



An
Bord
Pleanála

Inspector's Report

ABP-309347-21

Development	PROTECTED STRUCTURE: removal of two storey extension to rear; erection of two storey extension to side and rear renovation works to main house.
Location	10 Leeson Park Avenue, Dublin 6.
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	3163/19
Applicant(s)	Aelred & Maud Doyle
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	1. Deirdre Smith 2. Sasha Smith & Others
Observer(s)	1. Guy B. Johnston & Helen A. Keelan 2. John Bligh 3. Upr Leeson St. Area Residents Association
Date of Site Inspection	
Inspector	Gillian Kane

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1.0 Site Location and Description

- 1.1.1. The subject site is located on the southern side of Leeson Park Avenue, a narrow residential road of mid C19th single storey over basement dwellings, running south-east off Appian Way, in Dublin 6. The entire terrace is included on the Record of Protected Structures. The dwellings on the southern side of the avenue back on to the Royal Hospital Donnybrook (RHD).
- 1.1.2. The subject site, being the end of the terrace, has a triangular plot with a front and side garden. A gated entrance in the front railings leads to an overgrown front garden, within which a boundary wall has a blocked up pedestrian gate leading to the side and rear open space. The glasshouse noted on the submitted plans was not present on the date of my site visit. The slate roof of a garden shed is partially visible over the boundary wall.
- 1.1.3. The site is bound to the side and rear by the boundary wall of the RHD. The grounds of the hospital adjoining the terrace are laid out in an informal sports field with a pedestrian path running along the boundary and a number of benches. The grounds are open to the public.

2.0 Proposed Development

- 2.1. On the 4th June 2019, planning permission was sought for the following works to an existing protected structure:
 - Removal of 1990's 21sq.m. two-storey extension to rear,
 - Construction of 40sq.m. two-storey extension to side and rear,
 - Internal alterations
 - Landscaping works to front and rear open space, including new railings and bin store to front
- 2.1.1. It is also proposed to remove a small brick shed/outhouse within the side garden of the dwellinghouse and existing small glasshouse in the front garden. *(As noted above, this structure was not present on the date of my site visit).*
- 2.1.2. Details provided in the application form include:
 - Total site area: 290sq.m.
 - Floor area to be retained: 138sq.m.

- Proposed new build: 40sq.m.
- Proposed demolition: 21sq.m.
- Proposed new floor area: 178sq.m.
- Proposed plot ratio: 1:2.4

2.1.3. As the proposed development refers to a protected structure, the application was accompanied by a Conservation Report and a photographic study.

3.0 Planning Authority Decision

3.1. Planning Authority Reports

3.1.1. **Engineering Report:** No objection subject to standard conditions

3.1.2. **Conservation Report:** Conservation officer notes that she has concerns that the construction of the cantilevered two-storey extension to the side and rear may have a negative impact on the legibility of the architectural character of the protected structure. Considers the extension to be an overly dominant element, which should be reduced in length and volume. Recommends that further and additional information be requested regarding the above, the treatment of the timber fins, overlooking, bin store, undercroft area, and the proximity to historic boundary wall.

3.1.3. **Planning Report:** Considers the proposed demolition acceptable, considers the proposed extension to be subservient in form when viewed from the streetscape but further information required regarding the design and material palette. Rear elevation of the extension is not subservient and dominates the existing architecture. Applicant should be requested to reconsider the depth of the proposed extension, provide additional information on the historic boundary wall, on the proposed bin store and that the opening between the proposed kitchen and dining space to be limited to 3m. The reports states that the impact on the residential amenity of the adjoining dwelling could be addressed by the proposed timber fins. Recommendation to request two items of further information.

3.2. Further Information

3.2.1. On 30th July 2019 the Planning Authority requested additional information in relation to the following:

- The applicant is requested to reconsider the depth of the two-storey extension so it reads as a more subservient volume.
- The applicant is requested to relocate the bin storey platform to be less visible from the historic streetscape. The applicant is requested to reconsider the width of the proposed internal opening between the proposed kitchen and dining room to be limited to a maximum of 3 metres in order to protect the historic fabric of the protected structure.
- Further details required regarding the relationship between the historic boundary wall and the underside of the proposed extension and the external walls of the rear extension at first floor.
- Further details are requested with regard to the extent of works on the historic stone wall between the subject site and the Royal Hospital, Donnybrook.
- Further details of the materials, colours and textures of all external finishes.
- A selection of verified photomontages of the proposed dwelling in the context of existing dwellings.

3.2.2. On the 26th August 2019, the applicant responded to the FI request as follows:

- Reduction in plan depth by 300mm
- Relocated bin store
- 3m width of opening between proposed kitchen and proposed dining room
- Drawings showing relationship of the existing dwelling and proposed extension to the historic boundary wall and details of proposed works adjacent to the wall
- Details of proposed materials
- Photomontages

3.3. **Reports on file following submission of FI**

3.3.1. **Drainage Division:** No change to previous report

3.3.2. **Conservation Officer:** Line of the new extension needs to be pulled back further, i.e. remove the bay window or a reduction in length of the extension so that the corner of the original staircase volume remains legible externally or a shift in orientation of the external wall so that it is parallel to the building line rather than perpendicular to the historic boundary wall. Applicant should be requested to complete by way of compliance submission. Proposed relocation of the bin store is unsympathetic to the special architectural character and setting of the protected structure. Recommendation to grant permission subject to 5 no. conditions.

