



An
Bord
Pleanála

Inspector's Report ABP301013-18

Development	Construction of extension to side and rear of dwelling with new pedestrian access onto laneway and internal refurbishment of dwelling.
Location	8 Sundrive Park, Kimmage, Dublin 12.
Planning Authority	Dublin City Council.
Planning Authority Reg. Ref.	4407/17.
Applicants	Conor O'Meara and Niamh McLoughlin.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party -v- Grant.
Appellant	N. J. McAuliffe.
Observers	None.
Date of Site Inspection	25 th June 2018
Inspector	Paul Caprani.

Contents

1.0 Introduction	3
2.0 Site Location and Description	3
3.0 Proposed Development	4
4.0 Planning Authority's Decision	4
5.0 Planning History.....	5
6.0 Grounds of Appeal.....	5
7.0 Appeal Responses.....	6
8.0 Development Plan Provision.....	7
9.0 Planning Assessment	7
10.0 Appropriate Assessment	9
11.0 Decision	9
12.0 Reasons and Considerations	9
13.0 Conditions	9

1.0 Introduction

ABP301013-18 relates to a third-party appeal against the decision of Dublin City Council to issue notification to grant planning permission for a refurbishment, internal alterations and an extension to an existing house at No. 8 Sundrive Park, Kimmage, Dublin 12. The grounds of appeal argue that the laneway access to the rear of the dwellinghouse is privately owned and the applicants do not have a right of way or any right to use the laneway in question.

2.0 Site Location and Description

- 2.1. No. 8 Sundrive Park is located in the suburban area of Kimmage/Crumlin approximately 3.5 kilometres south-west of Dublin City Centre. Sundrive Park is located on the eastern side of Sundrive Road which links the inner suburban areas of Crumlin to the north with Kimmage to the south-east. Sundrive Park is a small cul-de-sac accommodating approximately 24 dwellinghouses set out in terraced blocks of three to six houses.
- 2.2. No. 8 is located on the southern side of Sundrive Park approximately 50 metres from its junction with Sundrive Road to the west. No. 8 occupies a corner site and it is bounded by a laneway along the north-eastern boundary and the rear to the subject site. Access to the rear section of laneway to the rear of the site is blocked by a 2 metre high metal gate. The laneway serves as service access to Apollo House, 2/3 storey commercial building fronting onto Sundrive Road.
- 2.3. No. 8 Sundrive Park currently accommodates a two-storey dwelling which dates from the 1940s/1950s with a brick and pebble dash finish on the front elevation and a cement render finish on the side elevation. There are no windows on the side elevation facing north-eastwards onto the laneway. The ground floor currently accommodates a hallway which leads to a stairs and a small kitchenette to the rear of the dwelling. A dining area and living room are also located at ground floor level. The first floor accommodates three bedrooms and a bathroom in a small return to the rear of the house. The rear garden is approximately 10 metres in width and accommodates two sheds. There is also a side garden along the north-western side

of the house which is approximately 3.75 metres in width adjacent to the laneway. A small c.1.2 metre high boundary wall separates the curtilage of the house from the adjoining laneway.

3.0 Proposed Development

- 3.1. Planning permission is sought for the construction of a single-storey extension to the side and rear of the existing house, within the existing side garden contiguous to the laneway. The proposed extension is 13.6 metres in length and between 3.4 and 4.4 metres in width. It rises to a height of just over 5 metres and incorporates a pitched roof with velux windows on the rear of the front pitch and velux windows at the western side of the rear pitch of the extension. The extension is to accommodate a new kitchen area to the rear and a new bedroom to the front of the dwellinghouse. It is also proposed to provide additional storage space within the roof pitch above the bedroom to the front of the extension at first floor level. The total additional area to be provided by the extension amounts to 65 square metres (52 square metres at ground floor level and 13 square metres of storage area at first floor level). The proposed extension is to incorporate a white render finish with extensive glazing on the rear of the extension facing onto the residual rear garden.
- 3.2. It is also proposed to incorporate a new pedestrian access gate from the rear garden onto the laneway which runs along the side of the dwelling. The proposal also involves alterations to the layout of the existing house at ground floor level.

