



An  
Bord  
Pleanála

## Inspector's Report ABP-309510-21

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<b>Development</b>	Retention of alterations to and completion of previously approved garden structure and associated site works to rear garden.
<b>Location</b>	40 Hillcourt Road, Glenageary, Co. Dublin.
<b>Planning Authority</b>	Dún Laoghaire Rathdown County Council
<b>Planning Authority Reg. Ref.</b>	D20A/0878
<b>Applicant(s)</b>	Neil McGroary & Robyn Espey
<b>Type of Application</b>	Permission for Retention and Completion
<b>Planning Authority Decision</b>	Grant subject to conditions
<b>Type of Appeal</b>	Third Party v. Decision
<b>Appellant(s)</b>	Hillcourt Park Residents Association
<b>Observer(s)</b>	Stan & Attracta Quinn
<b>Date of Site Inspection</b>	27 <sup>th</sup> April, 2021
<b>Inspector</b>	Robert Speer

## 1.0 Site Location and Description

1.1. The proposed development site is located at No. 40 Hillcourt Road, Glenageary, Co. Dublin, in an established residential area characterised by conventional two-storey, semi-detached housing with front & rear garden areas and off-street car parking. It has a stated site area of 0.05 hectares, is broadly rectangular in shape, and is occupied by a two-storey, semi-detached dwelling house which is presently undergoing renovation / extension works. The rear garden of the property extends westwards and backs onto a red-brick wall which separates the site from the adjoining housing estate of Hillcourt Park.

## 2.0 Proposed Development

2.1. The proposed development consists of the retention and completion of a single-storey garden structure to the rear of No. 40 Hillcourt Road as altered from that previously approved under PA Ref. No. D20A/0246. It is based on a broadly rectangular plan with a mono-pitched roof construction and has a stated floor area of 36m<sup>2</sup> with a maximum ridge height of 3.4m. External finishes include a painted sand & cement render, aluclad external joinery, and a zinc roof. Surface water runoff will be collected and discharged to an on-site soakaway.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. On 27<sup>th</sup> January, 2021 the Planning Authority issued a notification of a decision to grant permission for the retention and completion of the proposed development, subject to 4 No. conditions which can be summarised as follows:

Condition No. 1 - Refers to the submitted plans and particulars.

Condition No. 2 - Refers to external finishes and requires the rear (western) wall of the structure to match the colour of the rear (western) boundary wall as viewed from Hillcourt Park.

Condition No. 3 - Requires the garden room and storage structure to be used solely for purposes associated with the use of the existing

dwelling and states that it is not to be used as residential accommodation or subdivided from the existing house either by way of sale, letting or otherwise.

Condition No. 4 – Refers to the surface water drainage arrangements.

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

#### 3.2.1. *Planning Reports:*

States that the overall principle of the proposed development is acceptable and that it will not seriously injure the residential or visual amenities of the area or of property in the vicinity. It subsequently recommends a grant of permission for retention, subject to conditions.

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

*Drainage Planning, Municipal Services Dept.:* No objection, subject to conditions.

*Transportation Planning:* No objection.

### 3.3. **Prescribed Bodies**

None.

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

3.4.1. A total of 6 No. submissions were received from interested third parties and the principal grounds of objection / areas of concern raised therein can be summarised as follows:

- The proposed development was misrepresented by the applicants during discussions with neighbouring residents.
- The existing construction resembles an industrial work garage rather than a garden shed.
- Detrimental impact on the visual amenity of Hillcourt Park.
- Concerns as regards the surface water drainage arrangements.
- Concerns that unauthorised development was carried out in a deliberate attempt to circumvent the grant of permission / planning process.

- The plans and particulars lodged with the application do not accurately represent the works on site.

## 4.0 Planning History

### 4.1. On Site:

PA Ref. No. D20A/0246. Was granted on 6<sup>th</sup> August, 2020 permitting Robyn Espey & Neil McGroary permission for a development comprising (a) demolition of existing single storey extension and ancillary shed structures to rear of house, (b) construction of part single, part two storey extension to rear elevation, (c) construction of new detached garden room in rear garden (d) addition of bay windows at ground floor level to front elevation (d) conversion of attic space including new dormer window and roof structure to rear roof plane and new roof light to front roof plane, (e) internal and external alterations, (f) widening of existing vehicular entrance gates and (g) all associated site works.

## 5.0 Policy and Context

### 5.1. Development Plan

#### 5.1.1. ***Dún Laoghaire Rathdown County Development Plan, 2016-2022:***

##### *Land Use Zoning:*

The proposed development site is zoned as 'A' with the stated land use zoning objective '*to protect and / or improve residential amenity*'.

