



An
Bord
Pleanála

Inspector's Report ABP-301925-18

Development	Retention of rear extension, completion of building works, alterations and associated works
Location	22, Portobello Road, Portobello, Dublin 8
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	2673/18
Applicants	Eamonn Lewis
Type of Application	Retain
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellants	Con Manning
Observers	Residents of St Kevin's Road and other neighbours
Date of Site Inspection	18 th September 2018
Inspector	Dolores McCague

1.0 Site Location and Description

- 1.1.1. The site is located at 22, Portobello Road, in Dublin 8 which is a road running parallel to the Grand Canal comprising mainly single storey terraced houses, some with small front gardens and some without, which face south towards the canal. The site backs onto the rear of two storey terraced houses on St Kevin's Road. A narrow laneway which once intervened between the two rows of houses, no longer exists at this location and appears to have been subsumed into the adjoining properties.
- 1.1.2. The site comprises a small front garden and single storey house with a small back yard. The existing house has been extended to the rear by the addition of a 2-storey storey element which is not fully completed.
- 1.1.3. The site is given as 108m².

2.0 Proposed Development

- 2.1.1. The proposed development is the retention of the rear extension, completion of building works, alterations and associated works.
- 2.1.2. The total floor area of the existing dwelling and proposed extension is given as 90m².

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The planning authority decided to grant planning permission subject to 5 standard conditions.
- 3.1.2. The decision was in accordance with the planning recommendation.

3.2. Planning Authority Reports

- 3.2.1. Planning Reports

The planning report includes:

- Z1 zoning objective in the Dublin City Council Development Plan 2016 to 2022 which seeks 'to protect, provide and improve residential amenities'.
- The site is set in a Conservation Area due to its location situated along the Grand Canal.
- CHC4 - To protect the special interest and character of all Dublin's Conservation Areas.
- 16.10.12 - Extensions and Alterations to Dwellings.
- Appendix 17 - Guidelines for Residential Extensions.

In reviewing the file and planning application it is clear that the original grant of permission was for a 2 storey rear extension measuring 5m in height. The applicant's agent has proposed changes in order to better bring in line the unauthorised height of the extension. This is through material choices and the removal of the parapet. These changes have made a change somewhat to the visual impact of the rear extension. The current height now has the rear extension stated as c250mm above the original height permitted. The works on site clearly have not had any regard to the planning permission granted under 3644/12.

The extension as exists on site at present would be visible from the adjacent southern canal bank footpath albeit less than the previous application 3592/16. However, it is considered reasonable that the measures taken to date to rectify the unauthorised works have improved the poor visual amenity the original works had resulted in.

It is considered that the proposed development would be acceptable but would not set a precedent for similar undesirable development along the canal.

3.2.2. Other Technical Reports

3.2.3. Engineering Department Drainage Division – conditions.

3.3. **Prescribed Bodies**

3.3.1. TII – no observations.

3.4. Third Party Observations

3.4.1. Third party observations on the file have been read and noted.

4.0 Planning History

PL29S.247550 PA Reg Reg 3592/16, Retention of partly constructed 2-storey extension with alterations and permission for completion of extension, refused by the Board for the following reasons and considerations:

The current height of the extension to be retained, notwithstanding the alterations to the parapet, render the extension out of keeping with the scale and character of the original house and would seriously injure the visual amenities of the area, including the north and south banks of the Grand Canal which form a Conservation Area. The proposal to be retained would have an overbearing impact on the adjoining properties and set an undesirable precedent for similar extensions of this height and design. The retention of the extension at the current height would, therefore, be contrary to the provisions of the Dublin City Development Plan 2016-2022 and to the proper planning and sustainable development of the conservation area.

In deciding not to accept the Inspector's recommendation to grant permission, the Board noted the confined nature of the site, together with the careful consideration that had been given to the design and dimensions of the extension originally permitted on the site and had regard to the established character of the Conservation Area in which the site is located. The Board agreed that the planning authority assessment in relation to the unacceptable impacts of the development now being proposed for retention on the amenities of the Conservation Area and on the amenities of adjoining dwellings.

