



An
Bord
Pleanála

Inspector's Report ABP 304664-19

Development	Modifications to previously approved Reg. Ref. FW13A/0065 comprising; revised entrance porch arrangement with single storey extension and pedestrian gate into side passage, and associated works.
Location	19A Peck's Lane, Castleknock, Dublin 15.
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	FW19A/0055
Applicant(s)	David Finegan
Type of Application	Residential
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	David Finegan
Observers	11 no. Observations received.
Date of Site Inspection	16 th August 2019
Inspector	Brendan Coyne

1.0 Site Location and Description

1.1. This corner site is located on the western side of Peck's Lane on a junction with Stockton Drive to the south. The site contains a two storey detached dwelling with a single storey shed located in its rear garden. The roof profile of the dwelling is pitched, with a gable element presenting to the front. The elevations of the dwelling comprise rendered finishing. The main entrance to the dwelling is located on its side southern elevation. The southern boundary of the site is defined with a 2.1m high rendered wall with a staggered elevation. This wall continues along the south-eastern corner boundary of the site as a wall with a steel black railing over, with a staggered height of 1.5m dropping to 1m high as it approaches the vehicular entrance. A cobble-locked driveway is provided to the front of the dwelling. Three mature deciduous trees are located on the grass verge to the south of the site. The character of the surrounding area comprises 2 storey dwellings of various form and appearance.

2.0 Proposed Development

2.1.1. Permission sought for modifications to the subject dwelling, previously approved permission under P.A. Ref. FW13A/0065, comprising the following;

- Construction of a single storey porch extension (3sq.m.) to the side of the dwelling.
- Provision of a pedestrian gate to the side southern boundary of the site, along Stockton Drive.
- Associated site works.

3.0 Planning Authority Decision

3.1. Decision

Fingal County Council refused permission for the proposed development, for the following reasons;

1. *The side extension by virtue of its scale, siting and design, along with modifications to the existing unauthorised boundary wall, would be visually incongruous in the streetscene and detrimental to the visual amenities of the area. This harm would be exacerbated at this prominent corner site and as such contravene to objective PM46 of the 'RS' zoning objective which seeks to 'provide for residential development and protect and improve residential amenity' in the Fingal Development Plan 2017-2023. Furthermore the development would detract from the character of the immediate vicinity and wider area, in setting an undesirable precedent of other similar proposals building up to the boundary with a public road which is not characteristic of the immediate area and as such is contrary to the proper planning and sustainable development of the area.*
2. *The layout and design of the dwelling and boundary details does not accord with the approved planning permission FW13A/0065. In particular the proposal is not in compliance with Condition Nos. 1, 6a, and 10a and b. The proposed development of this site materially contravenes these conditions, would contravene Objectives and development management standards within the Fingal Development Plan 2017-2023 including car parking provision to the detriment of public safety, and would therefore be contrary to the proper planning and sustainable development of the area.*
3. *Given the nature of the development insufficient detail has been submitted to fully ascertain whether or not the applicant has sufficient legal interest to undertake the development without encroaching upon or necessary measures for safeguard the integrity of the public footpath. In the absence of such detail the proposal would be contrary to the proper planning and sustainable development of the area.*

3.2. Planning Authority Reports

3.2.1. Planning Report

The main issues raised are as follows;

- The site is restricted in size and already accommodates a substantial dwelling, relative to its site area.

- The proposed extension, while modest and simple in design, would be built up to the side boundary wall of the site. Such development would be inconsistent with the prevailing open character of the surrounding residential area.
- The proposal, by virtue of its scale, siting and design would detract from the character and visual amenity of the surrounding streetscape.
- On corner sites, pedestrian access gates to the side of properties are not an established feature in the surrounding neighbourhood. The proposed pedestrian access gate in the side southern boundary wall would create an undesirable precedent for similar development.
- The proposal would comprise modifications to an unauthorised development.

3.2.2. Other Technical Reports

Water Services Section: No objection subject to Conditions.

