



An
Bord
Pleanála

Inspector's Report ABP-306441-20.

Development

Planning permission is sought for modifications to an existing dwelling. These modifications include an additional gable end window; adjustments to existing glazing and change of façade treatment; a 2-storey extension to the side with rear terrace; and, replacement of an existing shed structure.

Location

'Estuary House', Estuary Road, Malahide, County Dublin.

Planning Authority

Fingal County Council.

Planning Authority Reg. Ref.

F19B/0133.

Applicant

Michael Dawson.

Type of Application

Planning Permission.

Planning Authority Decision

Grant with conditions.

Type of Appeal

First Party - Vs - Condition No. 2.

Appellant

Michael Dawson.

Observer(s)

None.

Date of Site Inspection

18th day of March, 2020.

Inspector

Patricia-Marie Young.

Contents

1.0 Site Location and Description	4
2.0 Proposed Development	5
3.0 Planning Authority Decision	5
3.1. Decision	5
3.2. Planning Authority Reports	6
3.3. Prescribed Bodies	6
3.4. Third Party Observations	6
4.0 Planning History.....	6
5.0 Policy & Context	7
5.1. Development Plan.....	7
5.2. Natural Heritage Designations	8
6.0 The Appeal	9
6.1. Grounds of Appeal	9
6.2. Planning Authority Response	9
7.0 Assessment.....	10
8.0 Recommendation.....	15

1.0 Site Location and Description

- 1.1. 'Estuary Road', the appeal site, with a stated area of 0.23ha, is located on the southern side of Estuary Road, c0.6km to the north west of its junction with Old Yellow Walls Road and c2.3km as the bird would fly from the centre of Malahide, in north east County Dublin.
- 1.2. The site contains a part single and part two storey detached dwelling house as well as a garage that has a staggered setback from the northern roadside boundary of Estuary Road by a mature landscaped garden area. It benefits from pleasant views across Malahide Estuary and countryside beyond. In close proximity to the western elevation of the dwelling house (Note: c6m) there is also a detached shed structure on site whose northernmost elevation adjoins and runs alongside a tall brick boundary wall that connects to the said elevation. The main private open space is located behind these structures and the dwelling house itself.
- 1.3. The site is served by two vehicle entrances onto the southern side of Estuary Road which at this point has a posted speed limit of 50kph and at the time of inspection I observed this road was heavily trafficked. One of the access points is located towards the easternmost portion of the roadside boundary whereas the other is located towards the westernmost portion of the roadside boundary. The Estuary Road at this point has a curved concave alignment which continues on either side of the roadside boundary but more acutely in a westerly direction. This significantly restricts views from both access points serving the subject dwelling house.
- 1.4. The ground levels of the site gently rise upwards from the roadside boundary towards the rear of the site with the dwelling house located on a high point. Mature soft landscaped boundaries are present to the east and west of the site. A low retaining type painted concrete wall runs along the main stretch of the roadside boundary. The land to the immediate west consists of grazing pastureland for horses and forms part of a larger area of land associated with 'Lebong' house which is located to the south west of the site.
- 1.5. Bounding the eastern boundary of the site is the garden area associated with a modest single storey dwelling house. The boundary treatment between the appeal site and this adjoining property are more robust.

1.6. Directly opposite the site and running alongside the northern roadside edge of Estuary Road there are deep setbacks containing mainly maintained grass with footpaths and seating provision. To the north west of the site there is indented provision of on-street car parking on Estuary Road for users of this recreational amenity. Immediately behind the appeal site is the grounds associated with the Malahide Rugby Club.

2.0 Proposed Development

2.1. Planning permission is sought for modifications to an existing dwelling house which would consist of the provision of an additional gable end window, adjustments to existing glazing and change of façade treatment, a two-storey extension to the side with rear terrace and replacement of an existing shed.

2.2. The Planning Application Form submitted with this application indicates the gross floor space of existing buildings on site is 289m²; that the gross floor space of proposed works is 103m² and that the gross floor space of proposed demolition is 24m².

