



An  
Bord  
Pleanála

## Inspector's Report

### ABP-309521-21

#### Development

Retention permission is sought for an external decking to the rear of an existing dwelling with a wooden privacy screening along the southern boundary wall. In addition, planning permission is also sought for a garden room located to the rear of the existing dwelling together with all associated site works and services.

#### Location

No. 18 Offington Park, Sutton, Dublin 13, D13 Y2R8.

#### Planning Authority

Fingal County Council.

#### Planning Authority Reg. Ref.

F20B/0300.

#### Applicant

Deirdre Fallon.

#### Type of Application

Retention Permission.

#### Planning Authority Decision

Grant.

#### Type of Appeal

Third Party

#### Appellants

Patrick & Maeve Cooney.

#### Observer(s)

None.

**Date of Site Inspection**

28<sup>th</sup> day of May, 2021.

**Inspector**

Patricia Young

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## 1.0 Site Location and Description

- 1.1. No. 18 Offington Park, the appeal site, has a 0.1138ha given site area and it is located on the western side of Offington Park road, c50m to the south of its entrance with Offington Avenue and c242m to the south of its junction with the R105 (Howth Road), in the Dublin suburb of Sutton, in north County Dublin. The site is also located c2.5km to the west of the historic heart of Howth village.
- 1.2. The site contains a dormer style dwelling that is one of the dominant characteristic architectural built forms present in the Offington residential scheme. The subject dwelling is set back from the Offington Park access road by way of a driveway that also accommodates the parking needs of the occupants of the subject property and mature well maintained soft landscaped garden area.
- 1.3. On the northern front boundary of the site in close proximity to the dwelling house is a detached garage.
- 1.4. To the rear the property has been extended with the extension being accessed from a large, raised anti-slip composite deck that provides access to the main rear garden area by several raised steps due to the significant change in ground levels that are present.
- 1.5. The rear garden is well maintained and recently landscaped with pleated evergreen trees present and back planted along the rear boundary. This integrates an attractive period stone wall that is located along this boundary. In addition, a timber lath privacy screen is present alongside the raised deck area and rear extension between the subject property and the adjoining property to the south.
- 1.6. The subject property adjoins No.s 35, 36 and 37 Glencarraig along its rear boundary. These properties form part of a later residential scheme known as Glencarraig that in the vicinity of the site is characterised by 2-storey semi-detached pairs. Like the rear garden area of the subject property, the adjoining and neighbouring Glencarraig properties occupy lower ground levels in comparison to the finished floor level of properties that align either side of Offington Park road.
- 1.7. The surrounding area has a mature residential character.

## 2.0 Proposed Development

- 2.1. Retention permission is sought for an external decking to the rear of an existing dwelling with a wooden privacy screening along the southern boundary wall. In addition, planning permission is also sought for a garden room, with a stated c38m<sup>2</sup> gross floor area, located to the rear of the existing dwelling together with all associated site works and services.
- 2.2. According to the planning application form accompanying this application the gross floor area of existing buildings on site is 190m<sup>2</sup>; the gross floor space of proposed works is 115m<sup>2</sup> and the gross floor space of works to be retained is 77m<sup>2</sup>.
- 2.3. In addition, it is indicated that the site benefits from an existing connection to the public mains water supply, the public sewer and that surface water disposal is via the public sewer.
- 2.4. This application is accompanied by a Planning Statement, prepared by Hughes Planning & Development Consultants, on the applicant's behalf.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. The Planning Authority decided to **grant** retention permission and planning permission for the development set out in Section 2 above subject to 9 no. conditions. I note the requirements of the following conditions:

Condition No. 4 & 5: Restricts the use of the garden room.

Condition No. 6: Requires that the rear boundary be supplemented with a native evergreen hedge of a minimum height.

Condition No. 7: Requires the provision of surface water drainage on site.

This grant of retention permission and planning permission includes a number of 'Advisory Notes', including but not limited to Advisory Note 1 which reiterates Section 34(13) of the Planning & Development Act, 2000, as amended; and, Advisory Note 3 which deals with the issue of encroachment and oversailing indicating that this is a

civil issue as well as advising that the consent of the adjoining property owner is required.

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

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

The Planning Officer's report dated the 20<sup>th</sup> day of January, 2021, is the basis of the Planning Authority's decision. This report includes the following comments:

- The principle of this development is acceptable.
- The concerns raised by 3<sup>rd</sup> Parties to the development are noted as well as the 3<sup>rd</sup> party submissions of support.
- The applicant has planted birch trees along the rear boundary, but it is considered that this needs to be supplemented by a native species evergreen hedge.
- It is considered that no undue overlooking would arise.
- Subject to the recommended conditions no objection is raised to this development. Therefore, a grant of retention permission and planning permission is concluded upon.

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

**Water Services Department:** No objection, subject to conditions.

### **3.3. Prescribed Bodies**

#### **3.3.1. None.**

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

#### **3.4.1. The 3<sup>rd</sup> Party appellants submitted an observation to the Planning Authority raising the same substantive concerns as raised in their appeal submission to the Board. In addition, observations were made from the adjoining property owners to the north and south in support of the proposed development alongside contending that in their view this development has not and would not give rise to any serious injury to their residential amenities.**

## 4.0 Planning History

### 4.1. Site and Setting

- 4.1.1. None relevant.