3.3.3. **Planning Report:** Disagrees with the Conservation officers requirement for a scaling back of the rear portion of the rear extension. Further details required regarding the proposed bin store. Considers that the alterations made under the FI submission address the concerns of the Planning Authority. Recommendation to grant permission subject to 7 no. conditions.

3.4. **Prescribed Bodies**

3.4.1. No submissions on file.

3.5. **Third Party Observations**

3.5.1. Three observations on the proposed development were submitted to the Planning Authority. Each raised the heritage / conservation value of the subject dwelling and surrounding area, the impact of the proposed extension on the existing and surrounding dwellings and the impact on residential amenity on said dwellings.

3.6. **Decision**

3.6.1. On the 20th September 2019, the Planning Authority issued a notification of their intention to GRANT permission subject to 7 no. conditions. Condition no. 2 requires further detail for the proposed bin store. Condition no. 3 requires the employment of a professional with appropriate conservation expertise to oversee works on site.

4.0 **Relevant Planning History**

4.1.1. None on file.

5.0 Policy Context

5.1. Architectural Heritage Protection – Guidelines for Planning Authorities

- 5.1.1. This guidance, which is a material consideration in the determination of applications, sets out comprehensive guidance for development in conservation areas and affecting protected structures. It promotes the principle of minimum intervention (Para.7.7.1) and emphasises that additions and other interventions to protected structures should be sympathetic to the earlier structure and of quality in themselves and should not cause damage to the fabric of the structure, whether in the long or short term (7.2.2).
- 5.1.2. **Section 6.8.1** of the Guidelines notes in relation to extensions that it will often be necessary to permit appropriate new extensions to protected structures in order to make them fit for modern living and to keep them in viable economic use. Where the existing exterior appearance of a structure is of special interest, and its interior is of sufficient size, it may be possible to incorporate new functions or services within the existing envelope of the structure. With flexibility and imagination, it may be possible to use secondary spaces within the building obviating the need to extend where there would be minimal impact on fixtures and features of special interest. The cumulative effect of minor additions can compromise the special interest of the structure and character of an Architectural Conservation Area. The Planning Authority should consider this when assessing a proposal for even small extensions.
- 5.1.3. With regard to **curtilage**, section 13.3.1 of the guidelines state that features within the curtilage and attendant grounds of a protected structure can make a significant contribution to the character of that structure. The designed landscape associated with a protected structure was often an intrinsic part of the original design concept and, as such, inseparable from the building. Where proposals are made for alterations to a designed landscape, ancillary buildings, structures or features within the curtilage or attendant grounds of a protected structure, a site inspection should be carried out by the planning authority in order properly to understand the potential effects of the proposed development. **Section 13.3.2** states that when assessing the contribution of structures or features within the curtilage or attendant grounds to the character of a protected structure, and when considering any proposals to alter such features, certain criteria must be considered.

5.2. Dublin City Development Plan 2016-2022

5.2.1. The subject site is located in an area zoned Z2 with an objective *'to protect and/or improve the amenities of residential conservation areas'*. The subject dwelling is listed as a Protected Structure (House) in Volume 3 of the plan. RPS ref. no. 4320

5.2.2. Policies of note in the development plan include:

CHC1: It is the Policy of Dublin City Council to seek the preservation of the built heritage of the city that makes a positive contribution to the character, appearance and quality of local streetscapes and the sustainable development of the city.

CHC2: To ensure that the special interest of protected structures is protected Development will conserve and enhance Protected Structures and their curtilage and will:

(a) Protect or, where appropriate, restore form, features and fabric which contribute to the special interest (b) Incorporate high standards of craftsmanship and relate sensitively to the scale, proportions, design, period and architectural detail of the original building, using traditional materials in most circumstances (c) Be highly sensitive to the historic fabric and special interest of the interior, including its plan form, hierarchy of spaces, structure and architectural detail, fixtures and fittings and materials (d) Not cause harm to the curtilage of the structure; therefore, the design, form, scale, height, proportions, siting and materials of new development should relate to and complement the special character of the protected structure (e) Protect architectural items of interest from damage or theft while buildings are empty or during course of works (f) Have regard to ecological considerations for example, protection of species such as bats. Changes of use of protected structures, which will have no detrimental impact on the special interest and are compatible with their future long-term conservation, will be promoted.

Policy CHC4 seeks to protect the special interest and character of all Dublin's Conservation Areas. Development within or affecting a Conservation Area must contribute positively to its character and distinctiveness and take opportunities to protect and enhance the character and appearance of the area and its setting wherever possible.

Enhancement opportunities may include:

1. Replacement or improvement of any building, feature or element which detracts from the character of the area or its setting.
2. Reinstatement of missing architectural detail or other important features.
3. Improvement of open spaces and the wider public realm, and reinstatement of historic routes and characteristic plot patterns.
4. Contemporary architecture of exceptional design quality which is in harmony with the conservation area.
5. The repair and retention of shop and pub fronts of architectural interest.

Development will not:

1. Harm building spaces, original street patterns or other features which contribute positively to the special interest of the conservation area.
2. Involve the loss of traditional, historic or important building forms, features and detailing including roofscapes, shopfronts, doors, windows and other decorative detail.
3. Introduce design details and materials such as PVC, aluminium and inappropriate designed or dimensioned timber windows and doors.
4. Harm the setting of the conservation area.
5. Constitute a visually obtrusive or dominant form.

