



An
Bord
Pleanála

Inspector's Report ABP-308183-20

Development	Install oriel window to house and retain extensions and alterations to the house layout and elevations
Location	12 Windsor Villas, Fairview, Dublin 3
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	2910/20
Applicant(s)	Máire Ní Bhrádaigh
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First & Third Party
Appellant(s)	Máire Ní Bhrádaigh Phil Reddy & Catherine Hayes
Observer(s)	None
Date of Site Inspection	21 st December 2020
Inspector	Colm McLoughlin

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1.0 Site Location and Description

1.1. The appeal site is located off Philipsburg Avenue in the Fairview area, 200m to the north of Fairview Park and 2km to the northeast of Dublin city centre. The site contains a part single and part two-storey three-bedroom detached house abutting a laneway serving Windsor Villas, which terminates at primary school grounds 40m to the east of the site. The rear amenity space to the property is situated in the southwest corner of the site. A slightly recessed front door and garage serving the house are situated onto the public laneway. The site is understood to have originally formed part of the rear gardens to nos.22 and 24 Philipsburgh Avenue and is bound by a private laneway to the east side. The immediate area is characterised by terraced housing along Philipsburg Avenue and Windsor Avenue alongside infill pockets of more recent housing. Ground levels in the vicinity are relatively level with a gradual drop moving south towards Fairview Strand.

2.0 Proposed Development

2.1. The development proposed to be retained comprises:

- alterations to the internal house layout, including a single-storey ground-floor extension to the kitchen and three extensions at first-floor level, including infilling of a previously permitted recessed inset space, provision of a utility room and the extending of a bedroom, amounting to an additional stated gross floor area of 12.2sq.m;
- alterations to the house elevations, including the relocation of a ground-floor window and the enclosing of the car port, including widening of the outer leaf wall.

2.2. The proposed development comprises:

- the installation of a first-floor north elevation oriel window.

2.3. The planning application was accompanied by a cover letter setting out the rationale for the existing and proposed development.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The planning authority decided to grant permission subject to 13 conditions, most of which are of a standard nature, but also including the following condition, which the first party has appealed:

- Condition no.2: The development hereby approved shall incorporate the following requirements:
 - a) Prior to occupation of the building the bathroom and wardrobe room shown on the As Built First Floor Plan shall be reversed on the plan such that bedroom 3 is bounded to the west by the bathroom, each room keeping their floor areas and henceforth being permanently retained as such. Bedroom 3 shall be permanently set out as a single bedroom.
 - b) The garage shall have a minimum internal depth of 5m suitable for parking a car.

Reason: In the interest of orderly development and residential amenities.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Officer reflects the decision of the planning authority. The Planning Officer noted the following:

- the previously permitted house was under construction in July 2020;
- the proposal to enclose the garage is reasonable given the site context, and a condition to control use of the garage for parking of a car should be attached in the event of a permission;
- the extension of the first-floor bedroom is acceptable, however, the internal layout should be amended in order to ensure that this bedroom can only be used as a single bedroom;
- use of the first-floor doorway to the sedum flat-roof can be restricted via condition;

- the utility room extension at first-floor level is acceptable, as it does not intrude on neighbouring amenities and as the window serving this should be of obscure glazing;
- the oriel window projecting over the public laneway would be required to address the loss of a window to the inset area serving bedroom no.3;
- given the limited amenity space of neighbouring housing and the inner-urban location of the site, an acceptable provision of 48sq.m useable private amenity space serving a five bed space house has been provided.

3.2.2. Other Technical Reports

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

3.3. Prescribed Bodies

- Irish Water - no response.

3.4. Third-Party Observations

- 3.4.1. During consideration of the application by the planning authority, two observations were received from neighbouring residents. The issues raised in these observations are similar to those raised in the third-party grounds of appeal and are included under the heading 'Grounds of Appeal – Third Party' below.

