



An  
Bord  
Pleanála

## Inspector's Report

### ABP-307140-20

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| <b>Development</b>                  | Retention of amendments to dwelling.               |
| <b>Location</b>                     | 35 Castle Avenue, Swords, Co.<br>Dublin, K67 ND26. |
| <b>Planning Authority</b>           | Fingal County Council                              |
| <b>Planning Authority Reg. Ref.</b> | F20B/0018  |
| <b>Applicant(s)</b>                 | Andrea and Des Butler.                             |
| <b>Type of Application</b>          | Retention Permission.                              |
| <b>Planning Authority Decision</b>  | Grant Retention Permission                         |
| <b>Type of Appeal</b>               | Third Party  |
| <b>Appellant(s)</b>                 | John McConnell and Caroline<br>Brennan.            |
| <b>Observer(s)</b>                  | None.  |
| <b>Date of Site Inspection</b>      | 7 <sup>th</sup> of August 2020.                    |
| <b>Inspector</b>                    | Stephanie Farrington                               |

## 1.0 Site Location and Description

- 1.1. The appeal site is located at no. 35 Castle Avenue, Swords, Co. Dublin. Castle Avenue is an established residential area c. 350 m to the east of Main Street in Swords and comprises a mix of 2 storey detached, semi detached and terrace properties.
- 1.2. No. 35 is a detached 2 storey dwelling with paved driveway to the front of the property and dished driveway entrance from Castle Avenue.

## 2.0 Proposed Development

- 2.1. The proposed development relates to retention permission for construction of amendments to the dwelling comprising the following:
  - Increase in height of flat roof over single storey garage and porch by 0.875m
  - Change of elevational finish from brick to napp plaster
  - Replacement of garage door with window
  - Increase in floor area by way of a side extension of 1.7 sq.m. to provide a link corridor providing access from the dwelling to the playroom.

## 3.0 Planning Authority Decision

### 3.1. Decision

Fingal County Council issued a decision to grant retention permission for the proposal subject to 5 no conditions. The following conditions are of note:

- Condition no. 1: Development shall be retained in its entirety in accordance with plans, particulars and specifications lodged with the application, save as may be required by other conditions attached hereto. In this regard, no part of the development to be retained shall encroach on or oversail adjoining property.
- Condition no 2. Requires a revised layout which indicates the provision of 2 in curtilage parking spaces.

## 3.2. **Planning Authority Reports**

### 3.2.1. Planning Reports

The Planner's report reflects the decision of the planning authority. The following provides a summary of the points raised.

- No undue impact on the residential amenity of adjoining properties is envisaged having regard to the scale and design of the proposal.
- Visual impact is minimal and no adverse impacts are considered from replacement of garage door with a window and change in elevational treatment from brick to napp plaster. The proposal would not represent a discordant feature in the area.
- Concerns regarding oversailing existing boundary and consent to do same are civil issues.

### 3.2.2. Other Technical Reports

Water Services Division: no objection subject to condition.

Transportation Planning Section: Concerns raised in relation to parking provision- 2 spaces required for a 4 bedroom dwelling in accordance with Development Plan standards. The works have removed an existing in curtilage parking space which is not deemed acceptable in light of parking capacity issues within the vicinity. It is noted that there appears to be sufficient space for 2 spaces to the front of the dwelling. Report recommends a revised layout which illustrates the provision of 2 in curtilage parking spaces.

## 3.3. **Prescribed Bodies**

Irish Water – no objection to the proposal.

## 3.4. **Third Party Observations**

1 no. submission was received on the application from the adjacent residence at no. 37 Castle Avenue. The following provides a summary of the issues raised:

- Works undertaken including infill of 75mm gap between the 2 properties to the front and 750mm to the rear have altered no 37 from a detached to a semi detached property. Extension has been fixed to the northern side of no. 37. The applicant did not obtain consent for such works and no reference to these works is included in the public notices.
- Works jeopardise the structural integrity and depreciate the value of no. 37. Refers to Section 191 (10) of the Planning and Development Act 2010 (as amended) which outlines reasons for refusal which exclude compensation- i.e. extension which would (c) *seriously injure the amenities, or depreciate the value, of property in the vicinity*".
- Refers to new boundary pillar constructed between no. 35 and no. 37 which protrudes onto lands in the ownership of no. 37.
- Development is out of character with the existing streetscape and fails to protect the amenity of adjoining properties and sets a negative precedent for future development in the area.

