



An  
Bord  
Pleanála

## Inspector's Report

### ABP-308798-20

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<b>Development</b>	Permission to convert attic to habitable room and retention of existing rear garden shed together with permission to upgrade shed to a home working studio.
<b>Location</b>	132 Taney Crescent, Goatstown, D14.
<b>Planning Authority</b>	Dun Laoghaire Rathdown County Council
<b>Planning Authority Reg. Ref.</b>	D20B/0282
<b>Applicant(s)</b>	Shane and Lara Collins
<b>Type of Application</b>	Permission and Retention Permission
<b>Planning Authority Decision</b>	Grant permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Shane and Lara Collins
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	10 <sup>th</sup> February 2021

**Inspector**

Emer Doyle

## 1.0 Site Location and Description

- 1.1. The application site is located on the western side of Taney Crescent, Dundrum, Co. Dublin. No. 132 is a two storey mid terrace dwelling. It is bounded to the north and south by terraced dwellings at 130 and 134 Taney Crescent.
- 1.2. The house is bounded to the west by a laneway serving Nos. 98 to 136 (even numbers only) Taney Crescent. The majority of these houses have an access to the laneway, in some cases this is a door or gate and in other cases, a garage door is accessible from the laneway. There is an existing flat roofed single storey building at the end of the garden of No. 132 which is currently in use as a garage for the house. This garage is un-plastered and juts out onto the laneway more than the adjoining premises. It would appear from the O.S. map that No. 132 has a longer site than the adjoining site.

## 2.0 Proposed Development

- 2.1. Permission is sought for the following:
  - (a) Conversion of attic to habitable room with new rear dormer roof/ window. The stated area of the proposed attic conversion is 25 square metres.
  - (b) The retention and upgrade of existing rear garden shed as home working studio. The stated area is 42 square metres.

## 3.0 Planning Authority Decision

### 3.1. Decision

On the 10<sup>th</sup> of November 2020, Dun Laoghaire Rathdown County Council granted permission subject to 8 No. Conditions. Condition 3 required that the entire dwelling shall be used as a single dwelling and shall not be sub-divided. Condition 4 required that the use of the home working studio shall be solely for purposes incidental to the enjoyment of the dwelling house and shall not be sold or let independently. Home-based economic activities that involve visiting members of the public were not permitted unless a separate permission was granted in this regard. Condition Nos. 2,

5,6, and 7 are the subject of the First Party Appeal and are discussed further in the Assessment below.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

- Planner expressed concern that the homeworking studio could be subdivided from the main dwelling or used as a commercial office and recommended that the rear door was omitted by condition.

#### **3.2.2. Other Technical Reports**

**Drainage:** No objection.

### **3.3. Prescribed Bodies**

#### **3.3.1. No reports.**

### **3.4. Third Party Observations**

#### **3.4.1. None.**

## **4.0 Planning History**

### **D19A/0961**

Permission granted by Planning Authority for part demolition of existing front garden wall including dishing of existing footpath to form vehicular access and off street parking to front garden with associated site works.

## **5.0 Policy Context**

### **5.1. Development Plan – Dun Laoghaire Rathdown County Development Plan 2016-2022**

#### **5.1.1. Site is zoned 'A' which seeks 'to protect and/or improve residential amenity.'**

#### **5.1.2. Policy E12 Home working/ E-working**

It is council policy to permit home based economic activities where by virtue of their nature and scale they can be accommodated without detrimental impact to the amenities of residential areas and to promote and encourage the development of 'Live -Work' units capable of accommodating home- based economic activities in areas of high density development at sustainable development locations in the County.

## **5.2. Natural Heritage Designations**

5.2.1. None relevant.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

The grounds of the appeal can be summarised as follows:

- Regarding condition No. 2- the rear access is existing and is the only way for applicants to get access to their rear garden.
- It is understood that the reason for this condition is to prevent the home studio from being subdivided and used as a commercial office.
- It is considered that conditions 3 and 4 would protect the Planning Authorities concern in relation to future subdivision.
- Conditions 5, 6, and 7 relate to the imposition of financial contributions. The Dun Laoghaire- Rathdown County Development Contributions Scheme Section 10 provides for an exemption for 'attic and garage conversion.'