5.2.3. Appendix 24 of the development plan refers to Protected Structures and Conservation Areas. Section 24.4 notes the importance of boundary walls, railings and trees.

5.3. **Natural Heritage Designations**

5.3.1. The subject site is 2.7km from South Dublin Bay SAC (000210) and the South Dublin Bay and River Tolka Estuary SPA (004024).

5.4. **EIA Screening**

5.4.1. Having regard to nature of the development comprising redevelopment of an existing dwelling and the urban location of the site there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1.1. Two third-party appeals against the decision of the Planning Authority to grant permission have been submitted.

6.2. Grounds of Appeal of Deirdre Smith, 9 Leeson Park Avenue

6.2.1. The third-party appeal of Deirdre Smith is divided into six parts and three appendices.

6.2.2. The grounds of the appeal can be summarised as follows:

- The appellant quotes sections of the DCC planning report and highlights the sections she says have been adhered to in the decision. The sections are the zoning objective, policy CHC4, policy CHC1, policy CHC2 and section 16.10.02 and appendix 17 of the development plan.
- Regarding the changes granted permission, the appellant submits that the first floor will be significantly larger than the ground floor, it will rise significantly above all existing boundary walls and will be visible from and overshadow the historic streetscape.
- The new north elevation will extend the symmetrical façade of the original dwelling. The large glazing on the north-west elevation will overlook the Royal Hospital and the gardens of no.s 1-7 and no. 9 Leeson Park Avenue. The windows on the south elevation are less than 10m from no. 9 and less than 0.5m from the boundary with the Royal Hospital.
- The proposed gate in the front garden wall results in a loss of the original granite with inset cast iron railings forming the front boundary.
- The subject dwelling is a protected structure, on a street that remains unaltered since it was built in the 1860's. It is submitted that there is widespread opposition to the proposed development, which will negatively impact the period character of the historic avenue. It is submitted that the proposed unsympathetic over-development will adversely affect the amenities of adjoining buildings, in terms of privacy, daylight and sunlight.
- It is submitted that the photomontages submitted do not show the hard landscaping, changes to garden level, new external gate and door in the granite

wall. The proposed materials are out of keeping with the existing streetscape and the scale of the extension overwhelms the period house.

- The proposed rear elevation results in a loss of symmetry of the original dwelling.
- The Conservation Officers concerns regarding the dominance of the proposed extension are not reflected in the grant of permission.
- The proposed first floor extension rises 0.3m above the boundary wall with the Royal Hospital grounds, representing privacy and overshadowing concerns.
- The architects impression of the proposed development does not show the 1860's return with three east facing windows of the neighbouring property. The large section of window without timber fins is less than 6m from and rises significantly above the neighbouring property, representing an overlooking / privacy concern.
- The proposed window seat with clear glass facing no. 9 will create a loss of privacy. Photos of the return of no. 9 submitted, showing the location of the windows that would be overlooked.
- It is submitted that the Planning Officers report in concluding that there would be no overlooking, is incorrect. The appellant notes the planning report for reg. ref. 4452/08 for development at 1 Leeson Park Avenue which referred to excessive levels of overlooking from full height glazing. Permission for a window seat at no. 1 Leeson park Avenue (reg. ref. 4403/16 refers) was refused on the grounds of an undesirable precedent.
- It is submitted that the conclusion of the Planning Officer that the distance is sufficient to avoid detrimental impact is questionable, given that the window is approx. 6m from the adjoining property and overlooks the rear gardens of no.s 1-9.
- The Conservation Officer raised concerns regarding overlooking of the grounds of the Royal Hospital. The Planning Officer discarded this objection on the grounds that the land is not in residential use.
- There is a path running along the boundary wall which is used by patients in the hospital and residents of the wider area. The proposed development will overlook the grounds of the hospital.

- The proposed bin store will not be 'partially visible' but will be an unsightly permanent addition. It is submitted that most residents store their bins below street level.
- No reason is given for not addressing the concerns regarding the new gate to the front garden and the raising of the garden level. It is submitted that a pedestrian access in the front boundary was considered unacceptable in reg. ref. 4403/16. The destruction of a section of the granite wall is gratuitous.
- The planning report does not address the objections regarding the external staircase, double height extension, extension to the side that is visible from the street and a shadow analysis. These elements were sought in other planning applications on the street but were refused on the grounds that they formed an undesirable precedent.
- The appeal is accompanied by the following appendices:
 - Conservation Officers report
 - Planning Officers Report
 - Planning Decision

6.3. Grounds of Appeal of Sasha Smith, 9 Leeson Park Avenue.

6.3.1. The appeal submission notes that the appellant is Sasha Smith and that the planning agent acts on behalf of Ms. Smith, The Residents Association of Leeson Park Avenue, the Chair of which is Irene Garvan of no. 13 Leeson Park Avenue and Guy Johnson of 8 Leeson Park Avenue.

6.3.2. The grounds of the appeal can be summarised as follows:

- Recent extensions to the dwellings along the terrace are all single storey. The proposed extension of 40sq.m. is twice the size of the existing extension. The proposed cantilevered extension will be prominently visible. The alignment and layout of the proposed extension are at variance with the established pattern in the area.
- The appeal submission provides a comprehensive assessment on the architectural characteristics of the subject and adjoining dwelling. The appellant states that the proposed development will be overtly obtrusive and of conspicuous

design. The small scale of the existing extension is respectful to the existing dwelling and the adjoining RHD. The proposed extension at the end of the terrace will be widely visible. Such a proposal was not allowed at the other end of the terrace (1 Leeson Pk Avenue).

