



An  
Bord  
Pleanála

## Inspector's Report

### ABP-307996-20

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| <b>Development</b>                  | The removal of the single storey return to the rear, and construction of a two storey extension to the rear. |
| <b>Location</b>                     | 46, Seafort Avenue, Sandymount, Dublin 4   |
| <b>Planning Authority</b>           | Dublin City Council South  |
| <b>Planning Authority Reg. Ref.</b> | 2791/20  |
| <b>Applicant(s)</b>                 | Robbie McFarlane   |
| <b>Type of Application</b>          | Permission.  |
| <b>Planning Authority Decision</b>  | Grant with conditions  |
| <b>Type of Appeal</b>               | Third Party  |
| <b>Appellant(s)</b>                 | Declan Kinsella & Paula Fullerton.   |
| <b>Observer(s)</b>                  | None   |
| <b>Date of Site Inspection</b>      | 10 <sup>th</sup> of November 2020  |
| <b>Inspector</b>                    | Adrian Ormsby  |

## 1.0 Site Location and Description

- 1.1. The appeal site is c. 3km to the south east of Dublin City centre at No. 46 Seafort Avenue, Dublin 4 and c.250m north east of Sandymount village. The site is the curtilage of a 106 sq.m house. It has a stated area of 342 sq.m.
- 1.2. The site is on the south side of Seafort Avenue c. 20m west of the junction with Strand Road. The site is an end of a terrace of three two storey dwellings with hip roofs to each end. This road is an established residential road of differing style single storey and two storey houses.
- 1.3. The application house is orientated north and is accessed via a vehicular entrance and driveway to its east side. The site is bounded to the public road and path by a low level plinth wall and hedgerow. The northern boundary to the front of the site is a high wall dividing the site and the side garden of the existing house to the north east. There is an enclosed side passage along the northern boundary of the site to the rear garden.
- 1.4. The house to the north east is known as Ossory Lodge and is a two storey over basement style house orientated east towards Dublin Bay. This house is sited and orientated almost perpendicular to the application house with a side garden to its east gable. The rear elevation of Ossory Lodge is c. 3m at its closest from the side boundary to the rear of the application house. There is a noticeable level difference between both houses with No. 46 sited on higher lands to Ossory Lodge. There is also a clear level difference in the rear garden of No. 46 which falls significantly from north to south. There is a staggered height northern boundary wall from the rear of the application house which drops in height to reflect the changing ground levels.

## 2.0 Proposed Development

- 2.1. The proposed development comprises of-
  - The construction of a 52 sq.m two storey extension to rear and single storey extension to the side of the house giving a total floor area of 158 sq.m.
  - A new canopy over front door and associated changes to the front elevation.
  - A new first floor window to the side (east) elevation.

- The widening of the existing vehicular access.

### 3.0 Planning Authority Decision

#### 3.1. Decision

The Planning Authority decided to grant permission on the 27/07/20, subject to nine conditions, generally of a standard nature but including the following-

C.3- The development shall be revised as follows:

- a) The parapet roofs of the proposed ground and first floor rear extension shall be reduced in height as far as practicable.

Development shall not commence until revised plans, drawings and particulars showing the above amendments have been submitted to, and agreed in writing by the Planning Authority.

Reason: In the interests of privacy and residential amenity.

C.5- The developer shall comply with the following transportation requirements of the planning authority:

- a) The driveway entrance shall be a maximum 3.0 m in width, shall not have outward opening gates and shall not impact on the existing provision of on-street parking bays
- b) -d) standard conditions

Reason: In the interests of proper planning and sustainable development.

C.9- The following drainage requirements of the planning authority shall be complied with:

- a) The Developer shall ensure that an appropriate Flood Risk Assessment, in accordance with the OPW Guidelines and the Dublin City Development Plan 2016-2022 Strategic Flood Risk Assessment, is carried out for the proposed development
- b) -e) standard conditions

Reason: In the interest of orderly development.

## 4.0 Planning Authority Reports

### 4.1. Planning Reports

The report of the Planning Officer (14<sup>th</sup> July 2020) reflects the decision of the Planning Authority. The following is noted from the report:

- The proposed demolition works are acceptable and would not result in the loss of building fabric that contributes to the ACA.
- The proposal is off an appropriate scale and is sited off the boundary with to the east to avoid visual dominance impacts on Ossory Lodge.
- A reduction in parapet height of the single and two storey extension as far as practicable is considered reasonable to reduce any unnecessary height via the parapet upstands.
- A new window is proposed on the eastern side gable at first floor level which will create new and direct views into the adjacent private garden to the east. A cover letter submitted with the application has been agreed with the neighbour. The observation confirms same. The proposed clear glazing is acceptable in this instance.
- The Drainage section has no objection subject to condition including a flood risk assessment be carried out.
- The extent of the widened entrance would create a conflict with existing on street parking and is considered excessive and should be reduced to 3m.

