



An  
Bord  
Pleanála

## Inspector's Report ABP-302669-18

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<b>Development</b>	Retention of garage conversion, porch, single storey kitchen extension, first floor shower room extension, sunroom, and granny flat.
<b>Location</b>	23 Cruise Park Drive, Tyrrelstown, D15
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	FW18B/0084
<b>Applicant(s)</b>	Christina Eremia
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Split
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Christina Eremia
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	02/12/2018
<b>Inspector</b>	Anne Marie O'Connor

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## 1.0 Site Location and Description

- 1.1. The appeal site is located in a suburban housing development at Cruise Park Drive, Tyrrelstown, Dublin 15. No.23 comprises a 2-storey semi-detached dwelling with a front and rear garden. The rear garden of the property adjoins Nos. 15, 17, 19, 25 and 31 Cruise Park Drive.
- 1.2. The rear garden area is hard surfaced (patio pavers) with a detached timber and glass sunroom along the rear boundary with Nos 25 and 31, and a single storey flat-roofed granny flat with bedsitting room, en-suite and kitchenette along the rear boundary with Nos 15 and 17. At the time of my site visit the granny flat was being used as storage and did not appear to be inhabited.
- 1.3. The rear garden is bounded by a 2m wall.

## 2.0 Proposed Development

- 2.1. Retention permission is sought for the following:
  - Garage conversion (14.4m<sup>2</sup>)
  - Porch to front (2.6m<sup>2</sup>)
  - Single storey kitchen extension to the rear across the full width of the house (25m<sup>2</sup>).
  - First floor shower room extension to rear (5.2m<sup>2</sup>)
  - Single storey detached sunroom to rear (15.2m<sup>2</sup>)
  - Single storey detached granny flat to the rear (15.2m<sup>2</sup>)

The total area of extensions for which retention permission is sought is 77.6 m<sup>2</sup>

## 3.0 Planning Authority Decision

### 3.1. Decision

The planning authority issued a split decision as follows:

**Grant** permission for retention of garage conversion, porch, kitchen extension, shower room extension, and sunroom. Condition 7 requires the payment of **€5,217** as a S. 48 financial contribution.

**Refuse** permission for retention of the granny flat. Two reasons for refusal:

- (1) Fails to comply with Objective DMS-43 which seeks to ensure family flats are linked directly to the existing dwelling and does not have a separate front door. Contrary to RS zoning objective to provide for residential development and protect and improve residential amenity.
- (2) The family flat results in overshadowing and is unduly overbearing upon the adjoining residential property.

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

3.2.1. Planning Reports - The planner's report reflects the decision to grant planning permission for all elements except for the granny flat.

3.2.2. Other Technical Reports

Transportation – FI required in relation to parking demand for granny flat.

### 3.3. **Prescribed Bodies**

None

### 3.4. **Third Party Observations**

None

## 4.0 **Planning History**

F99A/1620 Condition 30 of the original planning permission for the Cruise Park housing development (including the appeal site) de-exempted any development within the curtilage of the houses without prior grant of planning permission due to the small rear garden sizes and narrow frontage houses. Reason – to prevent overshadowing and overlooking.

## 5.0 Policy Context

### 5.1. Development Plan

The Fingal County Development Plan 2017-2023 is the County Development Plan for the area. The site is located within Zoning Objective **RS** "To provide for residential development and protect and improve residential amenity".

Objective DMS43 Requirements for family flats

### 5.2. Fingal Development Contribution Scheme 2016-2020

From 1 January 2018 the contribution scheme requires the payment of €85.94 per m<sup>2</sup> of residential development. Exemptions/ reductions are provided including:

- The first 40m<sup>2</sup> of domestic extensions
- Garages/ sheds
- Internal layout alterations where no additional floor area is created, and external walls are not being removed.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The grounds of appeal can be summarised as follows:

- Condition 7. The financial contribution of €5,217 is excessive and miscalculated. The rear extension was exempt development when built. The overall calculated area should be €3,153.99 based on 36.7m<sup>2</sup> (60.70m<sup>2</sup> minus 24m<sup>2</sup> exempt development).
- Decision to refuse retention permission for granny flat. The applicant accepts that the use of the structure does not comply with the family flat design requirements in the Fingal CDP. It is proposed that the structure be reduced in height to 2.1m and used as a store (as it is currently).

## 6.2. Planning Authority Response

The planning authority response to the grounds of appeal can be summarised as follows:

- The calculation of the financial contribution has been reconfirmed on the basis that the 24m<sup>2</sup> rear extension was not exempt development having regard to Condition 30 of the parent permission (F99A/1620).
- The planning authority would have no objection to the reduction in height of the granny flat structure and use for storage provide the shower and kitchen are removed. All works should be carried out within 3 months and revised plans submitted to the planning authority.

## 6.3. Observations

None

## 7.0 Assessment

7.1. The planning authority granted planning permission for the retention of the garage conversion, porch, ground and first floor rear extensions and sunroom. I note the 13m separation distance between the first floor window and the site boundary, the modest scale of the porch, and rear extensions and I am satisfied that these elements do not have an undue negative impact on the amenity of neighbouring properties in terms of overlooking, overshadowing, or loss of outlook.

7.2. Notwithstanding the construction of the sunroom and granny flat structure in the rear garden, c.43 m<sup>2</sup> of open space is retained for use as a patio and bbq area and, together with the sunroom, provides an adequate level of private amenity for occupants of the house.