- There is a contradiction between the conservation and planning report. The Conservation report identifies fundamental concerns regarding scale, bulk, design and requires a reduction in length. The planning report fails to understand the relationship to the streetscape / protected structures and the unity of composition of the terrace.
- The planning report fails to understand the impact on the privacy of the adjoining property. The existing dwelling looks over the grounds of the RHD. The proposed extension faces directly into no. 9 and other residences along the terrace. The reliance on privacy fins is mistaken as there are no fins at the corner of the bay window. Bi-fold windows could result in the area being used as an outdoor terrace. The cantilevered design and the difference in levels between neighbouring gardens means the garden wall will have no screening effect.
- The applicants desire to maximise this constrained site detracts from the legibility of the dwelling and of the terrace. The design approach emphasises the disruptive impact of the proposed extension. It is submitted that the proposed extension deliberately contrasts with and undermines the composition of the terrace of protected structures. The applicant was afforded the opportunity to modify the design at FI stage. The revised plans did not address the concerns of the conservation officer. The 300mm set back is not sufficient to offset the dominant impact of the design.
- The photomontages showing the view of the proposed extension from the RHD shows a profound and adverse impact on the historic character of the terrace. The existing dwelling appears overwhelmed, there are no privacy fins at the corner and the new door & staircase to the side emphasises the reorientation of use to the side. The lack of privacy fins at the corner, where it projects beyond the rear staircase return focuses the view towards the rear gardens and windows of no. 9. This was not addressed by the planning report.

- The photomontages from Leeson Park Avenue do not show the proposed new gate in the Victorian railing. The blank façade and staircase form a discordant element in the context of red-brick facades along the terrace. Notwithstanding the lower roof height, the contrast of all the elements attracts the focus away from the main façade.
- The proposed solid wall of the bin store disrupts the relationship of the railings. Condition no. 2 of the Planning Authority's decision requires details of the bin store. It is unsustainable to grant permission without details, where photomontages have shown that the bin store is unduly prominent.
- There is no justification for creating a new ope in the Victorian railings or historic wall. These elements serve to undermine and erode the historic context.
- The proposal to move the main living accommodation from the main rooms of the house to the extension is disturbing as it directly overlooks the RHD and the adjoining dwelling. The proposed timber fins may be more useful in preventing inward overlooking rather than outward overlooking. This mitigation is therefore inadequate. The appellant outlined the location of the proposed extension and the impacts arising from the injury to their residential amenity.
- It is submitted that the Planning Authority's decision is unsustainable, allowing a doubling of scale on a tight site. The proposed development is at variance with the historic plot form and would set an adverse precedent, materially contravenes the development plan and results in an adverse impact on neighbouring properties.
- The decision under reg. ref. 4403/16 wherein the side extension, balcony and pedestrian gate omitted sets a precedent for the subject proposal.
- There is no reference to the Architectural Heritage Protection Guidelines in the planning report. There was no independent assessment of the conservation impact of the proposed development. Section 6.4.4.15 of the Guidelines require an architectural heritage impact assessment of the full implications of the development. This was not undertaken. The cumulative impact of the proposed development is such that it is contrary to section 6.8.1 of the guidelines. It is submitted that the applicant has seen the contemporary design as license for a contrasting design rather than a complementary approach.

- The Conservation Officer identified the impact of the proposed development on the setting and legibility of the protected structure. This was ignored by the applicant and the Planning Authority and thus has failed to have due regard to national guidance.
- The bulk, massing, scale, stark design contrast and inappropriate palette of materials constitute a visually obtrusive and dominant form of development that would adversely affect the architectural character and legibility of the protected structure and setting and curtilage of the terrace. The proposed development does not accord with the Z2 zoning objective for the area or with policies CHC1 to CHC4 of the development plan.
- The Board is requested to refuse permission on the grounds that the proposed development would adversely affect the Victorian character of the terrace of protected structures, would directly overlook the adjoining dwelling at no. 9 Leeson Park Avenue, would materially contravene the zoning objective for the area and the Architectural Heritage Protection Guidelines.

6.4. Applicant Response

6.4.1. The applicant responded to the two third-party appeals. Their agent states that the decision of the Planning Authority to grant permission subject to 7 no. conditions was correct. Responding to the grounds of the appeal, the response can be summarised as follows:

- Regarding overlooking, the applicant states that the main living space to the rear of no. 10 overlooks the garden of no. 9. The large sash window is part of the original structure (1860) and is 400mm from the garden wall. This direct overlooking occurs due to the off-set nature of the garden wall. The first-floor window of the appellants faces directly into the garden of no. 10 and is less than 4.5m from the garden wall.
- The proposed extension is rotated 45 degrees away from the adjacent gardens, facing directly into the RHD. The timber fins at the western end ensures no overlooking of gardens will occur. The privacy fins are held back approx. 600mm from the inner corner to allow a connection to the south / opening window.

