



An
Bord
Pleanála

Inspector's Report

ABP-307474-20

Development	Construction of new detached garden room to rear of dwelling.
Location	226 Howth Road, Dublin 3.
Planning Authority	Dublin City Council North
Planning Authority Reg. Ref.	2388/20
Applicant	Helen MacEvilly
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party V. Refusal
Appellant	Helen MacEvilly
Observer	Nuala Burke
Date of Site Inspection	27 th August 2020
Inspector	Máire Daly

1.0 Site Location and Description

- 1.1. The appeal site (386sq m) is located on the north western side of the Howth Road (R105) just north of the junction with Castle Avenue and Dunluce Road, and approximately 5km north east of Dublin city centre.
- 1.2. The subject site has a single storey semi-detached dwelling located on it which closely mirrors the design of the house on the adjoining site to the north (no. 226A Howth Road). The dwelling and that adjoining it originally formed one house which was subdivided in 2008 under a previous permission (P.A. Ref. 2368/07 DCC). The house is located in a residential conservation area, as defined in the Dublin City Development Plan 2016-2022 and forms part of an area known locally as the Abbeyfield Estate.
- 1.3. The subject site is irregularly shaped and shares its northern boundary with house no. 226A and southern boundary with house no. 224. The dwelling (101sq m) has limited space to the rear with a triangular shaped back garden, with timber fencing bordering the southwestern side and a plastered concrete wall along the northern site boundary. The appeal site has a large area to the front of the dwelling, which is currently used for parking several vehicles, the entrance to the property is directly off Howth Road.

2.0 Proposed Development

- 2.1. The proposed development is to comprise:
 - The construction of a detached flat roofed timber frame garden room (19sq m) to the rear of the existing house.

3.0 Planning Authority Decision

3.1. Decision

Permission was refused on 9th June 2020 for the following reason:

The subject property is located in an important Z2 residential conservation area the zoning objective of which is “to protect and improve the amenities of residential

conservation areas". The proposed development of a garden building would result in the reduction of area and amenity value of the rear private open space to a level inconsistent with the residential amenity of the area and would constitute overdevelopment of a restricted site, in addition to having an undue impact on the residential amenities of the adjoining dwelling through proximity, overbearing and overshadowing. The proposed development, in itself and by the precedent established for similar overdevelopment to dwellings in the vicinity, would cause serious injury to the residential amenities of the area and would be contrary to the residential conservation area zoning objective for the area and the policies and objectives of the current Dublin City Development Plan and the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The recommendation to refuse permission in the area planner's report reflects the decision of the planning authority.

- The area planner notes that the proposed garden room is current under construction and that enforcement action is ongoing. He states that it is debatable whether the application for consideration should be for retention and completion rather than permission.
- The area planner notes condition no. 7 on the previous permission on site P.A. Ref. 2386/07 which states that the permission excludes the development of garden sheds in the rear garden which would normally constitute exempt development, unless such structures are authorised under a separate grant of permission.
- The structure would have a significant presence in the rear garden given the already restricted area and less than optimal triangular layout of the rear garden.
- As a result of the development the rear garden would be reduced in size to a useable area of approx. 20sqm. The structure would reduce the private open space to an unacceptable low amenity value.

- The proximity and extent of the proposed building would result in an unacceptable impact on the residential amenities of the neighbouring property to the north at 226A, in terms of overshadowing and overbearing results on their rear garden.
- The structure would have undue impact on the amenities of the adjoining dwelling and would set an unacceptable and undesirable precedent for similar development in the vicinity which is a residential conservation area.

3.2.2. Other Technical Reports

- Drainage Division – DCC – Report dated 22nd May 2020 - no objection subject to conditions.

3.3. Prescribed Bodies

- Irish Water – no response.
- Irish Rail – no response.

3.4. Third Party Observations

One submission was received from the occupant of the neighbouring property to the north at No.226A Howth Road. Issues raised relating to this proposed development include:

- The structure has been erected in breach of the previous planning permission P.A. Ref. 2368/07, condition no. 7 which sought to prevent the overdevelopment of the site having regard to the limited area available in the back gardens of both houses.
- The structure is very large, stretching to the observer's boundary wall and is out of character in terms of the surrounding vicinity.
- Impacts in relation to overshadowing and overlooking of the observer's kitchen.
- Visual impact including loss of existing views, skyline, trees, sunset etc.
- The recreational space in the observer's garden would be greatly reduced.

