



An
Bord
Pleanála

Inspector's Report ABP308579-20

Development	Retention permission for first floor extension to rear of existing house.
Location	16 Ivar Street, Stoneybatter Dublin 7.
Planning Authority	Dublin City Council.
Planning Authority Reg. Ref.	3224/20.
Applicant	Sandra Hoey.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party
Appellant	Fiona Cartin.
Observers	None.
Date of Site Inspection	14 th March, 2021.
Inspector	Paul Caprani.

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1.0 Introduction

ABP308579-20 relates to a third party appeal against the decision of Dublin City Council to grant retention of planning permission for a first floor extension to the rear of an existing house at No. 16 Ivar Street, Stoneybatter, Dublin 7. The grounds of appeal state that the first floor extension as constructed give rise to overlooking and argues that the proposed development adversely impacts on surrounding residential amenity and that the conditions attached to the Planning Authority's grant of permission do not adequately address these concerns.

2.0 Site Location and Description

- 2.1. The appeal site is located in the inner suburban area of Stoneybatter, approximately 2 kilometres west of Dublin City Centre. Stoneybatter is an inner suburban, exclusively residential area developed by the Dublin Artisan Dwelling Company at the beginning of the 20th Century. It comprises of a tight rows of small artisan two-storey dwellinghouses with small yards to the rear. The subject site is located on Ivar Street which runs parallel to the immediate north of Manor Place. No. 16 comprises of a mid-terrace dwelling which faces northwards directly opposite No. 1 Sigurd Road.
- 2.2. No. 16 incorporates a total site area of 40 square metres. The existing dwellinghouse on site occupies an area of 38 square metres. It accommodates at ground floor level a lounge to the front of the dwelling and a kitchen and bathroom to the rear. A stairwell located in the centre of the house provides access to two bedrooms and a small toilet at first floor level. To the rear of the dwelling at first floor level a small rectangular extension has been constructed occupying an area of 6 square metres. It is constructed above the kitchen and bathroom at ground floor level and extends c.2.79 metres from the rear of the house and is just over 2 metres in width. It incorporates opaque glazing on three sides. The centre panel on all three elevations incorporates windows which can open outwards. The extension is currently used as a utility room (for the drying of clothes) at the time of my site inspection. It does not appear to be used for any habitable purposes. The planning application form and

public notices indicated that the room is to be used as a second bedroom. The rear of the building backs onto No. 41 Manor Place. The rear return of No. 41 is approximately 6 metres from the extension for which retention of planning permission is sought.

- 2.3. The appellant who resides at No. 40 Manor Place to the south-west has a ground floor extension to the rear which is located approximately 7 metres from the first floor extension.

3.0 Proposed Development

- 3.1. Planning permission is sought for the retention of the first-floor extension as constructed for use as a second bedroom while retaining the opaque on all windows serving the room.

4.0 Planning Authority's Decision

4.1. Decision

- 4.1.1. Dublin City Council issued notification to grant planning permission subject to six conditions.

Condition No. 3 requires that the windows on the side elevations of the extension to be retained shall be permanently non-openable.

Reason: In the interest of privacy and residential amenity.

Condition No. 5 requires that the windows of the first-floor rear extension shall be permanently glazed with obscure glass.

Reason: In the interest of privacy and amenity.

4.2. Planning Authority Assessment

- 4.2.1. A report by TII notes that the proposed development falls within an area for the adopted Section 49 Supplementary Contribution Scheme (Luas Cross City). It requests that if planning permission is forthcoming, and the proposal is not exempt, that a condition be attached under the provisions of Section 49 Development Contribution Scheme.

- 4.2.2. Two letters of objection have been received one from the current appellant (No. 40 Manor Place) and from the occupier of No. 41 Manor Place directly opposite the site. Both letters of objection raise concerns with regard to overlooking, impact on amenity and planning precedent.
- 4.2.3. The planner's report sets out details of the proposal and notes that the windows are currently fitted with obscure glazing and it is therefore considered that it will not create significant overlooking of adjoining properties. However, it is considered that the windows in the side elevations of the extension should be non-openable to prevent overlooking of the bedroom windows of the neighbouring properties on Ivar Street. While generally the two-storey extension would be out of character with the restricted pattern of development in the area, precedent has been set on Ivar Street with two other properties including No. 14 having two-storey extensions. Given that there is a precedent for two-storey extensions within the area and having regard to the incorporation of obscure glazing it is considered that the development to be retained does not seriously injure the residential amenity of property in the immediate area. On this basis it is recommended that planning permission be granted for the proposal.