- Following discussions with the RHD, the proposed development was pulled back 300mm from the boundary wall. RHD expressed no further concern.
- The subject site, being the end of the terrace is not identical to the other dwellings, the gable is unremarkable, plain rendered with none of the decoration or detail of the front elevation. The rear of the terrace displays similar a pattern of variation, within the original elevations, the returns and extensions.
- The proposed development maintains the relationship of living spaces internally in the original dwellings whilst clearly adding a contemporary extension, subordinate to the original fabric and providing a composed finish to the end of the terrace.
- The proposal responds to the ICMOS charters recognising the significance of a place, whilst allowing the dwelling to continue a viable use as a residence.
- The proposed bin store sits on a platform, inside the curtilage of the dwelling. The light timber slated enclosure is consistent with others on the street.
- There are no changes proposed to the boundary wall between the front garden of no. 10 and the public footpath. It is proposed to remove a small section of granite kerb and make an opening in the railings above the kerb to provide an access point to the side garden. This accessibility measure is mitigated by the location at the end of the street, beyond the terrace. It will be coherent with the rhythm of the historic ironwork and will be masked by the protective barriers on the road.
- The Board is requested to uphold the decision of the Planning Authority to grant permission.

6.5. Planning Authority Response

- 6.5.1. None on file.

6.6. Observations

6.6.1. John Bligh, 25 Leeson Park Avenue:

- Proposed extension alters the Victorian house in an unsympathetic manner. Structure and materials are out of keeping with the symmetry of the Victorian architecture.
- Unclear why a third entrance is needed. It reduces the already small garden.

- Other extensions in the area are to the rear. Proposed extension is more prominent, intrudes on the visual continuity and diminishes the view of the RHD.
- Proposed bin bay is unsightly.
- The proposed development is of a different character to the existing architecture.

6.6.2. **Guy B Johnston & Helen A Keelan, 8 Leeson Park Avenue**

- Westerly facing window interferes with the privacy of the gardens at no. 8 and no. 9.
- Proposed wood finish is not in keeping with the period look of the houses. An Bord Pleanála recognised the architectural heritage at no. 26 Leeson Park (reg. ref. 0706/00, 26 Leeson Park).
- Wood finishes require more maintenance which cannot be guaranteed.
- The creation of an additional gate is inconsistent with the recent refusal for an additional gate at no. 1 Leeson Park Avenue.
- The bin management solution is welcomed.

6.6.3. **Upper Leeson Street Area Residents Association**

- Supports the view of the third-party appellants where they highlight the inconsistency between the planning report and the conservation officers report.
- Concurs with the assessment of the conservation officer that the proposed development is overly dominant by reason of location, massing, bulk and orientation.
- Proposed development would be visually obtrusive and would seriously injure the visual amenities of the conservation area.
- The proposed development would be contrary to the proper planning and sustainable development of the area.

6.7. Further Responses

6.7.1. Sasha Smith & Others:

- Supports the grounds of third-party appellant Deirdre Smith.
- The Board is requested to refuse permission on the grounds that the proposed development would adversely affect the Victorian character of the terrace of protected structures, would directly overlook the adjoining dwelling at no. 9 Leeson Park Avenue, would materially contravene the zoning objective for the area and the Architectural Heritage Protection Guidelines.

6.7.2. Interim CEO of The Royal Hospital Donnybrook

- Grounds are already very substantially overlooked by the houses at the end of the street. Whether that is through a traditional window or a new room with screening will not change that fact.
- Cannot see any difference in the impact on patients.
- Concerns regarding the proximity of the development to the shared boundary wall were addressed when the design was modified.

7.0 Board Direction

7.1. Following an Order of the High Court dated 2/02/21, the appeal was remitted to An Bord Pleanála.

7.2. On the 12th February 2021, the Board issued a Direction stating that parties to the appeal were to be notified of the High Court Order and were to be invited to make any further submissions / observations on the planning application the subject of the appeal.

8.0 Further Submissions

8.1.1. Applicant

- Notes their full support for the decision of the Planning Authority to grant permission and the decision of the Board to uphold that decision.
- These decisions reflect positive planning policy, allowing an old house to be refurbished and extended appropriately.

- The house is unoccupied and beginning to suffer material degradation.

8.1.2. **Deirdre Smith, 9 Leeson Park Avenue**

- New appendix which outlines the series of erroneous decisions.
- Case study which highlights the difference in the decision at no. 1 Leeson Park Avenue and the subject development at no. 10. The failure to apply the correct standards is notable, given that the restricted nature of the site was identified by the Conservation Officer, planning officer and Inspector.
- Permission should be refused as the planning application is unsustainable.
- Submission should be read in tandem with previous submission.
- Planning Officers report notes that the extension faces the appellants garden but incorrectly concludes that overlooking will be avoided due to the proposed privacy fins. The lack of fins at the section of window facing the neighbouring garden is clear and was brought to the planners attention. The planner failed to prove that the proposed development would not detrimentally affect the dwellings on Leeson Park Avenue and the RHD.
- Both of the Conservation Officers reports drew attention to the overly dominant bulk and mass of the extension. She requested that this be addressed by way of compliance condition. The failure of the decision to grant permission to include this is a significant planning error.
- The An Bord Pleanála Inspectors decision making process is fundamentally flawed. To allow an unsympathetic extension to a protected structure is contrary to common sense and best planning practice. Standards applicable to a protected structure were not applied.
- The age-related requirements of the purchaser of the property are unrealistic and will require further aggressive modification. The limitations of the site were clear before purchase.
- No justification has been made for the aggressive changes to a large property, resulting in only 20sq.m. of additional floorspace. The Architectural Heritage Protection Guidelines recommend reconfiguration rather than extension where possible.

