



An
Bord
Pleanála

Inspector's Report

ABP-308668-20

Development	Retention permission for garage conversion to games room, additional height to existing shed walls and construction of a new flat roof.
Location	1 Thormanby Woods, Howth, Co. Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F20B/0202
Applicant(s)	Mark and Rachel Jackson.
Type of Application	Permission.
Planning Authority Decision	Refuse permission
Type of Appeal	First Party
Observer(s)	David and Frances Lawson.
Date of Site Inspection	1 st February 2021.
Inspector	Barry O'Donnell

1.0 Site Location and Description

- 1.1. The subject site is a detached property, with a stated area of 0.42ha. It is located south of Howth village, in a residential neighbourhood. The site contains a dormer bungalow, garden and a number of outbuildings.
- 1.2. The site is enclosed along the northern boundary primarily by mature trees. An outbuilding, the subject of this appeal, also abuts the property boundary in this area.
- 1.3. The site is adjoined by detached residential properties, to the east and west, and by housing within the Thormanby Hill estate, to the south.

2.0 Proposed Development

- 2.1. Permission is sought to retain an existing garage conversion and renovation to games room, together with increased height to existing shed walls and a new flat roof, together with ancillary works.
- 2.2. The subject structure is L-shaped, with the section which has had its walls raised and a new flat roof applied is identified as a storage shed and bike store. It is located parallel to the property boundary, whilst the converted garage is set away from the boundary.
- 2.3. The converted garage has a stated gross floor area of 32sqm and a flat roof height of 2.43m, measured from ground level.
- 2.4. The storage shed and bike store has a stated gross floor area of 35sqm and had its walls raised by 0.67m, to a flat roof height of 3.10m.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On 20th October 2020, Fingal County Council refused retention permission, for the following reason:

'1. The development seeking retention permission by reason of its overall scale, design, height and mass and proximity to the site boundary results in an overbearing and visually intrusive feature that would seriously injure the character and amenities

of property in the vicinity by way of direct impact upon the residential amenities and in turn would contravene the RS zoning objective which seeks to 'provide for residential development and protect and improve residential amenity'.

3.2. Planning Authority Reports

3.2.1. Planning Report dated 14th October 2020, which reflects the decision to refuse permission. The report expressed particular concerns regarding the impact of the development on the residential amenities of the adjacent dwelling, as it is viewed by the occupants along the avenue access to their home. The unfinished state of the structure, with exposed blockwork and its siting, where it perforates a row of mature trees and hedging which contribute to the established setting of the dwelling, were identified as concerns. The report contended that the structure, by virtue of its proximity to the shared boundary represents an intrusive feature which is visually obtrusive and incongruous. The recommended refusal reason generally accords with the Planning Authority's refusal reason.

3.2.2. Other Technical Reports

The Planning Report outlines that no other departmental reports were requested.

3.3. Prescribed Bodies

3.3.1. None consulted.

3.4. Third Party Observations

3.4.1. A third party submission was received, the issues raised with which can be summarised as follows:

- The identification of the property boundary on the application drawings was questioned and observer outlined that the bike shed/store is located on the site boundary.
- The accuracy of the application drawings, with reference to the identified dimensions of the structure, were questioned.
- The height of the development was considered excessive and out of character with the area.

- Concerns were expressed regarding the safety of the structure.
- The height and scale of the structure were considered injurious to the amenity and market value of the observers' home, with reference to the increased height of the structure.
- The necessity for a bike shed/store of such height was questioned.
- The unfinished appearance of the structure is highly visible on leaving or entering the observers' property and it was outlined that it could have been finished, as the other end of the building has.
- The observer outlined that the roof appears to have been designed to drain onto their access driveway.
- It was considered that a grant of permission for the development would set a precedent for such development.
- The observer identified a number of other developments undertaken at the subject site, since the applicants purchased the site.
- The observer considered the maximum height of any wall to the front of their home should not exceed 1.2m.
- The observer considered the structure presents a fire risk and may impact on emergency access to their home.

