



An
Bord
Pleanála

Inspector's Report

ABP-308795-20

Development	Retention of minor alterations to previously approved planning permission (ref 18/38041) for the construction of a new two storey extension to the rear and side of existing dwelling
Location	31 Laburnum Lawn , Model Farm Road , Bishopstown, Cork
Planning Authority	Cork City Council
Planning Authority Reg. Ref.	2039374
Applicant(s)	Mike and Boonapa Floyd.
Type of Application	Permission for retention
Planning Authority Decision	Grant permission subject to conditions
Type of Appeal	Third Party
Appellant(s)	Kevin Murray.
Observer(s)	None
Date of Site Inspection	4 th February 2021.
Inspector	Bríd Maxwell

1.0 Site Location and Description

- 1.1. This appeal relates to an established semi-detached dwelling site, 31 Laburnum Lawn located within a well-established residential area in Bishopstown to the south west of Cork City. The dwelling is on the northern side of the public road and backs onto land associated with the Lee Garage on the Model Farm road to the north. The appeal relates specifically to a two-storey extension of recent construction located to the rear and side of the dwelling. The extended area includes a single storey utility and wc to the side while the rear extension provides a kitchen living dining area at ground floor and bedroom ensuite at first floor level.

2.0 Proposed Development

- 2.1. The application as described in public notices involves permission for retention of *“minor alterations to previously approved planning permission (ref 18/38041) for the construction of a new two storey extension to the rear and side of existing dwelling. The minor alterations proposed for retention can be summarised as follows: Reduction of side extension from two storey to single storey. Removal of previously approved rear single storey extension¹. Removal of previously approved side extension adjacent to neighbour’s boundary. Minor alterations to proposed two storey extension (proposed parapet height to remain as per approved application) Addition of high-level ground floor window with privacy screen to prevent overlooking. Addition of ground floor window to existing dwelling and minor alterations to other windows of existing dwelling.”*

3.0 Planning Authority Decision

3.1. Decision

By order dated 4th November 2020 Cork City Council issued the decision to grant permission for retention of the development subject to 5 largely standard conditions

¹ I note that the site layout plan provided within planning history documentation 18/38041 and those available on Cork City Council website <http://planning.corkcity.ie/AppFileRefDetails/1838041/0> do not show a single storey rear extension within the permitted footprint.

and which included condition 5 requiring payment of development contribution of €3,825 in accordance with the Cork City Council Development Contribution Scheme.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- Planner's initial report considers that the addition of the high-level window on ground floor will not impact on privacy. Shadow study does not show impact on access to daylight relating to the patio area or the ground floor in the adjoining property. Further information required to assess this.
- A request for additional information issued requiring a daylight / sunlight and overshadowing study in relation to the impact on the adjoining property to the east. ²
- Final planner's report considers that the impact on adjacent dwelling is minimal and recommends permission subject to conditions. Report of Senior Executive Planner concurs with recommendation to grant.

3.2.2. Other Technical Reports

- Contributions report – Development Contribution of €3,825 to apply.
- Executive Engineer Drainage – No objection subject to conditions of previous permission.

3.3. Prescribed Bodies

- Irish Water – no objection.

3.4. Third Party Observations

- 3.4.1 Submission by the Kevin Murry, 29 Laburnum Lawn objects to the application on grounds of negative impact on established residential amenity by reason of scale design, overlooking and overshadowing. Submission raises issues with regard to

² It is noted that reference within the planners report and further information request sought assessment of overshadowing impact on dwelling to the west whereas it was confirmed prior to the applicant's response to request for additional information that the issue to be addressed was impact on dwelling to the east.

non-compliance with conditions of permission relating to hours of construction giving rise to significant noise and other disturbance. Proposed window fins to high level ground floor window are not an acceptable solution. Extension has resulted in significant overshadowing of ground floor windows and patio area. Inaccuracies on planning application are noted. Notable reduction in sunlight to rear sitting room and overlooking of bedroom from window.

4.0 Planning History

18/38041 Permission granted 19/03/2019 for demolition of single storey annex and attached garage and construction of a new two storey extension to the rear and side of existing dwelling. Alterations to existing windows and doors, the erection of new boundary fence anew entrance gate and all associated site works. The permitted extension had a total floor area of 67sq.m and comprised a two-storey extension to the side and rear. As noted at Footnote 1 page the site layout plan provided to the Board within planning history documentation and those drawings and documentation available on Cork City Council website <http://planning.corkcity.ie/AppFileRefDetails/1838041/0> do not refer to a single storey rear extension within the permitted footprint.

E8201 E8181 Enforcement files in relation to the site.

5.0 Policy Context

5.1. Development Plan

5.1.1 The Cork City Development Plan 2015-2021 refers. The site is zoned ZO 4 Residential Local Services and Institutional Uses. The objective is to protect and provide for residential uses, local services, institutional uses, and civic uses, having regard to employment policies outlined in Chapter 3.