- It is unreasonable to accept that the proposed extension resembles an Edwardian Orangery.
- The applicant has failed to maintain the property leading to visible deterioration.
- The Architectural Heritage Protection Guidelines defines a protected structure as incorporating all curtilage. The proposed development with alteration to the original granite wall, original railings, outside lavatory (the only example remaining in the terrace), and original internal layout is not minimal interference.
- The Board failed to explain why they did not attach the Inspectors condition no. 2, notwithstanding that it was sufficient to warrant refusal.
- Under Planning Authority reg. ref. 4403/16 for development at no. 1 Leeson Park Avenue, permission was granted subject to a condition which required the omission of a new single storey brick clad extension to the side, the omission of a pedestrian entrance off the public street, the omission of a balcony at first floor and the omission of a new sash window and window seat.

8.1.3. Sasha Smith, 9 Leeson Park, The Residents Association of Leeson Park Avenue and Guy Johnson of 8 Leeson Park Avenue.

- Requests the Board to carry out an Oral Hearing of the application.
- It is submitted that there can be no other course of action for the Board but to quash the application as invalid.
- The application was invalid from the outset, the application drawings are in breach of the Planning and Development Regulations 2001, as amended as the rear contiguous elevation of no. 9 Leeson Park is not shown.
 - There are no sections or dimensioned plans of the foundations, work which might affect neighbouring structures. This is particularly relevant for Victorian properties which may have minimal foundations.
 - The plans submitted as FI are cut off from the boundary, shown in isolation from the neighbouring structure.
 - Section drawings for the bin store do not show the significant ground level differences. The impact of the bin store cannot be assessed.

- Site levels of the surrounding roads are not shown
- The planning Officers report is based on an error, which lead to the Boards decision being disaffected.
- The contiguous elevation drawing states that the angled fins block the view of the neighbours garden. This is incorrect.
- The inadequacy of the plans led to an incorrect estimate of less than 10m between opposing windows.
- The proposed mitigation of extending the timber privacy fins along the entire length of the south-west first floor elevation is not appropriate given that the proposed bi-fold windows will allow an open air terrace, 4.5m from and 1.04m over the neighbouring boundary wall.
- There was no explanation for not including the suggested mitigation in the Boards decision.
- In the Balscadden Residents v An Bord Pleanála the decision of the Board to grant an SHD was quashed on the basis of the inadequacy of the plans and failure to comply with Planning and Development Regulations 2001, as amended.
- It is submitted that the outset of this application, the plans were not adequate to comply with the Planning and Development Regulations. It cannot be cured at this stage. The Board is requested to dismiss the application on the basis of invalidity and non-compliance with the Planning and Development Regulations.

8.1.4. **Upper Leeson Street Area**

- Supports the request for an Oral Hearing.

9.0 Responses to Further Submissions

9.1.1. New matters raised, summarised as follows:

9.1.2. Deirdre Smith

- The Board is requested to refuse permission.
- It is deeply regrettable that the subject property has been allowed to fall into a state of dereliction.
- The applicants failure to maintain the protected structure cannot be used as an excuse to grant permission for an overly dominant extension.
- The suggestion that the original planning decision was correct is rejected. The applicants have not addressed the matters raised in the multiple objections.
- Any one of the multiple errors that were made in the process are sufficient to refuse permission.
 - Initial drawings submitted to the Planning Authority failed to show sufficient detail of adjacent structures
 - The Planning Officer misread the plans and granted permission based on erroneous interpretation
 - The Conservation Officer identified that the extension was overly dominant, which is a breach of the Architectural Heritage Protection Guidelines.

9.1.3. Helen A Keelan & Guy B Johnston

- The proposed extension is not in keeping the scale and character of Leeson Park Avenue. The Conservation Officer considered it overly dominant.
- Concerned that the proposed extension will overlook the garden of no. 8 and impinge on their privacy.
- The proposed development is not a sensitive and appropriate addition. It is significant in scale, modern, highly visible and not in keeping with the architectural of the Avenue.
- Many of the houses on the Avenue have developed contemporary spaces internally while preserving the external character of the avenue.

- The delay in undertaking the refurbishment has not led to material degradation of the dwelling.
- The Board is requested to refuse permission.

9.1.4. Sasha Smith, 9 Leeson Park, The Residents Association of Leeson Park Avenue and Guy Johnson of 8 Leeson Park Avenue.

- Supports the submission of Deirdre Smith
- Regarding the submission from the applicants agent, there is no proper or sustainable basis upon which to revert to the former decision of the Board.
- The decisions of the Council and the Board reflect an inability to mitigate the scale and massing of the development and the injurious impact on neighbouring residential amenity.
- The submission reiterates the original grounds on which the Board should refuse permission.

9.1.5. Applicant

- The options open to the Board are to re-issue the condition with a remedy complying with section 34(10(b)(2) or grant permission including a condition regarding the privacy fins.
- The applicants have no objection to a condition regarding the privacy fins.

10.0 Assessment

10.1.1. I have examined the file and the planning history, considered national and local policies and guidance and inspected the site. I have assessed the proposed development including the various submissions from the applicant, the planning authority and the Observer. I note that a previous Planning Inspector Report and previous Board decision have been referred to by a number of the parties to this appeal. With the exception of noting where it was raised by a party to the appeal, I state that I have had no regard to the previous planning report or Board decision and have carried out this assessment de novo.

10.1.2. I am satisfied that the issues raised adequately identify the key potential impacts and I will address each in turn as follows:

- Principle of development
- Impact on Residential Amenity
- Impact on Built Heritage
- Other

10.2. Principle of Development

10.2.1. The subject site is zoned Z2, Residential Conservation Area. Residential development is permitted in principle in such areas.

