



Development

Retention of dwelling as constructed consisting of:

1. Revised position and orientation of building as built on-site.
2. Minor revision of floor level.
3. Extended basement area by 14 square metres for sanitary facilities and storage purposes.
4. Reduction in size of attic window to north elevation.
5. Minor alterations to rooflight positions and sizes together with removal of windows on east elevation.
6. Reduction to window size on west elevation.
7. Provision of rooflight to stairwell atrium.

Location

'Adavoyle', Sandyford Road, Dublin 16.

Planning Authority

Dún Laoghaire Rathdown County Council

Planning Authority Reg. Ref.	D18A/0743
Applicant(s)	Brian and Sonia Rowland
Type of Application	Permission for Retention
Planning Authority Decision	Grant subject to conditions
Type of Appeal	Third Party v. Decision
Appellant(s)	Mark Regan
Observer(s)	None.
Date of Site Inspection	21 st December, 2018
Inspector	Robert Speer

1.0 Site Location and Description

1.1. The proposed development site is located within an established residential area, approximately 700m north of the M50 Motorway and 300m southeast of the Dundrum Shopping Centre, where it occupies a position along the northern side of Sandyford Road in Dublin 16. The surrounding area is predominantly characterised by conventional semi-detached, two-storey housing of varying designs dating from the mid-late 20th Century, although there are a number of other housing styles within the wider area, including several single storey bungalows to either side of the subject site along Sandyford Road in addition to semi-detached, single storey housing to the rear of same along Balally Drive. The site itself has a stated site area of 0.6 hectares, is generally rectangular in shape, and is occupied by a partial single storey / two-storey dwelling house which is presently undergoing redevelopment works, including the addition of a substantial contemporary extension (with a basement level) to the rear of same. The site falls steeply from south to north and is bounded by comparable housing to the immediate northwest and southeast.

2.0 Proposed Development

- 2.1. The subject proposal involves the retention of an existing dwelling house as constructed arising from a series of alterations to the development previously permitted under PA Ref. No. D17A/0267, including the following:
- The revised positioning and orientation of the building on-site.
 - The minor revision of finished floor levels.
 - The provision of an extended basement area (an additional 14m² of floor area) for sanitary facilities and storage purposes.
 - A reduction in the size of the attic window to the northern elevation.
 - Minor alterations to rooflight positions and sizes together with the removal of windows on the eastern elevation.
 - A reduction in the window size on the western elevation.
 - The provision of a rooflight to the stairwell atrium.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On 21st September, 2018 the Planning Authority issued a notification of a decision to grant permission for the retention of the proposed development subject to 1 No. condition which can be summarised as follows:

Condition No. 1 – States that save for the amendments permitted on foot of this grant of permission, the development is to be retained and completed in accordance with the terms and conditions of PA Ref. No. D17A/0267.

3.2. Planning Authority Reports

3.2.1. Planning Reports:

States that there is no objection to the principle of the proposed development given the applicable land use zoning. It subsequently notes that the amendments to the development previously approved under PA Ref. No. D17A/0267 provide for an increased separation distance between the subject dwelling house and the neighbouring property to the east known as ‘St. Annes’ without unduly undermining the separation from the adjacent property to the west. It is further stated that the revisions proposed for retention will not impact on the residential amenity of surrounding properties and will not adversely affect the streetscape. With specific reference to the concerns raised by a third-party objector (i.e. the appellant) as regards the potential for the subsidence or structural damage of a neighbouring property, it is stated that these are civil matters. The report thus concludes by recommending a grant of permission, subject to conditions.

3.2.2. Other Technical Reports:

Drainage Planning, Municipal Services Department: No objection, subject to conditions.

Transportation Planning: No objection.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

- 3.4.1. A single submission was received from the appellant, the contents of which are reiterated in the grounds of appeal.

4.0 Planning History

4.1. On Site:

PA Ref. No. D14A/0484. Was refused on 18th September, 2014 refusing Brian & Sonia Rowland permission for the demolition of an existing single storey extension to the rear of the existing house and the construction of a new split level, two-storey extension to the rear and side of the existing house; the widening of the existing entrance gates and modifications to the front garden.

PA Ref. No. D14A/0787. Was granted on 12th March, 2015 permitting Brian & Sonia Rowland permission for the demolition of an existing single storey extension to the rear of the existing house and the construction of a new split level, two-storey extension to the rear and side of existing house; the widening of the existing entrance gates and modifications to the front garden.

