



An  
Bord  
Pleanála

## Inspector's Report ABP-301246-18.

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<b>Development</b>	Permission for the retention of internal alterations, amended eaves, height, additional floor space as constructed, double height front porch as constructed, 6 velux rooflights as constructed and all associated site works.
<b>Location</b>	Kiltipper Road, Dublin 24.
<b>Planning Authority</b>	South Dublin County Council.
<b>Planning Authority Reg. Ref.</b>	SD17B/0411.
<b>Applicant(s)</b>	Donal O'Connor.
<b>Type of Application</b>	Retention.
<b>Planning Authority Decision</b>	Refuse.
<b>Type of Appeal</b>	First Party.
<b>Appellant(s)</b>	Donal O'Connor.
<b>Observer(s)</b>	Denise Buckley.
<b>Date of Site Inspection</b>	19 <sup>th</sup> June, 2018.
<b>Inspector</b>	A. Considine.

## **1.0 Site Location and Description**

- 1.1. The subject site is located to the west of the M50 and approximately 1km to the north of the conservation buffer associated with the Dublin Mountains Area. The Kiltipper Road to the south of the site is narrow at the location of the site and the junction with Ballymana Lane is just to the east of the site. There are a number of residential estate to the north and east of the site with one off detached houses in closer proximity to the site. Houses to the west and east of the site comprise bungalows.
- 1.2. The partially constructed house on the site comprises a large two storey detached house. Permission for a large two storey houses was granted under SD08B/0250, with a floor area of 530.10m<sup>2</sup>. and the floor plan for the house the subject of this appeal reflects the scale of this permitted development. The site currently comprises a building site and it would appear that works have ceased. The site has two vehicular access points constructed. The site occupies a stated area of 0.2038ha and the existing house has a stated floor area of 565m<sup>2</sup>.

## **2.0 Proposed Development**

- 2.1. Retention is sought for (a) minor alterations to existing ground floor and first floor layouts, as constructed which altered all fenestrations of the house and revised elevational treatments to all existing facades and fenestrations, as constructed; (b) amended eaves height including revised entire roof construction element as constructed; (c) existing additional floor space at first floor level, as constructed; (d) double height front porch, as constructed; (e) 6 'Velux' roof lights (on pitched roof) and 4 flat roof lights, as constructed and (f) all associated site works, all at Kiltipper Road, Dublin 24.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The Planning Authority decided to refuse permission for the proposed works for 6 reasons including:

- The application for retention relates to a permission which expired on the 15th July, 2015. The PA cannot assess an application for retention of alterations to a permission that has expired.
- Non compliance with previous conditions of permission SD15A/0011 including no 2 which related to sightlines at access, Condition 9 which required that the external walls have a nap plaster finish and the roof be blue / black colour and condition 10 which required that no development take place until a detailed landscaping scheme for the development was agreed.
- Two access points have been created without permission. The current application for retention is inaccurate and incomplete.
- The submitted plans do not fully correspond with the development that has taken place on site.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The Planning report considered the proposed development in terms of the relevant information presented in support of the application, together with technical reports. The report forms the basis for the Planning Authority's decision to refuse permission.

The report also notes the planning history associated with the subject site, noting that the permission for the development of the site expired on the 15<sup>th</sup> July, 2015. It is submitted that the permitted development has not been completed before the expiry date and that there is evidence of construction taking place on the 30/01/2018. The Report cites Section 40(1) of the Planning & Development Act, as amended which limits the duration of permission. The planning report concludes that 'the PA cannot assess an application for Retention which seeks alterations and modifications, which relate to a previous grant of permission which is now expired, given that the dwelling was not completed within the statutory period and especially since construction is currently taking place on the site to complete the development'. The report raises further concerns that the development has not been constructed in accordance with the plans and particulars lodged, nor in accordance with the

conditions attached. The report recommends a refusal of permission for 6 reasons. The report formed the basis of the Planning Authority decision to grant permission.

3.2.2. Other Technical Reports:

None.

3.2.3. Third Party Submissions:

There are 13 third party submissions noted on the planning file, each raising the following issues:

- Invalid application due to site notice and address issues.
- Issues with the planning history and the stealth approach to the planning process.
- Issues with zoning, proper development and non compliance with the Sustainable Rural Housing Guidelines.
- Issues with sight distances at entrance.
- The design of the house does not refer to any relevant guidelines for the design of housing in rural areas.
- Since the development of the site commenced, all trees and hedgerows have been removed from the site.
- The scale and massing of the development is out of character with the neighbouring dwellings.
- The potential occupancy and intended use of the house is questioned given the scale – potentially 2 large homes, 4 apartments or a B&B?
- Inadequate services in the area.
- The materials used are also at variance to what was approved, and is inappropriate to the rural setting.

