



An
Bord
Pleanála

Inspector's Report ABP300661-18

Development	Permission to retain 2 windows at 1 st floor level to the rear elevation of an existing commercial building.
Location	Deanstown House, Main Street, Blanchardstown, Dublin 15.
Planning Authority	Fingal County Council.
Planning Authority Reg. Ref.	FW17A/0187.
Applicant	Patrick Molloy.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party -v- Grant.
Appellant	Patrick J. O'Reilly.
Observers	None.
Date of Site Inspection	2 nd May, 2018.
Inspector	Paul Caprani.

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1.0 Introduction

ABP300661-18 relates to a third-party appeal against the decision of Fingal County Council to issue notification to grant planning permission for the retention of two windows at 1st floor level on the rear elevation of a commercial building at Deanstown House, Main Street, Blanchardstown. The windows currently serve a hairdressing salon. The grounds of appeal argue that the windows in question impact on the amenity of an adjoining commercial premises and adversely affect the development potential of the said premises.

2.0 Site Location and Description

- 2.1. The appeal site is located at Deanstown House a two-storey commercial development fronting onto Main Street, Blanchardstown adjacent to its junction with River Road and Castleknock Road. The building accommodates retail shop units at ground floor level fronting onto the Main Street while a number of commercial and office type units are located at first floor level. The building backs onto a car sales and car repair premises to the immediate north. The owners of this premises have appealed the decision of Fingal County Council to the Board. Lands to the immediate west of the subject site accommodate a vacant site and to the rear of this vacant site is a small public car park accommodating approximately 26 spaces. A residential development, the Mill Road Estate is located on lands further north.
- 2.2. Unit No. 4 at first floor level in Deanstown House accommodates a hairdressing salon. It is an L-shaped unit occupying an area of 25 square metres. The unit incorporates three windows, one window is located on the western side of the building and faces onto the public car park adjacent. The other two windows which are the subject of the retention of planning permission, are located on the northern boundary. The larger window is located at floor level between two customer seats associated with the hairdressing salon (see photograph attached). The smaller more easterly window is located at a much higher level approximately 2 metres above the floor level of the salon. This window serves a small storage area to the side of the salon.

2.3. Both windows face onto the northern boundary of the site and onto an outdoor car sales area to the immediate north of the site. The windows are located approximately 2 to 3 metres from the northern boundary of the site.

3.0 **Proposed Development**

Planning permission is sought for the retention of the two windows in question.

4.0 **Planning Authority's Decision**

4.1. Decision

Fingal County Council in its decision dated 15th December, 2017 granted retention of planning permission subject to three conditions.

4.2. **Planning Authority Assessment**

A planning application was lodged on the 1st November, 2017.

4.2.1. Reports from the Planning and Strategic Infrastructure Department, Water Services Section, Irish Water, and Fingal Co Council Transportation Planning Section stated that there is no objection to the retention application.

4.2.2. The planner's report states that the proposed development will not have an unduly negative impact on the visual amenities of the area. In terms of overlooking it is stated that the height of the most easterly of the two windows is measured 2 metres from floor level and will not result in any direct overlooking. It is acknowledged that the more westerly of the windows which is at floor level could give rise to overlooking and as such should be shown to be permanently glazed with obscure glass with a non-opening. This could be addressed by way of condition.

4.3. **Observations**

4.4. An observation was submitted from the current appellant and owner of the lands to the north. It raises concerns in relation to overlooking and adversely impacting on the development potential of the site.

- 4.5. Based on the recommendation of the planner's report Fingal County Council issued notification to grant retention of planning permission subject to three conditions. Condition No. 3 required that plans, elevations and photographic evidence shall be submitted by the 30th June, 2018 showing that the ground floor level window shall incorporate obscure glass and shall be non-opening.

5.0 Planning History

Details of the relevant planning history is set out in the planner's report. The planning history mainly relates to applications for planning permission and retention of planning permission for changes of use and other ancillary type developments associated with Deanstown House. None of these applications are directly relevant to the current application for retention before the Board.

6.0 Grounds of Appeal

- 6.1. The decision of Fingal County Council to issue notification to grant planning permission was the subject of a third party appeal by Patrick J. O'Reilly the owner of the neighbouring property to the north. It is stated that since taking over the property approximately two years ago the appellant has undertaken considerable redevelopment carrying out many much needed repairs and renewals. The grounds of appeal are outlined below.

- The windows overlook the appellant's property and are within 2 metres of the boundary. First floor opposing windows whether in a commercial or residential development would affect the development potential of the appellant's property. As Fingal County Council generally require 22 metres between opposing windows this means that Fingal County Council have effectively sterilised a 20 metre section of the appellant's property which significantly impacts on the development potential of the site in question.
- The planner states that the proposal relates to two windows only. However, this ignores the fact that this unauthorised development has necessitated the incorporation of the windows in question. The development was not carried out in accordance with the original permission granted. If the entire

development does not accord with the planning permission, how is it possible for Fingal to partially approved the unauthorised development.

- The proposal would also give the owners of Deanstown House cause to object to almost any development on the appellant's property. Any development on the appellant's property would almost certainly affect the applicant's light. Finally, it is argued that if one of the windows should be made of frosted glass it would be appropriate that this be applied to both windows.

