



An  
Bord  
Pleanála

## Inspector's Report

### ABP-306806-20

---

<b>Development</b>	Retention permission for alterations and additional alterations to previously granted planning permission (D15A/0657) for house extension.
<b>Location</b>	Karinya, North Avenue, Mount Merrion, Co. Dublin.
<b>Planning Authority</b>	Dun Laoghaire Rathdown County Council
<b>Planning Authority Reg. Ref.</b>	D19A/0940
<b>Applicant(s)</b>	Michael & Oonagh Beale
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant with Conditions
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	James Grennan & Dervela Walsh
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	28 <sup>th</sup> May 2020
<b>Inspector</b>	Mary Crowley

# Contents

1.0 Site Location and Description .....	4
2.0 Proposed Development .....	4
3.0 Planning Authority Decision .....	5
3.1. Decision .....	5
3.2. Planning Authority Reports.....	5
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 .....	7
5.3. EIA Screening .....	7
6.0 The Appeal .....	7
6.1. Grounds of Appeal .....	7
6.2. Applicant Response .....	8
6.3. Planning Authority Response .....	9
6.4. Observations .....	9
6.5. Further Responses.....	9
7.0 Assessment .....	10
7.3. Principle .....	10
7.4. Visual Amenity .....	11
7.5. Residential Amenity .....	11
7.6. Vehicular Entrance.....	12

7.8. Other Issues.....	13
8.0 Recommendation.....	13
9.0 Reasons and Considerations.....	13
10.0 Conditions .....	14

## 1.0 Site Location and Description

1.1. The appeal site with a stated area of 0.081 hectares is located on the eastern side of North Avenue, Mount Merrion proximate to the junction with St Thomas Road further to the north. The site accommodates a large 1930's detached two storey dwelling (188.25 sqm) and detached garage (14 sqm). The rear garden steps down from the house and affords unobstructed views of the adjoining site to the south east; Burnside, which is a large detached two / three storey dwelling with vehicular access off St Thomas Road. Development in the area is characterised by large detached suburban style dwellings on large sites. 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. Retention permission is sought for alterations and additional alterations to previously granted planning permission, Dun Laoghaire County Council Reference D15A/0657, which granted permission for;

- construction of a new single storey extension to the side, a new single storey extension to side and rear, and a new single storey extension to rear of the existing two storey detached house; to externally insulate and re-render the existing house; to re-roof and alter the existing windows and doors and to demolish the existing garage and construct a new garage to be part single storey, and part two storey to the rear and include a home office with associated site works which include widening the vehicular entrance gates, and providing a new pedestrian gate.

2.2. The proposed alterations to this permission are:

- Reduction of 17.7 sq.m in the overall area of the proposed single storey extension to the rear, adjusted floor level, and altered fenestration to this extension;
- Reduction of 23.2 sq.m. of the area of the proposed garage. The garage is now proposed as single storey, including omission of the proposed home office, and omission of the boiler room. It is also proposed to reduce the overall height of the

garage, and to use a concrete roof tile to match the existing house roof, rather than the slate roof previously proposed;

- Omission of the proposed single storey extension to the side and rear, a reduction in proposed area of 2.4 sq.m;
- Increased footprint of the single storey side extension by 2.3 sq.m., to allow for construction build ups;
- It is now proposed to repair the existing flat roof to the rear return, rather than replacing it with a new pitched roof. This reduces the overall height of the rear return;
- It is proposed to omit the replacement render to the original existing house;
- It is proposed to relocate the outdoor terrace area at the rear of the house to the west of the site;
- Minor internal alterations to the internal layout of the house and minor alterations to windows to rear elevation;
- Alteration of surface water drainage to proposed new soak away in rear yard

2.3. The application was accompanied by a cover letter and floor area schedule.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. DLRCC issued a notification of decision to grant permission subject to 6 no generally standard conditions.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

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

#### 3.2.2. Other Technical Reports

- **Drainage Planning** – No objection subject to conditions relating to foul and surface water sewers, surface water run-off and all proposed parking surfaces / hardstanding areas shall comply / be constructed in accordance with SuDs.

### 3.3. Prescribed Bodies

- 3.3.1. There are no reports recorded on the appeal file.