### 4.2. Other Technical Reports

- Drainage Division- No objection subject to condition
- Transportation Division- No objection subject to condition

### 4.3. Prescribed Bodies

- None

#### 4.4. **Third Party Observations**

One submission was received. The main planning issues raised can be summarised as follows-

- Impacts of loss of light and overshadowing
- Negative impact from height of the extension.
- A new window to east elevation overlooking garden could be acceptable on the understanding the heights of the extensions would be reduced. This has not been fully exploited.

#### 5.0 **Planning History**

5.1. There does not appear to be any planning history pertaining to the appeal site.

#### 6.0 **Policy Context**

##### 6.1. **National Guidelines**

6.2. The Planning System and Flood Risk Management Guidelines for Planning Authorities 2009.

Section 5.28 deals with 'Assessment of minor proposals in areas of flood risk'.

##### 6.3. **Dublin City Development Plan 2016-2022**

6.3.1. The appeal site has a zoning objective 'Z1 - Sustainable Residential Neighbourhoods' within the Dublin City Development Plan 2016-2022, with a stated objective *'to protect, provide and improve residential amenities'*.

6.3.2. 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 of Volume 2 of the Development Plan provides guidance specifically relating to residential extensions.

6.3.3. The following Sections are of particular relevance:

- Section 16.2.2.3 Alterations and Extensions:

- Section 16.10.12 Extensions and Alterations to Dwellings:
- Appendix 17 Guidance for Residential Extensions

#### 6.3.4. Section 11.1.5.4- Sandymount Architectural Conservation Areas.

The policy to ensure the conservation and protection of the areas of special historic and architectural interest is as follows-

*It is the Policy of Dublin City Council:*

*CHC4: To protect the special interest and character of all Dublin's Conservation Areas. Development within or affecting a conservation area must contribute positively to its character and distinctiveness, and take opportunities to protect and enhance the character and appearance of the area and its setting, wherever possible.....*

#### 6.4. **Natural Heritage Designations**

- 6.4.1. The site is located c. 35 m west of the South Dublin Bay SAC (000210) and the South Dublin Bay and River Tolka Estuary SPA (004024).
- 6.4.2. The site is located c. 35m west of the South Dublin Bay pNHA.

### 7.0 **The Appeal**

#### 7.1. **Grounds of Appeal**

One third party appeals have been received from Declan Kinsella & Paula Fullerton. The grounds of the appeal can generally be summarised as follows-

- The appellants request the development be amended by way of conditions to reduce the impacts of the development on Residential Amenity or alternatively refuse permission.
- Loss of Daylight and Overbearing from the proposed extension. The appeal includes photographs showing the proximity of the proposed dwelling to Ossory Lodge and the presence of large windows at ground level to a kitchen dining room.

- Overlooking from the proposed window in the east gable and the raised terrace. The appellants contend that DCC's Planning Officer appears to have misinterpreted the appellants original submission. The proposal will overlooking private amenity space and will have a seriously negative impact on their residential amenity and adversely affect the value of their property.
- The appellants consider the wording of Condition 3 requiring the reduction in height of the extension 'as far as practicable' to be vague, imprecise, ambiguous and may be unenforceable. There is no facility to enable the third party to participate in this process.
- There are a number of inaccuracies in the planning drawing including drawing (P)102 and (P)300. These do not show the large west facing window to the appellants property. They also do not show ground level differences between the properties. A sketch has been submitted showing the impacts on the level of daylight (and sunlight) referring to the 25 degree test of the BRE 209 Site Layout Planning for Daylight and Sunlight.
- The appellant's amenities are also under threat from the proposed development under 4429/19 (now permitted).
- The site is located within Flood Zone A and the appellant's refer to section 2.23 of the Flood Risk Guidelines, 2009.

## 7.2. Applicant Response

The applicants response to the grounds of appeal can be summarised as follows-

- The applicants have proposed a modest extension which in area is not to dissimilar to those permitted under exempted development provisions. The proposals have been revised following discussions with neighbours.
- The applicants highlight concerns regarding the accuracy and ambiguity of photographs submitted with the appeal.
- The proposed ground level extension will be sited c.1.2m away from the boundary wall and the proposed recessed first floor will be c. 1.8m from the boundary. The height of the first floor will not extend past existing eaves.