4.0 Planning History

- 4.1.1. I did not encounter any recent planning records pertaining to the site.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The site is zoned 'RS' under the Fingal County Development Plan 2017-2023, with an objective to "*Provide for residential development and protect and improve residential amenity.*"
- 5.1.2. The site is also located within the Howth Special Amenity Area Buffer Zone

5.2. Natural Heritage Designations

5.2.1. The subject site is not located within or adjacent to any designated European Site.

5.3. EIA Screening

5.3.1. The proposal is for retention of a garage conversion and increased height to existing shed walls and a new flat roof, together with ancillary works. This type of development does not constitute an EIA project and so the question as to whether or not it might be sub-threshold does not arise.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The grounds of appeal can be summarised as follows;

- The development meets all development plan requirements.
- Due to enforcement proceedings, the applicant was forced to stop works so an unfair assessment of the garage conversion was decided upon.
- The structure was built over 10 years ago, with a dilapidated roof that was dangerous and needed to be replaced.
- The addition of 2 courses of blockwork allows the floor to ceiling height to be 2.4m, which is reasonable and the roof has a minimal impact.
- The only instance where the north wall comes into view is when you travel down the neighbouring driveway. The applicant planned to soften the extended blockwork by rendering and painting it.
- The view of the development is obstructed by the treeline to the north and the trees on the applicants' site.
- The new roof drains onto the existing garage roof and is carried to the existing downpipes.
- The scale of the development is considered to be minor in respect to the site.

- There are other similar developments in the area with larger impacts on amenity and close to boundaries.
- The proposal is within the applicant's boundary.
- The Board is requested to overturn the Planning Authority's decision and to grant permission.

6.2. Planning Authority Response

6.2.1. Submission received dated 8th December 2020, the contents of which can be summarised as follows:

- The application was assessed against the policies and objectives of the Fingal County Development Plan 2017-2023 and existing government policy and guidelines. The development was assessed having regard to the development plan zoning objective as well as the impact on adjoining neighbours and the character of the area.
- The development was not considered acceptable and would by virtue of the scale, mass and height represent an intrusive overbearing feature, within a previously mature setting, which would be visually obtrusive upon the amenities of the adjacent dwelling to the north.
- To grant permission for the structure would not be consistent with the proper planning and sustainable development of the area.
- The Board is requested to uphold the Planning Authority's decision.
- In the event that permission is granted, provision should be made for a financial contribution in accordance with the Council's Section 48 Development Contribution Scheme.

6.3. Observations

6.3.1. A letter of observation has been received from David and Frances Lawson, the owners of the north-adjoining property.

- The face of the boundary wall is the boundary itself and there is nowhere to install a roof overhang, plaster or other raised surface. The wall seems to encroach over the boundary line.
- The scale of the structure is extremely obtrusive. Planning regulations state a maximum height of 1.2m for the boundary wall in a front garden.
- The height and mass are extremely large and an intrusively overbearing structure, that has a large impact on usage of the access drive and front area of the observers' home.
- It is incorrect to state that the walls have been raised by 2 courses of blockwork. The observers believe the height increase is in the region of 960mm-1m.
- The new roof is not a replacement. The area was previously an open walled area.
- While it is accepted that a gutter was installed with a downpipe from the new roof, there is no ridge on the north elevation of the roof to prevent rainwater spillage. Rainwater will flow over the south and north roof edges at the same, onto the old shed roof and onto the observers' driveway.
- The area for which retention is sought is 67sqm, comprising a games room, store and bike shed. This is in excess of any garage size and is more like an apartment or flat. The applicants have previously carried out development, when they converted a double garage to a habitable room in 2015.
- It is misleading to state that the development is similar to other garage developments in the area. The development is the opposite of a garage.
- The development, which is detached from the main house, is considered to be a big development, in terms of area and height.
- A series of photographs were included with the submission.

6.4. Further Responses

6.4.1. None received.

7.0 **Assessment**

7.1. Having inspected the site and considered the contents of the appeal in detail, the main planning issues in the assessment of the proposed development are as follows:

- Principle of development
- Ownership of the application site
- Scale and layout
- Impact on neighbouring properties
- Appropriate assessment.

7.2. **Principle of Development**

7.2.1. The proposed development is consistent with the 'RS' zoning objective, as set out in the Fingal County Development Plan 2017-2023.

