



An  
Bord  
Pleanála

## Inspector's Report ABP 304955-19

### Development

Proposed single storey extension to side and rear with alterations to the roof and all associated site development works to dwelling house.

### Location

Carina, 5 Bissets Strand, Malahide, Co. Dublin.

### Planning Authority

Fingal County Council

### Planning Authority Reg. Ref.

F19A/0074

### Applicant(s)

Giuseppina Morelli

### Type of Application

Permission

### Planning Authority Decision

Grant Permission

### Type of Appeal

Third Party

### Appellant(s)

Lia Morelli

### Observers

None

### Date of Site Inspection

20<sup>th</sup> September 2019

### Inspector

Brendan Coyne



## 1.0 Site Location and Description

1.1. 'Carina, on a site area of 0.06 Ha, is located to the rear of No. 5 Bisset Strand and is accessed off Bisset Strand Road via a shared driveway / right of way. This driveway subdivides the curtilage of 'Carina' and also provides access to a detached single storey dwelling known as 'Silina' to the rear / south of the subject site. 'Carina' comprises a 1.5 storey 2-bedroom dwelling on the eastern side of the laneway and a single storey garage and parking area on the western side of the driveway. The dwelling contains a lean-to conservatory to its rear with a side wall presenting to the driveway. The roof profile of the dwelling is pitched and the elevations comprise rendered finishing. A gateway and pillars are located along the driveway, near the south-western corner of 'Carina', separating it from 'Silina'. A 1.5 storey dormer type dwelling is located on lands to the east of the site and No. 5 Bisset Strand is a single storey dwelling located to the front / north of the site. The shared driveway (3.9m wide) is tarmacadamed and a cement footpath (c. 0.7m wide) is provided between the shared driveway and the western side elevation of the dwelling.

## 2.0 Proposed Development

- 2.1. Application as lodged on the 15/02/2019 - Permission sought for the following;
- Demolition of the conservatory to the rear of the dwelling.
  - Construction of a single storey extension to the western side and a 1.5 storey extension to the rear (south) of the dwelling.
  - Demolition of part of the gate structure located to the western side of the dwelling.
  - Increase the roof ridge height of the dwelling by 0.22m and increase in the roof eaves height by 0.6m.
  - The proposal would provide store rooms at first floor level.
  - Relocation of the main entrance from the western side elevation to the front northern elevation of the dwelling.
  - Re-configuration of window opes on the front elevation of the dwelling.

- Removal of the chimney stack on the eastern side roof slope of the dwelling.
- Provision of a stove flue to the western side elevation of the dwelling.
- Demolition of the boiler house to the front of the dwelling.
- Associated site works.

2.1.1. Further Information submitted on the 30/05/2019 included:

- Omission of the originally proposed increase in the roof ridge height of the dwelling by 0.22m.
- Documentation re. right of way / legal ownership

2.1.2. The floor area of the existing dwelling is 82 sq.m.

The floor area of the proposed works is 23.5 sq.m.

## 3.0 **Planning Authority Decision**

### 3.1. **Decision**

3.1.1. Fingal County Council granted permission for the proposed development subject to 7 no. Conditions. Of these, Conditions of note are as follows;

C.2 No part of the development shall overhang or encroach upon the indicated right of way or on any other party lands.

C.3 That any attic floorspace shall be used for storage purposes only.

### 3.2. **Planning Authority Reports**

#### 3.2.1. ***Planning Reports***

3.2.2. The basis for the Planning Authority's decision includes:

- The issue of land and boundary ownership is a civil matter.

- Condition No. 2 as per the Planning Authority decision recommended.
  - Further to the omission of the proposed increase in the roof ridge height and having regard to the orientation of the site and existing separation distances, the proposed development would not give rise to undue negative impacts on the residential amenity of neighbouring property.

### 3.2.3. Other Technical Reports

**Transportation Section:** No objections.

## 4.0 Planning History

**F18A/0149 / ABP 301854-18** Retention Permission granted in 2018 to Giuseppina Morelli for the retention of the existing detached house with attic space used as storage.

**F16B/0227 / ABP PL 06F.247578** Permission refused in 2016 for extension s/ alteration to the house. These included a two-storey extension to the side (west facing) and a single storey extension to the rear (south facing), alteration and extension the roof profile to create habitable first floor space with dormer roof design and use the first floor as an ancillary granny flat/family apartment. The proposal also included a number of other alterations internally and externally including relocation of the main access door from the side to the front face.

