



An
Bord
Pleanála

Inspector's Report ABP-303594-19

Development	Provision of a fixed clear glass frameless glass 1.1m balustrade at first floor level on the existing overhang shelter structure
Location	Daheim, St. Fintan's Road, Sutton, Dublin 13, D13 W6W4
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F18B/0302
Applicant(s)	Kevin Maher.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	First / Third Party
Appellant(s)	1. Kevin Maher 2. Joe Killian.
Observer(s)	None.
Date of Site Inspection	21 st March 2019.
Inspector	Karen Kenny

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1.0 Site Location and Description

- 1.1. The site is located to the north of St. Fintan's Road in Sutton, Dublin 13. It is accessed from St. Fintan's Road via a gated entrance and driveway that serves two separate residential properties. The South Hill housing estate is situated to the immediate west and north of the site, while the wider area is characterised by individual houses on large sites with access from St. Fintan's Road.
- 1.2. There is an existing two storey dwelling with flat roof on the site. The dwelling sits into the natural slope of the site and faces west. Dwellings to the immediate west are below the finished level of the subject dwelling.

2.0 Proposed Development

- 2.1. Permission is sought for a first-floor balcony along the full length of the western elevation of an existing two storey dwelling.
- 2.2. It is proposed to enclose an existing overhang structure with a frameless clear glass balustrade (1.1 m high) and to provide a new doorway onto the balcony in place of an existing first floor window.

3.0 Planning Authority Decision

3.1. Decision

Grant Permission. The following condition is of note:

Condition no. 2: Prior to the commencement of development, the applicant shall submit revised drawings for the written agreement of the Planning Authority to amend the proposed development in the following way:

- (a) The proposed balcony shall be reduced by 3 m from the north-western corner of the dwelling.
- (b) The proposed balcony shall be reduced by 3 m from the south-western corner of the dwelling.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Officer's Report reflects the decision to grant permission.

- The Report notes concerns raised in an objection in relation to overlooking and states that some overlooking of the private amenity space serving the neighbouring properties may occur as a result of the balcony extending along the entire front elevation.
- The Report recommends that the applicant be requested to amend the proposed balcony so that it no longer extends along the entire front elevation but rather only along the section which addresses the rear elevations of the 2 no. garages serving no. 10 and no. 11 South Hill.

3.2.2. Other Technical Reports

None.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

One third party observation was received and considered by the Planning Authority. The issues raised are similar to those set out in the grounds of appeal, as summarised below.

4.0 Planning History

The following planning history pertains to the appeal site:

PA Ref. F08A/003: Permission granted for retention and completion of modifications to dwelling granted under PA Ref. F05A/1449 to include a 1.8 metre reduction in finished floor level and reduction in roof height.

PA Ref. F06A/1412: Permission granted for two-storey dwelling on site to the west of an existing dwelling 'Lanterna'.

PA Ref. F05A/1449: Permission granted for two storey dwelling on the appeal site.

5.0 Policy and Context

5.1. Development Plan

5.1.1. The Fingal Development Plan 2017-2023 is the relevant statutory plan. The following provisions of the Development Plan are considered to be relevant:

- The site is zoned RS Residential with an objective to “provide for residential development and protect and improve residential amenity”.
- Objective PM46 encourages sensitively designed extensions to existing dwellings which do not negatively impact on the environment or on adjoining properties or area.
- Section 12.4 sets out ‘Design Criteria for Residential Development’. The following extracts relate to extensions to dwellings:

“The need for people to extend and renovate their dwellings is recognised and acknowledged. Extensions will be considered favourably where they do not have a negative impact on adjoining properties or on the nature of the surrounding area.”

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. The Planning Authority must be satisfied there will be no significant negative impacts on surrounding residential or visual amenities.

The following factors will be considered:

- *Overshadowing, overbearing and overlooking, along with proximity, height and length along mutual boundaries.*
- *Remaining rear private open space, and its usability.*
- *External finishes and design, which shall generally match the existing”.*

- Objective DMS42: Encourage more innovative design approaches for domestic extensions.
- Sheet No.10: The site is identified as being within the Howth Special Amenity Area buffer zone.

5.2. **Natural Heritage Designations**

None.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

Two appeals have been received.

6.1.1. **First Party Appeal:**

A first party appeal has been received against condition no. 2 of the notification to grant permission. The grounds of appeal can be summarised as follows:

- While the Planner's wish to reconcile the concerns of the third party are appreciated it is considered that there are not sufficient planning grounds to reduce the size of the balcony.