10.2.2. Some of the third parties to the appeal have submitted to the Board that the application is invalid as the application drawings are in breach of the Planning and Development Regulations 2001, as amended. The appellant states that the rear contiguous elevation of no. 9 Leeson Park is not shown, there are no sections or dimensioned plans of the foundations, the plans submitted as FI are cut off from the boundary, there are no sections for the bin store showing ground level changes, and site levels for the surrounding roads are not shown.

10.2.3. Section 6.4.9 of the Architectural Heritage Protection Guidelines notes that it is a general requirement of planning applications that drawings of elevations should show the main features of any contiguous buildings, in accordance with article 23 of the Planning and Development Regulations 2001, as amended. The Guidelines state that ideally, in the case of a protected structure or a proposed structure, buildings and other features of interest within the curtilage should also be indicated on elevational drawings.

10.2.4. Article 23(d) of the Planning and Development Regulations 2001, as amended states: “drawings of elevations of any proposed structure shall show the main features of any buildings which would be contiguous to the proposed structure if it were erected, whether on the application site or in the vicinity, at a scale of not less than 1:200, as may be appropriate, and where the development would involve work to a protected structure or proposed protected structure, shall show the main features of any buildings within the curtilage of the structure which would be materially affected by the proposed development”,

- 10.2.5. The main features of the buildings contiguous to the structure proposed to be erected (in this instance, the proposed extension at gable end) and all structures within the curtilage of the protected structure are shown on the subject plans and were accepted by the Planning Authority as being valid for the purposes of lodging the planning application.
- 10.2.6. Some of the third parties to the appeal have suggested that errors were made by the Planning Authority in their interpretation of the drawings submitted and therefore the decision of the Planning Authority is invalid. I refer to section 37(b) of the Planning and Development Act 2000, as amended, which states that the Board shall determine the application as if it had been made to the Board in the first instance and the decision of the Board shall operate to annul the decision of the planning authority as from the time when it was given.

10.3. **Impact on Built Heritage**

- 10.3.1. The subject dwelling and terrace of which it forms the end, are protected structures and lie within a conservation zone. I note that the Conservation officers report of 17/09/19 states that while there is much to be admired about the proposal, she has concerns that the legibility of the architectural character of the protected structure may be negatively impacted. She states that the proposed extension is shown on drawing no. 19003-P-305 as an overly dominant element to the rear of the protected structure. She recommends that permission be granted but that a condition be attached requiring the length of the proposed extension to be reduced to a point behind the existing building line of the dwelling.
- 10.3.2. I concur with the assessment of the Conservation Officer. The low boundary wall between the terrace and the open recreation grounds of the RHD is such that the entire rear terrace is visible. Notwithstanding that a number of the dwellings have been extended, the end-of-terrace location of the subject site is such that its rear elevation is particularly visible. Section 6.8.1 of the Architectural Heritage Protection Guidelines recognises that it is often necessary to permit appropriate new extensions to protected structures in order to make them fit for modern living and to keep them in viable economic use. The Guidelines note that even small additions can have a cumulative effect that compromise the special interest of a structure. Section 6.8.2 states that where the proposed development involves an extension,

the new work should involve the smallest possible loss of historic fabric, and that in general, principal elevations of a protected structure (not necessarily just the façade) should not be adversely affected by new extensions.

- 10.3.3. The length of the proposed extension is such that the staircase return would be obscured from all views other than straight on. A reduction in length such as that proposed by the conservation officer would still allow the dwelling to be accommodate modern living requirements whilst avoiding any overlooking of adjoining private open spaces and also protect the primacy of the rear elevation.
- 10.3.4. The impact of the proposed extension from the front elevation is less significant. The proposed structure is set back and lower in height. The contrast in design and materials allows the front elevation to retain primacy. The simplicity of the structure and the presenting elevation however, is challenged by the addition of a staircase to the side. Given that there are multiple ground floor access points, the omission of the side staircase would not onerously affect the viability of the dwelling. Should the Board decide to grant permission, this can be achieved by way of condition.
- 10.3.5. In relation to the requirement for the proposed development to prepare an Architectural Heritage Impact Assessment, I draw the Boards attention to section 6.4.14 of the Architectural Heritage Protection Guidelines which states that a brief written statement is a useful tool as part of a planning application to help explain the rationale for the proposed development. The Guidelines state that the written statement could take the form of a cover letter which summarises the principal impacts on the character and special interest of the structure or site and describe how it is proposed to minimise these impacts. The following section (6.4.15) refers to more extensive or complex works with a potential to have a major impact on the architectural heritage. In such instances, the Planning Authority may require an applicant to submit a more detailed impact statement, to allow the planning authority to assess the full implications of the proposals and allow an informed decision to be made on the appropriateness of the development.
- 10.3.6. I am satisfied that notwithstanding that the scale of the proposed extension has been raised as an area of concern, in the context of the development of the entire dwelling, the proposed development does not qualify as extensive or complex. Thus, an AHIA is not required.