Transportation Planning Section: No objection subject to Condition, requiring the following;

1. *As the wall of the dwelling has not been setback a minimum of 2 metres from the boundary wall at the back of the public footpath to provide for a bearing area at 45 degrees, it will be necessary, in order to reduce the effect of bearing area on the adjoining wall/footpath/road and services contained therein, to have the foundations of the gable wall of the development designed, supervised and certified by a suitably qualified person with professional indemnity. A copy of this certificate and associated drawing details of the foundations to be submitted to the planning authority for record purposes and compliance.*
2. *The applicant shall notify the Area Engineer, Operation's Department in writing to agree the footpath works required due to the alterations to the boundary wall at the back of the public footpath.*
3. *All works shall be carried out at the applicant's expense and to the requirements of the Planning Authority.*

4.0 Planning History

P.A. Ref. FW13A/0065 Permission granted for a detached two storey three-bedroom dwelling to the side of No. 19 Peck's Lane, extension of the existing vehicular entrance to create a shared access with parking for 4 no. parking spaces on the overall site and all associated site works.

Conditions of note are as follows;

- C.1 *The development shall be carried out in its entirety in accordance with the plans, particulars, specifications and information lodged within the application received on the 19/06/13 and by additional information received on the 25/09/13 save as may be required by the other conditions attached hereto.*
- C.6 (a) *The proposed 1m high mild steel black railing on the eastern and south-eastern boundary shall be omitted. The existing hedge on the south-eastern corner of the site shall be protected and maintained during construction and thereafter.*
- C.10 a) *No development of any form including planting, fences, walls or wing walls shall exceed a height of 0.9 metres within the area required to provide visibility from the site entrance point. The visibility requirements shall be agreed with the Transportation Engineer, Transportation Section.*
- b) *Parking for four cars (two for each dwelling) shall be provided within the curtilage of the site.*

5.0 Policy and Context

5.1. Fingal County Development Plan 2017 - 2023

Zoning: The site is zoned objective 'RS' with the objective 'to provide for residential development and protect and improve residential amenity'

Objective PM46 Encourage sensitively designed extensions to existing dwellings which do not negatively impact on the environment or on adjoining properties or area.

Section 12.4 Extensions to Dwellings – Development Management Standards

Table 12.8 Car Parking Standards

5.2. Relevant Government Guidelines

Development Management, Guidelines for Planning Authorities, Department of the Environment, Heritage and Local Government, (2007).

5.3. Natural Heritage Designations

None

6.0 The Appeal

6.1. Grounds of First Party Appeal

An appeal was received from Douglas Hyde Town Planner representing the first party appellant David Finegan, against the decision made by the Planning Authority to refuse permission for the proposed development. The following is a summary of the grounds of appeal.

- Discrepancies have occurred with regards compliance of Conditions imposed under P.A. Ref. FW13A/0065 for the subject dwelling as built on site. Such discrepancies may be for consideration by the Planning Authority, in the context of possible enforcement proceedings.
- Condition No. 10(b) of P.A. Ref. FW13A/0065, required the provision of 4 no. car parking spaces. This Condition could not be complied with because there is insufficient space on the site.
- The wall along the southern boundary of the site, adjoining the public footpath is not unauthorised. The wall was partially rebuilt on the same wall line as it had been for over thirty years. Having sufficient legal interest is not an issue.
- The proposed porch is modest in design and respects the proportions and design of the main dwelling.

- The provision of the porch would improve the internal stairwell layout at ground level within the dwelling.

6.2. Planning Authority Response

The Planning Authority's response is as follows;

- The Planning Authority remains of the opinion that if the development were permitted, the extension would be visually incongruous in the streetscape and detrimental to the visual amenities of the area.
- Concern expressed that, if allowed, the proposal would set undesirable precedent for other similar proposals building up to the boundary with a public road, in an area where this is not a characteristic feature.
- Fingal County Council requests An Bord Pleanála to uphold the decision to refuse permission.
- In the event the appeal is successful, provision should be made in the determination for applying a financial contribution in accordance with the Councils Section 48 Development Contribution Scheme.