5.0 Planning History

No history files are attached. Reference is made in the planner's report to a Section 52 warning letter served on the applicant for the first-floor rear extension in question.

6.0 Grounds of Appeal

- 6.1. The decision was the subject of a third party appeal by Fiona Cartin of No. 40 Manor Place, Dublin 7. The grounds of appeal are outlined below.
- 6.2. It is stated that notwithstanding the imposition of Condition No. 5, the window at the first floor can still open out to impact on the appellant's privacy and amenity. It is stated that the opening of this window directly overlooks the appellant's daughter's bedroom.
- 6.3. It is also stated that music coming from the structure impacts on the appellant's amenity.

- 6.4. While residents are unable to look into the proposed extension the owners can still look out into adjoining properties.
- 6.5. It is stated that if the windows could open upwards it may solve the issue.
- 6.6. Condition No. 3 which requires that the windows in question be non-openable is very difficult to enforce.

7.0 **Appeal Responses**

- 7.1. **Dublin City Council** have not submitted a response to the grounds of appeal.
- 7.2. A response on behalf of the **applicant** states that the extension is for the purposes of extending the bedroom facility and creating more space for circulation and it is not accepted that the proposal will encroach into the privacy of the appellant's daughter's bedroom. To suggest that music coming from the structure in itself gives rise to amenity issues is not accepted.
- 7.3. It is stated that the two-storey extension when built, had considerations for surrounding dwellings as all windows incorporated obscure glazing and the window design is purely for natural light and ventilation.
- 7.4. The extension has been completed for some time now and the applicant won't be altering the design openings on the side elevations. It is stated that the applicant was more than happy to engage with the appellant in respect of retaining the extension.

8.0 **Development Plan Provision**

- 8.1. The site is governed by the policies and provisions contained in the Dublin City Development Plan.
- 8.2. The subject site is governed by the zoning objective Z2 "to protect and/or improve the amenities of residential conservation areas".
- 8.3. Section 16.10.12 of the development plan specifically relates to extensions and alterations to dwellings.
- 8.4. The design of residential extensions should have regard to the amenities of properties and in particular the need for light and privacy. In addition, the form of the existing building should be followed as closely as possible, and the development

should integrate with the existing building through the use of similar finishes and windows. Extensions should be subordinate in terms of scale to the main unit.

8.5. Applications for planning permissions to existing dwellings will only be granted where the planning authority is satisfied that the proposal:

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

8.6. Appendix 17 of the Dublin City Development Plan also sets out further guidelines for residential extensions.

8.7. It notes that new extensions whether they are single-storey or two-storey, have an effect on the immediate environment and accordingly the following general principles should be addressed in all proposals for extensions. Proposals should:

- Not have an adverse impact on the scale or character of the building.
- Have no unacceptable effect on the amenities enjoyed by occupants of the adjacent building in terms of privacy and access to daylight and sunlight.
- Achieve a high quality of design.

8.8. It is important to make sure that any extension does not unacceptably affect the amenities of neighbouring properties. This includes privacy, outlook, daylight and sunlight. It is advisable to discuss the proposal with neighbours prior to submitting a planning application.

8.9. Section 17.6 notes that large single or two-storey rear extensions to semi-detached or terraced dwellings can, if they project too far out from the main rear elevation, result in the loss of daylight to neighbouring houses. Furthermore, depending on orientation such extensions can have a serious impact on the amount of sunlight received by adjoining properties. Consideration will be given to the proportion of the extensions, height and design of roofs as well as taking account of the position of windows including rooms they serve to or facing adjoining dwellings.