## 4.0 Planning History

There is extensive planning history relating to the subject site as follows:

**PA ref S99A/0840:** Outline permission granted for the construction of a private dwelling and treatment plant.

**PA ref S00A/0397:** Permission granted for the construction of a private dwelling and treatment plant (OPP PA ref S99A/0840 refers).

**ABP ref PL06S.206851 (PA ref SD04A/0064):** Change of house type from the approved dormer bungalow to a 3 bedroomed bungalow, biocycle treatment plant, relocated vehicle access and all ancillary works. Permission granted on appeal subject to conditions.

**PA ref S08B/0250:** Permission granted to raise the existing approved bungalow's ridge height from 5.5m to 7.2m to accommodate an attic extension/conversion, and the construction of a small ground floor extension to the rear and a double garage in the front garden. The development will include internal & minor external alterations from approved development Reg. Ref. SD04A/0064, to include windows to the front and rear and balconies with obscure glass to the rear on the first floor. All drainage & ancillary works. On lands known as Folio No. 45962F. This permission expired on the 15<sup>th</sup> July, 2013.

**PA ref S08B/0250/EP:** Permission granted to extend the duration of permission for above decision. The Board will note that the applicant sought permission to extend the duration of permission for the above permission on the 30<sup>th</sup> November, 2012, for a period of two years. This permission expired on the 15<sup>th</sup> of July, 2015.

**PA ref S13A/0209:** Permission refused for the construction of 2 x two storey, three bed detached houses including vehicular access and site ancillary works. The 4 reasons for refusal include non compliance with settlement location policy, ribbon development, inadequate road frontage and the development would have a visual impact and would be of an excessive scale and mass which would be out of character with adjacent properties and the amenities of the rural area.

**PA ref S15A/0011:** Permission granted for alteration to previously granted two storey detached house including vehicular access and site ancillary works under Reg. Ref. SD08B/0250/EP; alterations to include roof plan and front elevation porch. The Board will note that condition 1(b) of this decision, which issued on the 10<sup>th</sup> March, 2015, specified that the permission would expire on the 15<sup>th</sup> July, 2015.

There are two enforcement files noted in relation to the subject site as follows:

**Enforcement Ref S7604:** This file is indicated as being live and relates to non-compliance with condition no. 1 of SD08B/0252 in that the development currently under construction is not being carried out in accordance with the Plans and particulars submitted and approved under the above grant of permission.

**Enforcement Ref S7678:** This file is indicated as being closed on the 2<sup>nd</sup> June, 2015 and relates to non-compliance with condition no. 1 of SD08B/0252.

## 5.0 Policy Context

### 5.1. Development Plan

The South Dublin County Council Development Plan, 2016-2022 is the relevant policy document pertaining to the subject site. The site is zoned 'RU' where it is the stated objective for this zoning to protect and improve rural amenity and to provide for the development of agriculture.

Chapter 2 of the County Development Plan deals with Housing, and section 2.5.0, with Rural Housing. The following policies are considered relevant:

Housing (H) Policy 20 Management of Single Dwellings in Rural Areas:

It is the policy of the Council to restrict the spread of dwellings in the rural "RU", Dublin Mountain 'HA-DM', Liffey Valley 'HA-LV' and Dodder Valley 'HA-DV' zones and to focus such housing into existing settlements.

Housing (H) Policy 21 Rural Housing Policies and Local Need Criteria:

It is the policy of the Council that in accordance with the Sustainable Rural Housing Guidelines DEHLG (2005) and Circular SP 5/08 Rural Housing Policies and Local Need Criteria in Development Plans: Conformity with Articles 43 and 56 (Freedom of Establishment and Free Movement of Capital) of the European Community Treaty, "persons who are an intrinsic part of the rural community" or "persons working full-time or part-time in rural areas" as described under Section 3.2.3 (Rural generated housing) of the Sustainable Rural Housing Guidelines (2005) shall be favourably considered in relation to rural housing.

Section 2.5.3 of the Plan deals with rural housing in RU zone and Policy 22 is relevant in that it is the policy of the Council that within areas designated with Zoning Objective 'RU' (to protect and improve rural amenity and to provide for the development of agriculture) new or replacement dwellings will only be permitted in exceptional circumstances.

H22 Objective 1: To consider new or replacement dwellings within areas designated with Zoning Objective "RU" (to protect and improve rural amenity and to provide for the development of agriculture) where:

- The applicant can establish a genuine need to reside in proximity to their employment (such employment being related to the rural community) OR
- The applicant has close family ties with the rural community.