6.3. Observations

11 no. observations were received with regard the appeal. These were from the following; Proinsias O'Cionnaith, Sean MacLiam, Shokri Raof, Mary Johnston, Liam McCann, Traolach O'Sullivan, Lucy Williams, Áine Houston, Michael Noonan, Helen McCole and Mary Lennon. The issues raised were the same in each submission and are summarised as follows;

- The subject dwelling, as built, is not in compliance with the conditions imposed under grant of permission P.A. Ref. FW13A/0065, principally;
 - The car parking to the front of the dwelling is not in compliance with Condition No. 10(b),
 - Non-compliance with Condition No. 6(a) requiring the maintenance of the existing hedging and the omission of the proposed steel black railing along the south-eastern boundary wall.

- The unauthorised building of the boundary wall on the public footpath.
- The provision of an additional velux window over the ground floor rear kitchen.
- The provision of an additional horizontal window on the side elevation of the dwelling facing Stockton Drive.

6.4. Further Responses

None

7.0 Assessment

The main issues for consideration are the 3 no. reasons for refusal cited by the Planning Authority. These are addressed under the headings below accordingly.

7.1. Reason for Refusal No. 1: re. Design and Visual Impact.

- 7.1.1. The Planning Authority refused permission for the proposed development on the grounds that the proposed extension by reason of its scale, siting and design would be visually incongruous in the streetscape. The applicant contests this in the grounds of appeal, stating that the proposed porch is a modest, simple and carefully designed feature, respecting the proportions and design of the existing dwelling.
- 7.1.2. The drawings show that the proposed extension would extend 1.28m to the side of the dwelling, providing a new entrance porch to the side main entrance of the dwelling. The proposal would have a depth of 4m, extending along the southern boundary of the site and would have a parapet height of 3.5m, with a flat roof profile. Elevation finishes would be rendered, matching that of the existing dwelling.
- 7.1.3. The proposed pedestrian entrance in the side southern boundary wall would have a width of 0.8m and would be located close to the proposed side extension, providing access to the rear of the dwelling.
- 7.1.4. Having reviewed the drawings submitted, I consider that the proposed extension is modest in scale and simple in form and design. While the proposal extends up to and along the public footpath, it is considered, by reason of its modest scale and

height, that the proposal would not have an overbearing impact on the pedestrian amenity of the adjoining footpath and would not have a negative impact on the character and visual amenity of the surrounding streetscape. The proposed extension complies with the relevant provisions of the Fingal County Development Plan regarding extensions to dwellings. It is noted that precedent for gated entrances (albeit vehicular) to the side of corner site dwellings is established in the vicinity, notably at corner sites on the junction of Peck's Lane and Park Villas and also at the junction of Peck's Lane and Hadleigh Court.

7.1.5. In consideration of the above, I recommend that the proposed development should not be refused permission by reason that it would not detract from the character and visual amenity of the surround streetscape.

7.2. Reason for Refusal No. 2: re. Non-compliance with Conditions imposed under P.A. Ref. FW13A/0065.

7.2.1. The Planning Authority refused permission for the proposed development, on the grounds that the layout and design of the subject dwelling and its boundary detail is not built in compliance with Condition No.'s 1, 6(a), 10(a) and (b) of its approved planning permission FW13A/0065. The reason for refusal states that the proposed development would materially contravene these Conditions and would contravene objectives and development management standards within the Fingal Development Plan 2017-2023 including car parking provision, to the detriment of public safety.

7.2.2. Having reviewed the drawings submitted and further to site inspection, it is evident that the layout and design of the subject dwelling has not been built strictly in accordance with the Conditions of its permission under P.A. Ref. FW13A/0065. The car parking to the front of the dwelling is not in compliance with the requirements of Condition No. 10(b) and the steel black railing on the south-eastern boundary wall has not been omitted and the hedge along the south-eastern corner has not been maintained, in accordance with the requirements of Condition No. 6(a).

