



An  
Bord  
Pleanála

## Inspector's Report

### ABP-307544-20

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<b>Development</b>	RETENTION: Retain single storey, flat roof, extension and all associated siteworks.
<b>Location</b>	63, Grange Lodge Avenue, Clongriffin, Dublin 13
<b>Planning Authority</b>	Dublin City Council North
<b>Planning Authority Reg. Ref.</b>	WEB1093/20
<b>Applicant(s)</b>	Robert and Rachel Cumiskey
<b>Type of Application</b>	Retention Permission
<b>Planning Authority Decision</b>	Grant subject to conditions
<b>Type of Appeal</b>	First Party v. Condition
<b>Appellant(s)</b>	Robert and Rachel Cumiskey
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	15 <sup>th</sup> September 2020
<b>Inspector</b>	Máire Daly

## 1.0 Site Location and Description

- 1.1. The site (c. 114sqm) is located in Clongriffin, in Dublin City's northeast fringe c. 0.5km southwest of Clongriffin train station, within an expansive area of relatively low density suburban housing. Clongriffin is a large urban area in north east Dublin which has experienced significant growth in the last number of years, Dublin city centre is located approximately 10km to the southwest. Father Collins Park is located approximately 300m to the northeast of the site.
- 1.2. The application relates to a mid-terrace dwelling with 117.5sq.m stated gross floor area. The dwelling and neighbouring residences date from the early 2000's with a parent permission for 3,576 dwellings received under ABP Ref.PL 29N.131058. The dwelling has two car spaces to the front on an open parking/footpath area which directly adjoins the neighbouring houses.
- 1.3. The single storey extension to the rear, which is the subject of this appeal, has a gross floor area of 26.5sqm, extends c. 6.2m from the rear wall of the dwelling house and is constructed up to the boundary wall with each of the adjoining properties in the terrace. The extension has a height of 3.56m from ground level to parapet top and is built at a slight angle, tilting to the north in line with the angled back gardens. The garden of the dwelling to the north (no. 61 Grange Lodge Avenue) has a ground level of approximately 250mm lower than that of the appeal site.

## 2.0 Proposed Development

- 2.1. The development comprises:

Retention of a single storey, flat roof extension to the rear of no. 63 Grange Lodge Avenue with the following dimensions:

- 26.5sqm in area;
- 3.5m in height;
- 6.2m in depth from rear wall of dwelling to eastern (rear) wall of extension.
- An additional 0.6m overhang exists above the rear patio doors.

## 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 of a standard nature, but also including the following Condition No.3:

*The development hereby permitted shall be amended as follows:*

*a) The rear extension shall be amended by reducing the height of the flat roof extension by 0.5m. Alternatively a pitched roof may be provided with an eaves height which is 0.5m lower than the parapet height of the existing extension and a maximum pitch height of 3.82m.*

*b) The rear extension shall be amended to have a maximum depth of 4.5m from the rear wall of the original dwelling.*

*Reason: In the interest of residential amenity.*

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The report of the Planning Officer (June 2020) reflects the decision of the Planning Authority. The Planning Officer notes the following in their report:

- The application is the subject of enforcement action, as under parent permission P.A. Ref. 0132/02 condition no.37, the normal exemptions for rear extensions listed under Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 would not apply to the current site. (The Board should note there is an error in reference here in the planner's report, condition no. 37 applies to parent permission ABP Ref.PL 29N.131058 and not P.A. Ref. 0132/02 which was the initial application).
- It is noted that the extension to the rear at no.63 appears to have been constructed to satisfy the conditions and limitations for exempted development listed under Class 1 of Schedule 2, Part 1 of the Planning and Development Regulations 2001.

- As the terrace of dwellings is located on a north to south axis, it is likely that the adjoining dwelling at no.61 Grange Lodge Avenue is most likely to be impacted by the development.
- It is considered that the development proposed to be retained in its current form significantly reduced the levels of daylight previously received to the rear patio window/door of no. 61 and that the extension significantly reduces sunlight to the rear of no. 61 and to the private open space to the rear of that dwelling. To bring the development within acceptable limits of daylight/sunlight, it is recommended that the height and depth of the extension be reduced.
- The area planner lists several other examples of dwellings on a north to south axis that have recently received planning permission for rear extensions. However, all these permitted extensions are of a smaller scale than that of the current development under consideration at no.63 Grange Lodge Avenue.
- The development proposed for retention sets an undesirable precedent for future development in the area and is not in accordance with the proper planning and sustainable development of the area. It is considered that the development should be reduced in scale and depth to ensure the residential amenity of neighbouring dwellings is protected.
- In order to address the above concerns and reduce the overall impact on the adjoining properties, the area planner recommended that the parapet height of the flat roof extension be reduced by 0.5m or alternatively a pitched roof be provided with an eaves height 0.5m less than the parapet height of the existing flat roof extension and provide a maximum ridge height of 3.82m. The extension should also be reduced to have a maximum depth of 4.5m from the rear wall of the original dwelling.
- Condition no. 3 was attached to the grant of permission to ensure all those requirements listed above were incorporated into the final permitted development.