- The height of the existing rear boundary wall located proximal to the kitchen window is the main barrier to the amount of daylight that is received rather than the proposed extension which at first floor will be c. 4m to the west of the kitchen window.
- In relation to the ambiguous nature of condition 3 the applicants have submitted proposals showing a reduction in height to ground floor of c.140 mm. A reduction at first floor is impractical. The ground floor complies with building regulation requirements of 2.7m. The applicant requests Condition 3 be removed.
- The proposed window to east elevation is sought within a room to function as a home office/study to avail of views of the sea and Poolbeg stacks.
- The site already benefits from a raised patio which is to be extended further south into the garden. The applicants propose the seating area of the new patio to the west side. The applicants have submitted a revised proposal showing a larger planter against the boundary to provide additional screening.
- The applicant has submitted revised drawings to avoid any ambiguity in relation to the submitted drawings to address the appellant's concerns.
- The applicants argue the appropriateness of the 25 degree test in the sites context and question how it was applied.
- In relation to the proposal at Roslyn Park 4429/19 the applicants contend the proposal should be assessed on its own merits.
- The applicants refer to the Flood Risk Assessment (FRA) submitted with the application and state the proposal is considered acceptable in flood zone A. the inclusion of this condition is unnecessary and it is requested that condition 9 (a) be removed.

### 7.3. Planning Authority Response

- None received.



#### 7.4. Observations

- None

#### 7.5. Further Responses

A further response was received from Declan Kinsella & Paula Fullerton and the relevant planning issues can be summarised as follows-

- The appellant's argue that the Planning Officer had significant concerns about the proposal as demonstrated by the conditions to reduce the height.
- The applicants have not demonstrated through a shadow study that the development will not have an unacceptable impact on Ossory Lodge.
- The applicants could drop the floor level of the ground and first floor to address concerns over height. The proposal reducing height by 140mm is not accepted. The Appellants are also concerned by the proposed east facing first floor bedroom window and request it be omitted.
- The appellant has commissioned shadow studies/drawings which show the development will result in shadows to the kitchen/dining room window and the first floor.
- The appellant is not satisfied with the height of the proposed extension and therefore there is no agreement in place in relation to the side gable window.
- To suggest overlooking would be prevented by locating the terrace seating area to the west side is unrealistic. The provision of a large planter to provide screening is not acceptable. Additional planting would further negatively impact light into all ground floor windows.
- If the applicant was concerned about condition 3, it could have been appealed.

## 8.0 Assessment

### 8.1. Main Issues

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

- Zoning
- Impact on Residential Amenity
- Flood Risk
- Access
- Appropriate Assessment

### 8.2. Zoning

8.2.1. The site has a zoning objective 'Z1 - Sustainable Residential Neighbourhoods' within the Dublin City Development Plan 2016-2022, with a stated objective 'to protect, provide and improve residential amenities'. The proposed extension is an acceptable use in this zoning.

### 8.3. Impact on Residential Amenity

8.3.1. The Planning Authority have concerns over the height of the proposed extension. Condition 3 requires the parapet roofs of the proposed ground and first floor rear extension to be reduced in height 'as far as practicable' in the interest of privacy and residential amenity.

8.3.2. The appellant's have raised significant concerns over the proposed extension in relation to impacts from overshadowing and overbearing, the ambiguity of condition 3 and concerns of overlooking from the proposed first floor window to the east gable of the private amenity space of Ossory Lodge.

8.3.3. The applicants contend they have designed the proposed extension to address the appellant's concern by way of its height and set back of the northern boundary. The

height of the ground floor is reduced further (140 mm) in the applicants response to the appeal.

- 8.3.4. Having visited the site it is clear that the relationship between the application site and the adjoining dwelling Ossory Lodge is complicated by the orientation and siting of each house and the clear difference in levels between the sites.
- 8.3.5. The proposed ground floor extension to the side of the existing house will have a height of c. 3m and is to be built up to the northern boundary. The ground floor extension to the rear is set back off the northern boundary by c. 1.2m. The ground floor extension at its rear appears to be c. 3.4m in height and is set back off the northern boundary. I am satisfied the proposed ground floor element of this extension will not be overbearing or lead to undue overlooking or overshadowing of Ossory Lodge.
- 8.3.6. To facilitate the extension the development will require the raising of ground levels to the rear by c 1.m at its most southern point before providing steps down to the rear garden. I have no residential amenity concerns in relation to these works and any changes to the ground floor extensions parapet height is unwarranted.
- 8.3.7. The first floor element of the rear extension protrudes 4.1m from the existing first floor rear elevation and appears to be set back c. 1.8m from the northern boundary. It also appears to be sited c. 4.9m from the nearest point of the rear elevation of Ossory Lodge. The height of the first floor extension is stated as 5.935m. I have viewed the application site from the first floor window of Ossory Lodge and in my opinion the proximity of the proposed first floor extension would have a negative visual impact that would affect the residential amenity of Ossory Lodge.
- 8.3.8. The applicant have submitted revised drawings in their response to the appeal showing the location of the large ground floor kitchen windows and the difference in site levels. The appellant's have submitted Shadow Analysis drawings showing the impact of the development on the 21<sup>st</sup> of March and September from 1500 hrs – 1700 hrs. They have not provided an assessment for other times of the day or year. The applicants have not submitted any shadow drawings in support of their application.
- 8.3.9. Having visited the site at Ossory Lodge it is noted that the rear of the property is used as a private amenity space which is clearly lower than the application site and

is enclosed by a subsequently higher boundary wall. Given its aspect and orientation it is reasonable to assume a significant proportion of daylight into the kitchen dining area is achieved through the existing large windows.