- The historical significance of the area should be taken into account and the impact that the development would have on same.

4.0 Planning History

4.1. On site:

- P.A. Ref. 6330/07 Dublin City Council (DCC) – 2008 – Permission granted for modifications to the previously approved subdivision of existing house and site to provide two dwellings (P.A. Ref 2368/07). These modifications included internal alterations to provide a non-habitable room at attic level of house no. 1 (no. 226), additional roof windows to the east and west roof pitches and a bay window to the east facade of both houses.
- P.A. Ref. 2368/07 DCC – 2007 – Permission granted for subdivision of existing single storey house to form 2 no. two bed single storey semi-detached houses. Of note was condition no. 7 which stated the following:
This permission excludes any extensions to the rear of the proposed houses, together with conservatories, garden sheds, boiler houses or other such structures which would normally constitute exempted development within the meaning of the Planning and Development Regulations 2001, unless such structures or extensions are authorised by a separate grant of planning permission.
REASON: To prevent overdevelopment of the site, having regard to the limited area available within the rear gardens.
- ABP Ref. PL 29N.201549 - Permission Refused by ABP for demolition of existing single storey house and its replacement by a terrace of four two-storey houses. Reason for refusal – the development would be out of character with the pattern of development in the area and would seriously injure the visual integrity and amenities of the area and of property in the vicinity. (P.A. Ref. 3048/02 DCC).

4.2. Enforcement

- Case currently open – P.A. Ref. E0083/20 DCC - Alleged breach of condition no. 7 of P.A. Ref. 2368/07 - no exempt development/extensions to rear without planning permission.

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 'Z2 - Residential Neighbourhoods (Conservation Areas)' with a stated objective '*to protect and/or improve the amenities of residential conservation areas*'.

5.1.2. Relevant planning policies and objectives for residential development are set out within Volume 1 of the Development Plan under Chapters 11 – Built Heritage and Culture, and 16 – Development Standards, detailing the policies and objectives for residential conservation areas and standards respectively.

5.1.3. Chapters 11 – Built Heritage and Culture

- Section 11.1.5.6 - Conservation Area – Policy Application states that '*All new development must have regard to the local context and distinctiveness and the contribution to the local scene of buildings, landmarks, views, open spaces and other features of architectural, historic or topographical interest*'.

5.1.4. Chapter 16 – Development Standards

- Section 16.2.2.3 Alterations and Extensions states '*Dublin City Council will seek to ensure that alterations and extensions will be sensitively designed and detailed to respect the character of the existing building, its context and the amenity of adjoining occupiers*'. This section further states '*In particular, alterations and extensions should: Retain a significant proportion of the garden space, yard or other enclosure*'
- Section 16.10.2 Residential Quality Standards – Houses Private Open Space states '*Private open space for houses is usually provided by way of private gardens to the rear or side of a house. A minimum standard of 10 sq.m of*

private open space per bedspace will normally be applied. A single bedroom represents one bedspace and a double bedroom represents two bedspaces. Generally, up to 60-70 sq.m of rear garden area is considered sufficient for houses in the city'.

5.1.5. Appendix 17 to Volume 2 of the Dublin City Development Plan provides guidance specifically relating to residential extensions. The following sections are particularly relevant to the current appeal:

- Section 17.5 General Principles – *'Proposals should have no unacceptable effect on the amenities enjoyed by the occupants of adjacent buildings in terms of privacy and access to daylight and sunlight'.*
- Section 17.7 Appearance – *'The extension should not dominate the existing building and should normally be of an overall shape and size to harmonise with the existing house and adjoining buildings'.*

5.2. Natural Heritage Designations

None relevant.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal, as raised in the submission from MacCabe Durney Barnes Consultants, on behalf of the first party appellant can be summarised as follows:

- The proposed development at 19.13sqm in area and with a proposed height of 2.8m is not significant in the existing rear garden.
- The area available as useable open space is approaching 30sqm. This includes the circa. 10sqm of useable space to the southern side of the dwelling.
- The appellant has satisfied all other criteria/limitations of the exemptions (as listed in the Planning and Development Regulations 2001, as amended) in relation to height, distance from boundary, size and use.

