



An  
Bord  
Pleanála

## Inspector's Report ABP-303533-19

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<b>Development</b>	Retention of development comprising front porch and garage type door, dormer extension (including windows) to rear, single storey extensions to rear.
<b>Location</b>	17 Ardagh Park, Blackrock, Co Dublin
<b>Planning Authority</b>	Dun Laoghaire Rathdown County Council
<b>Planning Authority Reg. Ref.</b>	D18B/0481
<b>Applicant(s)</b>	Geoffrey Roe-O'Leary
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant subject to Conditions
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Veronica & Peter Kavanagh
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	30 <sup>th</sup> April 2019
<b>Inspector</b>	Mary Crowley



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## 1.0 Site Location and Description

- 1.1. The appeal site with a stated area of 0.66 ha is located in a well-established suburban area on a street predominantly characterised by semi-detached, dormer (front and / or rear dormer), houses with main pitched roofs. The site comprises a semi detached, dormer house (small front dormer and a large rear dormer) with a main hipped roof, side gable apex window, a single storey, flat roofed side garage, a relatively generous size front driveway and a garden and a relatively long rear garden.
- 1.2. A set of photographs of the site and its environs taken during the course of my site inspection is attached. I also refer the Board to the photos available to view on the appeal file. These serve to describe the site and location in further detail.

## 2.0 Proposed Development

- 2.1. Permission is sought for the retention of development (50sqm) comprising the following:
  - existing front porch and garage type door
  - existing first floor level dormer extension comprising bedroom and en suite bathroom to rear
  - existing single storey extensions to rear, comprising kitchen, utility room and living area
- 2.2. The application was accompanied by a letter of consent from the owners together with a cover letter that provided the following planning history:
  - **Reg Ref XB.570** – Permission granted in July 1982 relates to dormer extensions front and rear. Stated that only the rear dormer, which is the subject of this application was constructed.
  - **Reg Ref D.1140** – Permission granted in 1971 is understood to have related to a ground floor extension to the rear of the property. Stated that the drawings are no longer available and it was not possible to establish if the rear extension, also the subject of the current application, was constructed fully in accordance with the 1971 permission.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. DLRCC issued a notification of decision to grant permission subject to 4 no standard conditions 3 of which relate to the payment of development contributions.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

- **Case Planner** – Recommended that permission be granted subject to conditions. The notification of decision to grant permission issued by DLRCC reflects this recommendation.

#### 3.2.2. Other Technical Reports

- **Drainage Planning** – No objection

### 3.3. Prescribed Bodies

- 3.3.1. There are no reports from any prescribed bodies on the planning file.

### 3.4. Third Party Observations

- 3.4.1. There is one observation recorded on the planning file from Veronica & Peter Kavanagh, No 19 Ardagh Park, Blackrock, Co. Dublin and may be summarised as follows:

- As there would appear to be no valid planning permission for any of the works there is an objection to the continued retention of the use of the party / boundary wall between both properties and the end wall of the extension.
- The end wall of the rear extension protrudes / trespasses onto the observer's property (photos attached). The end wall of the extension should be within the boundaries of No 17 Ardagh Park.
- Concerned with access to the waste pipe as it appears to be under the extension.

- Drawings are inaccurate as they show the observers house as having a rear extension with a similar footprint to No 17. No 19 does not extend into the rear at all.

## 4.0 Planning History

4.1.1. There is no evidence of any previous planning appeal on this site. The following planning history has been provided with the appeal file as summarised:

- **D.1140** – Dublin County Council granted permission in 1971 for a proposed extension subject to 5 conditions. Condition No 5 stated *that the rights of adjoining property owners shall be not infringed by the development.*
- **XB.570** – Dublin County Council granted permission in 1982 for a front and rear dormer bedrooms extension subject to 4 conditions.

## 5.0 Policy and Context

### 5.1. Development Plan

5.1.1. The operative Development Plan is the **Dun Laoghaire Rathdown County Development Plan 2016-2022**. The site is zoned **Objective A** where the objective is *to protect and/or improve residential amenity*. **Section 8.2.3.4(i)** deals with extensions to dwellings.

