



An
Bord
Pleanála

Inspector's Report

ABP-307961-20

Development	Retention of a single storey structure for use as family accommodation ancillary to the dwelling and construction of a single storey structure linking the dwelling to the proposed family accommodation
Location	16 St. Sylvester's Villas, Malahide, Co. Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F20A/0249
Applicant(s)	Tracy Dunne.
Type of Application	Planning permission.
Planning Authority Decision	Grant Permission with conditions.
Type of Appeal	First Party against condition.
Appellant(s)	Tracy Dunne.
Observer(s)	DAA.
Date of Site Inspection	23 rd October 2020.

Inspector

Elaine Sullivan

1.0 Site Location and Description

- 1.1. The subject site is located to the east of Malahide village, on the corner of St. Sylvester's Villas and Back Road. It has a stated area of 0.0315ha and comprises a 1960's single storey detached dwelling with off-street parking to the front and a garden to the rear. The dwelling has previously been extended to the rear.
- 1.2. A hedge to the side of the property separates the front and rear gardens. A single storey wooden structure of 66m² with a pitched roof has been constructed behind the hedge and to the side of the dwelling. This structure has centrally positioned double doors on the southern elevation that open onto the rear garden.
- 1.3. The site is located within the boundaries of The Bawn, St. Sylvester's Cottages & Parnell Cottages Architectural Conservation Area.

2.0 Proposed Development

- 2.1. Planning permission is sought for the following development;
 - Retention of a single storey structure of 66m² for use as family accommodation ancillary to the main dwelling and,
 - Construction of a single storey structure linking the dwelling to the proposed family accommodation.

3.0 Planning Authority Decision

3.1. Decision

Planning permission was granted by the Local Authority subject to 10 planning conditions, which were mostly standard in nature. Conditions No. 2 and 3 required some amendments to the proposal as follows;

2. *The dormer extension located along the rear roof slope shall be omitted.*

Reason: In the interest of clarity.

3. *The door proposed along the front elevation of the proposed link shall be omitted.*

Reason: In the interest of clarity.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Officer, (July 2020), reflects the decision of the Planning Authority. The Planning Office noted the following in their report;

- The proposed connection integrates more appropriately than anything that has been previously proposed. Whilst the size of the family flat is in excess of the 60sqm restriction set out in Objective DMS43, the size has been accepted as part of a previous grant of permission.
- The applicant should be requested to omit the door located along the front elevation of the proposed connection and replace it with a fixed window in order to comply with Objective DMS43, which states that family flats should be linked directly to the main dwelling via an internal access door and should not have a separate front door.
- Drawings submitted indicate that it is proposed to provide a rear dormer window along the rear elevation of the existing dwelling which has not been included in the statutory description of the development. Whilst it is noted that permission for the dormer window was previously approved under Ref. F19A/0115 the applicant does not intend to undertake other aspects of that permission. It was noted on the occasion of the site visit, that the dormer has not been constructed and should the applicant wish to construct it, it should have been included in the description. As such the Planning Authority cannot undertake an assessment of this aspect of the development and it should be omitted by condition.

3.2.2. Other Technical Reports

- Transportation Planning Section – No objection subject to planning conditions.
- Parks and Green Infrastructure Division – Planning conditions are recommended.

- Conservation Officer – The proposed development is within the boundaries of The Bawn, St. Sylvester's Cottages & Parnell Cottages ACA. The CO does not deem the retention of a log cabin at this location to be appropriate within the ACA.
- Water Services Department – Additional information is requested with regard to surface water drainage.

3.3. Prescribed Bodies

- DAA – The proposed development is located within Noise Zone 3. It is requested that planning conditions in relation to noise mitigation be attached to any grant of permission.
- Irish Water – No objection subject to planning conditions.

3.4. Third Party Observations

None received.

4.0 Planning History

F19A/0115 – Retention permission and planning permission granted by the Local Authority in June 2019 for, the retention of a relocated single storey Log Cabin as a family flat connected to the existing house, the conversion of existing attic space for storage use and the provision of 2 no. dormer windows to the rear at first floor level. The following conditions required amendments as follows;

Condition No. 3 - Within 6 months of the final grant of Planning Permission the applicant/developer shall relocate the log cabin a further 500mm to the south from the position indicated on drawing no. 2019-P-1000 submitted, in order to ensure a satisfactory level of integration with the main dwelling. Reconfigured drawings shall be submitted to the Planning Authority for agreement within 6 months of the date of this permission.

REASON: In the interest of visual amenity.

Condition No. 4 - The dormer extension, located in closest proximity to the northern corner of the dwelling, shall be omitted and replaced with a roof light which has a width of 1m and a height of 1.2m.

REASON: In the interest of visual amenity.

F18A/0549 – Planning permission refused by the Local Authority in November 2018 for the retention of a single storey Log Cabin as a family flat in the rear garden to the side. The reasons given for refusal are as follows;

1. The subject site is within the 'RS' zoning objective under the Fingal Development Plan, 2017-2023, the objective of which is 'to provide for residential development and protect and improve residential amenity.' The subject structure is not served with a direct link to the existing dwelling, is in excess of 60sq.m and the applicant has not demonstrated a need for a family member to live here and as such does not accord with Objective DMS43 of the Fingal Development Plan 2017-2023. As Such permitting retention permission for this family flat in the current proposal would therefore contravene Objective DMS43 of the Fingal Development Plan 2017 - 2023 and would be contrary to the proper planning and sustainable development of the area.
1. Having regard to the lack of adequate information submitted with respect to the surface water drainage the applicant has failed to comply with the Sanitary Services Acts 1878-1964 (as amended) and the proposed development would therefore be prejudicial to public health.

