



An
Bord
Pleanála

inspector's Report ABP-303120-18

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| Development | Extensions to a house |
| Location | 22 Hazelbrook Drive, Dublin 6W |
| Planning Authority | Dublin City Council |
| Planning Authority Reg. Ref. | 3954/18 |
| Applicants | Neil and Sarah Delaney |
| Type of Application | Permission |
| Planning Authority Decision | Grant permission subject to conditions |
| Type of Appeal | First party vs. condition |
| Appellants | Neil and Sarah Delaney |
| Observers | 1. John and Joan Fitzpatrick 2. Darragh Boyd |
| Date of Site Inspection | 9 th February 2019 |
| Inspector | Stephen J. O'Sullivan |

1.0 Site Location and Description

- 1.1. The site is the curtilage of a 2-storey semi-detached house in a suburban part of Dublin dating from the middle of the last century. It has a stated area of 395m². The original house has been extended with a hipped roof porch at the front, an addition at first floor level to the side of the house, and with a two storey addition at the back. The stated floor area of the existing house is 149m².

2.0 Proposed Development

- 2.1. Revised drawings were submitted by the applicants with the appeal. It is now proposed to build a single storey hipped roof extension at the back of the house 11.1m out from the rear wall of the previous extension. Its width would be 5.82m. The ridge height would be 3.721m over its floor level. Its eaves would be 2.365m over the floor level. The minimum separation distance from the south-eastern site boundary would be 717mm. It is proposed to erect a timber fence on this boundary parallel to the site wall of the extension where an intermittent hedge with a post and wire fence currently stands. The rear extension would be a minimum of 1.137m from the north-western site boundary. The revised proposal increases the minimum separation distance from the south-eastern boundary shown on the drawings submitted with the application, omits a covered walkway along the north-western side of the extension, and increases the roof ridge height from 3.591m.
- 2.2. It is proposed to extend the hipped roof over the main part of the house to allow a first floor extension to its side of 5.6m², and to replace the existing porch with a flat roofed structure.
- 2.3. It is proposed to erect a new garden shed at the back of the site with a stated floor area of 20m². The separation between the proposed rear extension and the garden shed would be 13.47m.
- 2.4. The combined floor area of the proposed development was stated as 63.6m² on the submitted application form.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission subject to 5 conditions.

Condition no. 2 was as follows-

The development hereby approved shall incorporate the following amendments:

(a) The corridor leading to the proposed new bedroom at ground floor shall be reduced in length by 2.5m and the south western wall of the extension shall maintain a minimum 0.5m setback from the boundary with number 24 Hazelbrook Drive.

(b) The north facing window to the proposed ground floor bedroom shall be permanently obscured.

(c) The proposed covered walkway and associated wall on the boundary with number 20 adjacent to the ground floor proposed bedroom shall be permanently omitted.

Reason: *In the interest of the proper planning and development of the area.*

3.2. Planning Authority Reports

3.2.1. Planning Reports

The proposed extension in conjunction with the previous extensions would be large relative to the size of the original house. Mitigating factors include the long back garden of 28m which would allow the proposed extension to be effectively absorbed. However the corridor/breakout area contributes unnecessarily to the depth of the extension and a reduction in its length of 2.5m would allow adequate separation of between the bedroom and the living area while reducing the impact on adjoining properties and the extent to which the extension was visible from them. The submitted shadow analysis has demonstrated that there would not be undue overshadowing of neighbouring properties. Concerns have been raised about overlooking. The proposed corridor is a transient space and would not unduly affect the privacy of adjoining property. The main source of light to the proposed bedroom is from the window to the south so the north facing window can be fitted with obscure glazing. The ridge height of 3.59m is acceptable, as is the eaves height of 2m by the

boundary of the site. However the covered walkway on the north-western site boundary is unnecessary and should be removed. The proposed rear extension would leave a generous amount of space in the back garden. The proposed first floor extension is consistent with other extensions in the area. The flat roof porch is acceptable as it does not exceed the height of the party wall. The garden room is acceptable. A grant of permission was recommended.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

- 3.4.1. A submission was received from the occupier of the house at No. 24 Hazelbrook Drive which stated that the proposed development would unduly overshadow his garden and the the proposed boundary line between his property and the site was not ceded.
- 3.4.2. A submisison was received from the occupiers of the house at No. 20 Hazelbrook Drive which stated that proposed first floor extension would unduly overshadow windows in their house and that the proposed roof structure was unattractive and an element of it appears to be unsupported, while the replacement of the existing porch appears to involve building on a party wall. The maximum height of the porch should be below the level of that wall. The proposed pitched roof of the rear extension would be overbearing and visually obtrusive, as would the new boundary treatment and the passageway beside the observer's property. The reconfiguration of the living areas in the house would lead to overlooking of the property at No. 20. The proposed development would be out of keeping with the character of residential development in the area, including the extensions to houses. The rear garden room structure should not interfere with the shared boundary wall.