8.10. Section 17.8 relates to the subordinate approach. The subordinate approach means that the extension plays more of a supporting role to the original dwelling. In general, the extension should be no larger or no higher than the existing structure.

8.11. **Natural Heritage Designations**

The site is not located within or proximate to a designated Natura 2000 site. The nearest Natura 2000 site is the South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024) which is located 4 kilometres east of the subject site.

8.12. **EIAR Screening Determination**

The proposed extension is not a class of development for which EIAR is required.

9.0 **Planning Assessment**

I have visited the subject site and its surroundings and have had particular regard to the issues raised in the grounds of appeal. I consider the critical issues in determining the current application and appeal before the Board are as follows:

- Impact on Surrounding Residential Amenity
- Enforceability of Conditions
- Planning Precedent

9.1. **Impact on Surrounding Residential Amenity**

9.1.1. Having inspected the subject site I note that the proposed first floor extension for which retention of planning permission is being sought, has the potential to give rise to significant overlooking issues. While the applicant has endeavoured to address the issue of overlooking through the incorporation of opaque glazing on all the windows on the first-floor extension, the fact remains that the extension as constructed incorporates windows on three elevations all of which open outwards and can give rise to overlooking of surrounding rear yards and habitable rooms including bedrooms. I note that the first floor extension is not currently used as living accommodation and appears to be only used for utility purposes such as clothes drying. Nevertheless, the planning notices indicate that the building is to be used as a bedroom and therefore is intended to be used as a habitable room. With the incorporation of windows on three elevations all of which open outwards, the potential for overlooking is readily apparent.

9.1.2. In terms of separation distances, the distance between the first floor extension and surrounding windows are between 7 and 10 metres. This falls substantially short of

the 22 metre guidelines as set out in the development plan between opposing first floor windows. While the development plan states that this standard may be relaxed if it can be demonstrated that the development is designed in such a way as to preserve the amenities and privacy of adjacent occupiers, the separation distance is substantially short of this standard and the opening of windows undoubtedly gives rise to overlooking issues having regard to the orientation and proximity of adjoining windows.

9.1.3. With regard to overshadowing, I note that the first-floor extension is north of the rear yards of Manor Place and as such no significant overshadowing issues will arise.

9.1.4. With regard to the issue of playing music from the first-floor extension I don't consider this to be a material issue in adjudicating on the application and appeal. Music can emanate from any room in the house and give rise to noise issues. The fact that a first-floor extension has been incorporated to the rear does not in itself accentuate or exacerbate the potential for noise pollution post construction phase.

9.2. **Enforceability of Conditions**

9.2.1. The conditions imposed by the Planning Authority are in my view somewhat problematic in terms of addressing the appellant's concerns. It is appropriate that some form of ventilation is provided in the form of letting fresh air into the room in question. It is not appropriate therefore to block off windows on all three elevations of the first floor extension. However, all three windows when open give rise to significant overlooking issues. And while Condition No. 3 requires the windows on the side elevation to be permanently shut or removed this does leave the problem of overlooking from the rear window elevation. It does not successfully address problems of overlooking to the rear elevations of Nos. 40 and 41 Manor Place. If the Board are minded to grant planning permission, it could consider incorporating a condition which requires the applicant to replace the existing windows with new inward opening tilt windows (sometimes referred to as tilt and turn windows) which will provide sufficient ventilation. This in my view would substantially and sufficiently address the appellant's concerns in respect of overlooking.

9.3. **Planning Precedents**

9.3.1. I note the report of the Planning Authority where it is stated that generally two-storey extensions would be out of character with the restricted pattern of development in

the area. However, it is noted that two properties along the street (including No. 14) incorporate two-storey extensions to the rear.

9.3.2. There are also however a number of precedent decisions in the wider area including the following:

9.3.3. Under ABP302693-18 where permission was sought for a new single-storey extension at ground floor level and the incorporation of an en-suite bathroom to serve an existing bedroom at first floor level. It is noted that Dublin City Council in determining the application recommended a grant of planning permission subject to six standard conditions. The decision of Dublin City Council was subject to a third party appeal and while the inspector recommended that the decision of the Planning Authority be upheld in its entirety the Board in its decision dated January, 2019 issued a grant of planning permission but crucially Condition No. 2 of this permission required that the first floor extension be omitted from the development.

