



An  
Bord  
Pleanála

## Inspector's Report ABP-302582-18

### Development

Retention permission for existing single storey ground floor conservatory, block shed to the rear. Planning permission for new extensions with associated internal alterations, and all site development works.

### Location

86 Kimmage Road West, Dublin 12

### Planning Authority

Dublin City Council South

### Planning Authority Reg. Ref.

3379/18

### Applicant(s)

Michael & Louise Shortt

### Type of Application

Permission and Retention Permission

### Planning Authority Decision

Refuse

### Type of Appeal

First Party

### Appellant(s)

Michael & Louise Shortt

### Observer(s)

Francis & Mary Fox

Johnathon Ryder

John & Mary O'Sullivan

**Date of Site Inspection**

17 November 2018

**Inspector**

Gillian Kane

## 1.0 Site Location and Description

- 1.1.1. The subject dwelling is located on the northern side of Kimmage Road west, a long residential road of semi-detached dwellings, running from the Kimmage Crossroads (KCR) in the east to Crumlin in the west. The two storey dwellings are set back from the road with off-street car parking.
- 1.1.2. The existing semi-detached dwelling has been extended so that where formerly a single storey garage bound the neighbouring property (no. 88), the dwelling extends at ground and first floor level across the width of the site. The dwelling is bound to the east and west by dwellings largely in their original form. The two storey dwellings have a pitched roof bay at ground and first floor level. Notwithstanding a degree of alteration and or extension there remains a uniformity of architectural and design along the road. To the north of the dwellings is Lorcan O'Toole park.

## 2.0 Proposed Development

- 2.1. On the 28<sup>th</sup> June 2018 permission was sought for the retention of an existing single storey ground floor conservatory and block shed to the rear. Planning permission was sought for the construction of an extension at the rear at ground and first floor and extension to the existing block shed at the rear of the property.
- 2.2. Details provided in the application form are as follows:
  - Total site area: 696sq.m.
  - Floor area to be retained: 402.9sq.m.
  - Floor area of new build: 138.4sq.m.
  - Total floor area (new and retained): 541.3sq.m.
  - Existing extension area: 101sq.m.
  - Proposed plot ratio: 0.78
  - Proposed site coverage: 51.8%

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. On the 21<sup>st</sup> August 2018 Dublin City Council issued a notice of their intention to REFUSE permission for the following reasons:

- 1 The proposed extensions would have an adverse impact on the scale and character of the dwelling, contrary to section 16.10.12 (Extensions and Alterations to Dwellings) of the Dublin City Development Plan 2016-2022. The proposed development would overlook, overshadow and overbear upon neighbouring property and consequently would be seriously injurious to the residential amenity of neighbouring homes contrary to the proper planning and sustainable development of the area.
- 2 The proposed development would dominate the existing building and would be of an overall shape and size not to harmonise with the existing house and nearby buildings including its conjoined neighbour. The proposed extension does not adopt the subordinate approach to the provision of extensions or reflect the character of the area, in terms of scale, design or materials, or reflect the surrounding buildings in terms of age and appearance, contrary to sections 17.7, 17.8 and 17.11 (respectively) of Appendix 17 (Guidelines for Residential Extensions) of Dublin City Development Plan 2016-2022. Therefore the proposed development by itself or by the precedent a grant of permission would set for similar excessive and out of character development would be contrary to the proper planning and sustainable development of the area.
- 3 The proposed development involving the retention of two substandard bedrooms at attic level (indicated as bedroom 5 and 6 in the public notices) which are solely lit and ventilated by rooflights, would contravene materially a condition attached to an existing permission for development, i.e. condition no. 5 of plan ref no. 5952/06. Therefore the proposed development by itself or by the precedent a decision to grant permission would set for the retention of substandard, unauthorised development, would be contrary to the proper planning and sustainable development of the area.

