



An
Bord
Pleanála

Inspector's Report ABP-301788-18

Development	Alterations to floor plans, elevations, site layout and all associated site works of previously approved dwelling (Reg. Ref: SD09A/0081).
Location	2A, Mill Road, Saggart, Co. Dublin
Planning Authority	South Dublin County Council
Planning Authority Reg. Ref.	SD18A/0073
Applicant(s)	Energy Wise Construction
Type of Application	Retention permission
Planning Authority Decision	Grant retention permission
Type of Appeal	Third Party
Appellant(s)	Karen Benson
Observer(s)	None
Date of Site Inspection	14 th August 2018
Inspector	Michael Dillon

1.0 Site Location and Description

- 1.1. The site, with a stated area of 0.056ha, is located on the north side of Mill Road, within the village of Saggart in southwest Co. Dublin. Mill Road is a busy traffic artery linking the N81 and the N7. The 50kph speed restriction applies in this area. There are public footpaths in place, and there is public lighting. There is a cemetery located to the rear of the plot.
- 1.2. The site forms the side garden of adjoining no. 2 Mill Road – one of a pair of semi-detached, two-storey cottages on large and deep plots. No. 3, to the northwest, has recently been substantially extended with single- and two-storey elements. There is on-site parking for up to 3 cars on the appeal site – parked end to end. The house, as thus far constructed, is of two storeys with a hipped roof in natural slate, and part single-storey, flat-roofed projection to the rear and side. External finish is concrete block. Construction work on the house has halted. A new 1.2-2.5m high concrete block wall has been constructed along part of the boundary with no. 3, with the rear garden boundary being new concrete post and timber panel fencing. The site is unsightly pending completion of development.

2.0 Proposed Development

- 2.1. On 12th March permission was sought to retain alterations to permitted house (168m²) constructed on this site, which involved change of footprint and elevations. Surface water is to be discharged to a soak-way in the rear garden. Foul waste is to be discharged to the public foul sewer in the street. Water supply is from the public mains in the street.

3.0 Planning Authority Decision

By Order dated 8th May 2018, SDCC issued a Notification of decision to grant retention permission for development subject to 12 no. conditions – principal amongst which are the following-

1. Development to be carried out in accordance with plans and particulars submitted.
2. Two-year permission.

3. All windows in the ground and first floor on the northwest elevation, facing no. 3 Mill Road, shall be in permanent obscured glazing.
6. House shall be used as a single dwelling unit.
7. Attic space shall be used for storage only.
9. Relates to construction of a soak-way – details of which are to be agreed by SDCC.
12. Requires payment of a development contribution of €15,190.56.

4.0 Planning History

SD09A/0081: Permission granted for alterations and extension to no. 2 Mill Road, together with construction of a new two-storey house within the side garden, and new vehicular entrances. The decision was not the subject of an appeal to An Bord Pleanála. An extension of the permission was granted ref. SD09A/0081/EP – which expired on 29th September 2017. The extension of no. 2 was never carried out. Construction was commenced, but has not been completed on the new house. The development was not carried out in accordance with the permission.

5.0 Policy Context

5.1. Development Plan

The relevant document is the South Dublin County Development Plan 2016-2022. The site is zoned – “To protect and or improve residential amenity”. Corner/side garden developments are covered in section 11.3.2 (ii).

Corner/Side Garden Sites

Development on corner and/or side garden sites should meet the criteria for infill development in addition to the following criteria:

- The site should be of sufficient size to accommodate an additional dwelling(s) and an appropriate set back should be maintained from adjacent dwellings,
- The dwelling(s) should generally be designed and sited to match the building line and respond to the roof profile of adjoining dwellings,

- The architectural language of the development (including boundary treatments) should respond to the character of adjacent dwellings and create a sense of harmony. Contemporary and innovative proposals that respond to the local context are encouraged, particularly on larger sites which can accommodate multiple dwellings,
- Where proposed buildings project forward of the prevailing building line or height, transitional elements should be incorporated into the design to promote a sense of integration with adjoining buildings, and
- Corner development should provide a dual frontage in order to avoid blank facades and maximise surveillance of the public domain.