4.0 Planning Authority's Decision

- 4.1. Dublin City Council issued notification to grant planning permission subject to 8 conditions on 31st January, 2018.
- 4.2. **Planning Authority's Assessment**
- 4.2.1. The planning application was lodged with Dublin City Council on 1st December, 2017.
- 4.2.2. A letter from the Drainage Department states that there is no objection subject to conditions.

- 4.2.3. A report from the Roads, Streets and Traffic Departments notes that there are two objections on file relating to issues regarding the right of way along the laneway. The report states that the laneway has been taken in charge by Dublin City Council and as such is public land. In this regard the Roads, Streets and Traffic Department have no objection to the proposed development subject to three standard conditions.
- 4.2.4. The planner's report also notes the objections on file which relates to the right of way along the laneway. It refers to the report from the Roads and Traffic Planning Division which have confirmed that the laneway to the side of the dwelling is taken in charge by the City Council. Reference is also made to Section 34(13) of the Planning and Development Act 2000 which notes that a person shall not be entitled solely by reason of a permission to carry out the development. Furthermore the report notes that the planning system is not designed as a mechanism for resolving disputes about rights over land as these are ultimately civil matters. It is otherwise considered that the proposed development would not seriously injure the residential amenities of adjoining properties and would be consistent with the provisions of the Dublin City Development Plan and the proper planning and sustainable development of the area. It is therefore recommended that planning permission be granted for the proposal.

5.0 Planning History

No planning history files are attached. Reference to one relevant file in the planner's report. Under 3357/06 planning permission was granted subject to conditions for the widening of a pedestrian access to create a vehicular access at the front of the dwelling at 8 Sundrive Park.

6.0 Grounds of Appeal

- 6.1. The decision of Dublin City Council to issue notification to grant planning permission was the subject of a third-party appeal by N. J. McAuliffe of Apollo House, (Nos. 23 to 25 Sundrive Road). Apollo House is a three-storey commercial development fronting onto Sundrive Road with access to the rear via the laneway along the side of No. 8 Sundrive Park. The grounds of objection relate to the proposed pedestrian side access gate to the applicants rear garden granted as part of the proposed

development. It is stated that the laneway access to the rear from Sundrive Park is privately owned by the appellant and his partners. It is stated that the applicants do not have a right of way or any right to use this laneway at any time whatsoever. It is stated that this has been pointed out to the applicants on many occasions and as such they are well aware of the legalities of ownership. The applicants have no legal right or permission from the owners of the laneway to access the laneway from their property. The rear yard and basement parking from the appellant's premises requires access 24 hours a day for occupiers of the commercial premises, for refuse collections, for ESB and for emergency services. No such gateway should be permitted to access onto the laneway.

7.0 Appeal Responses

7.1. Applicants Response

7.2. A response was received on behalf of the applicant and is summarised below.

7.3. It states that the roadway to the pedestrian entrance is not in the ownership of the appellant as stated in the grounds of appeal. Dublin City Council's Roads and Traffic Division have confirmed that the laneway to the side of the dwelling is taken in charge by the City Council (reference is made to the planner's report – contained in Appendix 3 of submission). Reference is also made to previous planning applications by Apollo House which indicates that the ownership of the boundary of the site does not extend to that part of the laneway contiguous to the applicants' house (see drawings contained in Appendix 4, 5 and 6 of submission). Furthermore, it is stated that a narrow pedestrian gate would in no way restrict the access of Apollo House. It is inappropriate to prevent a family from providing normal amenities to their home such as a side gate for refuse, bicycles and maintenance to the rear of the dwellinghouse etc.

7.4. Planning Authority's Response

7.5. It appears that Dublin City Council have not submitted a response to the grounds of appeal.

8.0 Development Plan Provision

- 8.1. The site is governed by the policies and provisions contained in the Dublin City Development Plan 2016 – 2022. The subject site is zoned Z1 – “to protect, provide and improve residential amenities”.