7.3. I consider, therefore that the key issues in this case are:

1. Retention of the granny flat
2. First Part appeal against Financial Contribution condition

### **Retention of granny flat**

- 7.4. Objective DMS43 of the Fingal County Development sets out clear criteria for family flats including that they are linked directly to the existing dwelling via an internal access door and do not have a separate front door. The planning authority's reason for refusal was based on the lack of a link between the flat and the main dwelling, and that the structure to be retained is detrimental to the residential amenity of neighbouring properties due to overshadowing and overlooking.
- 7.5. The criteria for family flats are clearly and reasonably set out in Objective DMS43. The applicant accepts that the structure does not comply with the objective and proposes that the building be used exclusively for storage purposes. The planning authority has no objection to the proposed use of the structure subject to suitable conditions.
- 7.6. The grounds of appeal also propose a reduction in height of the structure from the existing 3m height, to 2.1m to address the second reason for refusal relating to overshadowing and overbearing impact on the adjoining residential property.
- 7.7. The structure is located along the boundary with Nos. 15, 25 and 31 and is currently quite an overpowering structure given its 3m height and the modest size of the gardens. In addition, the sunroom also extends along the boundary with No.15, albeit at a reduced eaves height of 2.2m. The current boundary wall is 2m in height and a reduction in the height of the structure to 2.1m as proposed by the applicant would be a significant improvement in this regard.
- 7.8. I have, therefore, no objection to the retention of the structure as a storage shed subject to a suitable condition to restrict its use and a reduction in the height of the building.

### **Financial Contribution Condition**

- 7.9. Condition 7 of the grant of permission requires the payment of €5,217 in accordance with the Fingal Development Contribution Scheme 2016-2020. I note that the originally published rate for residential development was €76.14, but that this was increased to €85.94 effective from 1 January 2018. The Scheme provides for a number of exemptions and reductions.

- 7.10. The grounds of appeal argue that a reduction of 24 m<sup>2</sup> should be made for development that would otherwise be exempt. The applicant calculates the contribution payable as €3,153.99 on the basis of 36.7 m<sup>2</sup>.
- 7.11. The planning authority points out that the original planning permission for the housing scheme removed exempted development rights for extensions or structures in the curtilage. The Planning authority reiterates that the contribution amount of €5,217 in Condition 7 is correct based on 60.7m<sup>2</sup> x €85.94 (ie the total floorarea less the granny flat).
- 7.12. The matter of exemption from planning permission is not, however relevant to the calculation of the amount payable under the Scheme. Exemption (a) of the Scheme states that the first 40 m<sup>2</sup> of domestic extensions is exempted from the requirement to pay development contributions under the scheme. This exemption is cumulative and limited to 40 m<sup>2</sup> in total per dwelling. The scheme does not require that the floor area is exempt from planning permission in order to benefit from the reduction, and nor would there be any logic to such a requirement. No reasoning is provided by the planning authority as to why this exemption was not applied in this instance. Based on the terms of the Scheme, I can see no basis upon which not to apply the 40m<sup>2</sup> exemption to the current development. The payable floor area should, therefore, be reduced by 40m<sup>2</sup>.
- 7.13. Exemption (o) of the Scheme states that garages and garden sheds are exempted. If approval is subsequently granted to convert exempt structures to habitable accommodation, then the appropriate levy is applicable. This means that the converted garage would fall within the scheme for development contributions. The sun room, likewise, would not benefit from this exemption as it constitutes habitable accommodation. The use of the 'granny flat' building as storage would, in my view, constitute a storage shed and would, therefore, be exempt. The payable area should, therefore, be reduced by a further 15.2m<sup>2</sup>.
- 7.14. Applying the terms of the scheme, I calculate the amount payable as €1,925 as follows:

	Floor area	Contribution
<b>Floor area to be retained</b>		
Garage conversion	14.4	
Porch	2.6	



Ground floor extension	25	
First floor shower room extension	5.2	
Former Granny Flat (now storage shed)	15.2	
Sun room	15.2	
<b>Total</b>	<b>77.6</b>	
<b>Exemptions</b>		
Former Granny Flat (now storage shed)	15.2	
Domestic extension exemption	40	
<b>Total</b>	<b>55.2</b>	
<b>Payable Gross Floor area</b>	<b>22.4</b>	<b>€1,925</b> (22.4 x €85.94)

## Other Matters

7.15. Having regard to the nature and scale of the proposed development, its location in a serviced urban area, the distance to the nearest European sites, I am of the view that no **appropriate assessment** issues arise, and 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.

## 8.0 Recommendation

8.1. I recommend that planning permission should be granted, subject to conditions, as set out below.

## 9.0 Reasons and Considerations

9.1. Having regard to the nature and scale of the proposed development and the existing pattern of development in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity and 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 development to be retained shall be amended as follows:
  - (a) The granny flat building shall be solely used for storage purposes incidental to the main dwelling house.
  - (b) The kitchen and shower facilities shall be removed from within the granny flat building.
  - (c) The height of the granny flat building shall be reduced to a maximum of 2.1m.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. All works should be carried out within 3 months of the date of this decision.

**Reason:** In the interests of residential amenity.

3. The existing dwelling and development to be retained, including the sunroom and storage building, shall be jointly occupied as a single residential unit and no part of the dwelling or ancillary structures shall be sold, let or otherwise transferred or conveyed, save as part of the dwelling.

**Reason:** To restrict the use of the extension in the interest of residential amenity.

4. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, no development falling within Class 1 or Class 3 of Schedule 2, Part 1 of those Regulations shall take place within the curtilage of the house, without a prior grant of planning permission.

**Reason:** In order to ensure that a reasonable amount of rear garden space is retained for the benefit of the occupants of the extended dwelling and in the interest of the amenities of the area.

3. Water supply and drainage arrangements, including the 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 and to ensure a proper standard of development.

4. The developer shall pay to the planning authority a financial contribution of €€1,925 (one thousand nine hundred and twenty five euro) 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 prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.

**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.

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Anne Marie O'Connor  
Planning Inspectorate

03 December 2018