4.0 Planning History

4.1. Appeal Site

- 4.1.1. There is an extensive planning history associated with the appeal site, as outlined within the planning authority's report. The following planning applications are the most recent applications relating to this site:

- ABP ref. PL29N.245068 (DCC Ref. 2599/15) – permission was granted by the Board in September 2015 for a two-storey two-bedroom contemporary-style house with one off-street car parking space. Conditions were attached

requiring the first-floor north-facing bedroom window to be partially glazed with obscure glass (condition no.2) and also requiring the flat roofs not to be used as a roof terrace/garden (condition no.4);

- DCC ref. 2662/18 – permission was granted by the planning authority in July 2018 for modifications to the development permitted under ABP ref. PL29N.245068, primarily consisting of a single-storey kitchen extension and an additional first-floor bedroom;
- DCC ref. 4427/19 – retention permission was refused by the planning authority in January 2020 for various internal and external modifications to the development permitted under ABP ref. PL29N.245068 and subsequently revised under DCC ref. 2662/18, as the modifications would provide for an additional bed space, a reduced garden area and a resultant inadequate provision of private amenity space for residents based on Development Plan standards.

4.1.2. The planning authority has referred to two enforcement cases relating to this site:

- E0957/19 – development not as approved plans;
- E0798/19 – drainage.

4.2. Surrounding Sites

4.2.1. Reflective of the residential urban character, there have been numerous planning applications for domestic extensions and alterations on neighbouring sites, none of which are of particular relevance to the assessment of the appeal site proposals.

5.0 Policy & Context

5.1. Development Plan

5.1.1. 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'. Under Section 16.10.12 of Volume 1 to the Development Plan, it is stated that applications for

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

- 'not have an adverse impact on the scale and character of the dwelling;
- have no unacceptable effect on the amenities enjoyed by the occupants of adjacent buildings in terms of privacy and access to daylight and sunlight'.

5.1.2. Appendix 17 (Volume 2) of the Development Plan provides guidance specifically relating to residential extensions. Under Policy QH1 of the Development Plan, the Planning Authority will have regard to Ministerial Guidelines, including the 'Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas' (2009) and the 'Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities' (2007).

5.2. Environmental Impact Assessment - Preliminary Examination

5.2.1. Having regard to the development on site, the nature and scale of the proposed development and the location of the site, there is no real likelihood of significant effects on the environment arising from the existing and proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal – First Party

6.1.1. A first-party appeal has been lodged only against condition no.2, which was attached to the planning authority notification of a decision to grant planning permission. The following grounds of appeal are raised:

- condition no.2 should be removed from the decision, as it is not practical and is unenforceable;
- the condition no.2(a) seeks to restrict bedroom no.3 from being altered to accommodate two bed spaces, as opposed to one bed space, but the terms of this condition would require significant structural changes to the fabric of the building;

- water and heating pipes would need to be removed, redirected and refitted to comply with the condition, which would require extensive work, including breaking ground, the removal of flooring and ceiling boards, alterations to ducting and a reduced efficiency for the operational heat recovery system, all of which would be inhibited by structural beams and the positioning of the living room directly below the revised bathroom position;
- the bathroom would have no window, as the existing rooflight serving the bathroom would subsequently only serve the wardrobe;
- the condition requires the work to be undertaken prior to the occupation of the house, which is not possible as the house had already been occupied 22 days prior to the planning authority decision;
- the revised layout for the house provides for improved living spaces, including a separate wardrobe storage space;
- the upper-floor layout has been reconfigured to only provide for five bed spaces, in order to meet the private amenity space standards.