Chapter 16 Extensions and Alterations to Dwellings.

The design and layout of extensions to houses are required to have regard to the amenities of adjoining properties particularly as regards sunlight, daylight, and privacy. The character and form of the existing building should be respected and external finishes and window types should match the existing.

Extensions should:

- Follow the pattern of the existing building as much as possible;
- Be constructed with similar finishes and with similar windows to the existing building so that they will integrate with it;
- Roof form should be compatible with the existing roof form and character.

Traditional pitched roofs will generally be appropriate when visible from the public road. Given the high rainfall in Cork the traditional ridged roof is likely to cause fewer maintenance problems in the future than flat ones. High quality mono-pitch and flat-roof solutions will be considered appropriate providing they are of a high standard and employ appropriate detailing and materials;

- Dormer extensions should not obscure the main features of the existing roof, i.e. should not break the ridge or eaves lines of the roof. Box dormers will not be permitted where visible from a public area;

- Traditional style dormers should provide the design basis for new dormers; Front dormers should normally be set back at least three-tile courses from the eaves line and should be clad in a material matching the existing roof;

- Care should be taken to ensure that the extension does not overshadow windows, yards or gardens or have windows in flank walls which would reduce the privacy of adjoining properties.

5.2. Natural Heritage Designations

The site is not within a designated area, the nearest such sites are Cork Harbour SPA (Site Code 004030) and Great Island Channel cSAC (Site Code 001058).

5.3 EIA Screening

5.3.1 Having regard to the nature, size and location of the proposed development, there is no real likelihood of significant effects on the environment. No EIAR is required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 The appeal is submitted by Kevin Murray 29 Laburnum Lawn, Model Farm Road and is accompanied by a report by McCormick Consulting Engineers. Grounds of appeal are summarised as follows:

- Sequence of events in term of previous planning application and construction set out.
- Prior to construction the back garden of No 29 including disabled access patio received 2 more than two hours of sunlight on March 21st. Now the patio area receives less than two hours.
- Significant disturbance and stress caused during construction works.
- Procedures adopted by the Local Authority in the initial application and assessment gave rise to difficulties and hindered the appellants with regard to their rights as an affected third party.
- Development Plan standards and guidelines have not been met.
- Objections were raised in the course of the application and following further information request size of the first-floor extension was increased and relocated from 2.7m to within 2.1m of the boundary with parapet level 1.1m. Length increased 4.5 to 6.2m. Council advised that this was not significant change and owners understood they had no right to appeal.
- Elongated high level window on ground floor allows overlooking of adjacent property. Proposed fins are not appropriate. Window should be fitted with frosted glass.

- Planners failed in their duty to protect the adjacent property.
- Planner did not inspect the site from the appellant's property where the overbearing effect of the structure would have been evident.
- Lower end of the garden is not disabled accessible.
- Planning conditions attached to 2018 application defined working hours however these were not adhered to.
- Developer and contractor have demonstrated disregard for neighbours and planning legislation.
- Question the independence of the daylight sunlight report which in any event shows negative effect on adjoining property.
- Diagram on page 16 clearly demonstrates that point 6 the patio door has a VSC of less than 15% which is considerable less than the recommended minimum 27% VSC and that point 7 the sitting room window receives marginally more than the minimum VSC requirement. This effectively confirms that this room receive marginally more than the minimum daylight requirement where its original value would likely have been in the order of 38%. Page 22 June 21 as built structure worse than the granted structure.

6.2. Applicant Response

The response by Simply Architecture on behalf of the first part is summarised as follows:

- Planning documentation contains a detailed daylight sunlight and overshadowing study and a design statement which outlines the minimal impact on the appellant's property.
- Extension sought for retention has reduced impact than that for which permission was granted.
- West side extension is smaller in height and volume compared to the approved planning permission which included a two-storey side extension.

- Rear extension overall length reduced by over 3m and is further away from the neighbouring boundary.
- Footprint of the two-storey extension to the rear has been reconfigured as part of this retention application. Parapet height is unchanged.
- Due to the north facing orientation the extension will only have a small impact on the appellant's property during late evening only.
- The removal of all single storey elements of the rear extension approved under 18/38041 particularly along the eastern boundary significantly reduces the footprint of the proposal and associated impact of the extension along the shared boundary.³
- Window on the eastern elevation is above eye level and includes privacy fins to eliminate potential for overlooking.

6.3. Planning Authority Response

6.3.1 The response by Cork City Council maintains that that it has carried out its duties in accordance with the provisions of the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended) and the decision to grant retention permission is consistent with the provisions of the Cork City Development Plan 2015-2021 and the proper planning and sustainable development of the area.