4.0 Planning History

Reg. Ref. 3559/04 – the planinng authority granted permission for an extension over the garage to the side of the house

Reg. Ref. 1783/05 – the planning authority granted permission for a 2 storey rear extension at the back of the house.

Reg. Ref. 2574/06, PL29S. 218596 – the board and the planning authority refused permission to retain alterations to the permitted rear extension.

The council planner's report refers to an enforcement case E1021/05 that was opened in respect of the extension to the back of the house and states that it was closed on 17th May 2007 after compliance.

Reg. Ref. 4591/18 – An application was made to the planning authority on 11th December 2018 for an extension to the side and rear of the neighbouring house at No. 24 Hazelbrook Drive.

5.0 Policy Context

5.1. Development Plan

The Dublin City Development Plan 2016-2022 applies. The site is zoned Z1 to protect, provide and improve residential amenity. Standards for extensions to houses are set out in section 16.10.12 of the plan, which states –

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.*

5.2. Natural Heritage Designations

None

6.0 The Appeal

6.1. Grounds of Appeal

- The appeal is concerned with condition 2 of the planning authority's decision.
- The proposed courtyard is an integral part of the development that would provide a useable recreational space and daylight to the rooms that open onto it including the kitchen/living areas of the house. The first part of condition 2a) would undermine this role while reducing the extension by 5m² which would result in little gain in terms of subordination in scale to the main house. There is no appeal against the second part of condition 2 a) and revised drawings are submitted which show a setback of 0.5m from the south-western boundary of the site.
- With regard to condition 2b), the window on the northern elevation of the bedroom would be largely obscured by the roof above. There would be no infringement of privacy at ground floor level. Clear glass should be allowed on that window.
- There is no appeal against condition 2c) and revised plans are submitted omitting the covered walkway and associated boundary wall on the boundary with no. 20. The ridge height of the extension is 3721mm, an increase of 128mm of that shown on the drawings submitted with the application. Ridge level glazing is removed and replaced with rooflights and glazed panels over the courtyard.

6.2. Planning Authority Response

The planning authority did not respond to the appeal

6.3. Observations

- 6.3.1. The observation from John and Joan Fitzpatrick, the occupants of the house at No. 20 Hazelbrook Drive, referred to their submission to Dublin City Council and they maintain their position set out in it. Condition 2 of the planning authority's decision was designed to protect and maintain the residential amenities of adjoining

properties and is the minimum necessary to achieve this objective. The revisions shown on the revised drawings that do not comply with the condition are not acceptable. The heightened roof would create a more overbearing effect on neighbouring properties. A low profile roof should be built over such a long extension that extends from c10m from the back of the previous extension to the house.

6.3.2. The observation from Daragh Boyd of 24 Hazelbrook Drive states that the concerns raised in his submission to the planning authority in relation to overshadowing and boundary demarcation were not addressed. Its content can be summarised as follows-

- The board should consider the application de novo and how it will impact on the observer's family's residential and visual amenity.
- The planning application for the previous extension on the site was flawed and allowed an extension up to the boundary of the site, as stated in the inspector's report on PL29S. 218596, Reg. Ref. 2704/06. This should not happen again. The board should consider the cumulative impact on the proposed development with the two previous extensions on the site. Previous works on the site were not in accordance with the permissions
- The submitted drawings do not accurately show the shared boundary. It is marked by a hedge and wire fence and not a wooden fence. Showing a wooden fence on the boundary minimises the impact of the proposed extension on the observer's property.
- The applicants have not maintained communication and consultation with the observer. The changes shown on the drawings submitted to the are not acceptable to the observer.
- The appeal against the conditions of the planning authority's decision is tantamount to asking that permission be refused as the council would not have decided to grant permission without those conditions, and planning permissions are indivisible, as stated by the courts in *Horne vs. Freeney*.
- The appeal does not address the reasons for condition 2a of the planning authority's decision or the impact of the proposed development on the amenities of the observer's property.

