



An
Bord
Pleanála

Inspector's Report

ABP-308253-20

Development	Alterations to include dormer windows.
Location	28 Brackenstown Avenue, Swords, Co Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F20A/0321
Applicant(s)	Jennifer Morton
Type of Application	Permission
Planning Authority Decision	Permission
Type of Appeal	First Party against Conditions
Appellant(s)	Jennifer Morton
Observer(s)	None
Date of Site Inspection	15 th of December 2020
Inspector	Angela Brereton

1.0 Site Location and Description

- 1.1. The application site is located on the western side of Brackenstown Avenue, with Rathbeale Road (R125) and Main Street Swords to the north. It is in the established residential area to the south west of Swords town centre. No. 28 Brackenstown Avenue is a two-storey semi-detached house located on the corner of Windmill Avenue and Brackenstown Avenue.
- 1.2. There is a single storey side extension to the existing semi-detached house. There is permission for this to be demolished and an additional house to be erected in the side garden area granted permission in Reg.Ref. F18A/0555. To date this has not been constructed. There is a high wall around the rear garden boundaries, in particular with no. 2 Windmill Avenue to the rear (west). There is a hedge along the southern boundary with Windmill Avenue.

2.0 Proposed Development

- 2.1. Permission is sought for alterations to previously approved plans under Reg.Ref. F18A/0546 to include two dormer windows at roof level, one hipped dormer on the side elevation and a flat roofed dormer on the rear elevation.
- 2.2. A Site Layout Plan, Floor Plans, Sections and Elevations have been submitted.
- 2.3. A letter has been submitted from CQA Design & Build providing a rationale for the proposed development.

3.0 Planning Authority Decision

3.1. Decision

On the 27th of August 2020 Fingal County Council granted permission for the proposed development subject to 9no. Conditions. These included relative to alterations to the design of the dormers, use restricted to non-residential purposes and construction measures. Condition nos. 2 and 3 are the subject of the First Party Appeal and are discussed further in the Assessment below.

3.2. Planning Authority Reports

3.2.1. The Planner's Report had regard to the locational context of the site, planning history and policy and to the interdepartmental reports. It is noted that no submissions were made. Their Assessment included the following.

- The proposal is in compliance with the residential zoning.
- The proposed dormers and converted attic will not result in loss of privacy or overshadowing leading to a loss of daylight.
- The onus is on the applicant to ensure that they comply with the building regulations regarding floor to ceiling heights in the attic level.
- They note that the design of the side dormer has been altered from the previous proposal under Reg.Ref. F18A/0546. They have some concerns about the design and scale and recommend modifications be conditioned.
- Only one other dormer was evident in the area during the site inspection (front dormer to The Laurels, 12 Brackenstown Avenue.)
- The proposed development is considered acceptable and in keeping with the existing dwelling and with the pattern of development in the area. They do not consider that it will not detract from adjoining residential amenity subject to compliance with the conditions set out. They consider it is in accordance with the proper planning and sustainable development of the area and recommend that permission be granted.

3.3. Other Technical Reports

Water Services Department

They have no objections to surface water drainage proposals.

3.4. Prescribed Bodies

Irish Water

They have no objections subject to conditions.

Irish Aviation Authority

They have no observations to make.

Dublin Airport Authority

They have no observations to make.

3.5. **Third Party Observations**

None noted in the Planner's Report

4.0 **Planning History**

The following permissions have been granted subject to conditions by Fingal County Council, relevant to the subject site:

- Reg. Ref. F18A/0555 – Permission granted for a part single storey, part two storey detached two bedroom house, new vehicular entrance and all associated site works.
- Reg.Ref. F18A/546 – Permission granted for the demolition of the existing single storey extension to the side, construction of a new single storey extension to the rear, dormer window on side roof slope, velux window on rear roof slope, porch to the front, relocation of the existing vehicular entrance and all associated site works.
- Reg.Ref. F08A/0814 – Permission granted for a two storey side extension incorporating granny flat with porch extension to front, two no. velux roof lights to front and dormer window to the rear of existing dwelling house.

