



An  
Bord  
Pleanála

## Inspector's Report

### ABP-307226-20

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<b>Development</b>	Permission for two slit horizontal windows at high level on side wall of existing extension to rear of house.
<b>Location</b>	77 Maryville Road, St. Anne's, Raheny, Dublin 5.
<b>Planning Authority</b>	Dublin City Council North
<b>Planning Authority Reg. Ref.</b>	4571/19
<b>Applicant(s)</b>	Fergal Russel
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant subject to conditions
<b>Type of Appeal</b>	Third Party V Grant
<b>Appellant(s)</b>	Ailish O' Neill
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	31 <sup>st</sup> July 2020
<b>Inspector</b>	Máire Daly



## 1.0 Site Location and Description

- 1.1. The subject property comprises a two storey, mid terrace dwelling located on the northern side of Maryville Road, Raheny, which is approximately 6km northeast of Dublin city centre. The dwelling forms part of a larger established housing estate of similar houses bounded by the Howth Road to the north, All Saints Road to the south and Watermill Road to the east. Raheny Village lies to the east of the site and St. Annes Park is to the south.
- 1.2. The site is rectangular in shape and measures a stated 264sq.m. Access to the site is from the existing estate road and the front garden is hard landscaped and accommodates off street parking. To the rear is a mono-pitched roofed single storey extension with a single skylight set into the roof structure and five higher level windows on three sides of the elevations, this extension houses the kitchen of the dwelling. The monopitch structure is connected to the main dwelling via a flat roofed structure which houses the dining room. A small outdoor patio area is nestled between the main dwelling and the extension and flat roofed structure, the boundary wall with the adjoining dwelling (No. 75 Maryville Road) borders the western side of the site. The two high level slit windows, the subject of this application can be seen on the western facing elevation of the monopitch structure. The back garden is enclosed by an established hedging over 2metres in height, the garden is accessed from the kitchen via a set of double doors.

## 2.0 Proposed Development

- 2.1. The proposed development comprises:
  - Permission for two slit horizontal windows, at high level on the western side wall of the existing single storey extension to rear of house.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. The Planning Authority decided to grant permission subject to seven conditions, most of which are standard in nature, but also including the following condition no.3:

*The two horizontal slit windows the subject of this permission shall be fitted with permanently obscure fixed glazing.*

**Reason:** *In the interest of the protection of residential amenity*

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The report of the Planning Officer (March 2020) reflects the decision of the Planning Authority.

Further Information was requested by the Planning Officer in their initial report (Jan 2020) in relation to two no. items.

1. Concerns were raised regarding the completion of the existing rear single storey extension, and evidence of same was requested.
  2. In addition, the Planning Authority requested evidence of the existing extension's compliance with the thresholds for exempt development as set out in Schedule 2, Part 1, Class 1 of the Planning and Development Regulations 2001 (as amended).
- Further information was received in February 2020, this included photographic evidence submitted in response to item no.1 above showing that the rear extension was at a substantial phase of construction with no evidence of high-level window openings on the western gable wall.
  - In response to item no. 2 above the applicant submitted evidence of the gross internal floor area. The Planning Officer raised concerns with the calculations submitted, however stated that notwithstanding the possible miscalculation that they were still satisfied that the extension was consistent with the provisions of the P&D Regulations 2001 (as amended) with regard to the internal floor area measuring less than 40sq. metres.
  - In addition, the Planning Officer considered that the height of the walls of the rear extension did not exceed the height of the rear wall of the house. The Planning Officer noted that the chimney pot is above eaves level of the house, however, stated that it is reasonable to assume that the chimney pot is not part of the side wall of the house. The Planning Officer concluded therefore that the existing

single storey dwelling complies with Schedule 2, Part 1, Class 1 of the P&D Regulations 2001 (as amended).

- In assessing the proposal for the insertion of two slit windows to the western elevation of the extension, the Planning Officer stated that due to their height above ground and their modification to include obscure glazing, that they should have little detrimental impact on the amenities of neighbouring properties. Condition no. 3 of the planning permission included the requirement that the windows be fitted with permanent obscure fixed glazing.

### 3.2.2. **Other Technical Reports**

Engineering Department (Drainage Division) – no objection, subject to conditions.

### 3.3. **Prescribed Bodies**

Irish Water – no response.

### 3.4. **Third Party Observations**

None.