Section 16.10.12 of the development plan specifically relates to extensions and alterations to dwellings. It states that the design of residential extensions should have regard to the amenities of adjoining properties and in particular the need for light and privacy. In addition, the form of the existing building should be followed as closely as possible, and the development should integrate with the existing building through the use of similar finishes and windows. Extensions should be subordinate in terms scale to the main unit.

- 8.2. 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.
- 8.3. Further details in relation to extensions and alterations to dwellings and roof profiles are contained in Appendix 17 of the development plan.

9.0 Planning Assessment

- 9.1. The grounds of appeal essentially relate to a legal issue regarding whether or not the appellant has a right to use the access lane which runs along the north-eastern boundary of the subject site. I have inspected the plans and particulars in relation to the application and also visited the site in question. I am in agreement with the Planning Authority that the proposed extension will in no way adversely impact on adjoining residential amenities through overlooking or overshadowing. I am also satisfied that the proposed development is appropriate in terms of design and complies with the Z1 zoning objective which seeks to “protect, provide and improve residential amenities”. On this basis I consider that the Board can restrict its deliberations to the sole issues raised in the grounds of appeal.

- 9.2. The appellant argues that the applicants do not have a right of way or any right of use over the laneway in question. No details of ownership/wayleaves/rights of way of the said laneway has been furnished by the appellant in the grounds of appeal. Furthermore, it is clear from the report prepared by the Roads and Traffic Planning Division which states that the adjoining laneway has been taken in charge by Dublin City Council, that the Council are of the opinion that the laneway constitutes public land and is not in private ownership.
- 9.3. There is clearly a dispute over the legal ownership of the laneway in question. It is not the purpose of An Bord Pleanála as a planning appeals body to adjudicate on disputes in relation to ownership of land between parties. The Development Management Guidelines for Planning Authorities (June 2011) is clear in stating in Section 5.13 that *“the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land these are ultimate matters for resolutions in the Courts. In this regard, it should be noted that, at Section 34(13) of the Planning Acts states, a person is not entitled solely by reason of a permission to carry out any development”*.
- 9.4. With this in mind I would consider that the decision of the Planning Authority should be upheld in this instance and that where any legal issue arises in respect of right of way, that this is a matter for the Courts and not An Bord Pleanála.
- 9.5. Finally, in relation to this issue I would note that it is a requirement of the planning permission that the pedestrian gate shall be inward opening only and shall not open onto the adjoining laneway. The gate provided is a pedestrian gate and will not give rise to any vehicular traffic using the laneway. In this regard, and notwithstanding the legal arguments put forward that the applicant has no right to use the laneway, it appears that the use of the laneway as proposed will not in any way obstruct or hinder access to and from the rear of Apollo House.
- 9.6. Arising from my assessment above I consider that An Bord Pleanála should uphold the decision of the Planning Authority and grant planning permission for the proposed extension.

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**

Having regard to the Z1 zoning objective relating to the site it is considered that the proposed development, subject to conditions set out below would not seriously injure the amenities of the area or property in the vicinity, would not be prejudicial to public health and would generally be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

13.0 **Conditions**

1. The development shall be carried out and completed 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 prior to the 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. 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.

3. The development shall comply with the following requirements of the Roads and Traffic Planning Division of Dublin City Council.
 1. The pedestrian gate shall be inward opening only and shall not open onto the adjoining laneway.
 2. All costs incurred by Dublin City Council, in any repairs to the public road and services necessary as a result of the development shall be at the expense of the developer.
 3. The developer shall be obliged to comply with the requirements set out in the Code of Practice.

Reason: To ensure a satisfactory standard of development and in the interest of traffic safety.

4. Site development and building works shall be carried out only between the hours of 7 a.m. to 6 p.m. Monday to Friday, 8 a.m. to 2 p.m. Saturday and not at all on Sundays or Public Holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

5. The external finishes of the proposed 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 commencement of development.

Reason: In the interest of visual amenity.

6. The developer shall pay to the planning authority a financial contribution of €1,037 (one thousand and thirty-seven euros) 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. The application of any indexation required by this condition 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.

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.

Paul Caprani,
Senior Planning Inspector.

25th June, 2018.