5.0 Policy Context

5.1. Fingal County Development Plan 2017-2023

The subject site is zoned objective RS, which seeks to 'Provide for residential development and protect and improve residential amenity'.

The site is also located within the Architectural Conservation Area for The Bawn, St. Sylvester's Cottages & Parnell Cottages.

Objective DMS43 - Ensure family flats:

- Are for a member of the family with a demonstrated need.
- Are linked directly to the existing dwelling via an internal access door and do not have a separate front door.
- When no longer required for the identified family member, are incorporated as part of the main unit on site.
- Do not exceed 60 sq m in floor area.
- Comply with the design criteria for extensions.

5.2. Natural Heritage Designations

No designations apply to the site.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal, as raised in the submission from the first party appellant can be summarised as follows;

- The dormer window referred to was built in accordance with the previous planning permission Ref. F19A/0115. The applicant submitted a commencement notice to the Planning Authority in November 2019 for the works and subsequently discovered that it was impractical to move the log cabin.
- In response to this, the subject proposal focuses on retaining the log cabin in-situ and providing a link between it and the original dwelling. As the dormer was previously approved it was not included in the application. Therefore, it is requested that the Board direct that Condition No. 2 be removed.
- The proposed door on the front elevation of the link structure is the only way in which access would be provided from the front and rear gardens without having to pass through the internal rooms in the house and allows for the

passage of bins and garden goods etc. Internal doors are provided to connect with the main house.

- The entire premises will be retained as one dwelling unit, incorporating the original dwelling, the proposed link and the log cabin. The proposed link and doorway will not be visible from the road or outside the property and will not result in any loss of amenity or detract from the dwelling around it. It is requested that the Board direct that Condition No. 3 be removed.

6.2. Planning Authority Response

- A response was received from the Planning Authority on the 9th September. Having reviewed the grounds of the appeal, the Planning Authority have no further comments to make.

6.3. Observations

- DAA - The proposed development is located within Noise Zone 3. It is requested that planning conditions in relation to noise mitigation be attached to any grant of permission.

7.0 Assessment

7.1. This is a first-party appeal only against Conditions No. 2 and No. 3 attached to the Planning Authority's decision to grant permission. Condition No. 2 requires the omission of the dormer window to the rear of the property and Condition No. 3 requires that the door proposed along the front elevation of the link structure be omitted.

7.2. Having regard to the nature and scale of the proposed development and the nature of conditions no. 2 and 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, 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. **Condition No. 2**

The Planning Authority's reasoning for attaching this condition is stated as 'In the interest of clarity'. The Planning Officer reasoned that as the development permitted under F19A/0115 would not be implemented in full, and the subject application did not include the dormer window that it should be omitted.

When I visited the site, the dormer window had been constructed in accordance with F19A/0115. Drawing 2003 P05, submitted the planning application also shows the dormer window in place in the 'Existing Rear Elevation'. I note that the previous permission, Ref. F19A/0115 is still valid could still be implemented. I am satisfied that the dormer window was constructed in accordance with the requirements of Ref. F19A/0115 and as such has been lawfully constructed. Therefore, I would recommend that Condition No. 2 be omitted.

7.4. **Condition No. 3**

The Planning Authority's reason for attaching this condition is stated as 'In the interest of clarity'. The report of the Planning Officer further expands on the reasoning and states that as per Objective DMS43, the family flat should be linked directly to the main dwelling via an internal access door and should not have a separate front door.

In my opinion the structure can be physically connected to the main house whilst also allowing access to the rear garden. Given floor layouts of both the original house and the ancillary unit, the proposed link can only ever function as a corridor and can never become usable, habitable space. It is also reasonable to seek to retain some form of connection to the rear garden, which can be provided through the link structure. Therefore, I am of the view that the connection can perform two functions without prejudicing the ability of the ancillary unit and the existing house to function as one unit and I would recommend that Condition No. 3 be omitted.

7.5. **Appropriate Assessment**

Having regard to the nature and scale of the proposed development within a serviced urban area and separation distance to the nearest European site, no Appropriate Assessment issues arise and it is considered that the proposed

development would not 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 Condition 2 is removed from the permission as the dormer window has been constructed in accordance with the provisions of PA Ref. F19A/0115, which is an extant permission for the site.
- 8.2. I recommend that Condition 3 is removed from the permission as the proposed link can provide a direct connection to the main dwelling and function as a family flat whilst also allowing for access to the rear garden as a secondary function.

9.0 Reasons and Considerations

- 9.1. 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 remove conditions number 2 and number 3.

REASONS AND CONSIDERATIONS

Having regard to the nature and scale of the proposed development, it is considered that the dormer window has been constructed in accordance with an extant permission granted under PA Ref. F19A/0115 and as such does not warrant an omission. It is also considered that the proposed link can function as a direct connection between the main house and the ancillary family flat, whilst also providing access to the rear garden by way of a doorway and as such, would not be contrary to Objective DMS43 of the Fingal Development Plan. Therefore, it would not seriously injure the amenities of the area or of property in the vicinity and would, therefore, be in accordance with the proper planning and sustainable development of the area.

Elaine Sullivan
Planning Inspector

11th November 2020