### 3.4. Third Party Observations

- 3.4.1. There is one observation recorded on the planning file from James Grennan & Dervela Walsh, Burnside, No 39 St Thomas Road (adjoining site to the south east). The issues raised relate to inadequate drawings, overlooking, full height bathroom window and the use of flat roof area a terrace / balcony

## 4.0 Planning History

- 4.1. There was a previous application on this site that is referenced in the development description of this appeal and that may be summarised as follows:

- **D15A/0657** – DLRCC granted permission in 2015 for the construction of a new single storey extension to the side, a new single storey extension to side and rear, and a new single storey extension to rear of the existing two storey detached house; to externally insulate and re-render the existing house; to re-roof and alter the existing windows and doors and to demolish the existing garage and construct a new garage to be part single storey and part two storey to the rear and include a home office with associated site works which include widening the vehicular entrance gates, and providing a new pedestrian gate subject to 15 no generally standard conditions.

- 4.2. There was a previous appeal on the adjoining site to the south east at Burnside, No 39 St Thomas Road (appellants property) that may be summarised as follows:

- **ABP-304394-19 (Reg Ref D19A/0113)** – DLRCC issued notification of decision to grant permission for the retention of changes made to the site level to the rear garden and permission for new screen planting along the site boundaries to the rear subject to 2 no conditions. The decision was appealed by a third party;

Michael & Oonagh Beale, Karinya, North Avenue (applicant), on the adjoining site. The main grounds of appeal related to impact on privacy and overlooking, drainage and inadequate mitigation measures. The Board granted permission subject to 5 no conditions. Condition No 3 and 4 relate to landscaping.

## 5.0 Policy 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 deals with **Additional Accommodation in Existing Built-up Areas** and **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. The South Dublin Bay and River Tolka SPA and South Dublin Bay SAC are located c. 2km to the east of the site.

### 5.3. EIA Screening

- 5.3.1. Having regard to the nature and scale of the proposed development in an established 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 Lyons Kelly Architecture & Design on behalf of James Grennan & Dervela Walsh, No 39 St Thomas Road (adjoining site to the south east) and may be summarised as follows:

- **Drawings** – The drawings submitted with the application are wholly inaccurate and do not describe the appellants house.
- **Overlooking** – The applicants have swapped the location of their bathroom and master bedroom from what was permitted on their original planning application and in a manner that has caused gross overlooking of the appellants property. The altered layout of the first floor has resulted in a situation whereby the appellant is now looking directly and clearly at their neighbour’s lavatory from their kitchen windows. Submitted that these changes would not have been permitted if they had applied for permission prior to carrying out the works.
- **Windows** – The issue is not in the shape and design of the window in its self it is the fact that the window is now serving a bathroom and not a bedroom as stated and is of clear glass constructed to the floor, with a lavatory facing directly into the appellants kitchen window.
- **Conditions** – The Planning Authority has placed onerous conditions on the appellant in order to protect the privacy of the neighbours yet has not applied the most basic conditions on the applicant in order to protect the appellants privacy and modesty.
- **Consistency** – The appellants who received planning permission for their kitchen through the proper channels are being told not to use these windows while the applicants are given permission for unlawfully carrying out works that have a grossly negative impact on the appellants enjoyment of their property. At a minimum it is requested that a condition requiring alterations to the bathroom window be imposed that the window cill be raised to a level that ensures that the toilet is not visible from the applicant’s kitchen and garden.

## 6.2. Applicant Response

6.2.1. Flynn Architects on behalf of the First Party submitted the following comment in response to the third-party appeal as summarised:

- The appeal is considered vexatious and is a result of the applicant’s objection and appeal to a previously granted permission by the appellants at No 39 Thomas Road (ABP-304394-19 refers). That appeal was made in the hope of protecting the privacy to the applicant’s property including the rear garden as they do not wish to



be overlooked by No 39. The applicant was disappointed that the appeal was unsuccessful.

- During the renovation and extension of the applicants house it became apparent that the unauthorised works to No 39 would impact on their privacy and a number of changes were made to the design and layout to mitigate the impact on their privacy. This included a reduction in the scope of the extension in order to re-orientate the living spaces and the external areas away from the overlooking so as to protect their privacy. A ground floor window facing the boundary was omitted also for this reason. Some internal works were redesigned.
- The appellants submission details overlooking from their property towards the applicant's bedroom en-suite, dining room and external spaces including the private rear garden. This overlooking is unacceptable. Noted that there is a bronze colouring applied to the glazing to the master en-suite and that there are also opaque blinds installed to the master bedroom en-suite window.
- In examining the evidence submitted by the appellants to demonstrate the direct line of sight into the applicants bathroom it is apparent for this location none of the boundary landscaping proposals included in this granted planning permission have been completed. Should the appellants landscaping scheme be completed in accordance with their planning permission, to including the panting of evergreen oak trees to an initial height of 3.3m, there will be no view from their kitchen into our clients master bedroom en-suite or dining area.

