



An
Bord
Pleanála

Inspector's Report ABP-300455-17

Development	New external garage store at side of house at infill space adjoining the northern boundary in position of the original garage structure
Location	No.12 The Rise, Malahide, Co. Dublin.
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F17A/0590
Applicant(s)	A & L Kelly
Type of Application	Permission
Planning Authority Decision	Permission
Type of Appeal	Third Party
Appellant(s)	PJ & Catherine Monaghan
Observer(s)	None
Date of Site Inspection	9 th of March 2018
Inspector	Angela Brereton

1.0 Site Location and Description

- 1.1. The application site is on the eastern side of The Rise to the south of the junction with The Mall. It is to the east of Malahide Town Centre and within walking distance of the railway station. This is an established residential area and there are detached c.1960's two storey dwellings on either side.
- 1.2. No.12 is a large previously extended and altered detached two storey dwelling house. While nearing completion, there are some works on-going on site. There is a store located in the rear garden area. There are foundations laid in the area of the proposed garage store to the side of the property. The former side garage which was also setback has been demolished. There is a c.1.8m rendered block wall along the side boundary with no.10 The Rise. The side elevation of no.10 has some side windows and a single storey rear extension. Some of the other detached properties in this established residential area also have set back side garages. The vehicular entrance is to The Rise and there is on-site parking

2.0 Proposed Development

- 2.1. Permission is sought for a new external garage store at the side of the house at infill space to adjoin the northern boundary. It is provided that this is to be located in the position of the original garage structure located at No.12, The Rise Malahide. The site is located, in an ACA.
- 2.2. The application form provides that the floor area of the existing buildings on site is 420sq.m (this includes previous extensions and alterations) and of the proposed garage/ store is 15sq.m.
- 2.3. A Site Layout Plan, Floor Plans, Sections and Elevations have been submitted. A photograph has also been included showing the previous garage that has been removed.
- 2.4. A letter has been submitted from EMHogan & Associates to confirm that the applicants will not be encroaching on adjoining property and will retain a structural engineer to advise on any structural issues, underpinning etc.

3.0 Planning Authority Decision

3.1. Decision

On the 20th of November 2017, Fingal County Council granted permission for the proposed development subject to 9no. conditions. These generally relate to design and infrastructural issues and the following are of note:

Condition no.2 – provides that the terms and conditions of permissions Reg.Ref.F16/0224 and F17A/0366 be complied with.

Condition no. 4 provides that the following requirements of the Conservation Officer shall be complied with in accordance with the agreed plans:

(a) The flat roof shall be omitted and replaced with a pitched roof with an angle of pitch similar to No.8 The Rise and with roof tiles similar to the main roof of the house. the revised design shall not exceed 4 metres in height and shall be contained within the redline of the application site.

(b) The granite capping shall be omitted.

(c) The materials for the large glazed doors shall be metal or timber and not uPVC.

Reason: To protect the visual amenities of the ACA.

3.2. Planning Authority Reports

3.2.1. Planner's Report

The Planner had regard to the locational context of the site, planning history and policy and to the submissions made. They noted that cognisance of the planning history associated with this site has been taken into account and the previous conditions requiring the omission of various designed car ports. They considered the proposed development to be for a small-scale storage structure and note the Conservation Officer's comments. Taking these on board they did not consider that the proposed development would impact adversely on residential amenity or the ACA and recommended permission subject to conditions.

3.3. Other Technical Reports

Fingal County Council

Water Services Section

They have no objections subject to conditions

Conservation Officer

They note the importance of the location within the ACA designation. There was originally a single storey pitched roof garage to the side of the property. While they do not object to the principle of the development they recommend some modifications including a pitched roof.

3.4. Prescribed Bodies

Irish Water

They have no objections subject to conditions.

3.5. Third Party Observations

Submissions received from local residents include the following:

- The proposed flat roof is not in keeping with the other side extensions in this ACA area.
- They note pitched or hipped roofs on other similar extensions.
- They note the previous recent planning history on the site including two previous refusals for development to the side of the house.
- They consider the works already permitted are imposing and this proposal will add to this, particularly for No.10 The Rise.
- They note the applicant did not state that the site is in the ACA on the application form, and consider the application invalid.