6.1.2. **Third party Appeal:**

A third-party appeal has been received against the decision of the planning authority to grant permission. The grounds of appeal can be summarised as follows:

- The proposed development would have a significant negative impact on the residential amenity of the appellants property.
- Development Plan objectives highlight the need for extensions to protect residential amenity. The development is contrary to the zoning objective and to objective PM46 of the Development Plan.

- The dwelling on the appeal site is an infill dwelling set at an unusual juxtaposition to neighbouring dwellings to the west. The façade faces the rear of no. 12 and no. 13 South Hill.
- There is a question in relation to whether the provision of living accommodation at the upper floor has planning consent. The dwelling approved under PA Ref. F05A/1449 had living space at ground level. The drawings submitted under PA Ref. F08A/0003 detailed the living space at the upper level, but this was not referenced in the public notices.
- Problems associated with the citing of the house are exacerbated by the provision of living accommodation in the upper level.
- A submitted cross section (Fig. 7) illustrates that the edge of the balcony is less than 19 metres from the rear wall of no. 12 South Hill and 10 metres from the property boundary.
- The typical separation distances of 22 metres are completely undermined by the balcony.
- The proposed development would have a significant negative impact on the amenities of the adjacent properties, would be overbearing and give rise to overlooking along a mutual boundary.
- The amendments detailed on condition no. 2 of the notification to grant permission will not address overlooking or mitigate the negative impact on residential amenity. A direct line of sight remains from first floor level over the private rear garden and into the rear of the appellant's dwelling.
- The appeal refers to an agreement between parties to provide semi-mature trees between properties. Question whether appropriate landscaping measures have been implemented on foot of F05A/003 as amended by F08A/003.
- Invite ABP to refuse permission under Section 35 of the Act for past failure to comply.

6.2. Responses

6.2.1. Applicant Response to Third Party Appeal

A response to the third-party appeal has been received from Tom Philips and Associates on behalf of the applicant. The response can be summarised as follows:

- Site (inc. partially constructed dwelling) purchased in 2009 with the benefit of planning permission. The documents did not include any agreement in relation to the boundary.
- Speculation in relation to position of living space and previous planning considerations is without any justification.
- Confusion in relation to house numbers arises from the Eircode which is different to that listed on the ground.
- The measurements referenced in the appeal in relation to separation distances were calculated using a laser measuring device.
- There are no overshadowing or overbearing impacts. The key issue is the potential for overlooking. Question how someone 10 metres away could be overlooked. A photograph is included in the response showing the view from the location of the balcony. There will be no overlooking to any materially detrimental extent.

6.2.2. Appellant's response to First Party Appeal

A response to the first-party appeal has been received from Future Analytics Consulting on behalf of the appellant. The response can be summarised as follows:

- Grounds of first party appeal are not clearly stated. Question compliance with Section 127 of the Act and invite the Board to invalidate the appeal.
- The appeal includes an exert of a cross-section between the proposed development and the appellant's property. The cross-section appears inadequate showing a separation distance of 24.27 metres. A section commissioned by the appellant shows a separation distance of 19 metres from the rear wall of no. 12 South Hill.

- Submission included from residents of no. 13 South Hill in support of the third-party appeal.

6.2.3. **Planning Authority Response**

- The application was assessed against the policies and objectives of the Fingal Development Plan and existing government policy and guidelines.
- The Planning Authority remains of the opinion that the proposed development will not detract from adjoining residential amenity, subject to compliance with conditions.

6.3. **Observations**

None.

7.0 **Assessment**

7.1. **Introduction**

- 7.1.1. I have read and considered the contents of the planning application, grounds of the first and third-party appeals, responses and relevant planning policy. I have also visited the site and environs. The proposed development seeks permission for the construction of a balcony on the front elevation of an existing dwelling at first floor level and for a doorway onto the balcony. The balcony would serve first floor living accommodation and extend along the entire front elevation.
- 7.1.2. The first party appeal relates to a condition of the permission, while the third-party appeal is in respect of the notification to grant permission. On the basis of the foregoing, I recommend that the Board make a determination in respect of the application as if it had been made to it in the first instance.
- 7.1.3. I am satisfied that no issues of principle arise and that the design of the balcony is sympathetic to the character of the existing dwelling. These matters are not disputed by any of the parties. The key issues arising from both appeals relate to the potential for overlooking and for impacts on the amenities of residential properties to the west.