### 5.2. Natural Heritage Designations

5.2.1. The site is not located within a designated Natura 2000 site.

### 5.3. EIA Screening

5.3.1. Having regard to the nature and scale of the proposed development comprising the retention of a front porch and rear extension in a serviced urban area there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. The third party appeal has been prepared and submitted by Veronica & Peter Kavanagh, 19 Ardagh Park, Blackrock, Co. Dublin (adjoining the appeal property to the west). The issues raised may be summarised as follows. The appeal was accompanied by photos.

- It is contended that it is not possible to clarify whether the various historic extensions are in compliance with the existing permissions as the drawings can no longer be located.
- In seeking a new permission DLRCC is obliged to apply the current planning requirements and not those previously applied. Particular reference is made to Section 8.2.3.4 where it states that *ground floor rear extensions will be considered in terms of their length, height, proximity to mutual boundaries and quantum of usable rear private open space remaining.*
- In this case it is not a question of proximity, but that the ground floor extension has been built on the boundary wall and at various points trespasses onto No 19 Ardagh Park. The dismissal of the observation on the basis that the encroachments are a private matter is an inappropriate basis on which to make a decision.
- The impact on No 19 is visually obtrusive and unsightly and impacts significantly on No 19 including at first floor level. The scheme detracts in a significant manner from the rear of No 19 and in particular with the fire block placed at the end of the first floor extension of No 19 where it meets No 17. The efflux of time is irrelevant.
- The first drawing was inaccurate in that it wrongly plotted an extension similar to that to the rear of No 17. The extension to No 19 stays more or less within the existing footprint of the property to the rear.
- With regard to the presence of a shed on No 19 adjacent to the boundary / party wall it is stated that no such structure or development was there at any point and is therefore an irrelevant consideration.



- Requested that the grant of permission be set aside or in the alternative that a condition be attached requiring that the end wall of the ground floor extension presently sited on the boundary wall be set back within the grounds of No 17 in accordance with Section 8.2.3.4 of the Development Plan.

## 6.2. Applicant Response

6.2.1. The first party response to the appeal has been prepared and submitted by the applicant Geoffrey Roe-O'Leary and may be summarised as follows:

- The house was the applicant's parents' home from 1959 to 2010. During that time extensions were added to the property including enclosure of the front porch, erection of garage type doors, kitchen extension constructed in c1974 (Reg Ref D.1140 refers – drawings no longer available), rear ground floor flat roofed living room extension and a rear first floor dormer (Reg Ref XB.570 refers).
- The property has been unoccupied since 2010. Following the owners death in 2015 the applicant applied for retention planning permission to regularise any potential planning issues prior to putting the house on the market.
- The application relates to a construction carried out over 40 years ago which has never been the subject of any complaint or controversy.
- The ground floor living room extension was constructed over 40 years ago in close co-operation with then owner of the adjoining property (mother of the appellant). The projecting blockwork nib on their side was provided at her request, and the applicant's parent's expense, as a structural tie-in point for a possible future extension to No 19. No objection to appearance of the projection, or indeed to any other aspect of the extension was ever raised, either at the time, or in any years following.
- The drafting error regarding the rear line of No 19 was noted by the Planning Authority and therefore taken into account in the Decision to Grant Permission.
- Applicant is not aware of any issue with fire sealing between the properties, however, if there was a genuine concern it is considered extraordinary that the appellants did not raise the issue at the time of construction of the 2-storey

extension to their property (Reg Ref D02B/0826) which abuts the applicant's house, or at any time since. Fire sealing is not a planning issue.

### 6.3. **Planning Authority Response**

- 6.3.1. DLRCC 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**

- 6.4.1. There are no observations recorded on the appeal file.

### 6.5. **Further Responses**

- 6.5.1. There are no further responses recorded on the appeal file.