7.2.3. Notwithstanding the above, I consider that the breaches of compliance of Conditions are not so substantial to prevent the proposed development from proceeding. The car parking space provided to the front of the dwelling accords with the requirements of the Fingal County Development Plan Car Parking Standards (Table 12.8) and it is

considered that its layout would not endanger public safety by reason of traffic hazard. While the hedge at the south-eastern corner has not been maintained, it is noted that a mature deciduous tree has been planted in its place, which I consider will enhance the visually amenity of the surrounding streetscape. The boundary treatment of the south-eastern corner of the site is considered visually acceptable.

- 7.2.4. Enforcement of planning control is the responsibility of the Planning Authority. It is noted in the Planning Report that the Planning Enforcement Section of the Planning Authority will be informed of the breaches of Conditions of the dwelling's planning permission.
- 7.2.5. In consideration of the above, I recommend that the proposed development should not be refused permission by reason that it would not materially contravene the Conditions of P.A. Ref. FW13A/0065 and would not contravene objectives and development management standards within the Fingal County Development Plan 2017-2023.

7.3. Reason for Refusal No. 3: re. Applicant's lack of sufficient legal interest to undertake the proposed development.

- 7.3.1. The Planning Authority refused permission for the proposed development on the grounds that insufficient detail has been submitted to fully ascertain whether or not the applicant has sufficient legal interest to undertake the proposed development without encroaching upon or providing necessary measures to safeguard the integrity of the public footpath.
- 7.3.2. It is evident from the documentation submitted that the southern boundary wall of the site has not been rebuilt fully along its original wall line and may have been built over the public footpath. In the grounds of appeal, the applicant confirms that the southern boundary wall was only partially rebuilt along the original boundary wall line. A letter from Fiach Byrne, Civil Engineer, submitted as an attachment to observations received, certifies that sections of the southern boundary wall have been moved towards the footpath. In the absence of accurate information in this regard, it is unclear if the full extent of the rebuilt southern boundary wall is within the legal ownership of the applicant and if the applicant has sufficient legal interest to carry

out the proposed development. In the Grounds of Appeal, the applicant asserts that he has sufficient legal interest to carry out the proposed development.

- 7.3.3. As set out in Section 5.13 of the Development Management Guidelines 2007, the planning system is not designed as a mechanism for resolving disputes about title to or rights over land and that these are ultimately matters for resolution in the Courts. Furthermore, Section 34(13) of the Planning and Development Act 2000 (as amended) states that a person is not be entitled solely by reason of a permission to carry out any development. In the absence of absolute certainty on the applicant's lack of sufficient legal interest to carry out the proposed development, I consider it inappropriate to refuse permission for the proposed development on these grounds.

7.4. **Appropriate Assessment**

Having regard to the nature and modest scale of the proposed development, to the location of the site within a fully serviced urban environment, and to the separation distance and absence of a clear direct pathway to any 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.

8.0 **Recommendation**

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

9.0 Reasons and Considerations

Having regard to the overall design and scale of the development proposed, and the provisions of the Fingal County Development Plan, 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 be acceptable in terms of traffic safety and convenience. The proposed development 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 external finishes of the proposed extension shall be the same as those of the existing dwelling in respect of colour and texture.

Reason: In the interest of visual amenity.

3. (i) Prior to commencement of development, the developer shall submit for the written agreement of the Transportation Planning Section of the Planning Authority, drawings / documentation from a suitably qualified person with professional indemnity insurance demonstrating that the gable wall of the proposed extension will not have an adverse effect on the bearing area of the adjoining wall/footpath/road and services contained therein.

(ii) The pedestrian gate shall be inwards opening only and shall not open across the adjoining public footpath.

(iii) All works shall be carried out at the applicant's expense and to the requirements of the Planning Authority.

Reason: To ensure a satisfactory standard of development and in the interest of traffic safety.

4. 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

5. Site development and building works shall be carried out only between the hours of 7 a.m. to 6 p.m. Monday to Friday, 8 a.m. to 2 p.m. Saturday and not at all on Sundays or 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.

6. All necessary measures shall be taken by the contractor to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.

Reason: To protect the amenities of the area.

Brendan Coyne
Planning Inspector

29th August 2019