PA Ref. No. D17A/0267. Was granted on 17th May, 2017 permitting Brian and Sonia Rowland permission for the demolition and reconstruction of the existing single storey dwelling to include a modified roof profile and dormer window to the rear; the construction of a split level, two-storey extension to the rear; and the widening of the existing entrance gates to the front garden.

4.2. On Adjacent Sites:

PA Ref. No. D13A/0540. Was refused on 11th December, 2013 refusing John Campbell permission for the demolition of a detached single storey house, the construction of a single storey over basement with attic conversion containing windows to the sides of roof detached house, with associated works, at Woodview, Sandyford Road, Dundrum, Dublin 16.

PA Ref. No. D14A/0080. Was refused on 16th April, 2014 refusing John Campbell permission for the demolition of detached single storey house, construction of single storey over basement with attic conversion, containing windows to the sides of roof, detached house, with associated works, at Woodview, Sandyford Road, Dundrum, Dublin 16.

PA Ref. No. D14A/0619. Was granted on 18th November, 2014 permitting John Campbell permission for the demolition of an existing dwelling and the construction of a dwelling with lower ground floor accommodation and ancillary attic space and associated works, at Woodview, Sandyford Road, Dundrum, Dublin 16.

PA Ref. No. D16A/0584. Was granted on 26th September, 2016 permitting John Campbell permission for retention of alterations to the permission granted under D14A/0619, including minor movement of dwelling on site, changes to fenestration and roof structure and the addition of plant room at lower ground floor, at Woodview, Sandyford Road, Dundrum, Dublin 16.

5.0 Policy Context

5.1. Development Plan

5.1.1. Dún Laoghaire Rathdown County Development Plan, 2016-2022:

Land Use Zoning:

The proposed development site is located in an area zoned as 'A' with the stated land use zoning objective '*To protect and-or improve residential amenity*'.

Other Relevant Sections / Policies:

Chapter 8: Principles of Development:

Section 8.2: Development Management:

Section 8.2.3.4: Additional Accommodation in Existing Built-up Areas (i) Extensions to Dwellings

First floor rear extensions will be considered on their merits, noting that they can often have potential for negative impacts on the amenities of adjacent properties, and will only be permitted where the Planning Authority is satisfied that there will be

no significant negative impacts on surrounding residential or visual amenities. In determining applications for first floor extensions the following factors will be considered:

- Overshadowing, overbearing and overlooking - along with proximity, height and length along mutual boundaries.
- Remaining rear private open space, its orientation and usability.
- Degree of set-back from mutual side boundaries

Roof alterations / expansions to main roof profiles - changing the hip-end roof of a semi-detached house to a gable / 'A' frame end or 'half-hip' for example – will be assessed against a number of criteria including:

- Careful consideration and special regard to the character and size of the structure, its position on the streetscape and proximity to adjacent structures.
- Existing roof variations on the streetscape.
- Distance/contrast/visibility of proposed roof end.
- Harmony with the rest of the structure, adjacent structures and prominence.

Dormer extensions to roofs will be considered with regard to impacts on existing character and form, and the privacy of adjacent properties. The design, dimensions and bulk of any roof proposal relative to the overall size of the dwelling and gardens will be the overriding considerations. Dormer extensions shall be set back from the eaves, gables and/or party boundaries.

The proposed quality of materials/finishes for dormers will be considered carefully as this can greatly improve their appearance. The level and type of glazing within a dormer structure should have regard to existing window treatments and fenestration of the dwelling. Particular care will be taken in evaluating large, visually dominant dormer window structures, with a balance sought between quality residential amenity and the privacy of adjacent properties. Excessive overlooking of adjacent properties should be avoided unless support by the neighbours affected can be demonstrated.

More innovative design responses will be encouraged, particularly within sites where there may be difficulty adhering to the above guidance and where objectives of habitability and energy conservation are at stake.

5.2. Natural Heritage Designations

5.2.1. The following Natura 2000 sites are located in the general vicinity of the proposed development site:

- The South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code: 004024), approximately 3.8km northeast of the site.
- The South Dublin Bay Special Area of Conservation (Site Code: 000210), approximately 4.0km northeast of the site.

N.B. This list is not intended to be exhaustive as there are a number of other Natura 2000 sites in excess of the aforementioned distances yet within a 15km radius of the application site.