In the appeal submitted to the Board it was proposed to omit the proposed granny flat use from the 1st floor and create attic accommodation within the space in its place. The proposed dormer windows on the front and rear elevations and the 1st floor openings on the east and west elevations were also omitted.

## 5.0 Policy and Context

### 5.1. Fingal County Development Plan 2017 -2023

**Zoning** 'RS – Residential'

**Zoning Objective** 'Provide for residential development and protect and improve

	residential amenity’.
<b>Objective PM46</b>	Encourage sensitively designed extensions to existing dwellings which do not negatively impact on the environment or on adjoining properties or area.
<b>Section 12.4</b>	Extensions to Dwellings – Development Management Standards
<b>Table 12.8</b>	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

The site is located 0.1km to the south of the Malahide Estuary SPA (Site Code: 004025) and SAC (Site Code: 000205).

## 6.0 The Appeal

### 6.1. Grounds of Appeal

An appeal was received from Brennan Furlong Architects & Urban Planners, representing the third-party appellant Lia Morelli who resides in ‘Silina’, the neighboring property to the south, against the decision made by the Planning Authority to grant permission for the proposed development. The following is a summary of the grounds of appeal.

- The proposed extension to the western side of the dwelling would form part of the right of way serving the dwelling ‘Silina’ to the rear (south) of the site.
- The removal or alteration of the gates in any way would encroach on the established right-of-way, which is not acceptable to the appellant.

- The proposed flue vent (as detailed on the Ground Floor Plan) and the eaves and gutters on the western elevation of the proposed extension would encroach on and over-sail the right of way serving the dwelling to the rear.
- The appellant draws attention to the fact that the attic space within the dwelling has been used as sleeping accommodation. The drawings of the subject application indicate the provision of individual doors, windows and radiators within the attic space. The appellant expresses concern that the proposal will turn the permitted dwelling into a 4-bedroom house – two bedrooms at ground floor and two bedrooms at first floor.
- The appellant draws attention to inadequacies in the drawing submitted including;
  - The drawings submitted do not show the existing gates and proposed gateway structure to be demolished.
  - No section drawings have been provided of the existing dwelling.
  - There are anomalies between the floor plans and sections drawings submitted, detailing the floor to ceiling heights of the dwelling.
  - The elevation drawings do not show the proposed flue vent.

## 6.2. Applicant Response

None

## 6.3. Planning Authority Response

The Planning Authority remains of the opinion that the proposed development, will not detract from the adjoining residential amenity, subject to compliance with the Conditions. An Bord Pleanála is requested to uphold the decision of the Planning Authority.

## 6.4. Observations

None

## 7.0 Assessment

7.1. The main issues for consideration are as follows;

- Encroachment / Overhanging of the Shared Driveway,
- Internal Accommodation.

These are addressed below. It is considered that the drawings submitted provide sufficient detail to enable an assessment of the proposed development and the issues raised in the grounds of appeal.

### 7.2. Encroachment / Overhanging of Shared Driveway

7.2.1. The third-party appellant has appealed the grant of permission for the proposed development on the grounds that the proposed extension to the western side of the dwelling would form part of the right of way shared driveway serving the dwelling 'Silina', located to the rear (south) of the site. The appellant also expresses concern that the proposed removal or alteration of the gates to the western side of the dwelling would encroach on the established right-of-way, and the proposed flue vent (as detailed on the Ground Floor Plan submitted) and the eaves and gutters on the western elevation of the proposed extension would encroach and over-sail the right of way driveway serving the dwelling to the rear / south.

7.2.2. The Planning Authority addressed this issue in its grant of permission, by imposing a Condition (No. 2) requiring that no part of the development shall overhang or encroach upon the indicated right of way or on any other third-party lands.

7.2.3. The proposed extension would extend 0.77m to the western side of the dwelling, up to and along the shared driveway / right-of way serving both the subject dwelling and 'Silina', the neighbouring dwelling to the south of the site. Having regard to the Site Plan submitted, this shared driveway has a width of 3.9m for the most part. A footpath (c. 0.7m wide) is located between the western side elevation of the dwelling and the shared driveway / right of way.