Reg. Ref.3644/12 Permission granted for demolition of existing single storey rear kitchen/bathroom annex remove rear terrace wall and rear pitched roof and construct new 2-storey rear extension, granted March 2013.

Reg. Ref. 4295/15 Permission refused for the retention of the increased height of the rear extension permitted under Reg. Ref. 3644/12 for one reason:

The increased parapet height to be retained would result in the extension being visible above the ridge line of the house, which would render the extension out of keeping with the scale and character of the original house and contrary to the visual amenities of the area, including the N and S banks of the Grand Canal which form a conservation area. The proposal, in itself and by the precedent it would set for further extensions of this type along the canal bank, would therefore be contrary to the provisions of the current Dublin City Development Plan and to the proper planning and sustainable development of the area.

The planner's report states 'the covering submission states that the floor to ceiling height of the kitchen/livingroom at the lower level as permitted was only 2m but was constructed as 2.4m in order to comply with the Building Regulations. From the original application it would appear that the permitted floor to ceiling height at ground floor level was 2.6m which would have allowed the extension to comply with the Building Regulations. The permitted height above ground level appears to have been only 2m but it would appear that the intention was to excavate below this level to provide additional height and this has not been done. As constructed the floor to ceiling heights in excess of 2.4m for both lower and upper levels. No justification.

E0924/14 Complaint in relation to the construction of an extension higher than permitted by 3644/12. Enforcement Notice issued.

Other sites in the area

2043/00 18 Portobello Rd permission granted for alterations & refurbishment including attic conversion and single storey rear extension. Condition no. 3, the roof height shall match No 17.

2278/97 No 17 Portobello Rd permission granted for permanent retention and completion of reconstruction (with alterations) of partly demolished dwelling including site development works.

2803/07 No 23 Portobello Rd permission granted for alterations to house incorporating first floor extension over reduced level ground floor also single storey extension to rear.

246041, PA Reg Reg 3849/15, No 23 Portobello Rd, permission granted by the Board (on foot of the Council's decision to grant) for demolition of the existing single storey return, the partial demolition of the flat roof of the existing house and the construction of a two storey extension and single storey extension to the existing house, with one rooflight to the front elevation and two rooflights to the flat roof and all associated works, subject to conditions including condition no. 7 - the roof above the rear ground floor extension shall not be used as a balcony and it shall not be accessed except as an emergency exit and, in the case of the green portion, for maintenance purposes.

2270/00, No. 24, Portobello Rd, permission granted for the erection of single storey rear extension.

5.0 Policy Context

5.1. Development Plan

5.1.1. The Dublin City Council Development Plan 2016 to 2022 is the operative plan.

The proposed development would be located within an area covered by the Z1 zoning objective in the Dublin City Council Development Plan 2016 to 2022 - to protect, provide and improve residential amenities.

The site is also located within the Grand Canal Conservation Area.

St. Kevin's Road to the north is zoned Z2 - to protect and/or improve the amenities of residential conservation areas.

CHC4 - to protect the special interest and character of all Dublin's Conservation Areas. Development within or affecting a conservation area must contribute positively to its character and distinctiveness, and take opportunities to protect and

enhance the character and appearance of the area and its setting, wherever possible.

16.10.12 - Extensions and Alterations to Dwellings. 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 of scale to the main unit. 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.

Appendix 17 Guidelines for Residential Extensions - The extension should not dominate the existing building and should normally be of an overall shape and size to harmonise with the existing house and adjoining buildings; the original appearance should be the reference point for any consideration of change that may be desired.

5.2. Natural Heritage Designations

- 5.2.1. South Dublin Bay and River Tolka Estuary SPA site code 004024 and South Dublin Bay SAC site code 000210 are the nearest Natura Sites located c 4km from the subject site.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. A third party appeal against the decision to grant permission, has been made by Michael Kelly MRIAI on behalf of Con Manning, 23 St Kevin's Road, Dublin 8, a property backing onto the subject site. The grounds includes:

- The planning history is cited.
- The planner's report on the subject application is cited.
- The core planning considerations are the impact of the two storey extension when viewed from the canal banks on the character of the conservation area and the impact of the two storey extension on the amenity of the adjoining residents of St Kevin's Road. The disposition of the parapets in plan and section and their heights are the measurable factors in the consideration and determination of this appeal.
- A composite drawing attached to the grounds, which shows four cross sections at a scale of 1:200 each extending from Grove Road to St Kevin's Road, based on the documentation publicly available on the planning authority's files, is referred to.