5.2. **Natural Heritage Designations**

None of relevance.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The 3rd Party appeal from Karen Benson, 3 Mill Road, Saggart, received by An Bord Pleanála on 5th June 2018, can be summarised in bullet point format as follows-

- Additional windows were added to this house, without permission. These windows directly overlook the appellant's property.
- These windows can be opened – so the requirement for obscured glazing would be rendered useless.
- The removal of mature trees on the boundary, by the builder, contributed to loss of amenity.
- The new-build house has been moved back further into the site than originally planned, which has contributed to the problem of over-looking.
- The unauthorised windows should be removed. There should be no windows on elevation B. The wrap-around windows on ground and first floor level should also be removed.

6.2. Applicant Response

6.2.1. The response of Michael Fitzpatrick Architects Ltd, agent on behalf of the applicant Energy Wise Construction, received by An Bord Pleanála on 29th June 2018, can be summarised in bullet point format as follows-

- Only two windows can be conceived to overlook the appellant's property – namely the two windows on the first floor of the northwest elevation. Both windows are to be fixed, unopenable, and to remain so in perpetuity. As per condition no. 3 of the Notification of decision to grant planning permission, all windows on this elevation are to be in obscured glazing.
- It is the intention of the applicant to replace the trees which were removed from the boundary between no. 2 and no. 3 Mill Road.
- The house has not been moved further back into the site.
- The floor area of the house, as constructed, is a reduction on that originally permitted.
- The appeal should be dismissed by the Board.

6.2.2. The response is accompanied by a copy of a drawing showing affected windows highlighted in colour.

6.3. Planning Authority Response

The response of SDCC, received by An Bord Pleanála on 20th June 2018, indicated that the PA had no further comment to make.

6.4. 3rd Party Response to 1st Party Response to 3rd Party Appeal

The 1st Party response to the grounds of appeal was circulated to the 3rd Party for comment on or before 2nd August 2018. The response of Karen Benson, received by An Bord Pleanála on 31st July 2018, can be summarised in bullet point format as follows-

- When the appellant purchased her own house at no. 3 Mill Road, she was satisfied that there would be no windows in the elevation which addressed her property – Elevation B.

- If it had not been for the appellant complaining, it is unlikely that SDCC would have noticed that the house was not constructed in accordance with the original planning permission.
- It will be up to the appellant to keep a check, to see if the windows are installed correctly – as it is unlikely that the purchasers of the house will be aware of the niceties of any planning permission – and will likely seek to change the opaque windows.
- The trees removed belonged to the appellant’s property. Notwithstanding that this was pointed out to the JCB operator – they were still removed. The architect for the applicant now concedes that this was done in error. No discussion has taken place on replacements.
- The house has been re-sited further back in the site. There is sewer pipe on the appellant’s site which crosses it at an acute angle – which must result in a breach of the 5m wayleave.
- The appellant’s house was purchased and adapted to give her disabled son the peace and quiet he desires.
- As the builder is intent on selling this house, it is immaterial to him whether the windows remain or are omitted.

6.5. **2nd Party Response to 1st Party Response to 3rd Party Appeal**

None received.

7.0 **Observations**

None received.

8.0 **Assessment**

8.1. **General Comment**

The principal issue in this appeal relates to residential amenity – and in particular over-looking which may result from the construction of this house, as it impacts the

rear garden of adjoining no. 3 Mill Road. Permission was originally granted for a slightly larger house on this site. This permission was subsequently extended, but the permission has since expired. Construction commenced, but was not carried out in conformity with the original permission – the design of the house being different from that granted permission. Hence, the application for retention permission.