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

- 3.2.1. **Planning Report:** Attic required to omitted by condition no. 5 of reg. ref, 5952/06 is shown on the plans and is therefore unauthorised. These bedrooms cannot be considered habitable as they are lit and ventilated solely by rooflights. This is contrary to section 16.10.2 of the development plan. The public notices do not refer to the retention of these unauthorised bedrooms. The demolition of the original garage and the construction of the two-storey side extension that extends the house to the boundary with no. 88 has no record of planning permission. The area for retention 183.3sq.m. and the proposed extension (authorised and unauthorised) extends the total dwelling to 541.3 sq.m, three and a half times the original house.
- 3.2.2. The proposed development does not follow the form of the house. The unauthorised attic extension of 4.3m, proposed first floor extension of 7.5m results in a 12m deep extension. This would overshadow and overbear neighbouring properties, notwithstanding the proposed setback. This would have an adverse impact on the scale and character of the dwelling which is contrary to section 16.10.12. Proposed development would dominate and is contrary to appendix 17, section 17.7 and 17.8. The proposed roof, window and extension finishes are contrary to section 17.11 as they do not reflect the character of the dwelling. Recommendation to refuse permission.

### 3.3. **Third Party Observations**

- 3.3.1. A number of observations on the proposed development were submitted to the Planning Authority. The issues raised are the same as those raised in the Observations to the Planning Authority and are discussed in greater detail in section 6.3 below.

## 4.0 **Planning History**

- 4.1.1. Planning Authority reg. ref. **4822/06:** Planning permission REFUSED for the demolition of an existing single storey porch, single storey extension and construction of part single, part three-storey extension. Permission refused on the grounds of scale, balconies at first floor level creating an overbearing impact and resulting in overlooking and failure of the proposed roof profile to integrate with the existing building.

4.1.2. Planning Authority reg. ref. **5952/06**: Planning permission granted for the demolition of an existing single storey extension and the construction of a new part single part two storey extension with attic modifications. Condition no. 5 states

“The proposed extension at first floor and attic level shall be set back from the eastern side boundary by a minimum of 1m. The second floor attic level shall be omitted. Prior to commencement of development the applicant shall submit revised drawings, including eastern and northern elevations and floor plan drawings, to a scale of not less than 1:100 for the written agreement of the Planning Authority.”

4.1.3. Planning Authority reg. ref. **5952/06/Sub01**: Condition no. 5 not in compliance.

## 5.0 Policy Context

### 5.1. Dublin City Development Plan 2016-2022

5.1.1. In the Dublin City Development Plan 2016 -2022 plan, the site is zoned ‘**Z1 Sustainable Residential Neighbourhoods**’ which has the stated objective “to protect, provide for and improve residential amenities”. Within Z1 zones ‘Residential’ is a permissible use.

5.1.2. **Chapter 16** includes the Development Management Standards and has regard to Design, Layout, Mix of Uses and Sustainable Design.

5.1.3. **Section 16.2.2.3** of the development plan refers to Alterations and Extensions. The section states that DCC will seek to ensure that alterations and extensions will be sensitively designed and detailed to respect the character of the existing building, its context and the amenity of adjoining occupiers. In particular, alterations and extensions should:

- Respect any existing uniformity of the street, together with significant patterns, rhythms or groupings of buildings
- Retain a significant proportion of the garden space, yard or other enclosure  
Not result in the loss of, obscure or otherwise detract from architectural features which contribute to the quality of the existing building
- Retain characteristic townscape spaces or gaps between buildings
- Not involve the infilling, enclosure or harmful alteration of front lightwells.

- 5.1.4. **Section 16.2.2.3** also states that extensions should be confined to the rear in most cases, be clearly subordinate to the existing building in scale and design and incorporate a high standard of thermal performance and appropriate sustainable design features.
- 5.1.5. **Appendix 17** of the development plan provides general principles for residential extensions.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- 6.1.1. A first party appeal against the decision of the Planning Authority to refuse permission was submitted by an agent on behalf of the applicant. The grounds of the appeal can be summarised as follows:

#### **Reason no. 1**

- The submitted shadow analysis and 3D visuals highlight that there is no adverse impact when comparing the proposed to the existing scheme and the shadow caused by the extensive landscaping within neighbouring properties. Aerial views submitted.
- There are no windows proposed facing eastern or western boundaries.
- The window to the first-floor extension has been set back 3m from the western boundary and 5m from the eastern boundary. The northern boundary is a golf course, 25m from the proposed extension.
- There is no clear pattern of development of scale, massing, form or fenestrational pattern of rear extensions – reference image 1.
- The proposed rear extension will not impact public street frontage or appearance of the area.
- The proposed materials and finishes are in keeping with the existing house. The proposed first floor roof is below the existing roof, reducing the massing. Brick is used at front and rear and zinc seam is used to provide a contrast.
- The proposed extension will not have an impact on the scale and character of the existing dwelling or affect the amenity of neighbouring properties.