### **6.2. Planning Authority Response**

- The Planning Authority response referred to the previous planner's report. It considered that the grounds of appeal did not raise any new matter which, in the opinion of the Planning Authority, would justify a change of attitude to the proposed development.

### 6.3. Observations

- None.

## 7.0 Assessment

7.1. Further to my examination of the planning file and the grounds of appeal that relate to four conditions only i.e. Conditions 2, 5, 6, and 7 of the notification of the decision of the planning authority to grant permission, and having assessed the documentation and submissions on file, I consider it is appropriate that the appeal shall be confined to these conditions. Accordingly, I am satisfied that the determination by the Board of this application as if it had made to it in the first instance would not be warranted and that it would be appropriate to use the provisions of Section 139 of the Planning and Development Act 2000 as amended in relation to Condition 2.

7.2. The grounds of appeal consider that the terms of the relevant development contribution scheme has not been properly applied and as such I consider that it would be appropriate to deal with Conditions 5, 6, and 7 under Section 48(10) (b) of the Planning and Development Act 2000, as amended.

### 7.3. Section 139 of the Planning and Development Act 2000 (as amended)

7.3.1. **Condition 2** is as follows:

‘The door on the rear elevation of the home working studio providing access to the laneway shall be omitted.

**Reason:** In the interest of residential amenities.’

7.3.2. In relation to this matter, the planner’s report states the following: ‘The Planning Authority has concerns that the proposed homeworking studio could be subdivided from the main dwelling or used as a commercial office.’

7.3.3. The appeal makes the case that the rear access is the only access to their garden and ‘should we need to bring machinery into the garden for the purposes of landscaping the garden space, these machines would need to be brought in via the rear access.’

- 7.3.4. In addition, whilst the concern by the Planning Authority regarding future subdivision is acknowledged in the appeal, it is noted that this concern is protected by Conditions 3 and 4 of the decision.
- 7.3.5. I note that no concerns have been raised by the Planning Authority regarding the impact on residential amenities of adjoining properties and that Policy E12 of the Development Plan permits homeworking subject to it not impacting on residential amenities.
- 7.3.6. On the site inspection, I noted that the terraced houses at this location are served by a laneway to the rear. Almost all of the houses have an access to the laneway either by way of a large garage type door or a narrow gate or door.
- 7.3.7. The existing access is typical of other sites in the vicinity and I note that there is no other means of access to the rear either to carry out gardening work or building work for example, other than through the existing terraced house.
- 7.3.8. Whilst I note that the Planning Authority are concerned in relation to future subdivision from the main dwelling or use as a commercial office, I am of the view that conditions 1, 3 and 4 are sufficient protection in this regard. Given that this is already an established access which is typical of other sites in the vicinity, taken together with the conditions above, I consider that this condition could be removed. I therefore recommend that the Board use its powers under Section 139 of the Act, as amended, to remove condition number 2.

**7.4. Section 48(10) (b) of the Planning and Development Act 2000 (as amended)**

- 7.4.1. **Conditions 5, 6, and 7** relate to financial contributions. The grounds of appeal make the case that garage and garage conversions are exempt from contributions as set out in Section 10 (c) of the Dun Laoghaire Rathdown County Development Contribution Scheme 2016-2020. The issue in this part of the assessment relates to whether or not the terms of the Dun Laoghaire Rathdown County Council Development Contribution Scheme adopted on the 14<sup>th</sup> of December, 2015 have been properly applied.