It is pointed out that the development permitted under 3644/12 included a two storey rear extension that would not be visible from the footpath on either bank of the canal. 2011-2017 development plan provisions, which it is considered by the third party that the permitted development does not comply with, are listed.

The sightline shown through the section for 4295/15 is stated to have been omitted from the application documentation.

Similarly the sightline shown through the section for 3592/16 is stated to have been omitted from the application documentation.

The sightline from the current application shows the proposed glazed element on the line of the rear wall of the house at 26.215. The proposed glazed element would not be visible from the Grove Road canal side foot path.

235mm of the parapet at the proposed level of 26.710 would be visible above the ridge of the existing house.

The ridge level is given as 26.110 which is 60mm higher than the ridge level given as 26.050 OD on the ODOS Architects section. Given that the 26.050 OD ridge level was the basis for the original grant of permission it should remain the basis for comparative purposes and in that case the 235mm dimension should be considered as 295mm.

The proposed parapet level of the solid roof of the two storey extension (26.710) is 80mm lower than the parapet level of 27.790 shown on the McHugh O'Cofaigh Architects drawing submitted in support of the retention application refused by both Dublin City Council and An Bord Pleanála. The proposed 80mm reduction would not significantly ameliorate the situation and the appeal should be upheld.

The third party disagrees with the planner's assessment, in recommending the originally permitted development, that the proposed development which will be set back 2.5m from the boundary with a height of 5m would have less of a negative impact on the neighbouring property to the rear, i.e. St Kevin's Road, as at present there is an existing extension on the boundary wall which is 4m high. It failed to understand how imposing the two storey extension would be when viewed from the properties adjoining: 22 and 23 St Kevin's Road.

The third party considers that the reduction of 80mm in the present case should not have caused them to reverse previous refusals and make the demonstrably overbearing extension even more overbearing.

The third party takes issue with the reason given in the subject application for the height of the developed extension, and states in addition that the proposition which underpins the retention application, that the concrete slab can be insulated and weathered in accordance with the Building Regulations and with standard construction practice with a parapet level of 26.710, is unachievable.

The third party considers that the proposed amendments demonstrate a lack of understanding of the architectural quality of the original design.

The elevation of the full width glazing on the line of the rear wall of the original building has not been submitted and it is not possible to assess how the different roof constructions would abut.

The insertion of two windows in the rear wall at first floor level would undermine the architectural quality of the original design.

The as-built and proposed roof plan, drawing No. S17-056-003 describe construction on the party wall line with No 23 Portobello Road extending as far as the original chimney. The third party considers that such construction is entirely at variance with the architectural intent of the proposal as permitted, wherein the original single storey pitched roof house is retained as is and a new two storey extension is constructed at the rear. It is the view of the third party that the original development, notwithstanding its deviations from the development plan standards, was permitted because the architect's proposal demonstrated a high level of design quality. The modifications proposed would, if permitted, substantially diminish the architectural quality of the original design and should be refused.

The proposed windows would be unacceptable as there would be potential for overlooking if the windows were open and any conversations or noise from the shower room could be heard in the private open space at No.s 22 and 23 St Kevin's Road and vice versa.

Permission should be refused because of past failures to comply.

The permission 3644/12 has now expired, the Board is obliged to consider the entire development.

Residents have lost faith in the planning system. Refusal either having regard to the proposed height of the parapets, or because the proposed works do not comply with the current development plan or because of past failures to comply would acknowledge the damage done and vindicate the planning process.