- It should be noted that the only reason that the development requires planning permission is because the exempted development rights were removed by way of condition no.7 of P.A. Reg. Ref. 2368/07.
- The proposed development is for a garden room and so fulfils an important amenity function in its own right.
- The appellant states that if the Board wish, that they would be amenable to the removal of a small triangular area of the proposed garden room in order to reduce the overall size of the development.
- The proposed development is only c750mm higher than the already existing boundary wall with no. 226A and is set back between 806mm and 940mm from the common boundary to the north. The area planner's assessment of the impacts of the development on the sunlight available to the neighbouring property to the north (no. 226A) is not based on any reasonable assessment. The presence of the existing boundary wall has impact upon the availability of sunlight to the adjoining garden, rather than the garden room proposed.
- The development will not have an adverse impact upon the outlook from the neighbouring property.
- The proposed development is not significantly large enough to negatively impact on the character of the conservation area and does not detract from the architectural features which contribute to the quality of the existing building. The development complies with Chapter 16 of the Development Plan as it is subordinate in scale to the main dwelling house.
- The approval of the proposal cannot set any precedence for any similar proposal as these would be classed as exempt development under the P&D Regs 2001 (as amended).

6.2. Planning Authority Response

- No response received to grounds of appeal.

6.3. Observations

One submission was received from the occupant of the neighbouring property to the north at No.226A Howth Road. The observer also made a submission on the original planning application P.A. Ref. 2388/20. Issues raised relating to this appeal include:

- The structure has been constructed illegally in a Z2 residential conservation area and compromises the historical character of the area significantly.
- The proposed structure has been constructed in breach of condition no. 7 of P.A. Ref 2368/07.
- The structure has a huge and permanent impact on the adjoining house at no. 226A and its garden in terms of daylight, skyline, sunlight, security, privacy and property value.
- The appeal has failed to address the concerns laid out in the planning authority's rejection of planning permission.

7.0 Assessment

- 7.1.1. Permission is sought for the construction of a new detached 19.13sq m flat roofed timber framed garden room to the rear of the existing dwelling at no. 226 Howth Road. I noted on site visit that construction of the structure, had already commenced, the Board may wish to note that enforcement action by the planning authority is ongoing on the site in this regard. The appeal site is located in a Z2 residential conservation area, with a general objective is to protect these areas from unsuitable new developments or works that would have a negative impact on the amenity or architectural quality of the area. As the development is residential in nature, located to the rear of the site, and is not visible from the public road, no significant impacts on this conservation area are expected.
- 7.1.2. Under the previous permission on site P.A. Ref. 2368/07, condition no.7 excluded any extensions to the rear of dwelling, including garden sheds, unless such structures are authorised by a separate grant of planning permission. I note condition no. 7 was originally attached to prevent overdevelopment of the site having regard to the limited available rear garden area.

- 7.1.3. I note the area planner's reference to the size of the garden in his report where he states, '*the already modest rear garden would be substantially reduced*'. The appellant disputes the area planner's report which states that only a rectangular area of circa. 20sqm would remain as useable open space if the development were to be constructed. The appellant argues that an additional 10sqm of useable open space is available to the side of the dwelling. At the time of site visit I noted that the smaller triangular areas in question, along the southern side of the dwelling, were being used for bin storage and that a small seating area with garden furniture was also in place.
- 7.1.4. Section 16.2.2.3 of the Development Plan, *Plan, Alterations and Extensions* states '*In particular, alterations and extensions should retain a significant proportion of the garden space, yard or other enclosure*' with Section 16.10.2 setting out the *Residential Quality Standards – Houses Private Open Space*. In the case of the current dwelling at no. 226, the plans submitted as part of the previous application on site P.A Ref. 2368/07 (for subdivision of existing single storey house to form 2 no, dwellings) show two double bedrooms exist in the dwelling, the attic has been converted with stair access but is not defined as a habitable room. According to the residential quality standards listed in Section 16.10.2 of the Plan, a minimum of 40sqm of private open space would therefore have been required to the rear or side of the dwelling (2 double bedspaces present in the house, therefore 2 x 20sqm). The appellant states in her appeal that if the Board wish she would be amenable to the removal of a small triangular area of the proposed garden room in order to reduce the overall size of the development. The floor area of this section has not been stated in the appeal statement on the submitted Figure 1 'Layout and Proposed Omission', however having examined the plans it is estimated that this area could measure no more than approximately 3 sqm. Therefore, even taking into account this possible addition to the rear garden area, the current development proposal still reduces the private open space to below the minimum required under Section 16.10.2.
- 7.1.5. As the structure is currently partly constructed and in situ on site, this allowed for a detailed assessment of the possible impacts of the development on the adjoining sites and also on the residential amenity of the current occupants. The structure appears to directly abut the southern boundary of the site, which separates the appeal site from the adjoining residential site at no.224. The proposed structure is