##### *Other Relevant Sections / Policies:*

##### *Chapter 8: Principles of Development*

##### *Section 8.2: Development Management*

##### *Section 8.2.3.4: Additional Accommodation in Existing Built-up Areas: (iv) Detached Habitable Room:*

This can provide useful ancillary accommodation such as a playroom, gym or study for the main residence. It should be modest in floor area and scale, relative to the main house and remaining rear garden area. The applicant will be required to

demonstrate that neither the design nor the use of the proposed structure will detract from the residential amenity of adjoining property or the main house.

Any such structure shall not be used to provide residential accommodation for a family member / granny flat.

## **5.2. Natural Heritage Designations**

5.2.1. The following natural heritage designations are in the general vicinity of the proposed development site:

- The Dalkey Coastal Zone and Killiney Hill Proposed Natural Heritage Area (Site Code: 001206), approximately 1.4km east-southeast of the site.

## **5.3. EIA Screening**

5.3.1. Having regard to the minor nature and scale of the development proposed, the site location outside of any protected site, the nature of the receiving environment in an existing built-up area, the intervening pattern of development, the limited ecological value of the lands in question, the availability of public services, and the separation distance from the nearest sensitive location, 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. Grounds of Appeal**

- From the outset, the applicants' approach to the planning process has been irregular. Although a site notice was erected to the front of the property on Hillcourt Road, no such notice was placed on the rear wall of the site facing into Hillcourt Park to alert its residents of the proposed development – there being no reason for anyone to pass the front of the site when exiting Hillcourt Park to reach the Upper Glenageary Road.

- During the assessment of PA Ref. No. D20A/0246, 14 No. submissions were lodged by the residents of Hillcourt Park focusing primarily on the negative impact the proposed garden room would have on the visual amenity of their estate. When permission was granted for that development, it was accepted that the Planning Authority would have considered the concerns raised as regards any possible detrimental impact on Hillcourt Park. If the residents of Hillcourt Park had known that the building in question would bear little resemblance to the approved plans (in reference to the increased floor area and the reversal of the roof pitch), they would have objected / appealed on receipt of notification of the planning approval.
- Following the commencement of works on site, it became apparent that the development was not adhering to the plans as approved. This culminated in the Enforcement Section of the Planning Authority being requested to investigate the issue, however, construction continued until an inspector visited the site and then the works were halted.
- The plans and particulars submitted with the application do not reflect the construction as carried out on site:
  - The plans show a 150mm - 250mm gap between the rear wall of the new garden room and the boundary wall, however, there is only a 1mm gap at the northern end of the wall and a 6mm gap to the south as constructed.
  - The lower end of the roof is shown to be flush with the back of the garden room wall, but the building 'as constructed' oversails the boundary wall by 150mm (please refer to the accompanying photographs).
  - Drainage is shown with downpipes to the front (east) of the building, however, the roof slopes downwards from east to west. The provision of guttering along the western extent of the roof would result in further oversailing of the boundary wall which was built on lands that formed part of House No. 1 when the first phase of Hillcourt Park was under construction. The owner of House No.1 has confirmed that he will not consent to any oversailing of his wall and, therefore, it is queried how

rainwater from the development will be collected and directed to the front of the building. If runoff is simply left to drain off the end of the roof it will eventually erode the wall's foundations.

- The cross-sectional drawing of the existing structure shows the roof sloping as per the original plans (not as constructed) but fails to show the lowered garden level as approved under PA Ref. No. D20A/0246.

Given the reversal in the roof slope and the significant increase in the building size, and notwithstanding that the garden area has not been excavated to lower the ground level under the new room, it is difficult to accept that the changes were of an accidental nature.

- The view of the rear wall of the garden room from Hillcourt Park is an obvious eyesore and represents a serious loss of amenity to the residents of that scheme.
- Any grant of permission for the retention of the building rather than insisting upon its removal and reconstruction in accordance with PA Ref. No. D20A/0246 makes a mockery of the planning regulations.

## 6.2. Applicant Response

- The garden room has been constructed in accordance with the drawings submitted with the planning application.
- Hillcourt Park is a housing estate as opposed to a 'park' and it is unclear how there could be a loss of 'visual amenity'. Works on the garden room ceased on foot of the receipt of an enforcement letter from the Planning Authority and have yet to be completed (the applicants were not able to finish the works due to the COVID-19 restrictions on non-essential construction).
- There is no entrance to the rear of the property from Hillcourt Park and it is the applicants' understanding that site notices should be erected at entrances to the property (as shown on the site layout plan). Furthermore, the rear boundary wall of the application site is shared with No. 1 Hillcourt Park and it is unlikely the applicants would have been permitted access over those lands to erect a site notice on that side of the wall. The applicants were also

unaware of any obligation to inform the residents of Hillcourt Park (who do not pass along Hillcourt Road) of their intentions.