## 7.0 **Assessment**

- 7.1. Having regard to the information presented by the parties to the appeal and in the course of the planning application and my inspection of the appeal site, I consider the key planning issues relating to the assessment of the appeal can be considered under the following general headings:

- Principle
- Legal Interest
- Other Issues

## 8.0 **Principle**

- 8.1. Permission is sought for the retention of development (50sqm) comprising the following:
- existing front porch and garage type door
  - existing first floor level dormer extension comprising bedroom and en suite bathroom to rear and

- existing single storey extensions to rear, comprising kitchen, utility room and living area
- 8.2. Under the provisions of the Dun Laoghaire Rathdown County Development Plan 2016-2022 the site is wholly contained within an area zoned Objective A where the objective *is to protect and / or improve residential amenity* and where residential development is permitted in principle. The retention of the residential extension and alterations to the existing dwelling for residential purposes is considered a permissible use.
- 8.3. Further I am satisfied that the development, represents an appropriately scaled and ancillary residential extension which will not give rise to any undue impacts on the amenity of any adjacent properties. Accordingly I am satisfied that the extension to be retained at this location is acceptable.

## 9.0 Legal Interest

- 9.1. The appellant raises specific concerns in relation to the ground floor extension that is being retained having been built on the boundary wall and at various points trespassing onto the appellants property at No 19 Ardagh Park. I refer to the appellant's observations to the Planning Authority where it states that the end wall of the rear extension protrudes / trespasses onto the observer's property (photos attached).
- 9.2. The applicant submits that the application relates to a construction carried out over 40 years ago, in consultation with the then owners of the adjoining site (appellant's mother). It is further submitted that the projecting blockwork nib on the appellants side was provided at the then owners request, and that the applicant's parent's expense, as a structural tie-in point for a possible future extension to No 19. It is stated that no objection to appearance of the projection, or indeed to any other aspect of the extension was ever raised, either at the time, or in any years following.
- 9.3. I refer to the photos available to view on the appeal site together with the photos taken on the day of site inspection where it appears that a section of block work may encroach into the appellant's property. However given the stated length of time the works are in place it may very well be the case the ownership has passed to the occupiers. However this is not a matter for An Board Pleanála to determine.

Notwithstanding the foregoing it is not for An Bord Pleanála in this instance to determine whether the applicant has sufficient legal interest as the matter is unclear giving the stated length of time the extension has been in place. Litigation is a matter for the Courts to decide and is not a function of An Bord Pleanála. In this regard I would draw attention to Section 34(13) of the Planning Act that states, that a person is not entitled solely by reason of a permission to carry out any development. Therefore, should planning permission be granted for the retention of these works as constructed and should the appellant or any other party consider that the planning permission granted by the Board cannot be implemented because of landownership or title issue, then Section 34 (13) of the Planning and Development Act 2000 is relevant.

## 10.0 Other Issues

- 10.1. **Appropriate Assessment** - Having regard to the nature and scale of the proposed development comprising the retention of a front porch and rear extension and its distance to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.
- 10.2. **Development Contributions** – Dun-laoghaire Rathdown County Council has adopted a Development Contribution scheme under Section 48 of the Planning and Development Act 2000 (as amended) and is in place since 14th December 2015. The proposed development does not fall under the exemptions listed in the scheme and it is therefore recommended that should the Board be minded to grant permission that a suitably worded condition be attached requiring the payment of a Section 48 Development Contribution in accordance with the Planning and Development Act 2000.

## 11.0 Recommendation

- 11.1. It is recommended that permission be **GRANTED** for the reasons and considerations set out below.

## 12.0 Reasons and Considerations

12.1. Having regard to the site's location on serviced urban lands and the policy and objective provisions in the Dun Laoghaire Rathdown County Development Plan 2016-2022 in respect of residential development, the nature, scale and design of the proposed development, to the pattern of existing and permitted development in the area, it is considered that, subject to compliance with the conditions set out below, the development to be retained would not seriously injure the residential or visual amenities of the area or of property in the vicinity and would be acceptable in terms of traffic and pedestrian safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 13.0 Conditions

1.	<p>The development shall be retained in its entirety in accordance with the plans, particulars and specifications lodged with the application, save as may be required by other conditions attached hereto.</p> <p><b>Reason:</b> To ensure that the development shall be in accordance with the permission and that effective control be maintained.</p>
2.	<p>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 prior to the 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. 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.</p>

	<b>Reason:</b> 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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**Mary Crowley**

**Senior Planning Inspector**

**15<sup>th</sup> May 2019**