## 4.0 **Planning History**

### 4.1. **Appeal Site**

There are no previous planning applications pertinent to the appeal site, however, the following Exempted Development applications applied for under Section 5 of the Planning and Development Act 2000 (as amended) are relevant:

- P.A. Ref. EXPP 0301/19 Dublin City Council (DCC) (issued August 2019) – The proposal for the erection of a single storey rear extension with monopitched roof and rooflight was considered to be exempt development in line with Schedule 2, Part 1, Class 1 of the Planning and Development Regulations 2001 (as amended).
- P.A. Ref. EXPP 0209/19 DCC (issued June 2019) – The proposal was not deemed to be exempted development as set out under the Planning and Development Regulations 2001 (as amended) Schedule 2, Part 1, Class 1

*Development within the curtilage of a house, as the development did not comply with the conditions and limitans set out under 6 (a) – as the windows proposed at ground floor level were not more than 1 metre from the side boundary of the dwelling.*

## **5.0 Policy Context**

### **5.1. Development Plan**

- 5.1.1. The operative Development Plan is the Dublin City Development Plan 2016-2022. The appeal site has a zoning objective 'Z1 - Sustainable Residential Neighbourhoods', with a stated objective '*to protect, provide and improve residential amenities*'.
- 5.1.2. Relevant planning policies and objectives for residential development are set out under Section 5 (Quality Housing) and Section 16 (Development Standards) within Volume 1 of the Development Plan.
- 5.1.3. Appendix 17 to Volume 2 of the Development Plan provides guidance specifically relating to residential extensions. The following sections are particularly relevant to the current appeal:
- *Section 17.4 Privacy* which states '*Extensions should not result in any significant loss of privacy to the residents of adjoining properties. Generally, windows overlooking adjoining properties (such as in a side wall) should be avoided. Where essential, the size of such windows should be kept as small as possible and consideration should be given to the use of high-level windows and/or the use of obscure glazing where the window serves a bathroom or landing*'.
  - *Section 17.6 Daylight and Sunlight* which states '*Consideration should be given to the proportion of extensions, height and design of roofs as well as taking account of the position of windows including rooms they serve to adjacent or adjoining dwellings*'.

## 5.2. Natural Heritage Designations

None relevant.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

1 no. appeal was received from DBFL Consulting, acting on behalf of the appellant Ailish O' Neill who is the owner of the adjoining property to the west at No. 75 Maryville Road. The grounds of appeal can be summarised as follows:

- The planned windows directly overlook the patio area and would affect the privacy of the appellant's garden patio.
- The appellant fears that the windows would negatively impact plans to extend her property.
- The windows do not follow building regulations in relation to minimum distance from the boundary.
- The requirement for the windows to be permanently obscure fixed glazing does not adequately address the objections lodged at application stage.
- The decisions made on the Section 5 application P.A Ref. EXPP 0209/19 made in June 2019 found the proposed extension was not exempt with specific reference to the windows.
- The conditions of the Section 5 Declaration issued under P.A. Ref: EXPP 0301/19 of June 2019 specifically stated that any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.
- The issue of the windows was raised in November 2019 as part of the planning application, the extension was under construction and slots for the windows were included without planning permission (photographic evidence has been submitted showing same).
- The application P.A. Ref. 4571/19 submitted in November 2019 inferred the extension was complete – it was not, however the window slots had been

included at that stage without planning permission and in direct contradiction to the decision made on the Section 5 application.

- The appellant fails to see how the application (P.A. ref. 4571/19) could be granted in March 2020 contrary to the two Section 5 Declarations which state that windows within 1 metre of a boundary require planning permission.

## 6.2. Applicant Response

- No response received.

## 6.3. Planning Authority Response

- No response received to grounds of appeal.

## 6.4. Observations

- None received.

## 7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including 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:

- Application Type
- Residential Amenity
- Appropriate Assessment

## 7.2. Application Type

7.2.1. As part of the appeal documentation it is stated that the applicant seeks 'planning permission' to create two slit horizontal windows at a high level (3.25m above FFL) on the side wall (western elevation) of the existing single storey extension to the rear of the dwelling. The windows are to be located approx. 150mm below the western gable wall of the upper slope of the monopitch roof extension. Following a site



inspection, I note that these windows are in fact already in place with obscured glazing inset, on the side (western) elevation of the now completed rear extension. A question therefore arises as to the validity of the application and the type of permission applied for which now may fall under 'retention permission'. In order to examine this issue further a detailed examination of the background to the appeal site and the previous applications on it has been carried out, as follows:

7.2.2. The site layout as submitted with the planning application (P.A. ref. 4571/19) describes the rear extension as 'under construction, exempt development', following a site inspection I can confirm that this extension is now fully complete. The Board should note that the applicant has applied for planning permission for the two windows as they would not conform with the exemption requirements under Schedule 2, Part 1, Class 1 *Development within the curtilage of a house*, condition 6 limitation (a) of the Planning and Development Regulations 2001 (as amended), as the required minimum distance of 1 metre between the proposed windows and the boundary could not be met. The applicant previously applied for and received an exemption certificate under Section 5 of the Planning and Development Act 2000 (as amended) in August 2019 for the now existing rear extension, this is evidenced in P.A. ref. EXPP 0301/19 and has been included in the appeal documentation for reference. As part of the Planner's Report for this Section 5 application the Planner referred to 'French doors and two clerestory high level windows on the western elevation' and stated 'these windows are indicated as being one metre from the shared boundary, this is in accordance with Condition 6 (a)'. The relevant drawings, which were submitted at the time to the Planning Authority were not made available in the appeal documentation, therefore it was not possible to determine which windows the Area Planner was referring to. However, it is noted that a previous Section 5 declaration (P.A. ref. EXPP 0209/19) determined the development not exempt in June 2019, due to the positioning of side windows at 0.85metres from the western boundary wall. The subsequent application made under P.A. ref. EXPP 0301/19 appeared to rectify this issue.