5.0 **Policy Context**

5.1. **Fingal County Development Plan 2017-2023**

The site is zoned 'RS' – "To provide for residential development and protect and improve residential amenity".

Section 3.4 refers to Sustainable Design and Standards and includes regard to Extensions. *The need for people to extend and renovate their dwellings is*

recognised and acknowledged. Extensions will be considered favourably where they do not have a negative impact on adjoining properties or on the nature of the surrounding area.

Objective PM46: Encourage sensitively designed extensions to existing dwellings which do not negatively impact on the environment or on adjoining properties or area.

Section 12.4 refers to Design Criteria for Residential Development and includes regard to Extensions and notes that a number of factors will be considered to satisfy the Planning Authority that there will be no significant negative impacts on surrounding residential or visual amenities. This includes regard to the impact of roof alterations and dormer extensions to roofs.

Objective DMS41: Dormer extensions to roofs will only be considered where there is no negative impact on the existing character and form, and the privacy of adjacent properties. Dormer extensions shall not form a dominant part of a roof. Consideration may be given to dormer extensions proposed up to the ridge level of a house and shall not be higher than the existing ridge height of the house.

Objective DMS42: Encourage more innovative design approaches for domestic extensions.

5.2. Natural Heritage Designations

There are no such designations either within or immediately abutting the appeal site. The closest such are the Malahide Estuary SAC (Site code 000205) and the Malahide Estuary SPA (Site code 004025) – located some 3km to the northeast.

5.3. Other Relevant Government Guidelines

Development Management, Guidelines for Planning Authorities (2007).

6.0 The Appeal

6.1. Grounds of Appeal

A First Party Appeal has been submitted by CQA Design & Build on behalf of the Applicant Jennifer Morton. This is an Appeal against Condition nos. 2 and 3 of the Council's permission and includes the following:

- The Applicant is seeking to extend the existing three bedroom house by adding an additional bedroom in the attic space to meet their family needs.
- They intended to convert the attic under exempted development provisions of the Planning and Development Act 2000 (as amended).
- The proposed dormer to the side is required to facilitate the stairs to the attic, the dormer to the rear is required to provide sufficient floor area at 2.4m floor to ceiling height.

Condition no.2

- They refer to the previous permission relative to this property Reg.Ref. F18A/0546 and note that the Council by condition omitted a narrower box dormer.
- The side dormer in the current application is necessary to provide the stairs access to the converted attic. They provide details of this and consider that the dormer now proposed will not have any visual impact from the street.
- They are concerned in particular about Condition 2(b) and do not consider that there is a need for obscure glazing. It is not appropriate or necessary to have obscure glazing on a bedroom window.
- The visual amenity is scarcely improved by reducing the width of the dormer or the distance of the gable elevation from the ridgeline of the main roof. They are concerned that this will result in a smaller floor area for the attic bedroom.
- They urge the Board to remove Condition no.2 entirely and permit the development as shown on the drawing submitted. They include Figures to demonstrate this.

Condition no.3

- The attic conversion is clearly for residential use, there is no requirement to apply Condition no.3.
- Compliance with the Building Regulations is a matter for the certifying architect or engineer and the building control authority.
- The Planning application process is not an appropriate forum for ensuring compliance with the Building Regulations.
- They as designers are satisfied that the works comply with the Building Regulations.

6.2. Planning Authority Response

They have regard to the Grounds of Appeal and their Response includes the following:

Condition no.2

- The proposed dormers were assessed having regard to the zoning objective for the site, relevant development plan objectives, the established pattern of development within the surrounding area, the scale and design of the proposal and the relationship with adjoining residential development. Having regard to these issues they consider Condition no.2 necessary in order to protect the residential and visual amenity of the area.