7.0 Assessment

7.1 I note that the submissions of the first party with regard to the permitted development (depicted on layout and floor plans and within the shadow study assessment) do not conform with the details supplied to the Board by the Planning Authority nor the

³ I note that the site layout plan provided within planning history documentation 18/38041 and those available on Cork City Council website <http://planning.corkcity.ie/AppFileRefDetails/1838041/0> do not show a single storey rear extension within the permitted footprint.

planning documentation available on Cork City Council's website <http://planning.corkcity.ie/AppFileRefDetails/1838041/0> which depict a total extension area of 67sq.m and not 82 sq. as suggested by the first party in the current application. In essence the depicted single storey extension to the rear of the two-storey extension is not shown on the drawings and plans supplied to the Board as the permitted development.

- 7.2 I also note that the third-party appeal has questioned the procedures adopted by the Local Authority in terms of the assessment and decision on the previous application and particularly with regard to the opportunities afforded to the appellant in terms of the ability afforded to submit observations. The submissions also allege that revised plans enlarging the extension were submitted during the course of the previous application and appellants were precluded from commenting on same. As noted above no evidence of an enlarged extension have been provided to the Board and following interrogation of the Council's website <http://planning.corkcity.ie/AppFileRefDetails/1838041/0> I have been unable to access any such plans. I note that it is not within the remit of the Board's consideration of the current appeal to revisit the procedures and previous decision of the Planning Authority and therefore I consider that it is appropriate to proceed to assessment of the development now proposed for retention on its own merit.
- 7.3 I also acknowledge certain inaccuracies on the submitted plans in terms of the dimensions of the extension for example the length of the rearward extension on the ground floor plan is indicated as 7m while the first floor is indicated as 4.3m when it is clearly the same length as the ground floor. In spite of these inaccuracies, it is possible to define the main key dimensions as follows. The rearward two storey extension is setback from the boundary with the appellant's property at a distance of 1.6m and has a total length of 7m. The height of the wall is 6.1m above internal floor level and circa 6.6m above external ground level. The parapet height is approximately 1.1m above eaves level.
- 7.4 I note that the third-party appellant is critical of the manner in which the extension was constructed on site, not in accordance with the permission granted, and also alleges non-compliance with the terms of permission in regard to the hours of

construction works which it is alleged gave rise to significant disturbance to residential amenity. Clearly best practice would involve prior permission and adherence to reasonable construction terms in an established residential area however these are matters which are beyond the remit of the current appeal. Nevertheless, I note that the planning legislation provides for an opportunity to regularise unauthorised development by means of a retrospective planning application. It is appropriate therefore to assess the revised extension as constructed on its planning merit.

7.5 I consider the principal planning issues relating to the development proposed for retention are the impact on residential amenity. Having regard to the previous permission granted on the site the principle of provision of a two-storey extension to the property has been established. I note that the nature of the site ensures that the development is not highly visible from the wider area and the impact on the character of the area is acceptable. As regards meeting the requirements of the development plan relating to extensions, I consider that the character and form of the existing house has been respected in design terms and that external finishes and window types respect the existing property and follow the pattern of the existing building. I consider that notwithstanding the fact that the parapet height of the extension exceeds the eaves height of the existing dwelling and the 7m depth of the extension I consider that the extension generally presents as subservient to the main dwelling. The key matter to be addressed is that of impact on established residential amenity. Having regard to the separation distance involved and established landscaping I consider that the design mitigates any potential adverse impact on no 33 to the west.

7.6 Impact on Residential Amenity of No 29

7.6.1 The appellant who resides in the adjoining property no 29 has submitted that the rear extension is injurious to established residential amenity by way of overbearing visual impact and results in overshadowing and loss of light as well as overlooking arising from the insertion of the elongated window to the eastern elevation. The impact on the patio area adjacent to the single storey rear extension to the appellant's dwelling is notable, and its significance is intensified in this case as it provides an importance outdoor amenity to the family as it is disabled accessible. I note that the single storey

extension to the western side of the property which replaces a permitted two storey extension is not disputed and I would raise no issue with regard to this element for retention.

7.6.2 The element of the extension raising concern is the two-storey rearward extension. Having visited the site and reviewed the extension as constructed it is clear that the extension has resulted in a substantial change to the context of the appellant's dwelling due to the scale and height of the extension, proximity to the common boundary and also to the provision of the elongated high-level window opening on the flanking side elevation. I note that I observed the extension from the rear of the appeal site. In light of current COVID-19 restrictions I did not request entry to the appellant's site however I am satisfied that I was in a position to observe and assess the impact of the development from the viewpoints within the appeal site. I note photographic evidence appended to this report and also note photographs included in the submissions from McCormick Consulting Engineers on behalf of the third-party appellant to Cork City Council 4th August 2020.