2.3. On the 3rd day of December, the applicant submitted their additional information response. This response is accompanied by a document titled: “*Estuary House, Malahide – Additional Information Report & Visual Impact Study*”, prepared by SFA42 Architects. This indicates the following revisions:

- The proposed large window would now be kept below the eaves level;
- The ground and mezzanine floor levels were lowered 300mm.
- The roof form over the proposed extension is amended.
- A bay window is proposed on the west end of the extension matching the proposed east façade.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On the 20th day of December, 2019, the Planning Authority granted permission for the proposed development subject to 9 no. mainly standard conditions. Of particular relevance to the grounds of this appeal is the requirement of Condition No. 2. This

requires the setback of first floor level of the proposed extension by 1.5m. The stated reason for this condition is in the interest of visual amenity.

3.2. **Planning Authority Reports**

3.2.1. **Planning Reports**

The **final Planning Officer's report** is the basis of the Planning Authority's decision. Their report indicated that the Planning Officer considered that the revised design would still be visually obtrusive upon the surrounding visually sensitive location. It was therefore considered appropriate that the 1.5m setback of the first-floor element be required by way of condition to address this concern as it would reduce the visual overbearance of the proposed extension whilst not resulting in the loss of internal floor area as the reduction would pertain to the proposed void over the ground floor area. No further substantive concerns were raised.

The **initial Planning Officer's report** concluded with a request for further information which can be summarised as follows:

Item No. 1: Required the design of the proposed extension to be revised.

Item No. 2: Clarification sought on the proposed use of the first-floor rear extension.

3.2.2. **Other Technical Reports**

Water Services Department: No objection subject to safeguards.

3.3. **Prescribed Bodies**

3.3.1. None.

3.4. **Third Party Observations**

3.4.1. None.

4.0 **Planning History**

4.1. **Site**

P.A. Reg. Ref. No. F97B/0039: On the 18th day of March, 1997, planning permission was **granted** subject to conditions for a development consisting of the construction of

a first floor extension, to make alterations to the existing facades, the construction of a conservatory and porch at subject dwelling which appears to have been called 'Saoirse' at this time.

5.0 Policy & Context

5.1. Development Plan

- 5.1.1. The policies and provisions of the Fingal Development Plan, 2017 to 2023, apply.
- 5.1.2. The appeal site is located on land zoned 'HA' – High Amenity lands. The Development Plan objective for such lands is to: *“protect and improve high amenity areas”* and the stated vision is to: *“protect these highly sensitive and scenic locations from inappropriate development and reinforce their character, distinctiveness and sense of place. In recognition of the amenity potential of these areas opportunities to increase public access will be explored”*. In land zoned 'HA' residential development is permissible subject to demonstrating compliance with the Development Plans Rural Settlement Strategy.
- 5.1.3. In relation to extensions to dwellings Chapter 3 of the Development Plan recognises the need for people to extend and renovate their dwellings and it states that: *“extensions will be considered favourably where they do not have a negative impact on the adjoining properties or on the nature of the surrounding area”*. Objective PM46 of the Development Plan reiterates this. It states that the Planning Authority shall seek to: *“encourage sensitively designed extensions to existing dwellings which do not negatively impact on the environment or on adjoining properties or area”*.
- 5.1.4. The site is located to the south of Malahide Estuary. Chapter 9 of the Development Plan states that: *“the Estuary Character Type is categorised as having an exceptional value, recognised by the EU designations (candidate Special Areas of Conservation and Special Protection Areas) that apply to each in addition to national designations such as proposed Natural Heritage Areas and Ramsar. The aesthetic quality of the estuaries is also outstanding.”*
- 5.1.5. The site is also located with an 'Ecological Buffer Zone'. Chapter 9 of the Development Plan states that: *“these buffer zones protect the ecological integrity of the nationally and internationally designated sites by providing suitable habitat for key species such*

as birds, by providing for compatible land-uses around the designated sites” ... “the Council will normally only grant permission where it is clearly demonstrated that a proposal will have no significant adverse impact on the habitats and species of interest in the buffer zone and its ecological functions. Proposals for development in these areas will require AA because of their close proximity to Natura 2000 sites”. Objective NH18 reiterates this.