4.0 Planning History

The following is the recent history of the subject site. The Planner's Report includes a description of the planning history of extensions and alterations to dwellings on the adjacent sites.

- F17A/0355 – Permission granted subject to conditions for additional works to approved extensions and alterations (Planning Ref.F16B/0224) to No.12 The Rise, Malahide, which is located in an ACA. This included a stand-alone store to the rear eastern boundary, a car port to the side with associated canopy to side of the property, provision of an additional roof light to attic space, widening of vehicular entrance with provision for new gate piers and replacement boundary wall to the front of the property. Condition no.5(b) omitted the car port.
- F16B/0224 – Permission granted subject to conditions for extensions and alterations to include demolition of the existing garage and store structure at rear, the construction of a single storey flat roof extension and two storey pitched roof extension to the rear, provision of attic level space with flat roof section to include rooflights and dormer window to rear elevation; the works include internal alterations and remodelling roof canopy at vehicular access and replacement garage and store to rear eastern boundary, minor modifications to the front elevation including replacement windows and porch. Condition no.3(c) omitted the proposed garage.

These decisions were not subject to appeal and copies are included in the History Appendix in this Report.

5.0 Policy Context

5.1. Development Plan

The Fingal County Development Plan 2017-2023 is the relevant statutory plan.

The development strategy for Malahide contained in Chapter 4 of the Plan seeks to promote the planned and sustainable consolidation of the existing urban form and the sensitive promotion of amenities. This includes Objective Malahide 3 which

seeks to retain the existing centre with its mixed use and varied architectural character as the heart and focal point of Malahide.

The appeal site is located in the Malahide Historic Core ACA and adjoins The Rise ACA. Objective DMS157 seeks to ensure that any new development or alteration of a building within or adjoining an ACA positively enhances the character of the area and is appropriate in terms of the proposed design including: scale, mass, height, proportions, density, layout, materials, plot ratio and building lines.

Objective DMS158 requires all planning applications in ACA's to have regard to the information contained in Table 12.11. (Direction for Proposed Development in ACA's) This includes that extensions to buildings in ACAs that are visible from public places should be of a scale and proportion that respects that of the original building. In general extensions should be subservient in size with materials, finishes and roof profiles that complement the principal structure.

Objective DMS39 provides that new infill development shall respect the height and massing of existing residential units. Infill development shall retain the physical character of the area including features such as boundary walls, pillars, gates/gateways, trees, landscaping, and fencing or railings.

Objective DMS44 seeks to protect areas with a unique, identified residential character which provides a sense of place to an area through design, character, density and/or height and ensure any new development in such areas respects this distinctive character.

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

5.2. National Policy Context

Architectural Heritage Protection -Guidelines for Planning Authorities 2004

These guidelines outline the responsibility of the Planning Authority to preserve the character of conservation areas within their functional area. Chapter 3 refers specifically to Architectural Conservation Areas. The Guidelines state that in relation to conservation areas that "the protection of architectural heritage is best achieved

by controlling and guiding change on a wider scale than the individual structure, in order to retain the overall architectural or historic character of the area”.

5.3. **Natural Heritage Designations**

None

6.0 **The Appeal**

6.1. **Grounds of Appeal**

A Third Party Appeal has been submitted by PJ and Catherine Monaghan, who reside in the adjoining property no.10 The Rise. Their grounds of appeal are summarised as follows:

- The plans show their gable wall extending to the boundary wall of no.12 which is not an accurate reflection of what exists on the ground.
- Fingal County Council has twice already refused planning permission for development to the side of the no.12 The Rise.
- The proposed garage which is designed with a flat roof is not in keeping with the design of the existing pitched roof garages on the road.
- They include an image to show that the proposed garage will extend above the height of the party wall with their property.
- The construction of the proposed garage will require underpinning of the existing party wall with no.10 The Rise.

6.2. **Applicant Response**

EMHogan & Associates has submitted a First Party response on behalf of the applicants. This has regard to the site description and location and provides an overview of the proposed development.

- They are satisfied to comply with most of Condition no.4 of the Council's permission and do not propose to use the party boundary wall to form part of

the proposed structure. They provide details of a small parapet wall which will allow for drainage.