9.3.4. In the case of No. 58 Viking Road to the south of the subject site planning permission was granted for an extension to the rear by Dublin City Council. This was the subject of an appeal (Reg. Ref. PL 237424) and again An Bord Pleanála incorporated a condition omitting the first floor element of the development.

9.3.5. Under Reg. Ref. ABP 301897/18 which related to a two-storey extension to the rear of No. 13 Viking Road, the Board in this instance overturned the decision of Dublin City Council to grant planning permission and refused planning permission outright for the proposed extension due to the scale of the development which was considered to constitute an overdevelopment of the site and stated that the proposed two-storey element would be unduly overbearing on neighbouring residential property.

9.3.6. Finally, I would refer the Board to the most recent application under ABP308296/18 which related to the demolition of an existing kitchen at ground floor level and the incorporation of a new two-storey extension including a new en-suite bathroom at first floor level. Again, the Board in granting planning permission for this development omitted the second storey in the interests of residential amenity.

9.3.7. The precedent issues relating to developments in the vicinity of the subject site would suggest that, if the application for permission (as opposed to retention of

permission) related to a two-storey element to the rear of the subject site, that permission for the second storey may not be forthcoming on appeal.

9.4. **Other Issues**

I note the submission from Transport Infrastructure Ireland which states that the subject site is located within the catchment area for the adopted Section 49 Supplementary Contribution Scheme – Luas Crosscity (St. Stephen’s Green to Broombridge Line). While the proposed development relates to a domestic extension Section 13 of the said contribution scheme states that exemptions and reductions shall not apply to permissions for retention of development. Thus, if the Board are minded to grant planning permission for the proposed development in this instance, I recommend that a non-specified Section 49 Supplementary Development Contribution be attached to any grant of planning permission.

10.0 **Conclusion and Recommendation**

It is my considered opinion that the Board could consider granting retention of planning permission for the proposed extension at first floor level provided that (a) new fenestration arrangements were incorporated into the extension where the existing standard windows were to be replaced with inward opening top or bottom hung hinged windows which incorporated obscure glazing. This would in my view help mitigate against any potential overlooking. (a) The room in question would be used for utility purposes only and would not be used as a bedroom or any type of habitable room. I would question the appropriateness of providing habitable accommodation which incorporates opaque glazing on all three elevations. Opaque glazing is normally incorporated into bathrooms, balconies or perhaps in an instance where a dual aspect habitable room is required to have one window fitted with opaque glazing in order to address potential overlooking issues. I would seriously question the appropriateness of permitting a bedroom which is required to incorporate opaque glazing in its entirety. The need to incorporate such glazing in my view undermines any argument that the room is in fact suited for habitable accommodation.

Furthermore, I consider the precedent to which a grant of planning permission for a two-storey structure to the rear would create would not be consistent with previous decisions issued by the Board in respect of similar type developments in the wider area of Stoneybatter, particularly on streets which are of a similar character and nature to the appeal site.

On balance therefore I consider that the Board should overturn the decision of the Planning Authority and refuse retention of planning permission for the proposed development.

11.0 Appropriate Assessment

Having regard to the nature and scale of the proposed development and nature of the receiving environment together with the proximity to 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.

12.0 Decision

Refuse retention of planning permission for the proposed first floor extension based on the reasons and considerations set out below.

13.0 Reasons and Considerations

It is considered that the retention of the first-floor extension to the rear of the existing house with the incorporation of outward opening windows would give rise to excessive levels of overlooking of adjoining properties and thereby seriously injure the residential amenities of residents in the vicinity. Furthermore, it is considered that a grant of planning permission for the first-floor element in order to provide an additional bedroom that incorporated opaque glazing on all windows serving the bedroom in order to attempt to alleviate and address the issue of overlooking, would set an undesirable precedent for similar type development in the area and would therefore be contrary to the proper planning and sustainable development of the area.

Paul Caprani,
Senior Planning Inspector.

6th April, 2021.