- 5.1.6. In addition, the site also forms part of a designated Sensitive Landscape; the views along Estuary Road are afforded protection under the Development Plan; and, there is an indicative cycle/pedestrian path along the Estuary Road.

5.2. Natural Heritage Designations

- 5.2.1. The appeal site is located within a 15km radius of a significant number of European Sites. The nearest are:

- The appeal site lies c22.5m to the south of Special Area of Conservation: Malahide Estuary SAC (Site Code: 000205);
- The appeal site lies c25.4m to the Special Protection Areas: Malahide Estuary SPA (Site Code: 004025);
- The appeal site lies c4.2km to the south of Special Area of Conservation: Rogerstown Estuary SAC (Site Code: 000208).
- The appeal site lies c4.4km to the south of Special Protection Areas: Rogerstown Estuary SPA (Site Code: 004015);
- The appeal site lies c5.4km to the north of Special Area of Conservation: Baldoyle Bay SAC (Site Code: 000199); &
- The appeal site lies c5.5km to the north of Special Protection Areas: Baldoyle Bay SPA (Site Code: 004016).

5.3. EIA Screening

Having regard to the brownfield nature of the site and the extent of works carried out thereon, the modest nature and scale of the proposed development, there is no real likelihood of significant effects on the environment arising from the proposed

development. The need for environmental 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 grounds of this 1st Party Appeal can be summarised as follows:

- This appeal relates to the requirements of Condition No. 2 only.
- As it is the applicant's intention to renovate and extend the dwelling at the same time it doesn't make sense for the extension to appear an annex or to be treated differently.
- The 1.5m setback would destroy the gable end of the extension which is designed to match the opposite gable as well as the eaves line of the house.
- The setback would result in a flat roof, would reduce the ceiling height and light at ground floor level.
- The extent of changes would have to be resolved spatially in order to meet Building Regulations and would also make it difficult to meet the requirements of Condition No. 1 of the grant of permission. It would also not meet the requirements of the appellant.
- The reason for the condition is subjective.

6.2. Planning Authority Response

6.2.1. The Planning Authority's response can be summarised as follows:

- The proposed development as originally submitted would be visually obtrusive and give rise to negative impact upon the protected views as designed under the Development Plan for Malahide Estuary.
- It is accepted that the applicant seeks to modernise the proposed dwelling; however, it was considered that the proposed extension fails to adequately do this.

- The design requires more architectural merit and it is considered that the proposal provided to the Planning Officer during the pre-planning was a more appropriate design resolution for this site given the sensitivity of the surrounding landscape.
- The Board is requested to uphold the decision of the Planning Authority.

6.3. Referrals

- 6.3.1. The Board referred this appeal case to An Taisce – The National Trust of Ireland; The Heritage Council; and, the Development Applications Unit of the Department of Culture, Heritage and the Gaeltacht. No responses were received.

7.0 Assessment

7.1. Overview

- 7.1.1. This appeal case is a First Party Appeal case against Condition No. 2 of Fingal County Councils notification to grant planning permission for the development sought under P.A. Reg. Ref. No. F19B/0133.
- 7.1.2. The appellants argue that this condition results in a poorer quality visual and residential amenity outcome than the design resolution put forward by of their additional information revisions as well as the initial design resolution sought in the initial suite of documents submitted with this application to the Council.
- 7.1.3. They also argue that it would result in Building Regulation compliance issues; that it would not be possible for Condition No. 1 to be complied with as it would require substantive changes to the overall proposal; and, that it would result in an outcome that is does not meet the applicant's needs.
- 7.1.4. Moreover, they question the Planning Authority's logic and rational behind this condition as they contend that it's requirements are essentially a subjective response to the architectural design of the proposal put forward in this application and they contend that having examined its implications it would result in a less harmonious visual aesthetic for the alterations and additions proposed.
- 7.1.5. In light of these considerations the appellant seeks that the Board omit this condition from the notification to grant permission for P.A. Reg. Ref. No. F19B/0133.