8.2. Design & Layout

- 8.2.1. The appellant claims that the house, as constructed, would appear to be pushed back further into the site. I would agree with this observation – the house would appear to be approximately 1m further back from Mill Road from that which was permitted in the original permission. However, this is an application for retention permission. I would not consider that the relocation of the house 1m further back into the site will have any significant impact on the amenities of the occupants of no. 3 Mill Road.
- 8.2.2. The agent for the applicant contends that there cannot really be overlooking from ground floor windows, and I would be inclined to agree with this. It is open to neighbours to screen their properties from one another, if required. This can be done by way of erection of walls/fences or screen planting. A 2.2m high wall would appear to have been recently constructed on the boundary, to screen the ground floor extension to the rear of the appellant's house at no. 3 Mill Road. The wrap-around window of the sitting-room to the front of the house, overlooks the front garden of the house – which is clearly visible from Mill Road. Due to the setting back of the house on the site, the building line is considerably out of kilter with its neighbours – and in particular no. 3. This results in the overlooking claim to the rear garden of no. 3 Mill Road. However, as noted elsewhere in this report, no. 3 has been substantially extended and contains ground floor windows addressing no. 2A Mill Road. There is no longer any side garden with no. 3 – the area being entirely paved. SDCC required all windows in the northwest elevation to be in obscured glazing. I would consider that this condition is unduly onerous. The ground floor WC is already in obscured glazing, and the newly constructed high wall on the boundary means that there would be no overlooking from this window, even if it were not in obscured glazing. The window in the sitting-room, even where only part of the wrap-around window was required to be in obscured glazing, would not be an attractive

feature in such a room. The newly-constructed 2.2m high wall on the boundary between the two properties ensures that there will be no overlooking of the garden or house at no. 3, from this wrap-around window. I would consider that the requirement for obscured glazing in this room is not warranted to protect the amenities of adjoining residents – particularly where a new wall has been constructed on the common boundary.

8.2.3. The applicant has submitted a drawing, as part of the 1st Party response to the grounds of appeal, indicating opaque glazing in the two first floor windows in the northwestern elevation – and these windows to be permanently fixed closed. One is part of a wrap-around window for the master bedroom – a room that already benefits from two windows facing Mill Road. There is no requirement for a window addressing the appellant's house and garden. This window would result in serious overlooking of the appellant's rear garden and terrace, and ought to be removed. I would agree with the contention of the appellant that it would be left to her to police the maintenance of obscured glazing in this window, in the event that the house is sold in the future. The simplest solution is the complete removal of this part of the wrap-around window. The second window in the northwestern elevation lights a staircase. This window could also result in significant overlooking of the appellant's rear garden and terrace, and should be in permanent obscured glazing (which already appears to be the case). It would be possible to require this by way of condition attached to any grant of permission.

8.2.4. Following on from my site inspection, I note that the drawings submitted by the applicant do not show the extensions to the appellant's house at no. 3. Article 23(1)(d) of the Planning and Development Regulations, 2001 (as amended) requires that planning applications be accompanied by drawings showing elevations of buildings which are contiguous. Interestingly, drawings submitted do show no. 2 extended (as indicated in permission ref. SD09A/0081) – which works were not in fact carried out, and the permission has now expired. Furthermore, the drawings submitted to the planning authority and An Bord Pleanála show the house considerably closer to the boundary with no. 3 than is represented on site. The drawings submitted show the house being within 0.9m of the joint boundary at its closest, whereas measurements taken by this Inspector show the house being no closer than 2.5m to the new boundary wall at its closest, and up to 3.5m away at its

greatest. Such is the gap which exists on the site, that it would be possible to drive a car down the side of the house – something which would clearly not be seen as feasible in the case of the drawings submitted with the application. However, given that the error shows the existing house further rather than closer to the appellant's property, I would not consider that this is an issue of major concern.

8.2.5. I would be satisfied that the overall design of the house for retention is in keeping with neighbouring houses – where there is no established design, siting or finish which is characteristic of the area. The original semi-detached cottages have been so altered, as to be almost unrecognisable from the simple one-room deep houses originally built along this side of Mill Road.

8.3. **Other Issues**

8.3.1. Financial Contribution

The application relates to retention and completion of a partially constructed house. Condition 12 required payment of a development contribution of €15,190.56. This condition has not been appealed by the 1st Party. A similarly-worded condition should be attached to any grant of permission to issue from the Board.