6.2. Grounds of Appeal – Third Party

6.2.1. In conjunction with the third-party observations to the application, the grounds of the third-party appeal lodged by two residents to the south of the appeal site at nos.18 and 20 Philipsburgh Avenue and accompanied by photographs of the site, can be summarised as follows:

- the house is occupied and the site has a complex and extensive planning history;
- it is difficult to understand how certain aspects that were once considered to be injurious to neighbouring amenities, can now be considered by the planning authority to be acceptable;
- the applicant has already undertaken much of the works, including the kitchen extension, the bedroom extension, the car port enclosure and the raised roof parapet, despite having previously been refused retention permission for these works. It is not fair or just for the neighbours, that the works were carried out without conforming to the planning permission;

- scope for overlooking of neighbouring properties to the south would arise due to the positioning of a first-floor openable window in this elevation and the provision of a parapet to the sedum roof, while the oriel window would also result in the loss of privacy for neighbours;
- the garage would have limited space to accommodate a car and has not been used for its required purpose, given that cars are being parked on a private laneway to the rear of the site;
- the utility or plant room extension is oversized for its purpose, resulting in an overbearing impact on neighbouring property;
- anti-social behaviour does not provide sufficient basis for the works to be retained and it is disingenuous of the applicant to suggest that internal alterations were required to address structural matters;
- there has been encroachment along the site boundaries and the floor area of the house has been substantially understated;
- the house is imposing and out of character with the surrounding area, and this has resulted in the devaluation of property in the vicinity;
- the proposals result in a six bed space house, served by an inadequate area of private open space relative to Development Plan standards and resulting in overdevelopment of a restricted site, all to the detriment of neighbouring residential amenities.

6.3. Applicant's Response

6.3.1. The applicant's response to the third-party grounds of appeal can be summarised as follows:

- actual floor areas have not been misrepresented in the planning application;
- overlooking of residential properties does not occur, particularly due to the existing screening provided by a line of Leylandii trees in the garden of no.20 Philipsburgh Avenue, as per the photograph included with the response;

- the parapet to the roof terrace is required in accommodating and containing a sedum roof, which will require ongoing maintenance and will not be used as a balcony space;
- the rationale for enclosing the garage has been explained, including the need to address valid security and safety concerns;
- parking in the private laneway to the rear of the site occurred prior to the construction of the house and there is no restriction on the applicant parking on neighbouring public streets;
- the garage will not be converted in the future, as it is required for parking a car;
- the gardens immediate to the site along Philipsburgh Avenue have rear gardens ranging from 25sq.m to 50sq.m.

6.4. Third-Party Appellants' Response

6.4.1. The third-party appellants did not respond to the first-party grounds of appeal.

6.5. Planning Authority Response

6.5.1. The planning authority did not respond to the grounds of appeal.

6.6. Observations

6.6.1. None received.

7.0 Assessment

7.1. Introduction

7.1.1. Planning permission granted by the Board in September 2015 (under ABP ref. PL29N.245068) allowed for a two-storey two-bedroom contemporary-style house on the appeal site. Following this in July 2018, permission was granted by the planning authority for various amendments to the permitted house (under DCC ref. 2662/18), primarily consisting of a single-storey kitchen extension and an additional first-floor

bedroom. The house was constructed and according to both parties to the appeal, the house was occupied in 2020, during consideration of the subject application by the planning authority. The subject proposals comprise the retention of four extensions of relatively minor scale to the house, a repositioned window along the public laneway and the enclosure of the permitted car port with a roller door to the front and a wall with a window to the rear. It is also proposed to install an oriel type window on the northern elevation onto the public laneway. The site does not have any conservation status and the proposed works, including elements to be retained, would have limited impact on the appearance of the previously permitted house, when viewed from the surrounding area. Consequently, I consider the substantive issues arising from the first-party and third-party grounds of appeal and in the assessment of the appeal, relate to the following:

- Impact on Residential Amenities;
- Development Standards.

7.1.2. The applicant has contested a condition of the decision to grant permission issued by the planning authority, and my consideration of the appropriateness or otherwise of this condition is undertaken as part of the assessment below.