- 7.1.6. The Planning Authority on the other hand seek that this condition is retained as they reiterate the concerns raised by their Planning Officer in their report that the proposed form of the extension would be visually obtrusive and would give rise to negative impacts upon the protected views as designated within the Development Plan for this particular locality. They also indicate that they consider that the design requires more architectural merit given the visual sensitivity of the surrounding landscape setting of the site. They therefore request that the Board uphold its decision including the subject Condition.
- 7.1.7. I am cognisant that Section 139(1)(c) of the Planning and Development Act, 2000, as amended, provides for where an appeal relates only to a condition, as is the case in this instance, and where the Board is satisfied having regard to the nature of the conditions that a determination by the Board of the relevant application as if it had been made in the first instance would not be warranted, the applicant does not need to be considered *de novo* and the Board at its discretion may **remove, attach** or **amend** as it deems appropriate the condition or conditions in question.
- 7.1.8. I am further cognisant that Section 8.11 of the Development Management Guidelines, 2007, provides that the Board has complete discretion to give to the planning authority whatever directions it considers appropriate relating to the attachment, amendment of or removal from the grant of planning permission of the condition or conditions the subject of the appeal as the case may be.
- 7.1.9. Based on the above considerations; having regard to the legislation and guidelines referred to above; and, taking into account that there are no 3rd Party Appeals, the lack of observations and other 3rd Party submissions to this appeal case which has been referred to the Board by the First Party, I consider it appropriate that in this instance for the Board to deal with the issues raised by Condition 2 only.
- 7.1.10. In saying this however I am concerned that the proposed design put forward includes bringing forward and adding to glazing at the first-floor level of western elevation by way of the extension sought under this application having regard to the potential additional adverse impact that this design approach would have on the adjoining property, a property that is already overlooked by a large window at first floor level on the western elevation that was permitted under P.A. Reg. Ref. No. F97B/0039. Notwithstanding, this is concern there is significant lateral separation distance and a

number of natural features which would aid in screening the 1st floor extension proposed.

7.1.11. I also note that the matter of Appropriate Assessment also requires examination in the context of this appeal case.

7.2. **Consideration of Condition No. 2**

7.2.1. For clarity Condition No. 2 of the notification to grant permission for the development sought under P.A. Reg. Ref. No. F19B/0133 reads:

“Prior to the commencement of development, the applicant shall submit for the written agreement of the Planning Authority revised drawings which show the first floor of the proposed extension being setback by 1.5m from its current layout”.

The stated reason for this condition is: *“in the interest of visual amenity”.*

7.2.2. I acknowledge that the proposed design concept for the renovations and extension to the subject dwelling was amended by way of the appellants response to the Planning Authority’s further information request and that the application not just sought to extend an existing dwelling house it also sought to renovate in a contemporary manner an existing dwelling house as a whole in order to achieve some synergy and harmony between existing and proposed building layers.

7.2.3. I also acknowledge the Planning Authority’s frustration in terms of the architectural quality of the design resolution put forward having regard to the highly sensitive to change visual setting of the site. Together with the fact that a first floor extension to this existing dwelling would be highly visible and legible from the public domain which in this case does not just include Estuary Road which adjoins the northern boundary of the site and from which access to the public road network is achieved but also from the high quality amenity of the public open space which bounds the northern edge of the Estuary Roads carriageway and Malahide Estuary which at this location offers both passive and recreational amenity accessible for the public.

7.2.4. Further the northern boundary of the site is open and unobscured to the bay itself which results in the occupants of this dwelling benefiting not just from light and air that this lends to the internal spaces but also it results in unobscured views over the picturesque estuary and Malahide bay setting itself which on the opposite side has an attractive sylvan character with a number of period buildings of merit visible. I also

observed during my inspection of the site that the dwelling house is highly visible from the Estuary Road as one approaches it in a westerly and easterly direction. Indeed, the open nature of the front boundary having regard to the lateral separation that exists across the Bay would also mean that this dwelling is not just visible from the public open space that exists on the opposite side of Estuary Road but also from the opposite side of the Estuary itself.