6.0 The Appeal

6.1. Grounds of Appeal

- From a review of the submitted drawings, it is apparent that the formation level of the pathway alongside the eastern elevation of the dwelling house has been reduced with the result that the finished floor level of the house is 600mm above that of the pathway (as further evidenced by the steps from the doorway serving the utility area to the pathway). Given that the floor level of the side extension to the adjacent property (i.e. 'St. Annes') to the immediate southeast of the application site is generally comparable to that of the subject dwelling house, there are concerns that the reduction in the level of the aforementioned pathway will have a direct impact on the structural stability of the gable wall of the appellant's side extension which immediately adjoins the pathway in question. In this regard it is submitted that due to the shallow nature of the foundations serving the appellant's property, the lowering of the adjacent pathway level will reduce the bearing capacity of those foundations thereby undermining the stability of the appellant's property.
- During the course of the construction works already undertaken on site, the reduction in levels to the east of the original house exposed the foundations of the appellant's property and caused the subsidence of the gable wall of his

side extension. Although these foundations were eventually underpinned, it is submitted that, when viewed in comparison to the proposed formation level of the adjacent pathway, the underpinning will not have enough cover to prevent potential damage arising from other factors such as frost-heave. Furthermore, the reduced pathway level will result in part of the rising wall of the side extension being exposed to a height of c. 300mm which effectively turns it into a retaining wall despite the fact that it was not designed for such a purpose and thus gives rise to further concerns as regards its structural integrity.

- The submitted drawings do not clearly show the level difference and boundary treatment between the subject site ('Adavoyle') and the appellant's property ('St. Annes'). The need for such details is critical given that subsidence has already occurred within 'St. Annes' due to works on site and as the applicants have carried out some measures to stabilise said subsidence.
- An alternative arrangement should be provided for the formation of the pathway and the ground levels to the east of the dwelling house in order to ensure that there is no impact on the structural integrity of the appellant's property. Alternatively, consideration should be given to a solution which would address the appellant's concerns as previously outlined.
- The proposal to retain the increased finished floor level of the dwelling house as constructed (i.e. from 50.00 to 50.10) serves to exacerbate the already critical difference between the application site and the appellant's property.
- The resolution of the appellant's concerns is considered to be in the interest of good engineering, architectural, and planning practice.
- By way of further background, the Board is advised that substantial cracks appeared within the appellant's kitchen extension when works commenced within the neighbouring property (i.e. the proposed development site) in October, 2017. Whilst this damage was immediately brought to the attention of the applicants and their building contractors, underpinning works were not carried out until late December, 2017. Irreparable damage had been caused to the appellant's property by this time due to subsidence, however, due to unmonitored sheet-piling works which were carried out in January, 2018, the

applicant's building works have resulted in further damage throughout the appellant's dwelling house with cracks having developed in every room.

After numerous investigations etc. by a structural engineer engaged by the appellant and a forensic engineer contracted by his insurance company, it has been established that the damage to his kitchen cannot be repaired and thus it will have to be demolished and rebuilt. Moreover, every room in the appellant's dwelling house will require some level of work.

The rebuilding of the appellant's kitchen area will necessitate the complete replacement of the floor slab (noting that the existing floor slab is presently excessively above ground level due to the reduced levels within the application site). In this regard, it should be noted that additional engineering costs will arise if the floor level is to be maintained at its current level whilst an architectural solution will be required if a revised slab level is required to cater for the reduced ground levels in the application site.

- No details have been provided of the 'as-built' drainage arrangements on site, including any sustainable urban drainage system installed to cater for the disposal of stormwater runoff. This is of particular concern given previous instances of ponding on site and the potential for flooding.
- It is the appellant's understanding that the presence of a nearby underground spring contributes to ponding in nearby properties whilst the inclusion of a basement level within the proposed development will have a noticeable impact on the water table.

6.2. Applicant's Response

- The development has been constructed in accordance with the grant of permission issued under PA Ref. No. D17A/0267 with the principle exception being the repositioning of the dwelling house which was done to move it further from the site boundary shared with the appellant's property in order to protect the existing structures.

- The drainage system on site is being developed as per engineering specifications and in accordance with the conditions attached to the PA Ref. No. D17A/0267.
- The pathway / passage between the existing house ('Adavoyle') and the appellant's dwelling house ('St. Annes') had yet to be completed at the time of the appellant's objection. The suggestion that it will be developed at a reduced level is both inaccurate and unfounded. The requirement for a single step at the doorway to the utility area is due to the natural fall from the front to the back of the property.
- The historical information provided with the grounds of appeal has been refuted and is factually incorrect. Independent reports (please see attached) prepared by Dr. David Gill and Val O'Brien & Associates (Chartered Building Surveyors) do not express any concerns as regards the structural stability of St. Annes or the need to demolish the existing extension. Both these reports state that the cracks within the appellant's property are of a cosmetic nature which can be repaired. It should also be noted that a pre-construction 'Dilapidation Survey' was carried out on St. Annes which identified multiple cracks common for a structure of its age.
- The Board is requested to dismiss the appeal on the basis that its primary focus is not a planning issue and as its intent is to delay the completion of the development in question.