- They consider that the proposed modest replacement structure will have no impact on adjoining property and note that materials/external finishes will harmonise with the existing and the structural works will be designed by MTW Structural Engineers.
- They ask the Board to allow this replacement garage structure with the revisions outlined in Condition no.4. They note that while the provision of a parapet to the site boundary is a legal issue they confirm that they will not use the party wall and will build a new wall to support the structure and would not encroach on the adjoining property.
- Their attachments include a letter from Consultants MTW Engineers relative to proposed construction methods. Revised drawings have also been included showing the parapet wall and the pitched roof.

6.3. Third Party response

6.3.1. PJ and Catherine Monaghan have submitted a response to include the following:

- They consider that it is misleading to reference no.8 The Rise as the garage does not form part of that property. Also, there is a side laneway between No.8 and No. 6 which is not proposed in no.12's submission so this is not comparing like with like.
- Reference to a garage/store is misleading. The proposed use of a structure as a garage is significantly different to that of a store and will have a greater impact on their property.
- They do not agree that this proposal will have no impact and are concerned that the proposed structure is proximate to their living space.
- The proposed parapet wall was not part of the original structure and will be significantly higher than the existing shared boundary wall.
- No dimensions have been provided on the revised drawings and the proposed parapet wall and height of the structure is higher than the original structure.

- Other than the letter from MTW Consultants Limited no 'actual' design details have been submitted relative to how they are going to construct a foundation to support the northern parapet wall of the proposed garage without undermining the existing party wall.
- The proposed hipped roof is not in keeping with the 'gable end' roof detail of original or existing garages on this road.
- Details have not been submitted of how the applicants will finish the northern wall of the proposed garage given that it is significantly higher than the shared boundary wall. This wall can only be finished by gaining access to their property will not be granted.
- No consideration has been given to health and safety matters relative to construct a structure in such close proximity to their property and the laneway which is used by their children.
- The owners of no.12 have already constructed a significant garden store to the rear of their property. Should additional storage be required this structure can be extended to the south by up to 5.0m in length.
- They request the Board to refuse permission as the proposed works will have a significant negative impact on their property and enjoyment of their private living space.

6.4. Planning Authority Response

They note that the matters raised in the appeal have been addressed within the assessment of the planning application and accompanying documents. The issue of the flat roof has been addressed in Condition no.4. If their decision is upheld they request that Condition no.4 be included in the Board's determination. They also request that provision be made for the inclusion of a financial contribution in accordance with Section 48 of the Development Contribution Scheme.

Subsequently the P.A noted the revised plans submitted in the First Party response and note that they have concerns regarding the visual impact arising from the proposed parapet wall and would request this element to be omitted. Otherwise they request that their decision is upheld and that Condition no.4 be included in the

Board's determination. The P.A remains of the view that the proposed development is in accordance with the proper planning and sustainable development of the area.

7.0 Assessment

7.1. Principle of Development and Planning Policy

7.1.1. The site is located with the established residential area and zoning objective 'RS' – Residential of the Fingal CDP 2017-2023 applies, where the objective seeks: *To provide for residential development and protect and improve residential amenity.* The vision is to ensure that any new development in existing residential areas has a minimal impact on existing amenity. I am satisfied that the proposal as an extension to an existing residence is acceptable in principle, however regard is had to the issue of its impact on the adjoining property and on the character and amenities of the area. Objective PM46 is of note in that it seeks to: *Encourage sensitively designed extensions to existing dwellings which do not negatively impact on the environment or on adjoining properties or area.*

7.1.2. The proposed development is within the Architectural Conservation Area and it is within Malahide Town Centre and adjoins the Malahide Historic Core ACA. Therefore, it is important that regard is had to compliance with the relevant Objectives of the Fingal Development Plan 2017-2023 including DMS157 which relates specifically to new development or alteration of a building within or adjoining an ACA. Chapter 3 of the Architectural Heritage Protection Guidelines refers specifically to Architectural Conservation Areas.

7.2. Regard to Planning History

7.2.1. Condition no.2 of the Council's permission relative to the current application is of note in that it provides that the terms and conditions of the grant of permission made under Reg.Ref.F16B/0224 and F17A/0366 shall be complied with in full. A brief description of these applications for previously permitted extensions and alterations to No.12 The Rise, is referred to in the Planning History Section above. It is of note that Condition no. 5(b) of F17A/0366 omitted the car port and associated cantilevered canopy. The reason given was in the interests of visual amenity and

protection of character within an ACA. This carport was shown in a similar location to the current proposed garage/store. Condition no.3(c) of F16B/0224 provided that the proposed garage and associated paving should be omitted. The plans showed that that was to be a larger free-standing structure located further down the rear garden, rather than the side of the house as currently proposed.

