



An
Bord
Pleanála

Inspector's Report ABP-309397-21

Development	Construction of new three-storey extension to the rear and internal alterations.
Location	15, Grattan Street, Dublin 2
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	WEB1836/20
Applicant(s)	Pere Sola and Kateryna Malinovsk
Type of Application	Permission
Planning Authority Decision	Grant with Conditions
Type of Appeal	Third Party
Appellant(s)	Tony McGee & Una Murphy
Observer(s)	None.
Date of Site Inspection	20 th of April 2021
Inspector	Adrian Ormsby

1.0 Site Location and Description

- 1.1. The site is located in Dublin City centre, at 15, Grattan Street, Dublin 2. The site is c. 200m north east of Merrion Square. Grattan St generally runs in a north to south direction between and perpendicular to Grand Canal St Lower and Mount St Lower.
- 1.2. The application site is located on the western side of Grattan Stt and is a mid terraced, two storey over basement house finished with a red brick to the front elevation with a stated site area of 147.8 sq.m.
- 1.3. The basement area off the house is bounded to the public path by a plinth and painted rail. There is a stepped entrance into the house.
- 1.4. The rear of the house is accessed from the basement level and the rear elevation is three storey. This area can be described as a long rear yard with paving stepping up to the rear boundary. It is finished in paving which is poorly maintained. The existing rear site boundaries to the sides are c.2m high wire mesh fencing with concrete posts.
- 1.5. Number 16 Grattan St and directly north of the site has a part one part two storey rear extension. Its side wall directly bounds the application site. The house directly to the south of the site identified as No. 13 on the submitted site plan is the house of the appellants. They identify the address of the house as No. 14. This house has a small single storey rear return set back of the site boundary with the subject appeal site.
- 1.6. Properties identified as numbers 12, 17, 18 and 19 Grattan St all have existing two/three storey rear extensions. No. 12 in particular is visibly prominent from the rear of the application site.

2.0 Proposed Development

- 2.1. The proposed development comprises-
 - A three-storey extension to the rear (61.4 sq.m) of existing house (86.1 sq.).
 - Total proposed floor area will be 147.5 sq.m
 - refurbishment of front façade to include new windows

- new rooflights to rear and
- all associated site works and drainage

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority decided to grant permission on the 12/01/21, subject to seven conditions, all of a standard nature.

4.0 Planning Authority Reports

4.1. Planning Reports

The report of the Planning Officer (06/01/21) reflects the decision of the Planning Authority. The following is noted from the report:

- It is considered that the 3 storey element is unlikely to have an overbearing impact on adjoining and nearby property.
- The proposed extension is unlikely to have an adverse impact on the availability of daylight and sunlight to neighbouring properties.
- The design of the proposed extension accords with the existing dwelling.
- In relation to third party objections the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land.
- The proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on any European site.
- The proposed development is considered to be in accordance with the Dublin City Development Plan 2016 – 2022 and the proper planning and sustainable development of the area.

4.2. Other Technical Reports

- Drainage Division- No objection subject to condition

4.3. Prescribed Bodies

- Transport Infrastructure Ireland- Section 49 Contribution should apply if granted and not exempt.

4.4. Third Party Observations

- There are two submissions on file which are from residents of the same address- No. 14 Grattan Street. The issues raised are generally included in the third party appeals and are set out in the Grounds of Appeal in section 7.1 of this report. Procedural issues in relation to the site notice are also raised.

5.0 Planning History

5.1.1. This Site-

- None

5.1.2. Relevant nearby Sites-

- 3561/18- 19 Grattan St, erection of three storey extension to the rear of the building, Grant 24-Oct-2018
- 2428/16, 246934- Site to rear of the subject appeal site at 8-9 Grants Row, extension of the existing three-storey office block to provide a five-storey office block. Grant 07/11/2016

6.0 Policy Context

6.1. Ministerial Guidelines

- 6.1.1. Development Management Guidelines for Planning Authorities June, 2007- Section 5.13- Issues relating to title to land

‘The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not be entitled solely by reason of a permission to carry out any development.

6.2. Dublin City Development Plan 2016-2022

- 6.2.1. The appeal site has a zoning objective ‘Z2 - Residential Neighbourhoods (Conservation Areas)’ within the Dublin City Development Plan 2016-2022, with a stated objective *‘To protect and/or improve the amenities of residential conservation areas.*
- 6.2.2. Relevant planning policies and objectives for residential development are set out under Section 5 (Quality Housing) and Section 16 (Development Standards) within Volume 1 of the Development Plan. Appendix 17 of Volume 2 of the Development Plan provides guidance specifically relating to residential extensions.
- 6.2.3. The following sections are of particular relevance:

Section 11.1.5.4- Architectural Conservation Areas and Conservation Areas.

The policy mechanisms used to conserve and protect areas of special historic and architectural interest include:

- Land-use zonings: Residential Conservation Areas (land-use zoning Z2)....

The policy to ensure the conservation and protection of the areas of special historic and architectural interest is as follows-

It is the Policy of Dublin City Council:

CHC4: 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.