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

- 6.3.1. No further comments.

### **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. With regard to the concerns raised regarding the accuracy of plans submitted I have considered the information available on file and I am satisfied that together with my site inspection that there is adequate information available to consider the appeal. With regard to any non-compliance with planning conditions this is a matter for DRLCC.

7.2. 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
- Visual Amenity
- Residential Amenity
- Appropriate Assessment
- Other Issues

### 7.3. Principle

7.3.1. I refer to Section 2.0 above for a detailed description of the proposed works. It is stated that the permitted development has proceeded with a phased construction, however a number of proposals for alterations have been made, generally amounting to a reduction in the scope of the works permitted. As documented and noted on day of site inspection some of the alterations have been completed e.g the alterations to the single storey extension to the side of the house, rear extension and garage and minor internal layout changes, and it is proposed to retain these changes. There are also alterations proposed to the previously proposed scheme that are yet to be constructed, including landscaping and finishes for the garage, and rear extension. Additionally, it is proposed to retain a change to the surface water drainage layout, now draining to soakaway in the rear garden as conditions in the previous grant of permission.

7.3.2. 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 extensions and alterations to an existing dwelling for residential purposes is considered a permissible use. Having regard to the permitted development on site together with the nature and scale of works to be retained and those proposed I am satisfied that the principle of the development is acceptable at this location subject to the acceptance or otherwise of site specifics / other policies within the development plan and government guidance.

#### **7.4. Visual Amenity**

7.4.1. The works to be retained are considered to be minor and do not harm the traditional character of the property when viewed from North Avenue. I am generally satisfied that the scale and design of the works to be retained and those proposed do not overwhelm or dominate the original form or appearance of the parent building and that the use of materials are compatible with the original house and surrounding area.

#### **7.5. Residential Amenity**

7.5.1. Much of the concern raised in the appeal and response to same centres on issues of overlooking between both properties. As observed on day of site inspection (site photos refer) there are clear and uninterrupted views between both houses and rear gardens. This unusual situation is the result of site levels, orientation of both dwellings, their proximity to each other and absence of a mature landscaped boundary between both. To my mind there is a shared responsibility to ensure maximum privacy is achieved and maintained between both parties. To this end I note the applicant's stated intention to plant suitable screening along this boundary. However, no details of same have been provided with the proposed scheme. Given the sensitive nature of the site further details are essential.

7.5.2. When permission was granted under ABP 304394-19 (D19A/0113) for works to the neighbouring property at Burnside; Condition No 3 required landscaping works to be carried out on the site. I recommend that a similar approach be taken in this case and that a condition be attached requiring detailed landscape boundary proposals to be submitted and agreed in writing with the Planning Authority. Given the particular circumstances in this case careful consideration of the type and nature of the landscape boundary treatment will be required to ensure its successful execution.

Therefore, in line with Condition No 4 of ABP 304394-19 it is recommended that the developer retain the professional services of a qualified Landscape Architect throughout the life of the site development.

7.5.3. As stated by the Case Planner the issue for consideration is the change to the size and design of the approved rear facing master bedroom window. The appellant in their submission raises specific concerns with regard to the large clear glass first-floor rear window (master bedroom) and the view of the applicant's bathroom from their property. Having examined the plans and visited the site, I agree with the Case Planner that in absolute terms the window as constructed is considered to be an appropriate size serving a master bedroom. However, the difficulty arises in this case in that the applicant's bath and toilet are clearly visible externally from the site. While a detailed landscaping plan, as recommended above, may in time overcome this situation I consider that in a mature compact urban area such as this an immediate intervention is more appropriate. Therefore, it is recommended that the rear window will be raised by 1 meter to ensure the bath and toilet are not visible externally from the site.

7.5.4. With regards to the issues raised regarding the potential for the flat roof areas of the extensions to be used as a terrace or balcony recommend that a condition be imposed restricting the use of same in order to protect the privacy of the neighbouring properties.