7.2.2. It is provided that the current proposal is for a replacement of the original garage store at the side of the property which has recently been demolished. Therefore, it is a different proposal to that previously submitted in the applications referred to above. In the event the Board decide to permit I would not consider it necessary to include Condition no.2. in this case, as the aforementioned permissions cover the works already permitted.

7.2.3. Photographs have been submitted showing the location of the previous garage that has been removed. This showed a lower profile pitched roof garage, also set back from the front elevation. The drawings submitted in the response by the Third Party show that the roof line of the original pitched roof garage was lower than that currently proposed. They also consider that a hipped roof is not in keeping with the 'gable end' roof detail of the original or existing garages in the area.

7.3. **Design and Layout and impact on the Character and Amenities of the Area**

7.3.1. The proposal is located in what is referred to as an infill space between the subject property and the northern boundary with no.10 The Rise. It is provided that this location is where the garage previously located was demolished during recent renovations to the property. As shown on the plans the width of the proposed garage/store is narrow c.2.6m to the boundary, the length along the boundary is c.6.7m and the height of the original proposal for a flat roof structure was 3m. This would provide a g.f.a of 17.42sqm, which is slightly larger than the 15sq.m referred to on the application form. It is recommended that if the Board decide to permit that it be conditioned that the floor area of the proposed structure not exceed 15sq.m.

7.3.2. There was concern that the new side garage store as originally submitted included a flat roof, which would be out of character with other such developments in the ACA and that a pitched or hipped roof would be more appropriate in this location. It is of note that the Council's Conservation Officer does not object in principle to the

proposal but asked that the structure have a pitched roof with roof tiles similar to the main roof of the house. They also requested that the granite capping be omitted.

They note that the materials for the large glazed doors are not stated on the drawing and recommend that these be metal or timber and not uPVC. These considerations have been included in Condition no.4 of the Council's permission.

7.3.3. The First Party response provides that they are satisfied to comply with most of this condition and to include the construction of a hipped pitched roof similar to no.8 The Rise. In this respect it is noted that the no.8 has a recessed two storey side extension and the hipped roof forms part of the single storey element, which is set off the side boundary. (Reg.Ref.F15B/0064 refers). Therefore, there is concern relative to Condition no.4(a) that the current scenario is not similar to that at no.8.

7.3.4. It is also provided that the construction of this modest replacement structure will not impact on the adjoining property, with the height and size reduced to that of the previous structure. In this respect it is noted that the proposal while higher than the original garage, will be set back and will not impact on the windows in the side elevation of No. 10 The Rise. The First Party confirm that the structural works will be designed by structural engineers. Also, that all finishes will harmonise with the existing including clay roof tiles, timber/Alu clad windows matching existing, painted plaster external finish to match the existing.

7.3.5. I would consider that should the Board decide to permit and having regard to other examples of single storey side extensions/garages in the vicinity, that a pitched hipped roof as referred to in Condition no.4 of the Council's permission would be preferable on this proposal to a pitched roof as shown on the side garage of No.14. The Rise, in that it would appear less obtrusive having regard to its location and the character of the ACA. It should also be conditioned that the revised design shall not exceed a maximum of 4m in height. I would consider that subject to such conditions and in view of the set back that the proposal will not be contrary to objective DMS157 or adversely affect the character of the ACA.

7.4. **Boundary issues**

7.4.1. The Third Party is concerned that the construction of the proposed garage will require underpinning of the existing party wall with No.10 The Rise. They consider

that the development that has already taken place at no.12 The Rise is imposing and overbearing on their property and that adding another structure that is adjacent to their property will further detract from their residential amenity. There is concern about encroachment and that the owners of no.12 will require consent from no.10 to carry out the works.

7.4.2. The First Party note that they do not intend to use the party boundary wall to form any part of the proposed structure. They provide that the proposal will therefore require a small parapet parallel to the site boundary so they can drain the roof away from the adjoining property. They note that while there is a legal issue they confirm that they will not use the party wall and will build a new wall to support the structure and would not encroach to the adjoining property. The drawings submitted with their response show this parapet wall inside the existing wall and include the pitched roof with an apex of 4m in height.