6.3. Planning Authority's Response

- States that the grounds of appeal do not raise any new matter which, in the opinion of the Planning Authority, would justify a change of attitude to the proposed development.

6.4. Observations

None.

6.5. Further Responses

6.5.1. Response of the Appellant to the Circulation of the Applicants' Submission:

- The Board is advised that after extensive examination by an engineer engaged by the appellant's insurance company, it has been confirmed that the damage to his kitchen area is of such severity as to warrant the demolition and rebuilding of same. Therefore, it is of the utmost importance that the levels as originally approved be observed on site. Failure to comply with the original specifications will lead to additional costly building measures and will prevent the appellant from safely rebuilding his kitchen. The reduced levels on the subject site will have a negative impact on the appellant's kitchen extension due to the possibility that its floor slab and rising wall may be left unsupported.
- Consideration must be given to the impact of the level difference from both a planning and sustainable urban design perspective.
- The assertion that the proposed change in floor level (by 75 - 100mm) is 'minor' is rejected given the impact of same on the appellant's property.
- The disruption attributable to the development works undertaken to date has had a negative impact on the residential amenity of the appellant and his family. Furthermore, they are now faced with having to leave their home while the necessary repair / rebuilding works are carried out.
- The development previously approved on site under PA Ref. No. D17A/0267 has not been carried out in accordance with the permission granted with the result that it has had a negative impact on the appellant's property.
- The development to be retained further overshadows the appellant's property by reason of its increased height whilst the alteration of the site levels complicates the rebuilding of his kitchen extension.

6.5.2. Response of the Planning Authority to the Circulation of the Applicants' Submission:

- States that the documentation does not raise any new matter which, in the opinion of the Planning Authority, would justify a change of attitude to the proposed development.

7.0 Assessment

From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised by the appeal are:

- The principle of the proposed development
- Overall design and layout
- Impact on residential amenity
- Appropriate assessment
- Environmental impact assessment (screening)
- Other issues

These are assessed as follows:

7.1. **The Principle of the Proposed Development:**

- 7.1.1. The description of the proposed development as set out in the public notices refers to the '*retention of dwelling as constructed*' and also lists a series of revisions / alterations to the permitted development. Accordingly, I am satisfied that the subject application effectively involves the retention of minor changes to the development previously approved on site under PA Ref. No. D17A/0267 and can be reasonably described as amending an extant grant of permission. Indeed, it is clear that the subject proposal is intrinsically linked to the grant of permission issued in respect of PA Ref. No. D17A/0267 and that the amendments detailed in the subject proposal are reliant on the implementation of that extant grant of permission and cannot be carried out in isolation of same. Therefore, as the overall principle of the development has already been established under PA Ref. No. D17A/0267, it would be inappropriate to revisit the wider merits of the permitted house extension which have already been considered in the assessment of PA Ref. No. D17A/0267.

7.2. **Overall Design and Layout:**

- 7.2.1. Having regard to the relatively minor nature and scale of the works proposed for retention, I am satisfied that the overall design and layout of the proposal is

acceptable and will not detract from the overall character of the existing dwelling house or the surrounding pattern of development.

- 7.2.2. However, following a review of the submitted plans and particulars, and having conducted a site inspection, I would advise the Board that there are a number of discrepancies in the submitted information. In the first instance it should be noted that although the site plan (Drg. No. 17/065/011) refers to the finished (ground) floor level within the redeveloped dwelling house as having been raised from 50.00 to 50.10, the 'as constructed' sectional details shown on Drg. No. 17-065/010 clearly indicate that this floor level has been maintained at 50.00, seemingly in accordance with the original grant of permission issued for PA Ref. No. D17A/0267. Secondly, the detailing of the pathway alongside the eastern elevation of the dwelling house (between it and the site boundary shared with the appellant's property) as shown on Drg. No. 17-065/010 includes for a series of steps leading from the ground floor utility room, however, this does not correspond with the existing situation on site given that there is only a single step between the pathway and the aforementioned doorway (*N.B.* The pathway as constructed does not take the form of a ramp as shown on Drg. No. 17-065/010 but rather comprises a series of elongated steps which lead towards the rear garden area).