### 3.2.2. Other Technical Reports

- DCC - Engineering Department (Drainage Division) Report dated 28/05/2020 states no objection, subject to conditions.

### 3.3. Prescribed Bodies

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

### 3.4. Third Party Observations

One submission was received from the occupant of the neighbouring property to the north at no.61 Grange Lodge Avenue. Issues raised relating to this proposed development include:

- The height and length of the structure has overshadowed their property and removed the natural light from their living room space. This has resulted in light deprivation and now requires the use of artificial lighting for most of the day.
- The structure goes above first floor level and above the level of the bedroom windows.
- The scale of the building is excessive in this area.
- Over half of their back garden has been impacted by the height and length of the build significantly reducing the enjoyment of the residents.

## 4.0 Planning History

### 4.1. On site – Parent Permission:

- ABP Ref.PL 29N. 131058 – 2003 – 10 year duration Planning Permission Granted for mixed use development providing 3576 dwellings, 80,600sqm of mixed retail, commercial, leisure and community uses and associated works at Lands North of Grange Road, Donaghmede, Dublin 13. (P.A. Ref. 0132/02 DCC).

Condition 37 states - *Development described in Classes 1 or 3 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 shall not be carried out within the curtilage of any of the proposed dwelling houses without a prior grant of planning permission.*

*Reason: In the interest of residential amenity.*

#### **4.2. Relevant permissions on other sites in the vicinity involving terraced dwellings:**

- P.A. Ref. 2676/19 – 2019 - 42, Beupark Square, Clongriffin. Retention and Permission Granted for the conversion of the attic space to an accessible store room with 2 no. Velux rooflights to the rear at attic level, and planning permission for the construction of a single storey extension to the rear (height 3.25m and depth of 7.3m including overhang to rear) with all associated site works.

- P.A. Ref. 2193/19 – 2019 – 30, Beau Park Square, Clongriffin. Permission Granted for single storey dining and kitchen room extension (parapet height 3.4m and depth of 4.2m) to rear of existing house. The following condition was included –

*Condition 2. The parapets to the rear extension hereby approved shall be reduced to be no higher than 400mm above the gutter level.*

*Reason: To protect existing amenities.*

- P.A. Ref. WEB1586/18 – 2019 – 8 Beau Park Avenue, Clongriffin. Permission Granted for construction of a single storey extension (depth 4.52m, width 4.3m, ridge height 3.43m) to the rear of existing house and for all associated site works.
- P.A. Ref. 3281/12 – 2013 - 32 Beupark Crescent, Clongriffin. Retention Permission Granted for of retention of 17sq.m single storey extension to the rear, attic conversion and garden shed. Rear extension 3.5m in depth and 3.175m to pitched ridge roof level.

#### 4.3. Enforcement on appeal site

- Case currently open – P.A. Ref. E0674/19 – 2019 - Alleged breach of condition no. 37 of ABP Ref.PL 29N. 131058 - no exempt development/extensions to rear without planning permission.

### 5.0 Policy Context

5.1. Quantitative methods for daylight assessment are detailed in the following documents:

- BRE209 - Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice' and;
- BS 8206 Lighting for Buildings, Part 2: Code of Practice for Daylighting'.

#### 5.2. Development Plan

5.2.1. The operative Development Plan is the Dublin City Development Plan 2016-2022.

The appeal site is located in the Strategic Development and Regeneration Area (SDRA) No.1 North Fringe (Clongriffin–Belmayne). The main aim for this area is '*To create a highly sustainable, mixed use urban district, based around high quality public transport nodes, with a strong sense of place*'. The site forms part of a larger residential area within this SDRA.

5.2.2. 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. Appendix 17 to Volume 2 of the Development Plan provides guidance specifically relating to residential extensions.

5.2.3. Chapter 16 – Development Standards

- Section 16.2.2.3 Alterations and Extensions
- Section 16.10.12 Extensions and Alterations to Dwellings

This section specifically states that '*The design of residential extensions should have regard to the amenities of adjoining properties and in particular the need for light and privacy*'.