- The length of the proposed rear extension is excessive, particularly in combination with the previous two storey extension, as concluded by the planning authority. The length of the back garden does not mitigate this impact due to its restricted width. There is substantial accommodation in the existing house and the corridor to the proposed bedroom is too long. That room could be used for another residential purpose without a grant of planning permission.
- The proposed extension would be 3.79m high with a pitched roof and would cause a loss of daylight and overshadowing to the observer's property. This would exacerbate the problems caused by the previous two-storey extension.
- The proposed extension would be visually obtrusive and overbearing of the observer's property. The existing boundary hedge is 1.6-1.8m high while the extension would overshoot this by 1.771-1.971m. It would also be visible through the hedge. The observer's agent has not located any previous cases where pitched roof extensions were permitted hard up to the boundary.
- There can be no justification for a rear extension of such height and length on the boundary of the observer's back garden, having regard to section 16.2.2.3 of the development plan. The application should be refused. If the board is considering a grant of permission then the length of the extension should be reduced by no less than the 2.5m sought by the council's decision, the setback from the observer's property should be increased, all windows facing it should be of obscure glass and the roof should be flat.
- The proposed development would have views from it into the observer's property. The drawings incorrectly show a wooden fence on the boundary when in fact there is a low, intermittent hedge. The council was wrong to conclude that the glazing along the corridor would not allow overlooking of the observer's property because it was not a habitable space. It would seriously injure the amenities of his property.
- The proposal for a higher roof is not valid as it was not part of the development described on the notices of the application. It would exacerbate the overbearing and overlooking from the proposed extension.
- The proposed development would seriously injure the amenities and depreciate the value of the observer's property.

- Condition no. 5 of the planning authority's decision is open to a wide degree of interpretation and allows the submission of revised plans upon which third parties cannot comment. It does not properly protect the amenities of the observer's property. Permission should be refused.

6.4. Further responses

The observation from Mr Boyd was circulated for comment. The applicants' response can be summarised as follows-

- The previous extension encountered difficulties, but was revised and completed in compliance with the council's requirement.
- The applicants are proposing to build a fence at the boundary with Mr Boyd's property to address any privacy issues. The hedge is in poor condition and does not form an adequate boundary.
- The applicants' family is growing and there is a need for more habitable accommodation.
- The proposed extension is designed to sit in this setting.

7.0 Assessment

- 7.1. I note that Mr Boyd submitted an observation on the appeal rather than making an appeal against the decision himself. The board is not obliged, therefore, to agree with the assertion in the observation that the proposed development should be considered de novo, rather than as against conditions only under section 139(1) of the planning act. Nevertheless, as the subject matter of the appeals and observations relates to the impact of the proposed development on the residential amenities of adjoining properties and because revised plans were submitted with the first party appeal, I would advise the board that a more coherent assessment of the proposed development would be possible if the application is determined de novo.
- 7.2. The proposed extension of the roof over the main part of the house and the provision of additional accommodation at first floor level to its side would be in keeping with the established character of the streetscape along Hazelbrook Drive. The proposed garden shed is also acceptable. It does not appear from the submitted drawings that

these elements of the proposed development would encroach upon adjoining property. However a grant of planning permission would not entitle a developer to do this in any event. The planning system does not provide the appropriate forum to resolve disputes about the delineation of property boundaries. A determination on a current planning application cannot be used to address alleged deficiencies on previous permissions that were not challenged within the statutory period, nor to circumvent the enforcement procedures set out in Part VIII of the planning act.

- 7.3. The proposed rear extension is large, particular when considered in conjunction with the previous extensions to the original house. However its characteristics as a single storey structure at the back of the house would render it subordinate in form and function to the main dwelling. A useful amount of amenity space would remain in the back garden after its construction. The rear extension would maintain a reasonable separation from the side boundaries of the site and the observers' properties. The limited height of its roof and eaves mean that it would not unduly overbear or overshadow the neighbouring gardens. The pitch of the roof is relatively shallow. Visibility of a structure from adjoining properties does not in itself mean that the amenities of those properties would be injured. Ground floor windows are not normally considered to give rise to undue overlooking of adjoining properties, as an adequate degree of privacy can be provided by ordinary fences, as proposed by the applicant in this case. A reduction in the extent of the extension or a requirement that its windows be of obscure glazing not would not be justified, therefore. The development shown on the revised plans submitted with first party appeal is within the terms of the development described on the notices of the application and those drawings can be considered by the board in its decision on this application.
- 7.4. Having regard to the foregoing, it is concluded that the proposed development would be in keeping with the character of the area and would not seriously injure the amenities of the neighbouring properties by reason of overlooking, overshadowing, overbearing or otherwise.

8.0 Recommendation

- 8.1. I recommend that permission be granted subject to the conditions set out below.

9.0 Reasons and Considerations

- 9.1. Having regard to the scale and form of the proposed development, it is considered that it would be in keeping with the established character of development on the site and in its vicinity and that it would not injure the amenities of neighbouring property by reason of overbearing, overshadowing, overlooking or otherwise. It would therefore be in keeping 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 as amended by the further plans and particulars received by An Bord Pleanála on the 29th day of November, 2018, except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity.

2. The external finishes of the proposed extension at the front and side of the main part of the house shall be the same as those of the existing house in respect of colour and texture.

Reason: In the interests of visual amenity

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.

4. Site development and building works shall be carried only out between the hours of 0700 to 19.00 Mondays to Fridays inclusive, between 0800 to 1400 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

Stephen J. O'Sullivan

Planning Inspector

10th February 2019