- The floor area of the garden room is the same as that granted permission for retention. An application for planning permission was lodged as the floor area of the structure at 36m<sup>2</sup> exceeded the exempted development allowances.
- Construction works ceased immediately upon receipt of an enforcement letter from the Planning Authority. The applicants were mistakenly under the impression that they were within the parameters for alterations following a site visit by the Enforcement Section of the Council.
- Equal ownership of the rear boundary wall is shared between No. 1 Hillcourt Park and No. 40 Hillcourt Road. There is no oversailing of property belonging to No. 1 Hillcourt Park and the intention is that surface water runoff will be managed as per the submitted plans by way of guttering installed to the rear of the construction with a downpipe return draining into a soakaway (SUDS) located within the rear garden area.
- The applicants are fully committed to completing the works as per any grant of permission for retention.
- The objections raised are vexatious and intended to obstruct the works.

### 6.3. Planning Authority Response

- States that the grounds of appeal do not raise any new matter which, in the opinion of the Planning Authority, would justify a change of attitude to the proposed development.

### 6.4. Observations

#### 6.4.1. *Stan & Attracta Quinn (No. 1 Hillcourt Park):*

- There are concerns that the proposed development will have a detrimental impact on the visual amenity of Hillcourt Park.
- The existing incomplete structure is significantly higher than was previously approved under PA Ref. No. D20A/0246 and is in material breach of the



planning regulations (although there are other irregularities with the development).

- A site notice was not erected on the rear wall of the property facing onto Hillcourt Park (a public road). This was a mandatory requirement and would have afforded all interested parties the opportunity to express their views as regards the proposed development.
- The observers do not consent to the provision of any roof guttering which would oversail the red brick wall constructed on their property.
- Any grant of permission for retention would set an undesirable precedent for circumventing the planning regulations.

## 6.5. Further Responses

None.

## 7.0 Assessment

7.1. From my reading of the file, inspection of the site and assessment of the relevant policy provisions, I conclude that the key issues relevant to the appeal are:

- The unauthorised nature of the works proposed for retention
- Procedural issues
- Impact on visual & residential amenity
- Appropriate assessment

These are assessed as follows:

### 7.2. The Unauthorised Nature of the Works Proposed for Retention:

7.2.1. With respect to the wider concerns as regards the unauthorised nature of the development for which permission for retention (& completion) has been sought, it should be noted that the Board has no function in respect of issues pertaining to enforcement and that the pursuit of such matters is generally the responsibility of the Planning Authority. Moreover, the subject application would appear to have been purposively lodged in an effort to regularise the planning status of the development

in question and it is entirely within the remit of the Planning Authority and the Board to assess any such application on its merits.

### 7.3. Procedural Issues:

#### 7.3.1. *The Adequacy of the Site Notice:*

It has been submitted that a site notice should have been erected on the rear (red brick) wall of the site facing onto Hillcourt Park so as to alert its residents of the proposed development (thereby implying that the failure to erect such a site notice would not satisfy the requirements of the Planning and Development Regulations, 2001, as amended, and thus would render the planning application invalid).

7.3.2. Article 19(1)(c) of the Regulations requires a site notice to be '*securely erected or fixed in a conspicuous position on or near the main entrance to the land or structure concerned from a public road, or where there is more than one entrance from public roads, on or near all such entrances, or on any other part of the land or structure adjoining a public road, so as to be easily visible and legible by persons using the public road, and shall not be obscured or concealed at any time*'. In this regard, I am satisfied that the erection of the site notice at the location shown on the site plan (i.e. at the entrance to the site from Hillcourt Road) accords with the requirements of the Regulations. In my opinion, the site notice was positioned at or near the main entrance to the site and would have been easily visible and legible by persons using the public road. Furthermore, given that the section of wall to the rear of the site which faces onto Hillcourt Park would appear to be beyond the confines of the development site and outside of the applicant's ownership, and as the wall in question and the intervening lands between it and the public road would seem to be retained by a third party (i.e. the owners of No. 1 Hillcourt Park), and as the rear of the application site does not therefore adjoin the public road, it would appear that the applicants would not have been obliged (or possibly permitted) to erect a site notice at the location suggested in the grounds of appeal.

7.3.3. Notwithstanding the foregoing, procedural matters, such as a determination as to the adequacy (or otherwise) of public notices and the subsequent validation (or not) of a planning application, are generally the responsibility of the Planning Authority which in this instance took the view that the location of the site notice satisfied the minimum statutory requirements. I do not propose to comment further on this matter other than

to state that the right of third parties to make a submission or to subsequently lodge an appeal would not appear to have been prejudiced in this instance.

#### **7.4. The Adequacy and Accuracy of the Submitted Drawings:**

7.4.1. In relation to the adequacy & accuracy of the submitted plans and particulars, in my opinion, there is sufficient information on file to permit a balanced and reasoned assessment of the development proposed for retention and completion. Whilst I would acknowledge that there are some minor differences between the submitted drawings and the development as constructed on site, I would suggest that these deviations are of an immaterial or '*de minimis*' nature and thus I propose to assess the proposal on the basis of the details provided.

