdevelopment of the site having regard to the planning history of the site and in particular Planning Authority Reference D10A/0308/An Bord Pleanála Reference PL06D.237414. It is considered by the Planning Authority that the dwelling which would now have an area of 394.75 sq. metres is well in excess of that previously refused on the site.

7.2.10 Under this previous application, a dwelling of 365 sq. metres was proposed and was refused on the basis that it would lead to overdevelopment and be out of character with the area. The primary concern raised by the Inspector in their assessment related to the scale and height of House A having regard to the elevated topography

and prominence of the site. It is noted that the house design for House A under this application was significantly different to that subsequently granted and constructed.

7.2.11 Whilst this previous refusals pertaining to the site is noted, the design, scale and height of the development must be considered on its merits and in terms of the overall site context and dwelling as constructed. The total area of the garage extension is approximately 35 sq. metres including the store which has an area of c. 10 metres. It is located to the south of the existing dwelling immediately adjacent to the southern boundary. It is a modest structure with a height of c. 3 metres. A side passage varying in width from 1.18 metres to 1.5 metres is retained along the southern boundary between the subject dwelling and House B. Having regard to the very limited footprint of the store to be retained, I do not consider that it in conjunction with the existing study extension significantly increases the overall massing, scale or height of the existing dwelling.

7.2.12 It is noted that even with the two extensions constructed and the proposed store, the site retains extensive areas of private open space both to the rear and to the side of the dwelling. It is stated by the applicant that the dwelling is served by a total private open space provision of 535 sq. metres. The development has a relatively low plot ratio of 0.36:1. I consider that the site is large enough to absorb the subject development without any undue impacts. I am satisfied, therefore, that the development does not result in the overdevelopment of the site.

### **7.3 Impact on Residential Amenities**

7.3.1 As noted above, the subject extension and store has a relatively modest footprint and height. It is tucked to the south of the dwelling and is not particularly visible from the surrounding area due to the existing boundary treatment. An adequate separation distance between the extension/store and the dwelling to the south has been retained. The development would not give rise to any overlooking or overshadowing. As part of the application, retention of elevational amendments are also sought, namely the replacement of a garage door with a bay window. The finishes and materials of the extension assimilate with the existing dwelling house. Sufficient private open space to serve the existing dwelling is retained. The proposed use as a study and store is consistent with the domestic use of the dwelling. I am satisfied that the development is compliant with the provisions of the current County

Development Plan regarding residential extensions and that the development will not have any adverse impact on the residential amenities of the area.

#### 7.4 **Appropriate Assessment**

7.4.1 Having regard to the nature and scale of the proposed development, retention of the conversion of a garage to a study and a store of 10.5 sq. metres within an established and fully serviced urban area, and its distance to the nearest European site, 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.

#### 8.0 **Recommendation**

8.1 It is recommended that retention permission be granted subject to conditions for the reasons and considerations set out below.

#### 9.0 **Reasons and Considerations**

9.1 Having regard to the zoning objective of the area, the design, layout and scale of the proposed development sought for retention and the pattern of development in the area, it is considered that, subject to compliance with conditions below, the development would not seriously injure the visual amenities of the area or residential amenity of property in the vicinity. The proposed development for which retention permission is sought would, therefore, be in accordance with the proper planning and sustainable development of the area.

#### 10.0 **Conditions**

1. The development shall be retained in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions.

**Reason:** In the interest of clarity.

2. 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 and to ensure a proper standard of development.

3. The existing dwelling and retained extension and store shall be jointly occupied as a single residential unit and shall not be sold, let or otherwise transferred or conveyed, save as part of the dwelling.

**Reason:** To restrict the use of the extension/store in the interest of residential amenity.

4. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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**Erika Casey**  
**Senior Planning Inspector**

**14th February 2018**