10.4. Impact on Residential Amenity

- 10.4.1. The impact of the proposed extension on the residential amenity of the other dwellings on the terrace has been raised by all of the third parties. It is submitted that the scale of the first-floor extension, its angle and the large sliding windows will directly overlook the rear gardens of the terrace, thereby injuring their residential amenity.
- 10.4.2. As noted above, the Planning Authority stated that they had a concern about the impact of the scale of the proposed extension on the protected structure and requested the applicant to address this concern. On receipt of FI, the applicant proposed a reduction in plan depth of 300mm – pulling the proposed extension away from the historic boundary wall. It is considered that while this addresses the relationship of the proposed extension to the existing dwelling and to the historic boundary wall, it does not address the impact on residential amenity of adjoining structures.
- 10.4.3. The proposed extension wraps around the side (east / gable) and rear of the existing two storey dwelling. At ground level the entire extension is behind the building line established by the rear wall of the original dwelling. At first floor, the proposed cantilevered fully glazed dining space projects beyond the rear building line by approx. 0.5m. At ground level that would have no impact on adjoining private open spaces. At first floor level however, the imposition of a new structure is exacerbated by the fact that it is a living space with 2.3m high windows and a window seat at the western end. The appellants concerns that people will sit at this space and have a direct line of sight into their garden is understood.
- 10.4.4. The applicants mitigation against this overlooking is stated to be angled timber privacy fins running from the front (east) around the side and along a portion of the end (east). The fins stop just before the western most corner of the structure, leaving a corner window facing south, west and north. This corner of the proposed extension is approx. 5.5m from the boundary with no. 9 and right on the boundary of the RHD. Overlooking of the adjoining rear garden of no. 9 could be avoided by the continuation of the fins along the full length of the western elevation. I note the applicants position that the existing sash window illuminating the first floor living room directly overlooks the rear garden of no. 9. That overlooking has existed since the construction of the dwellings in 1860 however and has been accepted by

residents. That one instance of overlooking exists, does not negate the injury to residential amenity any new instances overlooking would create.

10.4.5. As noted above, it is recommended that the proposed extension be reduced in length, to a point behind the established rear building line. This will further obviate overlooking of the private open space of no. 9 and thereby protect the existing residential amenity. Should the Board decide to grant permission, this can be achieved by way of condition.

10.4.6. I note that the RHD state that they have no objection to the proposal, that the grounds are already overlooked and that no impact on their patients will arise.

10.5. **Other**

10.5.1. Bin Store: Bins and bin stores are a necessary part of urban living. Their visual impact on a street, particularly a street of protected structures can be significant. Responding to the appeal, the applicant confirmed that it is proposed to erect a light timber-slatted enclosure that will be screened from the street by mature planting. It is considered the location and proposed finishes are acceptable.

10.5.2. New Gate: the applicant has confirmed that the proposed new gate will involve the removal of a small section of granite to facilitate a new opening. The existing railings will be used to create the gate. The location of the new opening is behind the pedestrian railings along the footpath kerb and as such will largely be screened from public view. This is considered acceptable.

11.0 **Appropriate Assessment**

11.1.1. 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 Recommendation

12.1. I recommend permission be GRANTED for the following reasons and considerations, subject to the following conditions.

13.0 Reasons and Considerations

13.1.1. Having regard to the zoning provisions contained in the Dublin City Development Plan which seek to protect the existing architectural character of the subject site and its surroundings, it is considered that the proposed development would not seriously injure the residential amenities or property in the vicinity, would not be prejudicial to public health and will be generally acceptable in terms of traffic safety and convenience and would otherwise be in accordance with the proper planning and sustainable development of the area.

14.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the information received by the planning authority on the 26th day of August, 2019, 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 agreement particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>That prior to the commencement of development, details of the following shall be submitted to and agreed in writing with the Planning Authority:</p> <ul style="list-style-type: none">a) a reduction in length of the proposed extension, such that the proposed extension does not extend at any point beyond the building line established by the rear elevation of the existing dwelling (existing dining room as shown on drawing no. 19003-P-101, submitted to the Planning Authority on the 4th day of June 2019)

	<p>b) the proposed privacy fins shall be extended along the entire section of the western elevation at first floor level,</p> <p>c) Omission of the proposed door and metal staircase leading from the lower ground floor to the first floor hall and dining space</p> <p>Reason: In the interest of protecting and enhancing the architectural merit of the existing building and the terrace, in accordance with policy CHC4 of the Dublin City Council Development Plan 2016-2022 and in the interest of protecting the residential amenity of the adjoining structures</p>
3.	<p>All works to the protected structure, shall be carried out under the supervision of a qualified professional with specialised conservation expertise.</p> <p>Reason: To secure the authentic preservation of this protected structure and to ensure that the proposed works are carried out in accordance with best conservation practice.</p>
4.	<p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the Planning Authority for such works and services.</p> <p>Reason: In the interest of public health and to ensure a proper standard of development.</p>
5.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays.</p> <p>Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the amenities of property in the vicinity.</p>
6.	<p>All service cables associated with the proposed development (such as electrical, communal television, telephone and public lighting cables) shall be run underground within the site. In this regard, ducting shall be provided</p>

	<p>to facilitate the provision of broadband infrastructure within the proposed development.</p> <p>Reason: In the interest of orderly development and the visual amenities of the area.</p>
7.	<p>Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, no development falling within Classes 1, 3 and 5 of Schedule 2, Part 1 to those Regulations shall take place within the curtilage of the house without a prior grant of planning permission.</p> <p>Reason: In the interest of orderly development, and to allow the planning authority to assess the impact of any such development on the amenities of the area through the statutory planning process</p>

Gillian Kane
Senior Planning Inspector

31 January 2022