7.3. **Impact on Residential Amenity:**

- 7.3.1. Having reviewed the available information, and in light of the site context, including its location within a built-up urban area, in my opinion, the overall nature and scale of the works proposed for retention will not give rise to any significant detrimental impact on the residential amenity of neighbouring property by reason of overlooking, overshadowing, loss of daylight / sunlight, or overbearing appearance. Indeed, it is of relevance to note that the revised alignment of the 'as constructed' extension to the rear of the main dwelling house serves to increase the separation distance between it and the appellant's property to the southeast thereby reducing any potential impact on the residential amenity of the latter without compromising the neighbouring dwelling house to the northwest.
- 7.3.2. With regard to the assertion in the grounds of appeal that the construction works carried out to date have resulted in damage to the appellant's property, with particular reference to the structural integrity / stability of a side extension which

adjoins the shared site boundary, it is my opinion that any alleged damage to, or interference with, the appellant's property attributable to the development proposed for retention is essentially a civil matter for resolution between the parties concerned and in this respect I would refer the Board to Section 34(13) of the Planning and Development Act, 2000, as amended, which states that '*A person shall not be entitled solely by reason of a permission under this section to carry out any development*' and, therefore, any grant of permission for the subject proposal would not in itself confer any right over private property. It is not the function of the Board to adjudicate on property disputes or to act as an arbitrator in the assessment of damages and thus I do not propose to comment further on this matter other than to recommend, for the purposes of clarity (given the discrepancies between the submitted drawings and the existing situation on site), the inclusion of a condition in any grant of permission requiring the submission of as-constructed details (i.e. levels etc.) of the pathway between the existing dwelling house and the shared site boundary with the appellant's property.

7.4. **Appropriate Assessment:**

- 7.4.1. Having regard to the nature and scale of the development proposed for retention, the nature of the receiving environment, the availability of public services, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the development to be retained would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site

7.5. **Environmental Impact Assessment (Screening):**

- 7.5.1. Having regard to the nature and scale of the development proposed for retention, the site location outside of any protected site and the nature of the receiving environment, the limited ecological value of the lands in question, the availability of public services, and the separation distance from the nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the development to be retained. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

7.6. **Other Issues:**

7.6.1. **Surface Water Drainage / Flooding Implications:**

In respect of surface water drainage and previous instances of ponding on site, given the limited nature and scale of the works proposed for retention, in my opinion, the subject proposal is unlikely to give rise to any significant additional considerations in this regard. Moreover, as the subject works are intrinsically linked to the grant of permission issued in respect of PA Ref. No. D17A/0267, there is an obligation on the applicants to comply with the terms and conditions of that grant of permission, including the following:

Condition No. 7:

‘The developer shall ensure that the driveway/parking area shall be constructed with sustainable urban drainage systems (SUDS) and to the satisfaction of the Planning Authority. The developer shall ensure that drainage from the required driveway/parking area will not enter onto Sandyford Road.

Reason: In the interests of the adequate disposal of surface water and in the interests of the proper planning and sustainable development of the area’.

Condition No. 8:

‘Surface water generated by the proposed dwelling house shall be disposed of by soakpit designed in accordance with BRE Digest 365 and located at least 5m from the dwelling house and shall not discharge onto or effect neighbouring properties.

Reason: In the interests of the adequate disposal of surface water and in the interests of the proper planning and sustainable development of the area’.

8.0 **Recommendation**

8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission for retention be granted for the proposed development for the reasons and considerations and subject to the conditions set out below:

9.0 Reasons and Considerations

- 9.1. Having regard to the planning history of the site, the nature, scale and design of the development to be retained, and to the pattern of development in the surrounding area, it is considered that, subject to compliance with the conditions set out below, the development proposed to be retained would not seriously injure the residential or visual amenities of the area or of property in the vicinity. The development proposed to be retained would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be retained 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 within three months of the date of this order and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The development shall be retained and completed in accordance with the terms and conditions of the permission granted on the 17th day of May, 2017 under planning register reference number D17A/0267, except as may otherwise be required in order to comply with the attached conditions.

Reason: In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous permission.

3. Within three months of the date of this order, revised drawings of the 'as constructed' pathway between the existing dwelling house and the south-eastern site boundary, including full details of all finished levels, shall be submitted to, and agreed in writing with, the planning authority.

Reason: In the interests of clarity and residential amenity.

4. 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.

Robert Speer
Planning Inspector

31st December, 2018