*Applications for planning permission to extend dwellings will only be granted where the planning authority is satisfied that the proposal will:*

- *Not have an adverse impact on the scale and character of the dwelling;*
- *Not adversely affect amenities enjoyed by the occupants of adjacent buildings in terms of privacy, access to daylight and sunlight.*

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

- Section 17.2 Residential Amenity Issues – *‘It is important to make sure that any extension does not unacceptably affect the amenities of neighbouring properties. This includes privacy, outlook, daylight and sunlight’.*
- 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’.*

### 5.3. Natural Heritage Designations

None relevant.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. A first-party appeal has been lodged by the applicants, the appeal is against condition no.3 only, which was attached to the Planning Authority’s notification of a decision to grant planning permission. The following grounds of appeal are raised:

- The applicant requests to have condition no. 3 of the grant of permission removed in its entirety.
- The applicants constructed the existing extension to the rear of their house in good faith with the understanding that it complied with the conditions of Class



1 of Schedule 2 Part 1 of the Planning and Development Regulations 2001, as it was less than 40sqm and retained a minimum area of 25sqm private open space to the rear.

- The applicants were not aware of Condition no.37 on the parent permission (ABP Ref.PL 29N. 131058) once they became aware sought to rectify the situation via planning permission.
- The applicant has attached a report prepared by Chris Shackleton Consulting (CSC) detailing an assessment of any Daylight and Sunlight impacts on neighbouring properties and additional analysis for impacts on neighbouring gardens. The report is in accordance with 'BR 209 - *Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice*' and 'BS 8206 *Lighting for Buildings, Part 2: Code of Practice for Daylighting*'.
- The report contains details of an assessment carried out comparing the impact that the as built extension and the 'as granted modified' extension have on the neighbouring properties.
- The report concludes stating that based on the testing conducted, the impact of the as-built extension generally complies with the requirements of 'BR 209 - *Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice*' and while the extension reduces the sunlight to the northern boundary of the rear garden of no.31 by an additional 3.3sq m on the 21<sup>st</sup> March compared to the proposed amended extension as requested in condition no. 3, the applicants feel that it has no unacceptable effect on the amenities of the occupants of no.61.
- The applicants also feel that the amendment requested as part of condition no.3 are onerous and that the level of work to be carried out and the cost of partial demolition to ensure a 50cm reduction in height would be excessive in the current circumstances.

## 6.2. Planning Authority Response

- No response received to grounds of appeal.

### 6.3. Observations

- None.

### 7.0 Assessment

7.1. This is a first-party appeal only against Condition no. 3 attached to the Planning Authority's decision to grant permission. Condition No. 3 amends the existing rear extension to ensure that the height of the flat roof is reduced by 0.5m or that alternatively a pitched roof is provided with an eaves height which is 0.5m lower than the parapet height of the existing extension and max pitch height of 3.82m. The condition also seeks to amend the maximum depth of the rear extension to 4.5m from the rear wall of the original dwelling. All in the interest of residential amenity.

7.2. After careful consideration, having regard to the location of the proposed development within a large residential area, where rear extensions have previously been permitted by the planning authority and the nature of condition no.3, it is considered that the determination by the Board of the application, as if it had been made to it in the first instance is not needed, and that a de novo assessment would not be warranted. Therefore, the Board should determine the matters raised in the appeal only, in accordance with Section 139 of the Planning and Development Act 2000, as amended.

7.3. The assessment of the appeal has been divided up into four main considerations as follows:

#### 7.4. Compliance with Parent Permission – Condition no.37

7.4.1. The initial application made to the planning authority was required due to Condition no. 37 of the parent permission (ABP Ref.PL 29N.131058) which de-exempted any extensions or garden structures and required specific permission be sought and granted prior to development. This was because the majority of the dwellings in the area form part of a terraced layout and the gardens to the rear are limited in size and width. The Inspector's report at the time, in reference to the formulation of condition no.37 stated it should require '*that no further structures be erected in back gardens other than those permitted by this permission*'. However, it then stated that '*This does not constitute a blanket ban*'. It then goes on further to state '*restrict certain*

*curtilage development which would otherwise be considered exempted development*. The parent permission evidences the importance of careful consideration of any future development to the rear of these dwellings and the requirement for planning permission for same. The Board should note that an enforcement case is currently open on the site with regard to the unauthorised extension.