- 8.3.10. Having inspected the site and based on the information on file, it is my opinion that the proposed first floor extension would lead to undue overshadowing of private amenity space and the kitchen/dining area of Ossory Lodge.
- 8.3.11. I also consider that the proposed first floor extension by way of its height and proximity would be visually overbearing to the private amenity space to the rear of Ossory Lodge.
- 8.3.12. The application proposes a first floor window to the east gable of the house. The appellant's raise concerns of overlooking to their side garden. It is noted that there is an existing window in this gable over the stairs facing the side garden. The appellant's side garden is enclosed on its north and eastern boundary by a high wall and existing shrubbery. In my opinion, the same level of protection to residential amenity is not required in this context as would be for a rear garden. I have no concerns in relation to the proposed gable window.
- 8.3.13. The application also provides for a new opaque window to the side gable of the first floor extension to master bedroom 3. In order to ensure there are no concerns of overlooking of private amenity space to the rear of Ossory Lodge and should the Board decide to grant permission for the first floor extension it is recommended that a condition shall apply stating this window to be non-openable/hinge inwards from the top only and permanently of obscure glazing.
- 8.3.14. Overall, in order to address concerns of overshadowing and overbearing it is recommended that the first floor extension be omitted by condition with final details and drawings to be agreed in writing with the Planning Authority.

#### 8.4. **Flood Risk**

- 8.4.1. Condition 9 (a) of the Planning Authority's decision requires the Developer to ensure that an appropriate Flood Risk Assessment, in accordance with the OPW Guidelines and the Dublin City Development Plan 2016-2022 Strategic Flood Risk Assessment, is carried out for the proposed development.

- 8.4.2. The applicants have detailed they submitted a FRA with the application and in this regard, it appears to me that they have satisfied themselves they have complied with this condition.
- 8.4.3. The proposed development is for an extension to an existing dwelling in Flood Zone A. Having regard to Section 5.28 of the 2009 Flooding Guidelines I am satisfied the proposal is a minor in nature and is unlikely to raise significant flooding issues.

## 8.5. Access

- 8.5.1. This application proposes widening the existing entrance to 3.5m from c. 2.5m. Condition 5 (a) of the Planning Authority's decision requires the driveway entrance to be a maximum 3.0m in width. This is based on the report of the Transportation Planning Division which states the proposal '*could create a conflict with existing on street parking provision*'.
- 8.5.2. It is noted that neither the applicant nor the appellant have raised concerns in relation to the proposed entrance.
- 8.5.3. Having inspected the site and observed the location of the nearest on street parking space and existing double yellow lines, I do not consider the proposed width of 3.5m would conflict with existing on street parking provision. The reduction in width of 0.5m is negligible in this regard and this condition is not warranted.

## 8.6. Appropriate Assessment

- 8.6.1. Having regard to the nature and small scale of the proposed development and the distance from the nearest European site, 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.

## 9.0 Recommendation

- 9.1. I recommend a grant of permission subject to the following conditions.

## 10.0 Reasons and Considerations

Having regard to the design and scale of the proposed development and based on the information submitted with the application, it is considered that the first floor extension as proposed would be overbearing and lead to overshadowing of the private amenity space to the rear of Ossory Lodge and would result in a detrimental loss of light to its kitchen dining area. Subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual and residential amenities of properties in the area and would be in keeping with the character of the area. The proposed development would, therefore, be in accordance with the zoning objective of the Dublin City Council Development Plan and the proper planning and sustainable development of the area.

## 11.0 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 proposed development shall be amended as follows:

- a. The first floor extension shall be omitted.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of visual and residential amenity.

3. No part of the roof of the extension shall be used as a balcony / terrace/ roof garden.

Reason: In the interest of residential and visual amenity.

4. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the Planning Authority for such works and services.

Reason: In the interest of public health.

5. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

6. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development. This plan shall be prepared in accordance with the "Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects", published by the Department of the Environment, Heritage and Local Government in July 2006.

Reason: In the interest of sustainable waste management.

7. 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 prior to commencement of development or 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.

Reason: 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.

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Adrian Ormsby  
Planning Inspector

18<sup>th</sup> November 2020