#### **7.5. Impact on Visual & Residential Amenity:**

7.5.1. In terms of the visual impact of the proposed development, the principal concern is the appearance of the construction when viewed from within the adjacent housing estate of Hillcourt Park to the west. In this regard, the height of the proposed structure will exceed that of the red-brick boundary wall shared with the neighbouring property at No. 1 Hillcourt Park by approximately 1.02m whereas the development approved under PA Ref. No. D20A/0246 only exceeded the wall height by 0.73m when seen from within Hillcourt Park. However, it should be noted that the external finishes of the proposal (including the use of zinc roofing, a painted sand & cement render & selected aluclad external joinery), once completed, will match those previously permitted on site.

7.5.2. It is also of relevance to note that there are already a number of other examples of differing types of structures and boundary treatments visible to residents of Hillcourt Park over the boundary walls of that estate (such as the timber panelling & sheds evident at the end of the cul-de-sac alongside Nos. 16 & 17 Hillcourt Park).

7.5.3. Consideration should also be given to the fact that Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, provides for the construction of sheds or similar structures to the rear of a house by way of exempted development and that the '*Conditions and Limitations*' applicable to same specify that '*the height of any such structure shall not exceed, in the case of a building with a tiled or slated pitched roof, 4 metres or, in any other case, 3 metres*' while the external finishes of any such structure are only required to conform with those of the

house where it has been erected or placed to the side of a house. In effect, it would normally be permissible to construct a garden shed etc. within the rear garden of a dwelling house to a height exceeding that of the brickwork wall bounding No. 1 Hillcourt Park (with a differing external finish) as exempted development.

- 7.5.4. Having considered the foregoing, and following a site inspection, whilst I would acknowledge the appellant's concerns, given the site context, including its location within a built-up urban area bounded by existing housing, the surrounding pattern of development, the planning history of the site (with particular reference to PA Ref. No. D20A/0246), and the nature, scale and design of the development proposed for retention and completion, I am satisfied that the subject proposal, once completed, will not detract to any significant extent from the visual amenity of the surrounding area.

With respect to the surface water drainage arrangements, it is proposed to dispose of runoff from the garden structure to an on-site soakaway in a manner similar to that previously approved under PA Ref. No. D20A/0246. However, concerns arise as regards the potential for any roof guttering etc. resulting from the altered roof profile to oversail the boundary line shared with neighbouring properties, including No. 1 Hillcourt Park. From a review of the submitted drawings, it would appear that all of the works are to be carried out within the confines of the application site and thus will not result in the encroachment or oversailing of adjacent lands. Notwithstanding, it is my opinion that any encroachment or interference with private property beyond the confines of the application site is essentially a civil matter for resolution between the parties concerned and in this respect I would refer the Board to Section 34(13) of the Planning and Development Act, 2000, as amended, which states that '*A person shall not be entitled solely by reason of a permission under this section to carry out any development*' and, therefore, any grant of permission for the subject proposal would not in itself confer any right over private property. It is not the function of the Board to adjudicate on property disputes or to act as an arbitrator in the assessment of damages and thus I do not propose to comment further on this matter.

#### 7.6. **Appropriate Assessment:**

- 7.6.1. Having regard to the minor nature and scale of the development under consideration, the site location within an existing built-up area outside of any

protected site, the nature of the receiving environment, the availability of public services, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

## 8.0 Recommendation

8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission for the retention and completion of the proposed development be granted for the reasons and considerations, and subject to the conditions, set out below:

## 9.0 Reasons and Considerations

9.1. Having regard to the site location, the planning history of the site, the provisions of the Dún Laoghaire Rathdown County Development Plan, 2016-2022, and to the nature, scale, form and design of the development proposed for retention and completion, it is considered that, subject to compliance with the conditions set out below, the development proposed for retention and completion would not seriously injure the visual or residential amenities of property in the vicinity, and would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be retained, 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. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority and the development shall be retained, carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. Details of the materials, colours and textures of all the external finishes to the development proposed to be retained and completed shall be submitted to, and agreed in writing with, the planning authority prior to recommencement of development.

**Reason:** In the interest of visual amenity.

3. 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

4. All service cables associated with the proposed development, (such as electrical, telecommunications and communal television), shall be located underground.

**Reason:** In the interests of visual and residential amenity.

5. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision amending or replacing them, the garden structure shall be used solely for purposes incidental to the enjoyment of the dwellinghouse as such and shall not be used for human habitation or for any business or commercial purpose, unless otherwise authorised by a prior grant of planning permission.

**Reason:** To protect the amenities of property in the vicinity and in the interest of clarity.

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Robert Speer  
Planning Inspector

5<sup>th</sup> May, 2021