## **7.5. Exempted Development**

- 7.5.1. The applicants, in their appeal, make reference to the exemptions listed under Class 1 of Schedule 2 Part 1 of the Planning and Development Regulations 2001, stating that it was their belief that the current development, as constructed, complied with the conditions and limitations of this class, as the extension is less than 40sqm and a minimum area of 25sqm of private open space to the rear of the house has been retained. On learning of the restrictions imposed by condition no.37 of the parent permission, they then sought to rectify the issue by applying for retention permission.
- 7.5.2. Following a site visit and an examination of the plans submitted I note that the current development does not in fact comply with the exemptions as listed above. The section drawings submitted with the appeal clearly show that the flat roof of the extension exceeds first floor level by 800mm (up to and including the existing parapet level), the extension in fact spans upward to above cill level on the first-floor windows. Class 1 of Schedule 2 Part 3 of the Planning and Development Regulations 2001 states '*Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary*', this limitation is important, as it ensures that any above ground floor extension does not appear overbearing or impact the amenities of the adjoining residents property. The portion of the extension above ground floor level at no. 63 therefore is contrary to this Condition and Limitation as listed in the regulations. The existing extension due to its height, bulk and construction directly up to the boundaries of no.61 to the north and no.65 to the south, results in an overbearing impact when observed from the rear gardens of both properties.

## **7.6. Impact on Residential Amenity – Daylight Analysis**

- 7.6.1. Section 16.10.12 *Extensions and Alterations to Dwellings* of the Dublin City Development Plan and Section 17.2 and 17.5 of Appendix 17 of the Plan are clear in

their guidance regarding consideration of the impacts on neighbouring properties, in particular with regard to light and privacy, and state that there should be no adverse effect on the amenities enjoyed by the occupants of adjacent buildings in terms of privacy, access to daylight and sunlight. In order to consider the impacts on the adjoining properties in detail, the applicants have submitted a Daylight and Sunlight (Impact Neighbours) Report as part of the appeal documentation. The information contained in this and the conclusions reached are examined further below.

7.6.2. Firstly, it should be noted that 'daylight' is the natural light which is available during the day. Within the field of daylight assessment daylight is then broken down into two component parts:

- Sunlight and Skylight

7.6.3. The guidance documents and standards used in conducting this assessment include '*BRE209 Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice*' and '*BS 8206 Lighting for Buildings, Part 2: Code of Practice for Daylighting*'. The BRE Guide and BS 8206 recommend the following performance targets:

- Guidance is provided in Section 3.1 of the BRE Guide on testing sunlight access to rooms. The potential for good internal sunlight amenity is assessed with regard to a measure called Annual Probable Sunlight Hours (APSH). This is the number of hours in the year when sunlight is likely to shine when typical cloud cover is accounted for. The BRE Guide advises that a main living room will appear reasonably sunlit in instances where one or more windows can receive at least 25% of annual probable sunlight hours, 5% of which should be available during winter months.
- Guidance on testing sunlight access to garden areas is provided in Section 3.3 of the BRE Guide. The potential for good sunlight amenity in outdoor spaces is assessed with regard to the area which is capable of receiving direct sunlight. The BRE Guide advises that an outdoor space will appear adequately sunlit through the year in instances where at least half of its area is capable of receiving two hours of direct sunlight on the 21<sup>st</sup> of March.

7.6.4. The Daylight and Sunlight (Impact Neighbours) Report submitted as part of the appeal concluded that when tested with the 'as-built extension' in place, all windows which require testing (i.e. 3 windows to the rear of each adjoining dwelling at no.61 and no.65 Grange Lodge Avenue) comply with the annual APSH sunlight

requirement. However, the report states one window fails to pass the winter WPSH requirements. This window is the rear ground floor glazed windows/patio door of no. 61, which is the only opening at ground floor level to the rear of this dwelling. This departure from the guidelines was not thought to have such an adverse impact as to warrant a de novo assessment or refusal, however further investigation into the severity of the impact is warranted and examined below.

7.6.5. The report also contains additional analysis of '*Shadow to amenity spaces*' with specific reference to the neighbouring properties at no.61 and no.65. This analysis examines whether or not the amenity space to the rear of the dwelling at no.61 is capable of achieving 2 hours of sunlight on the 21<sup>st</sup> of March each year, taking into account the angle of the sunlight delivered on this day. This assessment shows that the as built extension exceeds the BRE guidelines in relation to Sunlight/Shadow on the garden of no.61 to the north of the appeal site. The result shows a ratio score of 0.68 which is significantly below the required ratio of 0.80. The second table on page 9 of the report exams the '*Shadow to amenity spaces*' assessment for the 'Granted Modified' extension, this shows a score of 0.79, which is just marginally below the limiting ratio of 0.80. In real terms this difference means that on this date in March, an additional area of 3.3sqm of rear garden space will be impacted, with less exposure to light for the 'As Built' extension.