## **Reason no. 2**

- The overall size and shape of the proposed extension is in keeping with the area as shown in image no. 1. There is no strain of design, scale or massing evident in the rear extensions along Kimmage Road
- The proposed extension has a degree of flexibility in terms of design providing it does not impact neighbouring properties.
- The site has a plot ratio of 0.78 and site coverage of 51.8%, retaining a 191sq.m. garden – all within development plan standards.
- The proposed extension is entirely contained within the rear garden. It is set back 2.36m from the western boundary, 2.6m from the eastern boundary, stepping away from the adjoining boundaries. The existing first floor extension sets back as required by the previous permission.
- The proposed development is in keeping with section 17.8 as no dormers are proposed. The proposed roof is 1.5m lower than the main roof and matches in term of material and colour.
- Original drawings showing the attic rooms as bedrooms were incorrect – they are storage and a bathroom.
- First floor extension is set back 1m from eastern boundary as required by condition no. 5 of 5952/06.
- It is acknowledged that the use of the attic space is not in accordance with the previous permission, it is submitted that the use of the rooms rather than the rooms themselves that was required to be omitted. To resolve this issue, it is proposed to return the bedrooms to storage use whilst retaining the bathroom.

## **Summary**

- The proposed extension can be accommodated within the existing garden.
- The unauthorised development has been addressed.
- The concerns of overshadowing have been addressed.
- There will be no overlooking to the north as the site is not in residential use.
- The development is set back as required by the previous planning permission.



- The Board is requested to grant permission.

6.1.2. The appeal is accompanied by the following:

- Appendix A: copy of planning application
- Appendix B: copy of decision of Dublin City Council
- Appendix C: copy of DCC Planning report.
- Appendix D: observations on reg. ref. 3379/18
- Appendix E: Shadow Analysis
- Appendix F: extracts from DCC development plan Appendix 17.

## 6.2. **Planning Authority Response**

6.2.1. None on file.

## 6.3. **Observations**

6.3.1. Three observations to the appeal were submitted to the Board. The issues raised can be summarised as follows:

### **Francis & Mary Fox, 88 Kimmage Road West**

- The use of the unauthorised substandard attic rooms as storage only cannot be enforced
- The demolition of the original garage and the subsequent two storey extension as far as no. 88 is unauthorised. This extension includes access via passageway to the rear garden shed.
- The original house as 140/150sq.m. The proposed development would increase this by 360% which is excessive and out of proportion.
- Supports the comments of the planning officer that the proposed development is out of character.
- The proposed development would overlook, overshadow and be overbearing on neighbouring properties, consequently seriously injuring their residential amenity.

- Supports the claim of the Planning Officer that a grant of permission would approval the incremental unauthorised works which is contrary to the development plan and to the proper planning and sustainable development of the area.
- The Board is requested to refuse permission.

### **Jonathon Ryder, 90 Kimmage Road West**

- The size of the proposed development can be seen clearly from the plans and 3D drawings submitted. The large and over-bearing two storey extension to an already large and over-bearing extension would have a considerably negative impact on neighbouring homes.
- The photos, shadow analysis, details of finishes etc do not change the size and inappropriate scale of the proposed development.
- The applicants shadow analysis which states that there will be no adverse impact in fact shows that the neighbouring properties are already in considerable shadow from the existing extension, that the proposed extension would remove any remaining sunlight, would block all morning sunlight to no. 88 and no. 90 and those houses to the east.
- The trees and hedging referred to in the applicant's shadow analysis are to the north and do not overshadow the houses. The hedging referred to by the applicant has been cut back since the applicant's photos were taken. The proposed extension would block morning or evening sunlight to the neighbouring houses.
- Contrary to their claim, the applicants photos show a clear strain of design and scale - that extensions are at ground level, are modest in scale and do not negatively impact on neighbouring properties. The development at no. 100 is smaller than the existing extension at no, 86 and cannot be considered to be a precedent.
- The applicants use of plot ratio statistics demonstrates that the garden is large, not that the proposed development is acceptable in size.
- That the proposed extension is 25m from the back wall demonstrates only that the garden is large.
- The Board is requested to refuse permission.