7.6.3 It is reasonable, in my view, in assessing an application for an extension that the amenities and privacy of adjoining dwellings and the established character of the area be protected as required within the development plan. However, in the context of the zoning of the area regard must also be had to the reasonable objective to provide for home improvements and improved residential amenity on the appeal site. The question arising therefore is whether the benefit for the applicant is adequately balanced with the impact on the adjoining property.

7.6.4 The third-party appellant contends that the flanking wall of the extension which is 6.6m high and extends for 7m within 1.6m of the appellant's patio area (which is at a lower ground level) results in an overbearing structure. In assessing the nature of impact, it is important to note some key features, I note that the rear boundary of the appeal site is line with the appellant's and adjacent dwellings is in excess of 18m from the rear wall of the original dwelling however the site levels fall to the rear. The rear of these dwellings face north therefore would not benefit from extensive sunlight enjoyment. The first party indicates that the extension as constructed is consistent in terms of parapet height with that previously permitted. I note from review of the

previously permitted plans that a finished floor to parapet height of 6.395m was denoted which are in excess of the constructed equivalent 6.110m. This margin is not significant. The more noteworthy change is the construction of the extension within 1.6m of the common boundary as opposed to 2.7m in the case of the permitted extension and the elongation of the extension by 2.6m to 7m.

7.6.5 I consider that while the extension clearly has altered the context of the appellant's dwelling and resulted in an impact on the light available to the rear of No 29 however it does not however in my view give rise to such undue loss of residential amenity over and above the permitted extension sufficient to justify a refusal. As regards overshadowing the extension has resulted in overshadowing of the patio area to the rear of the appellant's dwelling however this also arose in regard to the permitted extension. As regards impact on daylight I note the findings of the assessment in accordance with BRE Site Layout planning for daylight and sunlight by Integrated Environmental Solutions Ltd. IES which was submitted in response to the Council's request for additional information. I note that this report compares the permitted extension (enlarged version as set within the application and not that provided to the Board in planning history documentation or available on Cork City Council website) as opposed to the pre-construction situation. The Vertical Sky Component modelling in relation to No 29 shows that VSC values exceed 27%⁴ save for patio doors to the side elevation of the single storey extension to the rear of No 29 where the VSC is 14.45%. On balance I consider that a refusal of permission to retain is not warranted.

7.6.6 On the issue of overlooking I note that the first party proposes the attachment of fins to the high-level kitchen window to mitigate overlooking impact. I would concur with the third-party appellant that this high-level window regardless of the attachment of fins gives rise to overlooking or perceived overlooking and diminishes residential amenity. Therefore, I would recommend that this window be permanently obscurely glazed and non-openable to prevent a continued loss of privacy. I would also

⁴ BRE 2011 guidelines (Site Layout planning for daylight and sunlight, a guide to good practice) state that if the VSC at the centre of a window is more than 27% (or if not, then it is more than 80% of its former value), then the diffuse daylighting of the existing building will not be adversely affected.

recommend that landscaping measures should be implemented on the site to mitigate overlooking from the raised patio area to the rear of the extension given the level difference. I consider that this can be addressed by condition.

7.7 Appropriate Assessment

7.7.1 Having regard to the nature and scale of the development proposed for retention within a serviced urban area and the distance from the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the development proposed for retention 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 have read the submissions on the file, visited the site and had due regard to the development plan and all other matters arising. I recommend that permission for retention is granted in accordance with the following reasons, considerations, and conditions.

9.0 Reasons and Considerations

Having regard to the Cork City Development Plan 2015-2021 it is considered that the extension proposed for retention would comply with the zoning objective for the site and would be compatible with the visual and residential amenities of the area and the subject to the conditions as set out would not impact unduly on the residential amenities of adjacent properties. No appropriate assessment issues would arise. The development proposed for retention would thus accord with the proper planning and sustainable development of the area.

Conditions

- 1 The development shall be retained and completed in accordance with the plans and lodged with the application as amended by further information submitted on 9th day of October 2020 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 development shall be amended as follows:

The high-level window horizontal window to the eastern elevation of the rear extension shall be non-openable and shall be permanently glazed with obscure glazing. Works to comply with this condition shall be carried out within one month of permission. Written confirmation shall be submitted to the planning authority within 6 weeks to demonstrate compliance with this condition.

Reason: To prevent overlooking of the adjoining residential property.

3. Landscaping measures shall be implemented on the rear patio area to mitigate overlooking of the adjacent dwelling to the east. Details shall be submitted to the planning authority for written agreement within one month of the date of planning permission.

Reason: In the interest of residential amenity.

4. 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.

Reason: In the interest of public health.

5. Notwithstanding the exempted development provisions of the Planning and Development Regulations 2001, 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 be erected within the rear garden area, without a prior grant of planning permission.

Reason: In the interests of the amenities of the area.

6. 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.

Bríd Maxwell
Planning Inspector

18th February 2021