6.2. Applicant Response

6.2.1. The applicant has not responded to the grounds of appeal.

6.3. **Planning Authority Response**

6.3.1. The Planning Authority has not responded to the grounds of appeal.

6.4. **Observations**

6.4.1. Residents of St Kevin's Road and other neighbour, c/o Michael & Teresa Coffey, 22 St Kevin's Road, have submitted an observation supporting the appeal, accompanied by a petition which was signed by their neighbours, which includes:

- Building work was halted when they reported that the extension being built was some 600mm above that specified in the original permission.
- They find it extraordinary that this the fourth application, which involves the retention of what was illegally built at the rear of the property with a somewhat lower parapet, still 260mm higher than the original permission, and also involving the insertion of windows in the first floor rear wall, was permitted by Dublin City Council. They consider that Dublin City Council has failed the residents by neglecting to enforce its enforcement notices.
- The original permission has lapsed and they request the Board to consider the application de novo. Any new application should comply more with the development plan, take more account of the amenities of the properties backing onto the site and encourage the applicant to apply for something more in line with what was built at 23 Portobello Road.

6.5. **Board Correspondence**

6.5.1. The Board wrote to the Development Applications Unit of the Department of Culture, Heritage and the Gaeltacht, The Heritage Council and An Taisce, informing them of the appeal and that the development is located within an Architectural Conservation Area and requesting observations.

6.5.2. No response was received.

7.0 Assessment

- 7.1.1. The issues which arise in relation to this appeal are: appropriate assessment, environmental impact assessment, impact on amenities of the conservation area, impact on residential amenities and the following assessment is dealt with under those headings.

7.2. Appropriate Assessment

- 7.2.1. Having regard to the nature and scale of the proposed development and nature of the receiving environment 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.

7.3. Environmental Impact Assessment

- 7.3.1. Having regard to the nature and scale of the proposed development and the nature of the receiving environment there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

7.4. Impact on Amenities of the Conservation Area

- 7.4.1. In the development plan Portobello Road is zoned Z1 (sustainable residential neighbourhoods) and St. Kevin's Road is zoned Z2 (residential neighbourhoods – conservation areas). Portobello Road is also within the designation of the Grand Canal Conservation Area and St. Kevin's Road is partially within this Conservation Area. The designation includes the canal and its towpaths / roads on either side and frontage development along these roads.
- 7.4.2. The front section of the roof of the 2-storey extension, as originally constructed, in breach of the permission granted, was highly visible from the Grand Canal Conservation Area. Notwithstanding alterations proposed to reduce the visual impact, in the previous retention proposal, the Board concluded that:

The current height of the extension to be retained, notwithstanding the alterations to the parapet, render the extension out of keeping with the scale and character of the original house and would seriously injure the visual amenities of the area, including the north and south banks of the Grand Canal which form a Conservation Area. The proposal to be retained would have an overbearing impact on the adjoining properties and set an undesirable precedent for similar extensions of this height and design. The retention of the extension at the current height would, therefore, be contrary to the provisions of the Dublin City Development Plan 2016-2022 and to the proper planning and sustainable development of the conservation area.

- 7.4.3. The subject application proposes amendments to the previous design in order to reduce the visual impact as viewed from public areas within the Conservation Area.
- 7.4.4. The concrete slab over the rear extension nearest the existing dwelling, previously shown reaching a height of 26.560 has been removed and a glazed section of roof, reaching a height of 26.215 to the rear of the dwelling and sloping upwards to 26.365, is now proposed for this area. The concrete slab over the rear portion of the extension remains in situ and extends to 26.71 with proposed insulation. As stated in the third party grounds of appeal, the proposed glazed element would not be visible from the Grove Road canal side foot path. The edge of the concrete roof is within the sightline of the viewer on the opposite side of the canal but to a much more limited extent than in the previous proposal. It is also worth noting that the two storey dwellings on St Kevins Road form the backdrop to the development as viewed from the Grand Canal and the small area projecting above the front roof will not be visible on the skyline.
- 7.4.5. In my opinion, on balance, the proposal is an acceptable solution to the situation which has arisen as a result of the unauthorised development and will result in a very limited impact on the visual amenities of public areas within the Conservation Area.
- 7.4.6. The first party has concerns with the design of the development which would substantially diminish the architectural quality of the original design. I would not disagree that the original design and the previous proposed amendment have design quality but the issue of importance in this regard, as pointed out by the third party, is the impact of the two storey extension when viewed from the canal banks on the

character of the conservation area. The current proposal involves a reduction in visibility and has very visual impact.