7.4.3. Their response includes a letter from MTW Consultants Ltd, Structural Engineers which notes that they propose to construct a raft foundation for the new garage and build an independent garage wall off the raft adjacent to the northern boundary wall. They further propose to add stability to the wall by introducing tie fixings between the boundary wall and the new independent wall, which they provide is considered best practice. They also have regard to structural certificates which are considered under separate remit.

7.4.4. It is noted that the Council's response acknowledges the First Party response that they will comply with Condition no.4. However, they are concerned about the visual impact arising from the proposed parapet wall and they request that this element be omitted. I would concur that it would not add an attractive feature to the proposed development or to the character of the area and recommend if the Board decide to permit that this element be omitted.

7.4.5. The Third Party response is concerned that no consideration has been given as to how it is proposed to finish the northern wall of the proposed garage given that it is significantly higher than the shared boundary wall including the section of parapet wall facing their property. They provide that access will not be gained via their property. It is of note that the issue of ownership is a civil matter and I do not propose to adjudicate on this issue. I note here the provisions of s.34(13) of the

Planning and Development Act: “A person shall not be entitled solely by reason of a permission under this section to carry out any development”. Under Chapter 5.13 ‘Issues relating to title of land’ of the ‘Development Management - Guidelines for Planning Authorities’ (DoECLG June 2007) it states, inter alia, the following: “The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts...”

7.5. Other issues

- 7.5.1. While the Council have not included a Development Contributions Condition on their original permission, they have subsequently requested one in their response to the appeal. This is in view of this proposal adding to the area of extensions previously permitted. Regard is had to Class 10 which refers to Exemptions and Reductions in the Fingal Development Contributions 2016-2020, which includes: *The first 40sq. metres of domestic extensions. This exemption is cumulative and limited to 40sq.m in total per dwelling.* Therefore, having regard to the terms of the scheme it would be in order to include a Development Contributions Condition should the Board decide to permit.

7.6. Screening for Appropriate Assessment

- 7.6.1. Having regard to the minor nature of the development and its location in a serviced urban area, 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. I recommend that permission be granted subject to the conditions below.

9.0 Reasons and Considerations

Having regard to the ‘RS’ – ‘Residential’ zoning provisions for the site, to the nature and scale of the proposed development and to the existing pattern of development in

the vicinity, it is considered that, subject to compliance with the conditions set out below, the proposed development would not be out of character with development in the Architectural Conservation Area, would not seriously injure the residential or visual amenities of the area or of property in the vicinity and would be acceptable in terms of pedestrian and traffic safety. 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 carried out 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 23rd day of January, 2018, 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 proposed flat roof shall be omitted from the development, and replaced with a pitched hipped roof with roof tiles similar to the main roof of the house. The revised design shall not exceed 4 metres in height and shall be contained within the application site.
 - (b) The proposed parapet wall shown on the revised plans submitted shall be omitted. Revised proposals shall be submitted to show that the proposed development will not overhang or encroach on the neighbouring property.
 - (c) The granite capping shall be omitted.
 - (d) The materials for the large glazed doors shall be metal or timber and not uPVC.
 - (e) The gross floor area of the proposed development shall not exceed 15sq.metres.

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 interest of residential amenity and the visual amenity of the Architectural Conservation Area.

3. The external finishes of the proposed extensions including roof tiles shall be the same, in colour and texture as those of the existing dwelling.

Reason: In the interest of visual amenity.

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

Reason: To restrict the use of the garage store in the interest of residential amenity.

5. Water supply and drainage arrangements, including the attenuation and 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.

6. Development described in Class 1 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001 shall not be carried out within the curtilage of the proposed house without a prior grant of planning permission.

Reason: In the interest of residential amenities.

7. Construction works shall be restricted to between 0800 hours and 1800 hours, Monday to Friday and between 0800 hours and 1400 hours on Saturdays. No works shall take place outside these hours or on Sundays or Bank or Public Holidays.

Reason: In the interest of residential amenity.

8. 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, as amended. The contribution shall be paid prior to 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, 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.

Angela Brereton
Planning Inspector

16th of March 2018