Condition no.3

- The insertion of this condition was to highlight that the onus is on the applicant to ensure that they comply with the building regulations regarding the floor to ceiling heights in the attic level and other regulations and requirements of the Building Regulations.

Other issues

- In the event that the Planning Authority decision is upheld, they request that a condition requiring the payment of a contribution in accordance with the Council's Section 48 Development Contributions Scheme be included in the Board's determination.

7.0 Assessment

7.1. Planning Policy Considerations

- 7.1.1. The site is located in an area zoned 'RS, Residential', under the Fingal Development Plan 2017-2023. This zoning objective is to provide for residential development and protect and improve residential amenity. The vision for the zoning objective is to ensure that any new development in existing areas would have a minimal impact on and enhance existing residential amenity. Extensions to existing houses are acceptable in principle within this zoning provided they do not impact adversely on the residential amenities of the area or on the character of the existing house.
- 7.1.2. As noted in the Policy Section above Objective DMS41 relates directly to the design and impact of dormer extensions and seeks to ensure that they do not appear overly dominant or impact on the privacy of neighbouring properties. The issues raised in this Appeal are considered further in this Assessment below.

7.2. First Party Appeal against Conditions

- 7.2.1. In this case it is noted that there is no Third Party Appeal or Observations. Section 139 of the Planning and Development Act 2000 as amended would apply as this relates only to appeals against conditions. Section 139 (c) provides that where: *the Board is satisfied, having regard to the nature of the condition or conditions, 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.* Therefore, it is considered that taking into account the particulars of this case and the documentation submitted that the application does not need to be considered *de novo*.
- 7.2.2. This assessment will therefore be confined to the specific appeal of Condition Nos. 2 and 3 of the Planning Authority's decision. I consider, that the main issues for consideration in this appeal relate to the appropriateness of Condition Nos. 2 and 3. These are addressed individually below.

7.3. Consideration of Condition no.2

- 7.3.1. It is of note that the Council's Condition no.2 is as follows:

Prior to the commencement of development, the developer shall submit revised elevational drawings, sections and floor plans detailing the following revisions for the written agreement of the Planning Authority:

- a) The width of the side dormer shall not exceed 2.5m and the glazed area shall not exceed 1m x 1m and the window to be permanently fitted with obscured glazing.*
- b) The rear dormer shall be reduced in scale such that its external width is no more than 2.1m and its gable elevation shall not exceed a depth of 3m from the roof ridge of the main roof. The proposed window located within the dormer shall be fitted with obscure glazing and the window shall be centred.*

Reason: *In the interest of visual amenity and in the interest of clarity.*

- 7.3.2. Regard is had to the plans and particulars submitted with this application. It is noted that there are two dormers proposed to allow for the attic accommodation and stairwell, a box type dormer to the rear and a hipped roof type dormer to the side. The First Party provides that the proposed dormers are both needed to allow for extra family space to the existing family home. They contend that these dormers will not be visually obtrusive, cause overlooking or loss of privacy or detract from the character of the existing house.
- 7.3.3. They provide that the side dormer proposed in the current application is necessary to provide the stairs access to the converted attic. It is centred on the ridge of the main roof. The original zinc dormer measured 2.3m external, the current hipped side dormer measures 2.65m external. In addition, that the hipped form will better integrate with the existing roof. Also, they submit that this provides the necessary 2.0m headroom for stairs. They contend that if they reduce the width of the dormer whilst maintaining the ridge line of the dormer, it leads to a truncated dormer that will appear out of character and compromised from the rear elevation. They also submit that by reducing the width of the dormer it will not have any visual impact from the street.
- 7.3.4. The First Party are particularly concerned about the inclusion of Condition 2(b) relative to the fitting of an obscure glazed window relative to the rear dormer, being inappropriate to the use of this room as a bedroom. In view of the orientation of no.28 Brackenstown Avenue and no.2 Windmill Avenue, the proposed rear dormer

will face only the first floor obscure glazed side window of no. 2 Windmill Avenue. There are no directly opposing first floor windows to the rear of the site. It is noted that the rear garden of no.28 is c.14m in length. In this case I would recommend that if the Board decides to include this condition, that the obscure glazed element could be omitted.