## 5.2. Natural Heritage Designations

The subject site is not located within, or adjacent to, any designated European Site. The Glenasmole Valley SAC, Site Code 001209, is located approximately 2km to the south.

## 5.3. Legislative Context

5.3.1. I consider that Section 40(1)(b) of the Planning & Development Act, 2000, as amended, is relevant in this case. This section of the Act deals with the limit of duration of permission and states as follows:

40.—(1) Subject to subsection (2), a permission granted under this Part, shall on the expiration of the appropriate period (but without prejudice to the validity of anything done pursuant thereto prior to the expiration of that period) cease to have effect as regards—

- (a) in case the development to which the permission relates is not commenced during that period, the entire development, and
- (b) in case the development is commenced during that period, so much of the development as is not completed within that period.

(2)(a) Subsection (1) shall not apply—

- (i) to any permission for the retention on land of any structure,
  - (ii) to any permission granted either for a limited period only or subject to a condition which is of a kind described in section 34(4)(n),
  - (iii) in the case of a house, shop, office or other building which itself has been completed, in relation to the provision of any structure or works included in the relevant permission and which are either necessary for or ancillary or incidental to the use of the building in accordance with that permission, or
  - (iv) in the case of a development comprising a number of buildings of which only some have been completed, in relation to the provision of roads, services and open spaces included in the relevant permission and which are necessary for or ancillary or incidental to the completed buildings.
- (b) Subsection (1) shall not affect—
- (i) the continuance of any use, in accordance with a permission, of land,
  - (ii) where a development has been completed (whether to an extent described in paragraph (a) or otherwise), the obligation of any person to comply with any condition attached to the relevant permission whereby something is required either to be done or not to be done.
- (3) “the appropriate period” means—
- (a) in case in relation to the permission a period is specified pursuant to section 41, that period, and
  - (b) in any other case, the period of five years beginning on the date of the grant of permission.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

This is a first party appeal against the decision of the Planning Authority to refuse permission for the retention of the amendments as requested. The grounds of appeal are summarised as follows:



- It is considered that the refusal for 6 reasons is excessive and unreasonable given the positive planning history of the site.
- The house is extremely similar to that permitted under SD08B/0250 and the amendments are of an extremely minor nature.
- It is considered that SDCC have assessed the application with a view to imposing development contributions which are far greater than the development contributions attached to the parent permission, despite the minimal increased floor area of 41m<sup>2</sup>.
- No UD file was acted upon and it is submitted that if the applicant was guilty of planning non-compliance, it would have been acted upon.
- The applicant has tried unsuccessfully to pay development contributions.
- The PA did not assess the application in the interests of proper planning and sustainable development.
- In relation to reason no 1, it is submitted that the house was substantially complete by the 15<sup>th</sup> July 2015. The application to SDCC was a simple and straight forward application for minor deviations in the existing house previously approved.
- 5 of the reasons for refusal relate to SD15A/0011 which was not enacted. The permission was not enacted as it attracted a €45k development contribution, which the applicant cannot afford to pay. SDCC is trying to force the applicant to apply to retain and complete the entire development which will attract the development contribution and the local need issue will arise.
- It is submitted that the main construction work is complete with the house being substantially complete in every aspect.
- With regard to Section 40(1) of the Planning & Development Act, 2000 it is submitted that it open to the Board under Section 41 of Act to vary the appropriate period. It is submitted that the applicant only sought a 2 year extension due to implied pressure from SDCC. The Board could extend the appropriate period to 15<sup>th</sup> July, 2018.

- With regard to reason 2, it is submitted that the applicant will be using the permitted entrance.
- With regard to reason 3, it is submitted that there is a temporary construction entrance and a permitted entrance. The applicant will be blocking up the temporary entrance once completed.
- With regard to reason 4, it is submitted that the applicant has used a brick façade on the front fenestration. It is considered that this is a minor element and the Board can condition that it be removed, or plastered over.
- With regard to reason 5, it is submitted that the plans submitted are accurate.
- With regard to reason 6, it is submitted that the applicant is working off the permitted planning application SD08B/0250 and not SD15A/0011.

In conclusion, it is requested that the Board grant permission which will allow the applicant to deal with the minor elements on site and close the file off. It is likely that if an application to retain and complete is submitted, SDCC will refuse permission based on local need as they are aware that the applicant cannot comply. It is further considered the SDCC is trying to extract development contributions which will force the applicant to abandon the site and works. It is submitted that the principle of the development has been established on the site, as has the house design, and that there are more benefits to granting permission rather than refusing the application.

There are a number of enclosures with the appeal.