7.2. Overlooking and Impact on Amenity

- 7.2.1. The first party has appealed condition no. 2 of the notification to grant permission. Condition no. 2 states the following: *“Prior to the commencement of development, the applicant shall submit revised drawings for the written agreement of the Planning Authority to amend the proposed development in the following way: (a) The proposed balcony shall be reduced by 3 m from the north-western corner of the dwelling. (b) The proposed balcony shall be reduced by 3 m from the south-western corner of the dwelling.”*
- 7.2.2. This condition requires the applicant to reduce the length of the balcony by 3 metres on either end. The Planner’s Report states that the balcony should be amended so that it addresses the rear elevations of garages to the rear of the properties to the west only, to limit the levels of overlooking of the private amenity space serving these properties. The first party appeal argues that there are not sufficient planning grounds to reduce the size of the balcony and requests that this condition be omitted.
- 7.2.3. The third-party appeal has been received from a resident of no. 12 South Hill, a contiguous property to the west. The grounds of appeal argue that the balcony will have a significant negative impact on the residential amenity of the appellants property due to overlooking and overbearing impacts. The appeal argues that the development is contrary to the Development Plan zoning objective and to Objective PM46 in relation to extensions, which seek to protect residential amenity. The appeal cites to the unusual juxtaposition between the dwellings, the front to back orientation between dwellings and the positioning of living space at the upper level as contributing factors. It is argued that there is a separation distance of less than 19 metres between the balcony and the rear wall of no. 12 South Hill and that the sections submitted with the application overstate the separation. It is also argued that the separation of only 10 metres from the property boundary is insufficient and that private amenity space will be overlooked. In respect of condition no. 2 of the notification to grant permission it is stated that the garages along the shared boundary do not mitigate the impact of views.
- 7.2.4. The level of the lands at this location rise from west to east. The finished level of the subject dwelling sits above the level of the dwellings to the west, no. 12 and 13

South Hill. These dwellings are single storey in character with attic level accommodation. The shared property boundary comprises a brick wall of c. 1.9 metres in height with a wooden fence and planting over, creating a strong visual barrier between the appeal site and the properties to the west. The relationship is detailed on Drawing PL-003. The Planning Officer's Report notes that the subject dwelling has been constructed in a manner which nestles it into the site and I would concur with this view. In terms of separation distance, the proposed balcony is in excess of 22 metres from the directly opposing rear elevation of no. 12 South Hill. This separation distance is reduced to c. 19 metres on a diagonal view. I would also note that the balcony level (39.81 OD) aligns with the level of buffer planting on the western boundary and the roof levels of dwellings to the west.

- 7.2.5. The siting of the property, the boundary treatments and the decline in ground levels between the site and the properties to the west, creates a situation, in my view, where there is limited visual connection between the first floor of the subject dwelling and the residential properties to the west, despite their relative proximity. On inspection, I noted that views from the first-floor windows are of the roofs of the dwellings to west and beyond to the coast. The rear gardens were not visible. I consider, having regard to the level of separation between the properties and taking account of the design and configuration of development within the appeal site, that undue overlooking would not arise in this instance. I am also satisfied that the development would not be overbearing when viewed from properties to the west.
- 7.2.6. On the basis of the foregoing, I recommend that permission is granted for the proposed balcony and that condition no. 2 is omitted from the permission.

7.3. **Other Issues**

- 7.3.1. The third-party appeal raises concerns in relation to the validity of the first party appeal, stating that the full grounds of appeal are not stated. However, I am satisfied that the subject matter of the appeal is sufficiently clear and that the appeal can be considered by the Board.
- 7.3.2. The third-party appeal refers to the planning status of the existing dwelling on the appeal site. The concerns raised relate to the details of a previous planning consent. The matters raised fall outside of the Boards considerations under the appeal and

are a matter for the Planning Authority. Reference to legal agreements between the parties also fall outside of the Boards considerations.

7.4. **Appropriate Assessment**

- 7.4.1. Having regard to the minor nature of the development and its location in a serviced urban area, 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.

8.0 **Recommendation**

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

9.0 **Reasons and Considerations**

- 9.1.1. Having regard to the location of the site on residential zoned lands within the urban area of Sutton and to the pattern of existing development in the area, it is considered that the proposed development, subject to compliance with the conditions set out below, would not seriously injure the amenities of the area or of property in the vicinity and would not conflict with the objectives of the Fingal Development Plan. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 **Conditions**

1.	<p>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.</p> <p>Reason: In the interest of clarity.</p>
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2.	<p>The external finishes of the proposed extension shall harmonise with those of the existing dwelling in respect of colour and texture.</p> <p>Reason: In the interest of visual amenity.</p>
3.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays.</p> <p>Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the [residential] amenities of property in the vicinity.</p>

Karen Kenny
Senior Planning Inspector

9th April 2019