7.3. **Ownership of the Application Site**

- 7.3.1. The observers state that the boundary wall of the structure is the property boundary and suggests that the structure seems to encroach over the boundary line. The grounds of appeal state that the proposal is within the applicant's boundary.
- 7.3.2. Section 5.13 of the *Development Management Guidelines* (DOEHLG, 2007) provides detailed guidance on the issue of land ownership disputes within planning applications, outlining that the planning system is not appropriate for resolving land disputes and that these are ultimately matters for the Courts. Further, it is advised that permission should only be refused on the basis of land ownership, where it is clear that the applicant does not have sufficient legal title.
- 7.3.3. In this instance, where the applicant has asserted control of the lands and where the observer has not undermined this position, I consider it has not been clearly demonstrated that the applicant does not have sufficient legal title. A refusal of permission on this basis would therefore be unjustified.

7.4. **Scale and Layout**

- 7.4.1. The subject structure has a gross floor area of 67sqm and is split into separate games room, storage shed and bike shed areas. I am satisfied that the subject site,

which is relatively large, is adequately sized to accommodate the structure, subject to consideration of its impact on adjacent properties.

7.5. Impact on Neighbouring Properties

- 7.5.1. The structure has been raised in height, directly adjacent to the shared property boundary with 1A Thormanby Woods. I note in this respect that the observers state that the wall has been raised by in the region of 960mm-1m, rather than by two courses of blockwork, as is stated in the grounds of appeal.
- 7.5.2. It was evident on my visit to the site that three courses of new blockwork have been applied to the structure and I also noted that the garden of the subject site is set below the adjacent driveway by around 300mm. I measured the height of the structure from ground level within the adjacent site, where it measured 2.8m high. The application drawings incorrectly identify that the driveway is set below the level of the shed.
- 7.5.3. The structure is clearly visible on the approach to the neighbouring property, along the driveway but, whilst I note the observers' concerns regarding its visual impact, I do not consider that it is so intrusive or injurious as to justify a refusal of permission. The structure is located forward of the observers' garden, where any available views are distant and are likely to be impeded by intervening vegetation. As such, the impact of the structure on the residential amenity of the adjoining occupiers is, in my opinion, limited.
- 7.5.4. I am also cognisant that a c.2m high wall has evidently existed in this location for a number of years, 10 years according to the grounds of appeal, and the subject development is the raised height of the wall and new roof, rather than the wall in its entirety. The application of an appropriate finish to the wall, i.e. render, which the grounds of appeal state is the applicant's intention, would undoubtedly improve its appearance in the available views from the neighbouring property. Such works will likely require access to the neighbouring property.
- 7.5.5. The observers have also outlined concerns regarding drainage from the roof of the structure. The application drawings identify a downpipe at the south-east corner of the games room and I noted on my visit to the site that a gutter runs along the south side of the raised roof section. It is not clear, however, from the drawings, how the roof has been designed in order to direct rainwater towards the collection system.

Given the close proximity of the structure to the property boundary, I would recommend that should the Board decide to grant permission, a condition be attached requiring the applicant to submit and agree surface water drainage proposals with the Planning Authority. Such proposals should ensure that rainwater is adequately drained within the subject site.

7.6. Appropriate Assessment

7.6.1. Having regard to the nature and scale of the proposed development, which is a small-scale residential development on residentially zoned and serviced lands, outside of any Natura 2000 sites, I do not consider that any Appropriate Assessment issues arise and I do not consider 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.

8.0 Recommendation

8.1. I recommend that retention permission be granted, subject to conditions as set out below.

9.0 Reasons and Considerations

9.1. Having regard to the nature and scale of the development to be retained, it is considered that, subject to compliance with the conditions below, the development would not seriously injure the amenities of the area or the amenities of properties in the vicinity. The development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	The development shall be 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
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	<p>commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity</p>
2.	<p>The external walls of the structure shall be finished in nap plaster within 6 months of the date of this order.</p> <p>Reason: In the interest of visual amenity</p>
3.	<p>The permitted structure shall not be used as habitable accommodation.</p> <p>Reason: In the interest of residential amenity.</p>
4.	<p>Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services, details of which shall be submitted for the agreement of the Planning Authority within 6 months of the date of this order.</p> <p>Reason: In the interest of public health.</p>

Barry O'Donnell
Planning Inspector

2nd February 2021.