- 7.2.5. Having regard to the documentation on file, I am of the view that the revised design submitted offers some visual improvements to the initial design put forward in the initial application.
- 7.2.6. In particular, I consider breaking up the glazing of the large window proposed in the extension together with the ensuring that this window does not project above the eaves level of the existing building results in a more harmonious design response. It also adds some visual interest in terms of breaking up what would otherwise be a void of glazing that would be of a scale that in my view would be out of character and lacked balance with the solid to void expression of the principal elevation of this dwelling when appreciated from the public domain. On this point I also note that whilst large expanses of void often form part of contemporary design resolutions in this situation, I tend to consider it is out of balance and visually overt with the overall design which attempts to marry existing and new building layers
- 7.2.7. I also consider that the revised roof form also is more harmonious with the existing roof structure and would result in a building that is visually balanced by its greater uniformity alongside the other hierarchy of roof structures that would also be present over the first-floor level components. Whilst the provision of a bay window on the western end of the extension may arguably match that on the eastern elevation, I do not consider this an appropriate insertion considering its potential to result in add to greater level of actual overlooking of the adjoining property.
- 7.2.8. Despite this concern with the revised design, I am of the view that to impose a 1.5m setback would not result in any real visual improvement to the coherence or aesthetics of the proposed design resolution proposed over and above that achieved by breaking up the glazing of the large window in the proposed extension and dropping down the ground and mezzanine levels.

- 7.2.9. Further, I consider if employed, even with a lightness of architectural touch, the 1.5m setback, would result in a design that would be legibly very fragmented with a roof structure over that would be out of character with the existing roof structures shape, volume and profile.
- 7.2.10. Moreover, it arguably would dilute the synergy that would arise between the existing and proposed building layers which in turn would result in the building being visually less coherent in its built form, its massing, its volumes and so forth.
- 7.2.11. In terms of the local planning policy provisions the Development Plan indicates that the extensions to existing dwellings will be considered favourably where they do not have a negative impact on the adjoining properties or on the nature of the surrounding area; and, Objective PM46 of the Development Plan states that the Planning Authority shall seek to: “*encourage sensitively designed extensions to existing dwellings which do not negatively impact on the environment or on adjoining properties or area*”. In this instance I am of the view that the proposed setback sought under the revisions required under Condition No. 2 would not give rise to any visual and/or residential amenity gain for a setting that I acknowledge is of high visual quality and merit.
- 7.2.12. Based on the above considerations I recommend that the Board **remove** Condition No. 2 from the Councils notification to grant permission for P.A. Reg. Ref. No. F19B/0133.

7.3. **Appropriate Assessment Screening**

- 7.3.1. Having regard to the subject of this appeal, the appellants request that the Board remove Condition No. 2 of P.A. Reg. Ref. No. F19B/0133 which relates to the setback of the first floor level of the principal elevation of the extension proposed to an existing dwelling on the subject appeal site that benefits from foul water drainage, it is considered that in view of the modest nature, scale and extent of this component of the proposed development, despite the proximity of the site to the Special Area of Conservation: Malahide Estuary SAC (Site Code: 000205) and Special Protection Areas: Malahide Estuary SPA (Site Code: 004025) which are located c22.5m and c25.4m to the north of the site respectively, that subject to normal safeguards that 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. Having regard to the nature of the condition the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted; and, based on the reasons and considerations set out below, directs the said Council under subsection (1) of section 139 of the Planning and Development Act, 2000 to:

(a) **REMOVE** condition number 2 and the reason therefor.

REASONS AND CONSIDERATIONS

Having regard to limited scale, nature and design, it is considered that the proposed development would not seriously injure the amenities of the area, it would not be out of character with the design resolution of the proposed renovations and additions proposed for this dwelling which seeks to update and extend an existing dwelling house of no architectural merit in a contemporary manner, it would not result in any significant visual adverse impact on its setting, and, it would be in accordance with the provisions of the Fingal Development Plan, 2017 to 2023. The Planning Authority's Condition 2 requiring the revised drawings which show the first floor of the proposed extension being setback by 1.5m from its current layout is, therefore, not warranted.

Patricia-Marie Young

Planning Inspector

16th day of April, 2020.