## **John & Mary O’Sullivan 84 Kimmage Road West**

- The subject shed at the rear of the property, which was built without planning permission is to be changed from a non-habitable to a habitable structure with toilet facilities. This was not included in the public notices nor was it included in the plot ratio, site coverage and open space calculations. This is seriously injurious to neighbouring properties in terms of noise, loss of light, overshadowing and loss of privacy.
- The glass block windows on the eastern side of the existing building would overlook the garden and patio of no. 84.
- A metal chimney at ground level causes health and aesthetic concerns for the residents of no. 84.
- The Board is requested to refuse permission on the grounds of over development, overbearing impact and impact on residential amenities.

## **7.0 Assessment**

7.1.1. I have examined the file and the planning history, considered national and local policies and guidance and inspected the site. I have assessed the proposed development including the various submissions from the applicant and the Observers. I am satisfied that the issues raised adequately identify the key potential impacts and I will address each in turn as follows:

- Principle of development
- Conservatory to be Retained
- Garden Room to be Retained and Extended
- Impact on Residential Amenity
- Environmental Impact Assessment
- Appropriate Assessment

## **7.2. Principle of Development**

7.2.1. As can be seen from the planning history, the submitted plans and the appended site photographs, the existing dwelling has been extended at ground, first and attic level. It is proposed to further extend at ground and first floor level to the rear of the main

dwelling and secondly to extend the single storey garden room for which retention permission is sought.

7.2.2. I note that the attic level (bedrooms, storage and bathroom as shown on drawing no. 3.1.102) was required to be removed by condition no. 5 of the previous planning permission (Planning Authority reg. ref. 5952/06). In their planning report the Planning Authority note that these bedrooms are unauthorised and that the public notices and description of development do not seek to regularise this situation.

7.2.3. The appellants submit that it is the use of the rooms as bedrooms that was omitted by condition no. 5 rather than the rooms themselves and offers to return the use of the two bedrooms to storage use and retain the existing bathroom. The board will note that condition no. 5 is clear and unequivocal – “The second-floor attic level should be omitted”. The development at attic level was to be omitted in its entirety, it was not the intention of the Planning Authority to merely place a restriction on the use of rooms at attic level. It is considered that the Board is precluded from granting permission in this instance as to do so would facilitate the consolidation and intensification of an unauthorised development.

### 7.3. **Conservatory to be retained**

7.3.1. The proposed ground floor conservatory of 24sq.m. to be retained is located along the eastern boundary of the ground floor extension. I note the high level opaque glazed windows on the eastern elevation which face directly into the private open space of no. 84 Kimmage Road. (see photo no. 1). The conservatory to be retained increases the blank elevation facing no. 84 from the permitted 4.5m to just under 8m. No overlooking can occur, and the conservatory is largely in keeping with the existing dwelling. The proposed conservatory to be retained is acceptable.

### 7.4. **Garden Room to be retained and extended**

7.4.1. Permission is also sought to retain the single storey 20.9sq.m. garden room along the northern boundary of the site. Whilst the parapet wall of the structure is clearly visible from the adjoining gardens, it reads as an extension of the rear boundary wall which has been painted to match the garden room. I am satisfied that no overlooking could occur. The proposed garden room to be retained is acceptable.

7.4.2. Permission is sought to extend the garden room by a further 37.4sq.m. (internal floor area). I note that it is proposed to add a WC to the room to be retained. It is considered that the intensification of this garden room would increase the noise level and therefore the disruption of the residential amenity of the adjoining properties. It is recommended that the proposed extension of the garden room be refused.

## 7.5. Impact on Residential Amenity

7.5.1. As can be seen from the planning history, the submitted plans and the appended site photographs, the existing dwelling has been extended at ground, first and attic level. It is proposed to further extend at ground and first floor level to the rear of the main dwelling.

7.5.2. The appellant states that there is no particular strain of design, scale or massing evident in existing extensions along the road. The Board will note the images provided by the appellant and the site photos taken by me. It is clear that where dwellings have been extended to the rear, the extensions are ground level, modest and in keeping with the scale of the existing dwellings. It is considered that there is in fact a clear pattern of development and that is ground level extension only. The single outlier is the subject dwelling itself, which at a two storey with attic accommodation is markedly out of keeping with the existing pattern of development.