## **6.2. Planning Authority Response**

The Planning Authority has responded to this appeal advising no further comments.

## **6.3. Observations**

There is one observation noted in relation to this appeal. The submission restates the objections raised during the Planning Authority's assessment of the proposed development. The observation has 22 signatories.

## 7.0 Assessment

7.1.1. At the outset, I consider it appropriate to address the matter that this appeal before the Board relates to the retention of works to a building which is currently under construction, but where the actual planning permission for the building expired on the 15<sup>th</sup> July, 2015. This is 3 years prior to the date of this report. The appellant has submitted that the structure is substantially complete and therefore, there should be no issue permitting what he considers to be minor amendments. I also note the issues raised in relation to development contributions and local need, however, I consider that compliance with the Planning & Development Act, 2000, as amended, takes precedence.

7.1.2. In terms of the level of completeness of the structure, I would not generally concur with the appellant. The house is without doubt, in the early - mid stages of construction, albeit with the roof on. There are windows installed on the side elevations – I could not gain access to the rear to confirm here – but no windows are installed on the front elevation. The building is not rendered or finished externally and I would conclude that there is no first fix of carpentry, electrics or plumbing in the building. The building is not sealed and no landscaping works have been carried out. The front boundary wall has been partially constructed but I would not consider that the building is substantially complete, and in particular, given the 3 year gap since the permission expired.

7.1.3. Section 40(1)(b) of the Planning & Development Act, 2000, as amended, is relevant in this case in that it deals with the limit of duration of permission and states as follows:

40.—(1) Subject to subsection (2), a permission granted under this Part, shall on the expiration of the appropriate period (but without prejudice to the validity of anything done pursuant thereto prior to the expiration of that period) cease to have effect as regards—

- (a) in case the development to which the permission relates is not commenced during that period, the entire development, and

(b) in case the development is commenced during that period, so much of the development as is not completed within that period.

(2)(a) Subsection (1) shall not apply—

- (i) to any permission for the retention on land of any structure,
- (ii) to any permission granted either for a limited period only or subject to a condition which is of a kind described in section 34(4)(n),
- (iii) in the case of a house, shop, office or other building which itself has been completed, in relation to the provision of any structure or works included in the relevant permission and which are either necessary for or ancillary or incidental to the use of the building in accordance with that permission, or
- (iv) in the case of a development comprising a number of buildings of which only some have been completed, in relation to the provision of roads, services and open spaces included in the relevant permission and which are necessary for or ancillary or incidental to the completed buildings.

(b) Subsection (1) shall not affect—

- (i) the continuance of any use, in accordance with a permission, of land,
- (ii) where a development has been completed (whether to an extent described in paragraph (a) or otherwise), the obligation of any person to comply with any condition attached to the relevant permission whereby something is required either to be done or not to be done.

(3) “the appropriate period” means—

- (a) in case in relation to the permission a period is specified pursuant to section 41, that period, and
- (b) in any other case, the period of five years beginning on the date of the grant of permission.

7.1.4. Having regard to the case before the Board, I am satisfied that Section 40(1)(b) applies in that the grant of permission enacted, SD08B/0250 refers, expired on the 15<sup>th</sup> July, 2015 and ceased to have effect with regard to the development

which was not completed within that period. In terms of Section 40(2) of the Act, I am satisfied that S40(2)(a)(iii) does not apply as the house has not been completed in accordance with the permission granted within the appropriate period.

7.1.5. The Board will note the argument of the First Party that the Board has the power to vary the appropriate period under Section 41 of the Act. I do not accept the suggestion that this is either achievable or reasonable. The appropriate period that would have to be extended is that associated with what the appellant submits is the enacted permission, which expired 3 years ago. It would be wholly inappropriate in my opinion to seek to extend the appropriate period as suggested. With regard to the powers to extend the appropriate period provided for under Section 42 of the Act, again, I advise that the permission expired in 2015 and therefore this section of the Act cannot be relied upon.

7.1.6. In light of the above, and on the basis of the submissions made in connection with the planning application and appeal, I consider that the proposed development relates to a structure which is unauthorised. I arrive at this conclusion given that the grant of permission which governed the development expired on the 15<sup>th</sup> day of July, 2015, being 3 years from the date of this report. I am not satisfied that the development is substantially complete and as such, I consider that the proposed development would comprise the extension and alteration of an unauthorised structure. Accordingly, I consider that it would be inappropriate for the Board to consider the grant of a permission for the proposed development works and amendments in such circumstances.