7.2. Impact on Residential Amenities

7.2.1. The Development Plan requires extensions to houses to have regard to the impact on the residential amenities of neighbouring properties. The orientation, scale and siting of the ground-floor kitchen extension, as well as the three first-floor extensions relative to neighbouring residential properties, is such that the potential for undue overshadowing and overbearing impacts on neighbouring amenities would not arise. Drawing no.7 identifies the location of the proposed oriel window along the public laneway, which I note would be within the site boundaries based on the site plan drawing no.9. Obscure glazing is proposed on the north-facing lower-glazing panel, which I am satisfied would restrict the potential for excessive direct overlooking of properties to the north on the opposite side of the public laneway, including no.26 Philipsburgh Avenue. The window would also be necessary in providing natural lighting to this bedroom. The primary concern raised within the third-party grounds

of appeal relates to the potential for excessive overlooking to arise from the upper-floor windows to the house, particularly towards the properties to the south.

7.2.2. Drawing no.7 illustrates that there are three south-facing first-floor openings, including a glazed doorway serving a hallway, as well as windows serving a stairwell and a utility space, which has been used as a home office according to the first-party appellant. These openings would be positioned between 1.9m and 5m from the southern boundary with the rear garden to no.20 Philipsburgh Avenue and a further 6m from no.18. Based on the application drawings (nos.2 and 9) and the photographs submitted with the third-party grounds of appeal, each of the openings feature obscured glazing only and do not serve the main rooms to the house, thus restricting the potential for excessive direct overlooking of properties to the south from the internal areas of the house. Concerns are expressed by the neighbouring appellants with respect to the potential to use the flat-roof terrace area on the south side of the house, given that it would be accessible from a glazed doorway. In the interest of residential amenity, condition no.4 of the parent permission ABP ref. PL29N.245068 for this house requires that the flat roofs of the house shall not be used for general access or as roof terraces or gardens, and access onto the roof shall be for maintenance purposes only. The first-party appellant has outlined that the glazed doorway to the flat roof would only be used to maintain a sedum roof. Consequently, I am satisfied that in the event of permission being granted for the subject proposals, with the attachment of a condition tying the subject development back to the parent permission, potential for excessive overlooking from external roof areas would not arise.

7.2.3. The grounds of appeal assert that the development would lead to a depreciation in the value of property in the vicinity. Arising from the assessment above, and cognisant of the existing development on site, I am satisfied that clear and convincing evidence has not been provided to support claims that the development would be likely to result in a substantial depreciation of property values in the vicinity. In conclusion, I am satisfied that the development would not injure the residential amenities of the area.

7.3. Development Standards

- 7.3.1. The planning authority has referenced two enforcement cases relating to this site and the first party states that the application was submitted in order to regularise amendments to the previously permitted house. The house has been occupied and it is proposed to retain extensions to the house.
- 7.3.2. The third-party appellants raise concerns that the proposed extensions and alterations would result in an inadequate provision of amenity space to serve the house on site. Based on Development Plan standards requiring 10sq.m of private amenity space per bed space in new houses in this part of the city, the minimum amount of private amenity space required to serve a house accommodating five bed spaces would be 50sq.m. The first-party appellant states that 52sq.m of private amenity space would be provided, whereas the planning authority assert that 48sq.m would be provided and that this would be acceptable given the context, including the existing pattern of limited rear amenity spaces to the neighbouring houses and subject to bedroom no.3 of the development only providing one bed space.
- 7.3.3. The utility room extension and infilling of the recessed area along the northern elevation at first-floor level would not directly impact on the amenity space provision. The ground-floor extension to the kitchen area is stated to amount to 2.2sq.m and, as such, alongside the first-floor extensions they provide a minor increase and improvement in the internal areas serving the house, while also having very limited impact on the functionality of the rear amenity space. To attempt to align the occupancy of the house and the amenity space provision with Development Plan standards, the planning authority attached condition no.2(a), which ultimately sought to limit the extended bedroom no.3 at first-floor level to be used as a single bedroom only, as per the previous permission (DCC ref. 2662/18), and to restrict its potential to be used as a double bedroom. To achieve this, the planning authority requested that the position of a first-floor bathroom be swapped with a walk-in wardrobe. The first-party appellant asserts that the retrofitting work to address this would be unreasonable and impractical for a variety of reasons. The revised layout required by the planning authority would not affect the 7.5sq.m floor area and the 2.25m width of the subject bedroom no.3, which would only be sufficient to meet the single-bedroom size (7.1sq.m) and width (2.1m) required in the 'Quality Housing for