- 7.3.5. It is also contended that the visual amenity is very marginally improved by reducing the width of the dormer or the distance of the gable elevation from the ridgeline of the main roof. That the result is a smaller floor area for the attic bedroom. It is noted that the attic floor plans show the bedroom area proposed is c.12.6sq.m. The plans are colour coded showing the extent of alterations in orange and of new floor area i.e to comprise the dormer windows area as 5.8sq.m.
- 7.3.6. Regard is had to the relevant Planning History. It is noted that the previous application Reg.Ref. F18A/0546 proposed a narrower zinc box dormer c. 2.4m wide and c. 2.4m in height on the side (south) elevation. A velux roof light was then proposed at the rear (west) roof plane of the dwelling. Condition no.2 of the Council's permission omitted this dormer in the interests of visual amenity. The revised design seeks to allow for better integration of the proposed dormer.
- 7.3.7. It is also of note that there has been a subsequent permission relative to Reg.Ref. F18A/0555, was granted to build a two-storey detached house to the south of the existing dwelling (the subject property) located in the side garden of no.28 Brackenstown Avenue. This has not yet been constructed but will considerably change the dynamic as the side dormer will be less visible in the streetscape on what is now a corner site. Regard is had to the northern elevation of the permitted but not yet constructed house, and it is noted that it does not include windows in the north elevation facing the subject property, so the proposed side dormer will not cause overlooking to the permitted house. However, while detached as shown on the plans there is a separation distance of c.1.2m between the host property and the permitted house, which is less than the separation distance of 2.3m between properties as recommended in Objective DMS28 of the Fingal CDP 2017-2023. Therefore, the impact of the proposed development including in particular, the side dormer, on this permitted property also needs to be taken into account.

- 7.3.8. Regard is had to Objective DMS41 of the Fingal CDP relative to dormer extensions to roofs, where it is advised that they not appear overly dominant in the roofscape or exceed the height of the ridge level of the existing roof. I would be concerned that the scale of the two dormers now proposed will appear excessive when seen in the context of the existing roof scape, adjoining houses and having regard to the pattern of development of the area. This will set a precedent as there are no other similar type dormers in the immediate area.
- 7.3.9. Having regard to the context of the site and surrounding area and taking into consideration, the scale and design, I would consider that, the development proposed subject to amendments to Condition no.2 as noted above, to be acceptable. I have no reason to consider that the proposal would be contrary to the proper planning and sustainable development. The development proposed subject to these amendments is visually acceptable and does not impact on the amenity of the surrounding area.
- 7.3.10. I would recommend that the modifications referred to Condition no.2 of the Council's permission should be retained as they would reduce the overall visual impact and the dormers would appear less overly large and dominant and more in character with the existing house and other houses in the area. If the Board decides to permit, I would recommend that Condition no.2 be retained but that the reference to the obscure glazing element in the rear elevation be omitted.

7.4. **Consideration of Condition no.3**

- 7.4.1. It is of note that the Council's Condition no.3 is as follows:

The attic conversion shall be restricted to non-residential use only in the event that the floor to ceiling heights and other regulations and requirements of the Building Regulations relating to the ventilation of habitable room are not complied with in the development.

Reason: *In the interest of orderly development.*

- 7.4.2. It is noted that Condition no. 5 of the Council's previous permission relative to this house, Reg.Ref. F18/0546 sought to clarify the extent of the permission and was as follows: *Any attic space which does not comply with Building Regulations in relation to habitable standards shall not be used for human habitation.*