7.1.7. Should the Board disagree with the above assessment, I consider the following to be relevant:

Retention permission is sought for:

- a) Minor alterations to existing ground floor and first floor layouts, as constructed which altered all fenestrations of the house and revised elevational treatments to all existing facades and fenestrations as constructed;
- (b) amended eaves height including revised entire roof construction element as constructed;
- (c) existing additional floor space at first floor level, as constructed;

- (d) double height front porch, as constructed;
  - (e) 6 'Velux' roof lights (on pitched roof) and 4 flat roof lights, as constructed and
  - (f) all associated site works,
- all at Kiltipper Road, Dublin 24.

7.1.8. Taken as a whole, I consider the as constructed house on the site to be significantly different from that permitted under SD08A/0250. In particular, I would have concerns regarding the roof structure and the finishes being sought as I do not consider that they comprise minor amendments. The visual impacts arising, and while I have no objections in principle to the materials, are not insignificant in my opinion, and would not complement the existing character of this area of Dublin 24. I would also share the concerns of the third party observers in relation to the labelling of the rooms as constructed and the potential use of the house. That said, I would consider that an appropriately worded condition would restrict the use of the house to that originally permitted.

7.1.9. I note that the submitted drawings do not appear complete and have omitted clear details of the windows proposed to be used. For example, the windows on the elevation drawings show no detail while the windows on the floor plans suggest that the original three pane windows are to be used. While the appellant suggests that the alterations are minor, I would have some reservations. The permitted dwelling under SD08B/0250, in my opinion, is substantially altered by the as constructed house alterations. I would not accept that the amendments are minor. Should the Board be minded to grant permission in this instance, I recommend that a condition be included to revert to the previously permitted finishes, being a nap plaster finish and the original window design, in order to minimise the visual impact associated with the house.

7.1.10. In terms of the references to permission SD15A/0011, the first party submits that this permission was not enacted. The appeal submission advises that no commencement notice was lodged for this permission. However, the building as constructed is more akin to the permission granted under SD15A/0011 and it is clear that the permitted roof design under SD15A/0011 is the roof that has essentially been constructed. There are amendments to the double height porch on the front elevation drawings. The Board will note that the roof plans submitted with

SD15A/0011 indicate that the porch roof is an A roof and not a flat roof as depicted in the elevation drawings. I would note that the internal layout permitted under SD15A/0011 differs from that currently under consideration. In this regard, I consider it reasonable that the conditions attached to SD15A/0011 should apply.

7.1.11. The First Party has submitted that the reason for the refusal is to require the applicant to submit an application to retain and complete the development so that development contributions can be attached. It is also noted that the applicant may not comply with the SDCC settlement location policy for this area. While I empathise with the applicant and note their cited efforts to pay said contributions since 2012, the contributions do not appear to have been paid. I note the email from SDCC on the 26<sup>th</sup> October, 2012 advising that the contribution was €11,067.55, with reductions associated with own water supply and drainage. It would appear that the applicant responded to this email on the 30<sup>th</sup> January, 2015. I refer the Board to the decision under SD15A/0011, which issued on the 21<sup>st</sup> April, 2015, and in particular condition 13, which required the payment of €45,090.31 in development contributions.

7.1.12. Condition 13 advises that the rate of contribution payable will be that pertaining to the year in which implementation of the planning permission is commenced. The commencement notice relied upon by the applicant is dated 19<sup>th</sup> February, 2015. As such, the relevant contribution payable should reflect this. Should the Board be minded to grant permission for the current proposal, I consider it appropriate that a development contributions condition be included, given that no contributions appear to have been paid to date.

7.1.13. I also note the comments of the appellant in relation to other elements of the works which have been carried out on the site, including the opening of the second access point, without the benefit of permission. It is noted that this entrance is to be closed once construction works are completed. Should the Board be minded to grant permission in this instance, I recommend that a condition requiring the immediate closing of the entrance be included.

## 7.2. **Appropriate Assessment:**

Given the location of the subject site within an established and mature residential area, together with the nature of the proposed development, being a residential

extension, I am satisfied that there is no potential for impact on any Natura 2000 site, warranting AA.

## **8.0 Recommendation**

I recommend that permission be refused for the following stated reason.

## **9.0 Reasons and Considerations**

On the basis of the submissions made in connection with the planning application and appeal, it appears to the Board that the proposed development relates to a structure which is unauthorised given that the grant of permission which governed the development expired on the 15<sup>th</sup> day of July, 2015. The Board is not satisfied that the development is substantially complete and considers that the proposed development would comprise the extension and alteration of this unauthorised structure. Accordingly, it is considered that it would be inappropriate for the Board to consider the grant of a permission for the proposed development in such circumstances.

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A. Considine  
Planning Inspector  
16<sup>th</sup> July, 2018