7.0 Appeal Responses

7.1. Planning Authority's Response to the Grounds of Appeal

- The appellant's argument that the grant of planning permission would effectively sterilise his land extending 20 metres into his property is not the case, as the 22 metre separate distance is only applied between directly opposing residential windows, which would not be the case in this instance.
- Following a site visit it is considered that the plans in respect of Unit No. 4 are sufficiently accurate to determine the application before the Planning Authority.
- Retention of the windows are sought to allow a degree of light into that part of the building where deficiency exists. Given the 2 metre gap between the building and the boundary, it is considered that this should be sufficient to allow an acceptable degree of daylight into the commercial unit without unduly compromising the development potential of lands to the north.
- The use of obscure glass to the floor window level is recommended to avoid any undue overlooking. However, given the high level location of the other window it is considered that this would not give rise to any undue overlooking of neighbouring properties.
- Any future planning application for land to the north of the appeal site would be determined on merit and in accordance with the relevant development plan policies. Thus concerns regarding the development of neighbouring lands

being compromised as a result of this application are considered in this instance to be unfounded.

7.2. **Applicant's Response to the Grounds of Appeal**

It appears the applicant has not submitted a response to the grounds of appeal.

8.0 **Development Plan Provision**

8.1. **Development Plan Provision**

The site is governed by the policies and provisions contained in the Fingal County Development Plan 2017 – 2023. The subject site is located in an area governed by the zoning objective "TC" which seeks to protect and enhance the special physical and social character of the town and district centres and to provide and/or improve urban centre facilities.

9.0 **Planning Assessment**

9.1. I have read the entire contents of the file, visited the site in question and I consider that the Board's deliberation on the current application and appeal can generally be confined to the issues raised by the third party appellant namely:

- Whether or not the proposed development will give rise to overlooking.
- Whether or not the proposed development will adversely impact on the development potential of the subject site

9.2. In relation to the first issue, I do not consider that the proposed development will adversely impact the amenity of the adjoining site to the north through overlooking. Currently the appellant's site is used as a commercial car sales park and is therefore accessed by the public. The lands which are currently overlooked do not constitute a private space where overlooking from an adjoining building would impact on privacy and amenity. Furthermore, the smaller window, as the photograph indicates, is located at a point approximately 2 metres above ground level and as such does not provide any scope for overlooking of the appellant's premises. The other window is located at floor level and while this window does give rise to overlooking of the adjoining premises, Condition No. 3 of Fingal County Council's

grant of planning permission requires that this window incorporate obscure glazing to specifically address the issue of overlooking.

- 9.3. Regarding the impact of the retention of the windows on the development potential of the adjoining site, it is difficult to assess the potential impact which could arise as there currently are no specific or concrete proposals for the redevelopment of the lands in question. As the Planning Authority points out the windows in question have been incorporated to increase the amount of natural light penetration into the hairdressing salon. Similarly, any development on the appellant's site would require an appropriate setback to ensure that if fenestration arrangements were to be incorporated into any proposed southern elevation on the appellant's site that sufficient setback would be required to allow adequate daylight and sunlight penetration. While the appellant refers to a 22 metre separation requirement for opposing first floor windows in the case of residential development, the Board will be cognisant of the fact that Deanstown House accommodates commercial premises and therefore such a rigid separation distance would not be necessary. Furthermore, due to the location of the smaller windows at a higher level and the incorporation of obscure glazing for the lower level window overlooking issues will not arise from vantage points within the hair salon. As already stated it will be a requirement that any design in respect of the southern elevation which incorporates windows would be required to be setback from the Deanstown House building in order to allow adequate sunlight and daylight penetration. As no overlooking issues will arise as a result of the insertion of the said windows, the development potential of the appellant's site will not be adversely affected through potential overlooking issues. The incorporation of the windows in the northern elevation therefore in my view will not unduly comprise the development potential of lands to the north.
- 9.4. Arising from my assessment above therefore I recommend that the Board uphold the decision of the planning authority and grant retention of planning permission for the windows as constructed as I consider the windows in no way inhibit or compromise the development potential of adjoining lands and do not give rise to any amenity issues by virtue of overlooking.

10.0 **Appropriate Assessment**

Having regard to the nature and scale of the proposed development and nature of the receiving environment together with the proximity 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.

11.0 **Decision**

Grant planning permission for the proposed development in accordance with the plans and particulars lodged based on the reasons and considerations set out below.

12.0 **Reasons and Considerations**

It is considered that the retention of the two windows which is the subject of the current application would not seriously injure the amenities of the area or adversely affect the development potential of adjoining sites to any significant or material extent and subject to conditions below, it is considered that the proposed development would be in accordance with the proper planning and sustainable development of the area.

13.0 **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. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority within three months of the date of this order and the development shall be carried out and completed in accordance with the agreement particulars.

Reason: In the interest of clarity.

2. This permission shall relate to the retention of the two windows only.

Reason: To clarify the extent of the condition.

3. Plans and elevations and photographic evidence shall be submitted within three months of this order showing that the ground floor level window (the most westerly of the two windows which are the subject of the retention application) shall be permanently glazed with obscure glass and shall be non-opening.

Reason: In the interest of orderly development.

Paul Caprani,
Senior Planning Inspector.

5th June, 2018.