irregular in footprint and while it is noted that the appellant has suggested removing the eastern protruding part of the garden room, this would not make any significant difference to the impact on the adjoining residents at no.224. Due to the orientation of the appeal site, construction of the proposed shed would not impact on the availability of daylight or sunlight to this southerly located adjoining site. However, the garden room would be clearly visible from the rear garden of No.224 as it currently exceeds the height of the wooden panel fence boundary, with a finished height of 2.8m. The Board should note, when examining the drawings submitted as part of the appeal that there is a discrepancy on the 'Proposed Garden Room Plan View' drawing no. HR-1, with the north arrow facing in the wrong direction.

- 7.1.6. The adjoining dwelling to the immediate north of the site is no. 226A Howth Road, this dwelling formed part of the original application (P.A. Ref. 2368/07) which subdivided the site and by virtue of this it also has limited garden space to the rear. The height of the garden room at 2.8m is 750mm higher than that of the boundary wall which separates the two rear gardens and due to the orientation of no. 226A's garden (north of the appeal site), its irregular shape and limited size, this rear garden would be significantly overshadowed as a result of the proposed structure. The current separation distance of 904mm to 806mm between the northern elevation of the shed and the boundary wall to the north does little to alleviate this impact and I note that overshadowing has been evidenced in the photographs submitted as part of the observer's documentation on the appeal.
- 7.1.7. Regarding possible overlooking, the following was noted on site - the proposed structure has a finished floor level approximately 200mm above the existing level of the rear yard on site. While standing in the partially constructed structure I noted that only the very upper section of the adjoining property's windows was visible, therefore I do not believe that the structure will provide any additional overlooking of the adjoining garden or dwelling at no. 226A. However, due to its height and proximity to the shared site boundary (northern), the structure has an evident overbearing presence on the adjoining garden at no. 226A and given this garden's limited size this overbearing impact is exacerbated.
- 7.1.8. The structure also has an overbearing impact on the existing dwelling house on site. The eastern elevation of the garden room structure is approx. 3.2m back from the rear elevation of the applicant's dwelling at its northern end and approx. 1.4m away

at its southern end. The proximity of the garden room structure to the existing dwelling creates an overbearing effect and while technically the structure is subordinate to the dwelling, its immediacy to the rear windows of the house raises concerns with regard to impacts on the residential amenities of the existing residents and possible impacts on future occupants and compliance with Section 16.2.2.3 of the Development Plan.

- 7.1.9. In conclusion the proposed development would reduce the quantity of open space available to the residents of no. 226 to a level significantly below those standards set out in Section 16.10.2 of the Dublin City Development Plan 2016-2022 and in addition by virtue of the overshadowing and visual obtrusion that it would create would be contrary to Section 17.5 which states that *'Proposals should have no unacceptable effect on the amenities enjoyed by the occupants of adjacent buildings in terms of privacy and access to daylight and sunlight'*.

7.2. **Appropriate Assessment**

- 7.2.1. Having regard to the small-scale 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 refused for the reasons and considerations as set out below.

9.0 **Reasons and Considerations**

Having regard to the planning history of the site and its limited size, it is considered that the proposed development would seriously injure the residential amenity of existing residents by reason of loss of open space. The proposal would therefore represent significant overdevelopment of this constrained site and would be contrary to Section 16.2.2.3 of the Development Plan. In addition, the proposed development by reason of its scale, bulk and proximity to site boundaries would seriously injure the residential amenities of adjoining properties by reason of visual obtrusion and

overshadowing and would therefore be contrary to Section 17.5 of the Development Plan. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

Máire Daly
Planning Inspector

14th September 2020