## 4.0 Planning History

There is no planning history associated with the appeal site.

## 5.0 Policy Context

### 5.1. Development Plan

Fingal County Development Plan 2017-2023

5.1.1. The Fingal County Development Plan 2017-2023 is the relevant statutory plan. A number of Development Plan objectives are relevant:

- The site is zoned RS with an objective to "provide for residential development and protect and improve residential amenity".
- Objective PM46 encourages sensitively designed extensions to existing dwellings which do not negatively impact on the environment or on adjoining properties or area.

- Section 12.4 sets out ‘Design Criteria for Residential Development’. The following extract relates to extensions to dwellings:

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

- Side extension “will be evaluated against proximity to boundaries, size and visual harmony with existing (especially front elevation) and impacts on residential amenity”.
- Objective DMS42: Encourage more innovative design approaches for domestic extensions.

## 5.2. Natural Heritage Designations

The following designated sites are located c.1.3km to the north east of the appeal site:

- Malahide Estuary SPA 004025
- Malahide Estuary SAC 000205

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- 6.1.1. A third-party appeal has been received from Downey Planning on behalf of the adjoining residents at no. 37 Castle Avenue. The grounds of appeal primarily reflect the points raised within the observation on the application as detailed in Section 3.4. The following additional points are raised:

- Impact on Residential Amenity - Works undertaken impact on the structural integrity and depreciate the value of no. 37. Conversion of garage to a playroom has seriously materially altered the property from a detached to a semi detached property.
- A case is made that condition no. 1 which states that *“no part of the development to be retained shall encroach or oversail adjoining property”* is

fundamentally flawed as the development does over sail and encroach into the neighbour's property. A case is made that compliance with the requirements of Condition no. 1 would require more works to no 35 further damaging the property.

- In relation to Condition no. 2 it is stated that the Transportation Planning Section had serious concerns regarding the car parking provision and shortfall in 1 no. parking space. A case is made that the requirements of Condition no. 2 are fundamental, and the appellant will be precluded from commenting on them. It is stated that Condition no. 2 is inappropriate and requires significant matters to be agreed with the planning authority.
- Validity of application. Inaccuracies in the labelling of the plans, letter of consent not submitted and full extent of works are not described in the public notices.

## 6.2. Applicant Response

O' Neill Town Planning have provided a response to the third-party appeal on behalf of the applicant. The following provides a summary of the points raised:

- The applicant will fully comply with the 5 no. conditions attached by the planning authority.
- Outlines that there are no shared walls between no. 35 and no. 37, the roofs are not shared and both properties are detached properties. Appellants claims regarding the change in the status of the property from detached to semi-detached and subsequent devaluation are misplaced and ill informed.
- The proposed development is a minor development carried out within the legal boundaries of the applicant's property.
- Contiguous elevations are included which illustrate that the properties along Castle Avenue are detached properties, but the roof of the garages abut the wall of the next-door property. In all cases it is noted that guttering overhangs the adjoining garage and as such the neighbour's property.
- The applicant has built up to the site boundary and have done so without interfering with the appellants property.

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

Fingal County Council have provided a response to the grounds of appeal which outlines the following:

- The proposal was assessed having regard to the development plan zoning objectives as well as the impact on adjoining neighbours and the character of the area.
- All works are shown within the red line boundary, of which the applicants have indicated they are the owners. The dwellings remain connected at the front elevation as they were previously and there is no material change in dwelling types.
- Having reviewed the grounds of appeal it remains the opinion of the planning authority that planning permission should be granted for the proposed development.
- In the event that planning permission is granted, the planning authority requests that Condition no. 5 is included within the Boards determination.