- 7.4.7. The first party points out that the as-built and proposed roof plan, drawing No. S17-056-003 describes construction on the party wall line with No 23 Portobello Road extending as far as the original chimney, which he considers entirely at variance with the architectural intent of the proposal as permitted, wherein the original single storey pitched roof house was to be retained as is and a new two storey extension was to be constructed at the rear. The Board should note that the drawing simply reflects the situation on the ground, showing a wall provided by the neighbouring property as part of the extension on that site. It should not be viewed as a reflection on the subject design.

7.5. Residential Amenity

- 7.5.1. The third party and observers are particularly concerned at the impact of the scale of the extension and its proximity to the properties on St Kevin's Road.
- 7.5.2. Both the third party and observers point out that the original permission has now expired and they wish the Board to revisit the principle of the extension, which it is suggested by observers should follow the example set by the extension to No 23 Portobello Road. The permission granted in 2013 for the subject extension has been the baseline by which each retention application has been assessed and in my opinion it is reasonable that this should be the case.
- 7.5.3. The original proposal had a parapet of 26.450 along the rear building line. The subject proposal shows a roof edge of 26.71 at this location a difference of 260mm.
- 7.5.4. The third party considers that the original permission failed to consider how imposing the two storey extension would be when viewed from the properties adjoining: 22 and 23 St Kevin's Road and the proposal submitted for retention would increase the impact. The Board may consider that any increase in height over that permitted under 3644/12 would be unacceptable, in my opinion on balance, this is an acceptable solution and will result in a limited impact on the residential amenities of adjoining properties.
- 7.5.5. The third party considers that the proposed windows would be unacceptable, that they offer the potential for overlooking if open, and that they allow the transmission of

conversations or noise from within the building to the private open space at No.s 22 and 23 St Kevin's Road and vice versa. I note that in the previous proposal roof windows were proposed behind an upstand. The subject proposal omits the upstand, presumably with a view to reducing the height of the wall.

- 7.5.6. Openings have been provided in the concrete roof, and the Board, if minded to grant permission, could require that glazed roof panels be provided to light these rooms with only air vents being provided in the rear wall. In relation to wall windows, the impact on privacy could be dealt with by a condition requiring that the windows are incapable of being opened below a minimum height above floor level.
- 7.5.7. In relation to sound transmission, any opening will allow sound to escape. The ground floor has large door openings to the external courtyard. It is likely that outdoor amenity areas will be in use by many residents at the same time and therefore there is potential for sound transmission between all these properties which are in close proximity to each other. This issue is not exclusive to the proposed WC and shower room.
- 7.5.8. In light of the fact that the wall windows are the subject of the grounds of appeal and that there is available an alternative in the form of roof lights and wall vents, in my opinion the window openings should be omitted.

8.0 Recommendation

- 8.1.1. In the light of the above assessment I recommend that planning permission be granted for the following reasons and considerations and in accordance with the following conditions.

9.0 Reasons and Considerations

- 9.1. Having regard to the provisions of the Dublin City Development Plan 2016-2022, and to the nature and scale of the development proposed for retention and completion and to the pattern of development in the area, it is considered that subject to compliance with the following conditions, the development proposed for retention

and completion would not seriously injure the amenities of the area or of property in the vicinity. 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 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 windows at first floor shall be omitted and only air vents shall be provided at first floor level in the rear elevation. Natural lighting shall be provided for the WC and shower room by glazed panels in the roof; details shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of residential amenity.

3. Details of the materials, colours and textures of all the external finishes to the proposed rear extension shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

4. The roof above the rear extension shall not be used as a balcony and shall not be accessed except for maintenance purposes.

Reason: 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.

6. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and 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.

7. During the construction and demolition phases, the proposed development

shall comply with British Standard 5228 – Noise Control on Construction and open sites Part 1. Code of practice for basic information and procedures for noise control.

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

Planning Inspector

24 September 2018

Appendices

1 Photographs

2 Extracts from the Dublin City Council Development Plan 2016 to 2022