It is the Policy of Dublin City Council:

Development will not:

- 1. Harm buildings, 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 roof-scapes, shop-fronts, doors, windows and other decorative detail*
- 3. Introduce design details and materials, such as uPVC, aluminium and inappropriately designed or dimensioned timber windows and doors*
- 4. Harm the setting of a Conservation Area*
- 5. Constitute a visually obtrusive or dominant form.*

Section 16.2.2.3- Extensions and Alterations to Dwellings-

.... alterations and extensions should:

- Respect any existing uniformity of the street, together with significant patterns, rhythms or groupings of buildings*
- Retain a significant proportion of the garden space, yard or other enclosure*
- Not result in the loss of, obscure, or otherwise detract from, architectural features which contribute to the quality of the existing building*
- Retain characteristic townscape spaces or gaps between buildings*
- Not involve the infilling, enclosure or harmful alteration of front lightwells.*

Furthermore, extensions should:

- Be confined to the rear in most cases*
- Be clearly subordinate to the existing building in scale and design*
- Incorporate a high standard of thermal performance and appropriate sustainable design features.*

Section 16.10.12 Extensions and Alterations to Dwellings:

‘Applications for planning permission to extend dwellings will only be granted where the planning authority is satisfied that the proposal will:

- Not have an adverse impact on the scale and character of the dwelling;*
- Not adversely affect amenities enjoyed by the occupants of adjacent buildings in terms of privacy, access to daylight and sunlight.’*

Appendix 17 Guidance for Residential Extensions

- Section 17.3 Residential Amenity Issues
- Section 17.4 Privacy
- Section 17.5 Relationship Between Dwellings and Extensions
- Section 17.6 Daylight and Sunlight
- Section 17.7 Appearance
- Section 17.8 Subordinate Approach

6.3. Natural Heritage Designations

- None relevant

7.0 The Appeal

7.1. Grounds of Appeal

One third party appeal was received from Tony McGee & Una Murphy of No. 14 Grattan St. Dublin 2. The grounds of the appeal can be summarised as follows-

- The applicants do not have ownership or occupancy to the full site shown within the boundaries outlined in red.
- The red line encroaches onto the property of No. 14 Grattan St.

- The applicants do not have the permission from the estate of Patrick Murphy to make an application showing these encroachments.
- The applicants should be required to prove their site boundaries as shown.
- The application should be suspended until such time as the site plan is revised.
- Three exhibits in the forms of mapping are submitted in support of the appeal.

7.2. Applicant Response

The applicants response to the grounds of appeal can be summarised as follows-

- The third party appeal is wholly based on a boundary dispute. Land ownership disputes are a legal matter as it is for the courts and not planning authorities to adjudicate on.
- No planning matters have been raised in the appeal.
- The appeal is vexatious and should be dismissed.
- OSi Maps do not confer legal ownership and positional accuracy of OSi maps allow for a significant margin of error.
- The applicants are in a position to prove the ownership of the property i.e. the red line boundary. A screenshot from online land registry mapping is submitted.
- The application site boundary does not include any land in the ownership of the appellants and permission from the owners of No. 14 Grattan St is not required for the application.

7.3. Planning Authority Response

- None Received

7.4. Observations

- None

8.0 **Assessment**

8.1. **Introduction**

8.1.1. I have examined the application details and all other documentation on file, including the appeal. I have inspected the site and have had regard to relevant local/regional/national policies and guidance.

8.1.2. I consider that the main issues for this appeal are as follows-

- Zoning
- The Grounds of Appeal
- The Proposed Development
- Appropriate Assessment

8.2. **Zoning**

8.2.1. The subject site is located within an area with a zoning objective 'Z2- Residential Neighbourhoods (Conservation Areas)' within the Dublin City Development Plan 2016-2022, with a stated objective '*To protect and/or improve the amenities of residential conservation areas*'.

8.2.2. The proposed development seeks to provide a residential extension to the existing house. The proposed development is, therefore, acceptable in principle.

8.3. **The Grounds of Appeal**

8.3.1. The appellants grounds of appeal contest the legal entitlement of the applicants to include lands to the rear of the property within the application site boundary. The appellants argue the applicants do not own part of the site and do not have the consent from the legal owners to make the application.

8.3.2. The applicants have challenged the appellants claim and are satisfied they are the legal owners of the application site. Dublin City Council have not raised any concerns in this regard and have validated the application.

- 8.3.3. It is not within the remit of An Bord Pleanála to adjudicate on the opposing claims by the parties. This dispute is clearly a civil matter. In this regard Section 5.13 of the Development Management Guidelines 2007 states-

‘The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not be entitled solely by reason of a permission to carry out any development’

8.4. The Proposed Development

- 8.4.1. The application is for a three-storey extension to the rear of an existing two storey over basement house. The proposed extension will add 61.4 sq.m of floor space to the house providing a total floor area of 147.5 sq.m. The extension will be the full width of the house and over the three existing levels. It includes a rear stair case up to the ground floor from the rear yard. The height of the extension to the rear will be 9.3m to the ground level at basement and 8.198 m to the rear yard area to which the external stair case will meet. The extension will have a flat roof below the height of the existing pitch roof.
- 8.4.2. Neither the Planning Authority nor the appellant have raised any concerns in relation to residential or visual amenity. Having inspected the site and neighbouring properties from the rear of the application site and considered the planning history in the area I consider the proposed development acceptable in this context.

8.5. Appropriate Assessment

- 8.5.1. Having regard to the nature and scale of the proposed development and the distance from 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.

9.0 Recommendation

- 9.1. I recommend a grant of permission subject to the following conditions.

10.0 Reasons and Considerations

- 10.1. It is considered that the proposed development, subject to compliance with the conditions set out below, would not seriously injure the residential or visual amenities of properties in the area. The proposed development would, therefore, be in accordance with the Z2 Residential Neighbourhoods (Conservation Areas) zoning objective set out in the Dublin City Council Development Plan 2016-22 and to the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity.

2. 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.

Reason: In the interest of public health.

3. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

4. 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 made under section 48 of the Act be applied to the permission.

5. The developer shall pay to the planning authority a financial contribution in respect of the Luas Cross City Scheme in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 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 Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

Adrian Ormsby
Planning Inspector

29th of April 2021