### 7.0 **Assessment**

7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, and inspected the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Legal Issues and Condition no. 1
- Impact on Residential Amenity of no. 37 Castle Avenue
- Visual impact
- Condition no. 2
- Appropriate Assessment
- Other issues

## 7.2. Legal Issues and Condition no. 1

- 7.2.1. Concerns are raised in the appeal that the applicant did not obtain the consent of the appellants for works undertaken as part of the development. Such works include the infill of 75mm gap between the 2 properties to the front and 750mm to the rear and fixing of the extension to the northern side of no. 37.
- 7.2.2. From review of the contextual elevations it is evident that the garage of no. 35 was previously connected to no. 37 to the front and side of the property. This is a design feature in properties on Castle Avenue.
- 7.2.3. Condition no. 1 of the notification of decision of Fingal County Council to grant permission for the proposed development outlines that *“no part of the development to be retained shall encroach on or oversail adjoining property”*.
- 7.2.4. The appellant has made the case that the requirements of Condition no. 1 are fundamentally flawed as it is alleged that the development does oversail and encroach into the neighbour’s property. The applicant has made the case that all works undertaken are within the legal boundaries of the applicant’s property. In this regard there is a dispute in relation to the extent of property ownership.
- 7.2.5. I am of the view that the issues raised in the appeal relating to ownership and consent are civil matters and are not matters that the Board can consider. In this regard, Section 34 (13) of the Planning and Development Act states that, ‘a person shall not be entitled solely by reason of a permission under this section to carry out any development’.
- 7.2.6. Section 5.13 of the Development Management Guidelines (DEHLG, 2007) provides guidance on this matter, stating that *‘the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts’*. The guidelines state that where in making an application, a person asserts that he or she is the owner of the land or structure in question, and there is nothing to cast doubt on this, the planning authority is not required to inquire further into the matter.
- 7.2.7. As stated in the planning officer’s report, the granting of planning permission does not entitle any party to undertake works on lands outside their ownership. On this



basis, I consider the requirements of Condition no. 1 to be both appropriate and warranted in the context of the subject application.

7.2.8. In conclusion, I am of the view that the issues raised in the appeal are civil matters that fall outside of the Planning and Development Acts and that the Board is not empowered to make a determination in relation to such matters. It is not the Board's role to determine legal title or entitlement to any given lands.

### **7.3. Impact on Residential Amenity of no. 37 Castle Avenue**

7.3.1. A case is made in the 3<sup>rd</sup> party appeal that the works which have been undertaken to no. 35 Castle Avenue impact on the structural integrity and depreciate the value of the adjoining residential property at no. 37 Castle Avenue. It is stated that the works undertaken have materially altered the property from a detached to a semi-detached property.

7.3.2. In responding to the grounds of appeal, the applicant has made the case that there are no shared walls between no. 35 and no. 37, the roofs are not shared and both properties even though they abut each other are detached properties.

7.3.3. From review of the contextual elevations it is evident that the garage of no. 35 was previously connected to no. 37 to the front and side of the property. This is a design feature in properties on Castle Avenue. The dwellings remain connected at the front and rear elevation as they were previously. In this regard I do not consider there to be a material change in dwelling type, both properties remain as detached properties.

7.3.4. Having regard to the above, I do not consider that the works which have been undertaken seriously injure the character of no. 37 to such an extent that would adversely affect the value of property.

### **7.4. Visual Impact**

7.4.1. The appellant has made a case that the works undertaken to no. 35 are out of character with the existing streetscape of Castle Avenue, fails to protect the amenity of adjoining properties and sets a negative precedent for future development in the area.

7.4.2. The guidance set out within the Fingal County Development Plan 2017-2023 outlines that side extensions "*will be evaluated against proximity to boundaries, size and*

*visual harmony with existing (especially front elevation) and impacts on residential amenity”.*

- 7.4.3. I consider that the works undertaken are minor in nature and consider that the visual impact is minimal. No adverse impacts are evident from the raising of height of the roof of the garage and porch, replacement of garage door with a window and change in elevational treatment from brick to napp plaster. Similar interventions are evident within the wider Castel Avenue/Castle Park area.
- 7.4.4. In terms of proximity to site boundaries, it is evident from review of the contextual elevations that the garage of no. 35 was previously connected to no. 37 to the front of the property. This is a design feature in properties on Castle Avenue.
- 7.4.5. Having regard to the minor nature of the works undertaken I do not consider that the works undertaken are out of character or visually discordant with the existing streetscape of Castle Avenue.