8.3.2. Landscaping

The application for retention was not accompanied by any detailed landscaping plan. An hedgerow boundary between no. 2 and no. 3 Mill Road was entirely removed by the developer, to facilitate construction of the new house. Original drawings submitted had clearly shown that this feature was to be retained. The appellant objects to the removal of this hedgerow. The agent for the applicant, in responding to the 3rd Party appeal, indicates an intention to reinstate this boundary treatment. However, no drawings or planting schedule was included to indicate just how this would be put into effect. SDCC had attached condition no. 4 to the Notification of decision to grant planning permission, requiring submission of a landscape plan for written agreement. It would be prudent to attach a similarly-worded condition to any grant of permission to issue from the Board. I note that the boundary between the two properties would appear to have been entirely renewed in the recent past, with a concrete block wall which is capped where the houses address one another, and a concrete post and timber panel fencing separating the rear gardens.

8.3.3. Water Supply & Drainage

Permission has already been granted for a house on this site. Whilst this retention permission is ostensibly to regularise fenestration issues, it is nonetheless an application for retention and completion of the house. The rear building line of the proposed house for retention is similar to that for which permission was originally granted, and the impact, if any, on a sewer which is located within the back garden would not be any different. It would be appropriate to attach conditions relating to water supply, foul drainage and disposal of surface water to an on-site soakway in the rear garden, to any grant of permission to issue from the Board.

8.3.4. Parking

On-site parking for up to three cars (end-to-end) could be provided within the curtilage of the site, and site inspection revealed that it would be possible to pass cars down the side of this house into the area to the rear of the house. I would be satisfied that there is adequate parking provided.

8.3.5. Duration of Permission

The Notification of decision to grant retention and completion permission included at condition no. 2 a limitation on the permission to two years. The half-completed house on this site is an eye-sore. I would recommend that a one-year permission be granted for its completion – regard being had to the substantially complete nature of the development where the house has walls, roofs and windows/doors.

9.0 **Recommendation**

I recommend that retention permission be granted for the Reasons and Considerations set out below, and subject to the attached Conditions.

10.0 **Reasons and Considerations**

Having regard to the previous grant of permission for a house on this site and the limited nature of the fenestration in the northwest elevation of the house, it is considered that, subject to compliance with the attached conditions, the proposed development for retention and completion would not result in serious over-looking of adjoining property and so would not be detrimental to the residential amenities of the

area. The proposed development would be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

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

Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. This permission is for a period of one year from the date of this order.

Reason: To ensure the timely completion of this dwelling in the interests of the visual amenities of the area, where permission was originally granted in 2009.

3. The portion of the wrap-around window in the master bedroom which faces northwest (addressing no. 3 Mill Road) shall be omitted entirely and the area blocked up permanently using concrete block and plaster, timber panelling or metal panelling. The window lighting the staircase shall be in permanent obscured glazing and shall not be capable of being opened in any way.

Reason: To prevent any overlooking of the rear house and rear garden at no. 3 Mill Road, in the interest of residential amenity.

4. The recently erected boundary wall with no. 3 Mill Road shall be plastered/dashed on the site side and painted/coloured as appropriate.

Reason: In the interest of visual amenity.

5. The surface water soakway shall be installed and maintained to the satisfaction of the planning authority. No surface water shall be permitted to discharge off the site to either the public footpath, adjoining sites or to the public foul sewer.

Reason: in the interest of orderly development and public health.

6. Parking for at least two cars shall be provided within the front garden curtilage of the house.

Reason: In the interest of orderly development.

7. A landscaping plan shall be submitted to the planning authority, and written agreement obtained, prior to first occupation of the house.

Reason: In the interest of visual amenity.

8. All service cables associated with the development for retention and completion shall be located underground.

Reason: In the interest of visual amenity.

9. The external finishes of the house shall be as indicated on drawings, and external walls shall be painted in a neutral colour.

Reason: In the interest of visual amenity.

10. Proposals for a house numbering scheme shall be submitted to the planning authority, and written agreement obtained, prior to first occupation of the house.

Reason: In the interest of orderly development.

11. 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 within three months of the date of this order, 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.

12. Within three months of the date of this order, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or such other security as may be acceptable to the planning authority, to secure the satisfactory reinstatement of the road and footpath, coupled with an agreement empowering the planning authority to apply such security or part thereof to such reinstatement. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory restoration of the public footpath and road in the interest of residential amenity and traffic safety.

**Michael Dillon,
Planning Inspectorate.**

16th August 2018.