- 7.4.3. The First Party provide that the proposed dormers will comply with the Building Regulations. They provide that the attic conversion is clearly for residential use, there is no requirement to apply condition no.3. Also, that compliance with building regulations is a matter for the certifying architect or engineer and the building control authority. In addition, they submit that the planning application process is not the appropriate forum for ensuring compliance with Building Regulations.
- 7.4.4. I refer the Board to Section 7.8 of the *Development Management - Guidelines for Planning Authorities* (2007) which states that it is inappropriate in development management to attach planning permission conditions which are the subject of more specific controls under other legislation or are directly regulated by other statutes, unless there are particular circumstances e.g. the matters are relevant to proper planning and sustainable development and there is good reason to believe that they cannot be dealt with effectively by other means. The Guidelines detail that the existence of a planning condition, or its omission, will not free a developer from his or her responsibilities under other codes and further advise that the Building Regulations require certification by a developer's design team.
- 7.4.5. On this basis, I consider that that the Planning Authority should not have imposed a condition requiring that the attic conversion of the dwelling be restricted to non-residential only on the grounds that its floor to ceiling height does not comply with the Building Regulations. It is outside the remit of this planning appeal to determine whether or not the floor to ceiling height of the first floor area complies with the Building Regulations. The onus is on the First Party to comply with the relevant standards set out in the Building Regulations. I recommend, therefore, that the Planning Authority be directed to remove Condition No. 3.

7.5. **Regard to Development Contribution**

- 7.5.1. The Planning Authority's response to the Appeal requests that in the event their decision is upheld by the Board, that a condition relative to the payment of a development contribution be included. It is noted that the Council's permission did not include such a condition. The planning application provides that the g.f.s of the existing building is 90.64sq.m and that proposed is 5.9sq.m. Section 10 of the Fingal

County Council Development Contributions Scheme 2016-2020 refers to *Exemptions and Reductions* i.e.:

(a) The first 40 sq metres of domestic extensions. This exemption is cumulative and limited to 40 m² in total per dwelling. Domestic extensions for accommodation of disabled person(s) are exempted in full in cases where a Disabled Persons Grant is approved.

(b) Attic conversions.

7.5.2. Note is had of the Planning History Section above and if the extensions to floor area as previously permitted have been constructed then these would have to be included relative to the cumulative 40sq.m. In this case in view of the limited additional floor area proposed and as this is being considered as an application for an appeal against specific conditions, I would not consider that the inclusion of a Development Contribution condition would be warranted or appropriate.

8.0 Recommendation

8.1. I recommend that Condition no.2 of the Council's Permission Reg.Ref. F20A/0321 be modified as noted below and that Condition no.3 be omitted.

9.0 Reasons and Considerations

The wording of Condition no.2 should be modified as follows:

Prior to the commencement of development, the developer shall submit revised elevational drawings, sections and floor plans detailing the following revisions for the written agreement of the Planning Authority:

- a) The width of the side dormer shall not exceed 2.5m and the glazed area shall not exceed 1m x 1m and the window to be permanently fitted with obscured glazing.*
- b) The rear dormer shall be reduced in scale such that its external width is no more than 2.1m and its gable elevation shall not exceed a depth of 3m from the roof ridge of the main roof. The proposed window located within the dormer shall be centred.*

Reason: In the interest of visual amenity and in the interest of clarity.

Condition no.3

It is considered that the removal of condition number 3 would be in accordance with Section 7.8 of the Development Management Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in June, 2007 which states that it is inappropriate in development management to attach planning permission conditions which are the subject of more specific controls under other legislation or are directly regulated by other statutes, unless there are particular circumstances e.g. the matters are relevant to proper planning and sustainable development and there is good reason to believe that they cannot be dealt with effectively by other means. Condition number 3 requires that the attic conversion be restricted to non-residential only in the interest of compliance with the Building Regulations. It is considered inappropriate, in this instance, to attach a condition relating to matters regulated by the Building Regulations. The proposed development would not seriously injure the amenities of the area or of property in the vicinity and, therefore, would be in accordance with the proper planning and sustainable development of the area. The onus is on the applicant to ensure that the development proposed complies with the Building Regulations.

Angela Brereton
Planning Inspector

16th of December 2020