Sustainable Communities' guidelines and would not be sufficient to meet a standard double-bedroom size (11.4sq.m) and width (2.8m) required in these Guidelines. Consequently, I am satisfied that rearranging of the upper-floor layout would have negligible impact on the actual size of this bedroom or in controlling the occupancy of the bedroom and to require these works to be undertaken would be unnecessary and unreasonable. In the event of a permission or retention permission for the subject development, the attachment of a planning condition similar to condition no.2(a) of the planning authority decision would not be warranted. A condition was not applied in the previous relevant permissions for this house (ABP ref. PL29N.245068 and DCC ref. 2662/18), restricting the exempted development rights of the property. Given the extent of functional amenity space remaining on the appeal site, it would be prudent to attach same in the event of a grant of planning permission.

- 7.3.4. It is proposed to retain the enclosure of the previously permitted car port on the eastern side of the house. The first-party appellant asserts that this was found to be required due to security and safety concerns. The enclosed garage would continue to provide sufficient space for a car to be parked off the street and on the site, as per drawing no.4 submitted, in line with the previous permissions and the standards contained within the Development Plan for a house in this location.
- 7.3.5. In conclusion, I am satisfied that the proposals provide a suitable level of amenity for residents of the house, including adequate private rear amenity space and car parking, and the development should not be refused permission or retention permission based on non-compliance with development standards.

8.0 Appropriate Assessment

- 8.1. Having regard to the minor nature of the existing and proposed development and to the location of the site in a serviced urban area and the separation distance to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the 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 that permission for the proposed development and retention permission for the development proposed to be retained should be granted, subject to conditions, for the reasons and considerations set out below.

10.0 Reasons and Considerations

1. Having regard to the planning history of the site, to the nature and scale of the proposed development and the development for which retention permission is sought, to the existing pattern of development in the vicinity and the provisions of the Dublin City Development Plan 2016-2022, it is considered that subject to compliance with the conditions set out below, the proposed development and the development for which retention permission is sought would not seriously injure the residential amenities of the area or of property in the vicinity and would provide a suitable level of amenity for future occupants, including an appropriate provision of rear amenity space and on-site car parking, in accordance with the provisions of the Dublin City Development Plan 2016-2022. The proposed development and the development for which retention permission is sought would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The proposed development and the development to be retained shall be carried out, completed and retained, 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, completed and retained in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Apart from any departures specifically authorised by this permission, the development shall be carried out in accordance with the terms and conditions of the permission granted on the 17th day of September, 2015, under An Bord Pleanála reference PL29N.245068 (planning register reference number 2599/15) and also under the permission granted on the 3rd day of July, 2018, under the planning authority register reference number 2662/18, and any agreements entered into thereunder.

Reason: In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous permissions.

3. Notwithstanding the exempted development provisions of the Planning and Development Regulations 2001-2020, and any statutory provision replacing or amending them, no development falling within Class 1 or Class 3 of Schedule 2, Part 1 of those Regulations shall take place within the curtilage of the house, shall be erected within the rear amenity area, without a prior grant of planning permission

Reason: In order to ensure that a reasonable amount of rear amenity space is retained for the benefit of the occupants of the extended house.

4. Site development and building works shall be carried out between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays or public holidays. Deviation from these times shall 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.

Colm McLoughlin
Planning Inspector

21st December 2020