7.5.3. It is considered that the proposed extension of the dwelling at ground level by 6m at ground level and by 7m at first floor level is an excessive form of rear extension on a road where none of the neighbouring properties have extended at first floor level. That no windows are proposed on the eastern and western elevations does not detract from the overbearing impact of a blank almost 6m high elevation extending for a length of 14m. This is considered an excessive and undue burden on the adjoining properties, notwithstanding the orientation of the properties.

7.5.4. It is considered that the proposed extensions do not comply with section 16.2.2.3 of the development plan as the proposed extension more than doubling the footprint of the original house cannot be considered to be subordinate to the existing building.

7.5.5. Section 16.2.2.3 of the development plan, in referring to alterations and extensions also states that they should be sensitively designed and detailed to respect the character of the existing building, its context and the amenity of adjoining occupiers. Alterations and extensions should respect any existing uniformity of the street,

together with significant patterns, rhythms or groupings of buildings, not result in the loss of, obscure or otherwise detract from architectural features which contribute to the quality of the existing building and retain characteristic townscape spaces or gaps between buildings. The proposed extension is entirely to the rear and so will not result in the loss of any architectural style from the street. It considered however that the proposed extension fails to respect the context not only of the existing dwelling but also that of the adjoining properties. The scale, bulk and massing of the proposed ground and first floor would represent a significant visual intrusion when viewed from the rear of no.s 84, 88 and 90 Kimmage Road. Whilst no overlooking would occur, there would undoubtedly be a perception of dominance. It is considered that the scale of the proposed development is excessive, would be out of character and scale with the existing and proposed dwellings and would be seriously injurious to the residential amenity of the adjoining properties.

#### **7.6. Appropriate Assessment**

- 7.6.1. Having regard to the nature and scale of the proposed development in a fully serviced built-up urban area, no appropriate assessment issues arise and it is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects, on a European site.

#### **7.7. Environmental Impact Assessment Screening**

- 7.7.1. Having regard to nature of the development comprising extension to and alteration of an existing dwelling and the urban location of the site 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

#### **8.0 Recommendation**

- 8.1.1. GRANT permission for the retention of the conservatory at ground level and the garden shed as constructed in accordance with the said plans and particulars based on the reasons and considerations marked (1) under and subject to the conditions set out below. REFUSE permission for the proposed ground and first floor extensions based on the reasons and considerations marked (2) under.

## **REASONS AND CONSIDERATIONS (1)**

The proposed ground floor conservatory to be retained and garden shed to be retained as constructed (namely without sanitary facilities), are in keeping with the pattern of residential development in the area, do not cause overlooking of or overshadowing of neighbouring properties and are in accordance with the proper planning and sustainable development of the area.

### **CONDITIONS**

- 1 The development shall be retained in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority 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.

## **REASONS AND CONSIDERATIONS (2)**

The proposed extension at ground floor and first floor level and the existing attic level shall be refused for the following reasons:

- 1 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 and 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.

- 2 The proposed extensions would have an adverse impact on the scale and character of the dwelling, contrary to section 16.10.12 (Extensions and Alterations to Dwellings) of the Dublin City Development Plan 2016-2022. The proposed development would overlook, overshadow and overbear upon neighbouring property and consequently would be seriously injurious to the residential amenity of neighbouring homes contrary to the proper planning and sustainable development of the area.
- 3 The proposed development would dominate the existing building and would be of an overall shape and size not to harmonise with the existing house and nearby buildings including its conjoined neighbour. The proposed extension does not adopt the subordinate approach to the provision of extensions or reflect the character of the area, in terms of scale, design or materials, or reflect the surrounding buildings in terms of age and appearance, contrary to sections 17.7, 17.8 and 17.11 (respectively) of Appendix 17 (Guidelines for Residential Extensions) of Dublin City Development Plan 2016-2022. Therefore the proposed development by itself or by the precedent a grant of permission would set for similar excessive and out of character development would be contrary to the proper planning and sustainable development of the area.

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Gillian Kane  
Senior Planning Inspector

18 November 2018