- 7.4.2. Whilst Section 10 (c) of the Development Contribution Scheme does provide an exemption for attic and garage conversions, I note that Section 9 states that all retention permissions will be charged a multiple of 1.25 times.
- 7.4.3. I note that the garage conversion is described on the application form as 42 square metres retention of shed upgraded and in the site and newspaper notices as (b) The retention and upgrade of existing rear garden shed as home working studio.
- 7.4.4. I accept that the current use is as a garage and I note the photographs submitted in the appeal response in this regard. I note that there is no planning history in relation to the garage and no record of permission. I note from a cover letter submitted with the application that the applicants purchased the property in 2019 and at the time of purchase, the vendors 'did not provide documentation associated with a single storey shed structure (42 sqm) to the rear garden. The applicant's now wish to obtain planning permission for retention of the shed with the intention of upgrading the structure for use as a studio space for home working.'
- 7.4.5. On the day of inspection, the garage use was still in place and no works have been carried out in relation to the conversion to home studio.
- 7.4.6. I consider that the applicant can avail of the exemption set out in Section 10 (c) of the Scheme in relation to attic conversions for the attic element of the application. However, it seems clear to me from all the information submitted on the cover letter, the application form, and the site and newspaper notices that the garage appears to be unauthorised, and the current application relates to the retention and upgrade of this rear garden shed to a home working studio.
- 7.4.7. The Planning Authority have calculated the Development Contribution based on the first 40 square metres of any residential extension being exempt as set out in Section 10. A previous extension of 23.9 square metres was subtracted from the 40 square metres (16.1 square metres) and the calculation was based on the floor area of the shed (42 square metres) minus 16.1 square metres equals 25.9 square metres.
- 7.4.8. Having examined the Development Contribution scheme, I consider that the Development Contribution has not been properly applied. The exemption as set out in Section 10(c) is not applicable in the case of a retention permission as Section 9



states that all retention permissions will be charged a multiple of 1.25 times the rates outlined in the Schedules.

- 7.4.9. In conclusion, I consider that the Board should direct the Planning Authority to amend Conditions 5, 6, and 7 so that the development contribution payable for the retention element of the application is payable at a multiple of 1.25 times the rates set out in the scheme and based on the stated area to be retained of 42 square metres.

## 8.0 Recommendation

- 8.1. I recommend that the Planning Authority be directed to REMOVE Condition 2 and AMEND Conditions 5, 6, and 7 for the reasons and considerations set out hereunder.

## 9.0 Reasons and Considerations

(a) Having regard to the residential land use zoning for the site, and to the pattern and character of development in the area, to the terraced nature of the property and the availability of rear access points to similar properties in the vicinity of the site, it is considered that the retention of the door in the rear elevation, by reason of its nature, design, and function, would not detract from the character of the existing dwelling or the visual amenities of the area, and would not detract from the residential amenity of the existing dwelling or adjoining properties. Therefore, the planning authority's Condition No. 2, requiring the omission of the door in the rear elevation, is not warranted.

(b) Having regard to the nature of the development which relates to the retention and upgrade of an existing rear garden shed as a home working studio, and to the provisions of the Dun Laoghaire Rathdown County Council Development Contribution Scheme 2016-2020, (as updated on the 01/01/2021), it is considered that the provisions of the scheme have not been properly applied, such that development contributions are payable on all retention permissions at a multiple of 1.25 times the rates outlined in the scheme and exemptions and reductions do not apply to any applications for retention permission.

## 10.0 Conditions

(a) Having regard to the nature of condition number 2, the Board is satisfied 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 and, based on the reasons and considerations set out below, directs the said Council under subsection (1) of section 139 of the Planning and Development Act, 2000 to REMOVE condition number 2 for the reasons stated.

(b) The Board, in accordance with section 48 of the Planning and Development Act, 2000, as amended, considered, based on the reasons and considerations set out above, that the terms of the Development Contribution Scheme for the area had not been properly applied in respect of condition number 5, 6 and 7 and directs the said Council to AMEND condition numbers 5, 6, and 7 so that they shall be as follows for the reasons stated.

5.	The developer shall pay to the planning authority a financial contribution of €123.90 (one hundred and twenty three euro and ninety cent) in respect of the provision of Surface Water Public Infrastructure 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. The application of any indexation required by this condition 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.
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	<p><b>Reason:</b> 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 made under section 48 of the Act be applied to the permission.</p>
6.	<p>The developer shall pay to the planning authority a financial contribution of €2836.57 (two thousand, eight hundred and thirty six euro and fifty seven cent) in respect of the provision of the Roads 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. The application of any indexation required by this condition 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.</p> <p><b>Reason:</b> 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 made under section 48 of the Act be applied to the permission.</p>
7.	<p>The developer shall pay to the planning authority a financial contribution of €1,840.12 (one thousand, eight hundred and forty euro and twelve cent) in respect of the provision of the Community and Parks Public Infrastructure, Facilities and Amenities 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</p>

	<p>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. The application of any indexation required by this condition 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.</p> <p>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 made under section 48 of the Act be applied to the permission.</p>
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Emer Doyle  
Planning Inspector

19<sup>th</sup> March 2021