## 7.6. **Vehicular Entrance**

7.6.1. The applicant is also seeking the retention for amendments to the vehicular entrance and pedestrian gate. Under the approved application (Reg Ref D19A/0940 refers), the entrance was permitted at 3.5 metres in width (as set out in Condition 5 of the permission) with a pedestrian gate adjacent. The applicant now seeks retention for a vehicular entrance 3.8 metres in width and relocated pedestrian gate. In the notification of decision grant permission Condition No 5 also sought the reduction in width to 3.5 metres.

7.6.2. The relocation of the pedestrian gate is acceptable. With regard to the width of the gate entrance to be retained I refer to Section 8.2.4.9 of the Development Plan that allows for a maximum vehicular entrance width of 3.5 metres. I agree with the previous

approach by DLRCC and the Board and recommend that should the Board be minded to grant permission that a condition be attached reducing the width to no more than 3.5 metres.

## 7.7. **Appropriate Assessment**

- 7.7.1. Having regard to the nature and scale of the proposed development 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.

## 7.8. **Other Issues**

- 7.8.1. **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.

## 8.0 **Recommendation**

- 8.1. It is recommended that permission be **GRANTED** subject to the reasons and considerations set out below

## 9.0 **Reasons and Considerations**

- 9.1. 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; the pattern of existing and permitted 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 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

## 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><b>Reason:</b> In the interest of clarity</p>
2.	<p>Save for amendments granted on foot of this permission, the development shall otherwise be carried out in strict accordance with the terms and conditions of Planning Permission Reg. Ref. under D15A/0657 save as may be required by the other conditions attached hereto.</p> <p><b>Reason:</b> In the interest of the proper planning and sustainable development of the area.</p>
3.	<p>The rear window cill be raised by 1 meter to ensure the bath and toilet are not visible externally from the site.</p> <p><b>Reason:</b> in the interest of residential amenity.</p>
4.	<p>a) Within three months of the grant of permission the applicant shall submit a detailed boundary landscaping plan to be agreed in writing with the Planning Authority.</p> <p>b) The landscaping scheme shall be carried out within the first planting season following this decision. All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development shall be replaced within the next</p>

	<p>planting season with other of similar size and species, unless otherwise agreed in writing with the planning authority.</p> <p><b>Reason:</b> In the interest of residential amenity.</p>
5.	<p>Prior to commencement of development, the developer shall retain the professional services of a qualified Landscape Architect as Landscape Consultant throughout the life of the site development works and shall notify the planning authority of that appointment in writing. The developer shall engage the Landscape Consultant to procure, oversee and supervise the landscape contract for the implementation of the permitted landscape proposals. When all landscape works are inspected and completed to the satisfaction of the Landscape Consultant, they shall submit a Practical Completion Certificate (PPC) to the planning authority for written agreement, as verification that the approved landscape plans and specification have been fully implemented.</p> <p><b>Reason:</b> To ensure full and verifiable implementation of the approved landscape desing proposals for the permitted development, to the approved standards and specification.</p>
6.	<p>The roof area of the extensions shall not be used as a balcony, roof (terrace) garden or similar amenity area.</p> <p><b>Reason:</b> In the interests of residential amenity.</p>
7.	<p>Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, as amended, no further structures or patios shall he erected and no alteration in site levels shall take place within the overall site without the benefit of a separate grant of planning permission.</p> <p><b>Reason:</b> To protect the residential amenities of adjoining properties and to allow the Planning Authority to assess the impact of any such development through the statutory planning process.</p>
8.	<p>Within three months of the grant of permission the width of the vehicular entrance shall be reduced to a width of no more than 3.5 metres.</p> <p><b>Reason:</b> In the interest of road safety.</p>

9.	<p>Drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p><b>Reason:</b> In the interest of public health.</p>
10.	<p>The site and building works required to implement the development shall be carried out only between the hours of 0800 to 1800 Monday to Fridays, between 0800 to 1400 hours on Saturdays and not at all on Sundays and Public Holidays. Deviation from these times will 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 adjoining property in the vicinity</p>
11.	<p>Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006.</p> <p><b>Reason:</b> In the interest of sustainable waste management.</p>
12.	<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</p>



	<p>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> <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</p>
--	--

---

**Mary Crowley**

**Senior Planning Inspector**

**24<sup>th</sup> June 2020**