## **7.5. Condition no. 2**

- 7.5.1. Condition no. 2 of the permission requests the submission of revised layout for the proposed development which includes provision of 2 no. in curtilage car parking spaces for written approval of the planning authority, prior to the commencement of development.
- 7.5.2. This condition is attached on foot of the report received from the Transportation Planning Section which outlines that the removal of an existing in curtilage parking space would be unacceptable. The report refers to Development Plan parking requirements of 2 spaces for a 4 bed house and outlines that it is considered that there is sufficient space to the front of the property to accommodate the provision of 2 in curtilage parking spaces.
- 7.5.3. The appellant has made a case that the requirements of Condition no.2 are fundamental and require significant matters to be agreed with the planning authority. Concern is raised that the revised proposals could impact on the adjoining property and the appellant will be precluded from commenting on these.
- 7.5.4. The applicant's response to the 3<sup>rd</sup> party appeal prepared by O' Neill Town Planning refers to a revised site layout plan which includes parking for 2 no. vehicles in

accordance with the requirements of Condition no. 2. However, I note that no revised plan has been submitted in conjunction with the appeal response.

- 7.5.5. Notwithstanding the above, on review of the existing site layout plan and the dimensions of the front garden at c8.1m by c5.5m I consider that there is sufficient space within the existing front garden to accommodate parking for 2 no. vehicles. I note that a number of properties in the vicinity of the site accommodate parking for 2 no. cars in the front garden.
- 7.5.6. The majority of the front garden of no. 35 is currently paved. I am not clear if such works have been recently undertaken or if were in place at the time of the planning authority's decision. In my view, the driveway in its current format would appear to accommodate 2 in curtilage parking spaces. This could be demonstrated in compliance with condition no. 2 of the permission.
- 7.5.7. Contrary to the appellants assertion I do not consider that works associated with the provision of in curtilage parking would be significant or impact on the amenity of adjoining residential properties. In this regard I have no objection in principle to the requirements of Condition no. 2.
- 7.5.8. I note the wording of Condition no. 2 which relates to the submission of a revised parking layout prior to the commencement of development. Having regard to the nature of the application, which relates to retention of works undertaken, I recommend a slight revision to the wording of this condition to remove the reference to prior to the commencement of development. I consider it appropriate to attached a timeframe for compliance with this condition of 3 months.

## 7.6. **Appropriate Assessment**

- 7.6.1. Having regard to the minor nature of the development and its location in a serviced urban area, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 7.7. **Other Issues**

### Validity of Application

- 7.7.1. The appellant raises concerns in relation to the validity of the application on the basis of inaccuracies in the labelling of the application drawings and inadequate

development description. I consider the references in this instance to be minor in nature and note that the application was deemed valid by the planning authority. The works for which retention permission is sought are, in my view, clearly outlined and annotated in Drawing no. P19.023-2.

#### Boundary Pillar

- 7.7.2. Reference is made within the 3<sup>rd</sup> party appeal to works to the new boundary pillar constructed between no. 35 and no. 37 which protrudes onto lands in the ownership of no. 37. No details of the pillar are provided within the application drawings and no reference to the provision of the pillar is provided within the public notice. On this basis I consider that such works are outside the scope of the current application to adjudicate upon.

### **8.0 Recommendation**

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

### **9.0 Reasons and Considerations**

Having regard to the scale and design of the development to be retained and to the pattern of existing development in the area, it is considered that the development proposed to be retained, subject to compliance with the conditions set out below, does not seriously injure the amenities of the area or of property in the vicinity and would not conflict with the objectives of the Fingal Development Plan 2017-2023. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

### **10.0 Conditions**

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| 1. | The development shall be retained in its entirety 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. No part of the development to be retained shall encroach on or oversail adjoining property. |
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|    | <b>Reason:</b> In the interest of clarity   |
| 2. | <p>Within 3 months of the issue of this decision, the applicant shall provide a revised drawing illustrating the provision of 2 no. in-curtilage parking spaces for written agreement of the planning authority.</p> <p><b>Reason:</b> In accordance with the proper planning and sustainable development of the area.</p>  |
| 3. | <p>Water supply and drainage arrangements, including the disposal and attenuation 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>   |
| 4. | <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 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.</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> |

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Stephanie Farrington  
Senior Planning Inspector  
20<sup>th</sup> of August 2020