7.2.3. I would draw the Board's attention to the following - as part of the further information submitted to the Planning Authority by the applicant in February 2020 photographic details were included. In these photos the western elevation wall of the dwelling was shown to be fully completed, with no openings for said proposed windows. However,

the appellant submitted photographic evidence with the appeal showing the openings in the western side wall elevation in November 2019 (3 months prior). There therefore appears to have been several alterations to this western side wall as the extension was being constructed. The issue of retention was not raised by the Planning Authority at the time and as there appear to have been several changes made to the inclusion or not of these windows in the western side wall I feel the best approach now is to assess the development as it is currently in place and examine whether these obscured glazed windows should now remain or not.

### **7.3. Residential Amenity**

7.3.1. The third-party appellant has three main concerns in relation to the development:

1. The non-compliance with planning regulations;
2. The potential of overlooking from the windows and the impact on their privacy;  
and
3. The future restrictions that the windows may place on her extending her property.

7.3.2. In order to address item 1 in relation to non-compliance, I would again draw the Board's attention to the history of the appeal site as discussed in Section 7.2 above. The applicant has sought to regularise development on the site by applying to the Planning Authority for a Section 5 Exemption Certificate for the rear extension. In August 2019 the Planning Authority responded stating the development was considered to be exempt in accordance with Schedule 2, Part 1, Class 1 of the Planning and Development Regulations 2001 (as amended). As part of the current appeal, I note from photographic evidence submitted by the applicant and the appellant, that there have been some variances to the side wall (western) of the extension where the two high level windows are now in place. The applicant submitted application P.A. ref. 4571/19 to gain approval for permission to insert the two side windows into the confirmed exempt rear extension, however as discussed above I can confirm these windows are now in place. While it is acknowledged that there is some confusion over the approach to gaining permission, the question of the impact of the windows on the neighbouring property is the main concern of the appellants, therefore the windows existence and the impact that they may have on the adjoining property shall form the remainder of this assessment.

- 7.3.3. In relation to Item No. 2, Appendix 17 to Volume 2 of the Development Plan provides guidance specifically relating to residential extensions. *Section 17.4 Privacy* is of relevance to the current appeal and the issues of overlooking are also covered in this section. Section 17.4 acknowledges that in general windows '*overlooking adjoining properties (such as in a side wall) should be avoided*', however then goes on to state that '*where essential, the size of such windows should be kept as small as possible and consideration should be given to the use of high-level windows and/or the use of obscure glazing where the window serves a bathroom or landing*'. The existing windows are situated at high level 3.25 metres above FFL and are finished with obscured glazing. The windows provide additional light to the extension and are at such a high level as to not allow overlooking of the adjoining property. Therefore, I do not consider that these windows will have any significant negative impact on the residential amenities of the adjoining property to the west at No. 75 Maryville Road.
- 7.3.4. In relation to item No. 3 above, the appellant has raised concerns regarding the restrictions the position of the windows may place on her future ability to extend her own property to the rear at No. 75 Maryville Road. The existing boundary to the west of the appeal site is approximately 150mm from the two high level windows, therefore the windows do not directly abut the boundary. The windows are made of obscured glazing and are located 3.25metres above FFL and therefore cannot accommodate overlooking of the adjoining garden. In the event that the appellant does wish to extend her property to the rear of no.75, any development would have to be considered on its own merits and therefore it is not feasible to give a definitive answer on this concern.

#### 7.4. **Appropriate Assessment**

- 7.4.1. Having regard to the minor nature of the development proposed within an existing built-up 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.

### 8.0 **Recommendation**

- 8.1. I recommend that planning permission should be granted, subject to conditions, for the reasons and considerations as set out below.

## 9.0 Reasons and Considerations

Having regard to the 'Z1 Sustainable Neighbourhood' zoning provision for the site and the small scale nature of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable and would not seriously injure the residential amenities of the area or property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. The two horizontal slit windows on the side (western) elevation shall be fitted with permanently obscure fixed glazing.

**Reason:** In the interest of protecting the residential amenity of neighbouring property.

3. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such work and services.

**Reason:** In the interest of public health and to ensure a proper standard of development.

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Máire Daly  
Planning Inspector  
24<sup>th</sup> August 2020