7.6.6. The rear gardens to the dwellings located along Grange Lodge Avenue measure on average approximately 50sqm, and according to diagrams shown on page 9 of the assessment, the area which would benefit from this additional light exposure would be located in the area of garden closest to the rear of the dwelling. In my opinion, the reduction in height and width as imposed by condition no.3 on the grant of permission therefore does make a significant difference to this area of rear garden at no.61, by providing not only additional sunlight to the rear garden but also additional daylight through the centrally located window/door opening on the ground floor.

## 7.7. **Impact on Residential Amenity – Overbearing**

7.7.1. Apart from the impact on the daylight on the rear gardens of the adjoining properties, the other major consideration in the current appeal is the overbearing and dominant impact that the extension has on the neighbouring properties. The extension as exists with a length of 6.2m and an additional overhang of approx. 600mm has a

significant negative visual impact on the adjoining properties and in particular on no.61 which is located to the appeal sites direct north. The parapet height in particular creates a domineering effect on the adjoining property and the fact that the structure actually exceeds the bottom sill level of the first storey windows exacerbates this impact. The extension spans the entire width of the garden and therefore no step back exists to reduce this impact to any degree on the neighbouring residents. It is my opinion that the scale and mass of the extension creates an unacceptable level of dis-amenity to the adjoining residents at no.61.

- 7.7.2. I note the area planner's reference to other developments in the area where rear extensions have been permitted on a similar north to south orientation. In particular P.A. WEB1586/18 is referred to which was permitted with a maximum depth of 4.52m, width of 4.3m and pitched roof of ridge height of 3.43m. I also note a very recent grant of permission on P.A. 2193/19 which has many similarities with the development under appeal, spanning the entire width of the rear garden, however having a shorter depth at 4m. As part of this grant a condition was attached to ensure a reduction in the height of the parapets by 200mm, thereby reducing the parapet height to a max of 3.2m.
- 7.7.3. While every application has to be considered on its own merits, it is clear from the above permitted developments that lower eaves heights were required on these rear extensions as rear gardens in the area are mostly of a limited size and careful consideration of design, mass and height is required in order to ensure the protection of the residential amenities of neighbouring properties. I note that where higher parapet levels have been proposed previously, conditions have been imposed to ensure a reduction in height. In the case of the current extension condition no.3 states that the height of the flat roof shall be reduced by 0.5m or alternatively where a pitched roof is to be provided that the eaves height will have to be 0.5m lower than the existing parapet height and a maximum pitch of 3.82m shall apply. The Board should note that 3.82m is the current height of the parapet on the northern elevation of the 'as built' extension when measured from the rear garden of no.61. Therefore, by imposing this height on a pitched roof, the impact of the extension would be significantly reduced on the neighbouring residents to the north.
- 7.7.4. While it is acknowledged that condition no. 3 presents difficulty for the applicants, it is considered that the amendments are necessary in order to ensure that the

residential amenities of neighbouring dwellings is protected. The height and depth of the extension which is currently in place has significant impacts on the daylight/sunlight provision to the ground floor of the adjoining property to the north and also to their private open space. The extensions as currently constructed is also overbearing and considered inappropriate in its current form in this residential area. I am therefore in full agreement with the planning authority on its imposition of condition no.3.

## **8.0 Recommendation**

- 8.1. Having regard to the nature of the condition the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and, based on the reasons and considerations set out below, directs the said Council under subsection (1) of section 139 of the Planning and Development Act, 2000 to ATTACH condition number 3 and the reason therefor.

## **9.0 Reasons and Considerations**

- 9.1. Having regard to the pattern of development in the area and the nature and scale of the development to be retained, it is considered that, the removal of condition 3, which seeks to reduce the overbearing and overshadowing effects of the development, would impact negatively on the residential amenities of neighbouring properties and would set a precedent for similar undesirable development in the vicinity and would therefore be contrary to Section 16.10.12 and Appendix 17, Section 17.2 and 17.5 of the Dublin City Development Plan 2016-2022. Therefore, the planning authority's Condition 3 is warranted.

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Máire Daly  
Planning Inspector

29<sup>th</sup> September 2020