7.2.4. The existing front elevation drawing submitted shows the existing gate and piers to its either side, along the western side of the dwelling. The proposed front elevation-contiguous drawing submitted shows the omission of the gate and the pier closest to the western side elevation of the subject dwelling. It is stated in the statutory notice that the proposed development will comprise the 'demolition of on-site gateway structure'. The applicant states in a letter submitted to the Planning Authority, by way of Further Information, that the eastern pier will be removed and the left-hand side of the gate will be dismantled.

In consideration of this issue, Section 5.13 of the *Development Management Guidelines (2007)* refers to 'Issues relating to title to land' and states that the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land and that these are ultimately matters for resolution in the Courts. The Guidelines advise that where there is doubt in relation to the legal title of the applicant, the Planning Authority may decide to grant permission, however a grant of permission is the subject of Section 34(13) of the *Planning and Development Act 2000 (as amended)*, which states that 'a person is not entitled solely by reason of permission to carry out any development'.

Having regard to the above and in the absence of absolute certainty that the applicant has sufficient legal interest to carry out the proposed development, I consider it inappropriate to refuse permission for the proposed development on these grounds. I recommend, therefore, that this ground of appeal should not be upheld.

### 7.3. Internal Accommodation

7.3.1. The appellant expresses concern that the attic space within the proposed development will be used as sleeping accommodation and that this will turn the permitted dwelling into a 4-bedroom house – two bedrooms at ground floor and two bedrooms at first floor. The appellant draws attention to how the drawings of the proposed development indicate the provision of individual doors, windows and radiators within the attic store rooms.

7.3.2. The drawings submitted detail the provision of 2 no. store rooms and a hot press within the attic space of the dwelling, with 1 no. small window ope (2.3m wide x 0.6m

high) serving both store rooms provided on both the northern and southern gable elevations of the dwelling respectively. Section Drawings submitted show that the floor to ceiling height of the store rooms would be 2m. Such floor to ceiling height would not enable these rooms to be used as habitable rooms in accordance with the Building Regulations.

7.3.3. It is noted that the Planning Authority addressed this issue by imposing a Condition (No. 3) requiring that any part of the attic floorspace shall be used for storage purposes only.

7.3.4. It is my view that the Condition as imposed by the Planning Authority is appropriate. Such Condition would ensure that there is clarity as to the scope of any permission that is granted. I recommend, therefore, that this ground of appeal should not be upheld.

#### **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. I recommend that planning permission be granted subject to the conditions set out below.

#### **9.0 Reasons and Considerations**

9.1.1. Having regard to the provisions of the Fingal Development Plan 2017 – 2023, the nature, scale and extent of the proposed development and the pattern of development in the area, it is considered that, subject to compliance with the Conditions set out below, the proposed development would not seriously injure the residential amenity of neighbouring property. The proposed development would,

therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 **Conditions**

<p>1.</p>	<p>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 submitted on the 30<sup>th</sup> May 2019, 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><b>Reason:</b> In the interest of clarity.</p>
<p>2.</p>	<p>The attic space shall be used as storage / non-habitable space only.</p> <p><b>Reason:</b> To clarify the extent of permission.</p>
<p>3.</p>	<p>The external finishes of the proposed extension (including roof tiles/slates) shall be the same as those of the existing dwelling in respect of colour and texture.</p> <p><b>Reason:</b> In the interest of visual amenity.</p>
<p>4.</p>	<p>The house and proposed extension shall be used as a single dwelling unit.</p> <p><b>Reason:</b> In the interest of residential amenity.</p>
<p>5.</p>	<p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning</p>

	<p>authority for such works and services.</p> <p><b>Reason:</b> In the interest of public health.</p>
6.	<p>The proposed extension shall be constructed so that it does not overhang the right of way driveway shared with the neighbouring dwelling to the rear / south of the site.</p> <p><b>Reason:</b> In the interest of residential amenity.</p>
7.	<p>Site development and building works shall be carried out between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays or public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p><b>Reason:</b> In order to safeguard the residential amenities of property in the vicinity.</p>
8.	<p>The site development works and construction works shall be carried out in such a manner as to ensure that the adjoining shared driveway is kept clear of debris, soil and other material and, if the need arises for cleaning works to be carried out on the adjoining shared driveway, the cleaning works shall be carried out at the developer's expense.</p> <p><b>Reason:</b> To ensure that the adjoining shared driveway is kept in a clean and safe condition during construction works in the interest of orderly development.</p>
9.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in</p>

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 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.

**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.

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Brendan Coyne  
Planning Inspector

17<sup>th</sup> October 2019