## 5.0 Policy & Context

### 5.1. Local Planning Context

- 5.1.1. The policies and provisions of the Fingal Development Plan, 2017-2023, as varied applies. The site lies within an area zoned 'RS' which has an aim to: *"provide for residential development and protect and improve residential amenity"*.
- 5.1.2. Chapter 3 of the Development Plan deals residential development.
- 5.1.3. The following Development Plan provisions are considered relevant:
- Extensions to Dwellings: The need for people to extend and renovate their dwellings is recognised and acknowledged. Extensions will be considered favourably where they do not have a negative impact on adjoining properties or on the nature of the surrounding area.
  - Objective PM46: Encourage sensitively designed extensions to existing dwellings which do not negatively impact on the environment or on adjoining properties or area.
  - Objective DMS42: Encourage more innovative design approaches for domestic extensions.
- 5.1.4. Appendix 6 Map Based Local Objective No.118 which relates to Offington seeks to: *"ensure that development is in keeping with the layout, scale, design and character of existing development"*.

### 5.2. Natural Heritage Designations

- 5.2.1. The nearest European sites are:
- Baldoyle Bay SAC (Site Code: 000199) which is located c337m to the north of the site.

- North Dublin Bay SAC (Site Code: 000206) and North Bull Island SPA (Site Code: 004006) which are located c347 to the southwest of the site at their nearest point.
- Howth Head SAC (Site Code: 000202) which is located c1.03km to the southeast of the site.

### 5.3. **Environmental Impact Assessment/Screening**

- 5.3.1. Having regard to the nature and scale of the residential development sought under this application, the residential zoning of the site and its setting, the serviced land and nature of the receiving environment, there is no real likelihood of significant effects on the environment arising from the proposed development. I consider that 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**

- 6.1.1. The grounds of this 3<sup>rd</sup> Party Appeal can be summarised as follows:
- Their residential amenities have been irreparably damaged by way of overlooking by the development carried out to date.
  - The desire of the applicants to have a large first floor outdoor decking should not be allowed at the expense of their neighbour's residential amenities.
  - The removal of the trees between the two properties and the unauthorised erection of the large, raised decking platform has dramatically changed the outlook from their property and sets a dangerous precedent.
  - Condition No. 6 is vague and ambiguous and the planting that it requires would take at least 10 years to recover any resemblance of privacy that their rear garden was afforded with.
  - The decking at 77m<sup>2</sup> represents overdevelopment and is visually overbearing.
  - The planting provided is inadequate.



- The applicants provided significant screening to protect the residential amenities of the adjoining property to the west and it is considered that this is the most reasonable solution to be provided also on the rear boundary.
- It is requested that the Board require by way of condition the erection of a screen 1.8m in height from the finished floor level of the deck to the rear of the dwelling and that this screen be of non-transparent material with the details to be agreed with the Planning Authority with this provided within 3 months of any decision of the Board to grant the development sought under this application. Should this mitigation measure not be deemed acceptable by the Planning Authority it is requested that a 3.18m privacy screen be provided between their property and the applicants property until such time as the landscaping matures.

## 6.2. Applicant Response

### 6.2.1. The applicant's response can be summarised as follows:

- In relation to the concern raised on the matter of tree removal it is contended that these trees became compromised and were removed on safety grounds. It is further contended that these trees had become compromised due to the overgrown nature of the boundary and that they had been dying as well as decaying over the last number of years. Therefore, for safety reason they needed to be removed.
- Since the removal of the trees 9 no. birch trees have been replanted along the rear boundary wall. The Appellant claims that these will take up to 10 years before having any impact. This is not accepted, and more planting has been proposed within the garden including to the north and rear boundaries. The pandemic has impacted on the completion of the landscaping works.
- There is 39m separation distance between the applicants and the appellants property at the closest point to the decking. This distance together with the landscaping is sufficient to mitigate adverse impact in this setting.
- No undue overlooking arises from the development sought under this application and once Level 5 restrictions have been lifted additional planting along the boundaries is planned.
- The Board is requested to uphold the decision of the Planning Authority.

### 6.3. Planning Authority Response

6.3.1. The Planning Authority's response can be summarised as follows:

- This development was assessed against relevant planning provisions as well as the site's land use zoning objectives and impact on residential amenity of properties in its vicinity.
- It is considered that this development subject to compliance with conditions would not unduly detract from visual and/or residential amenities of the area.
- The Board is requested to uphold its decision.
- Should the Board uphold its decision it is requested that it include Condition No. 6 of their notification to grant retention permission and planning permission.
- It is further request that the Board include a Section 48 Contribution.

### 7.0 Assessment

7.1. The development sought under this application essentially consists of two distinct elements. Firstly, the works related to the provision of an external decking to the rear with a wooden privacy screen along the southern boundary wall which adjoins No.s No. 20 Offington Park for which retention permission is sought; and, secondly the provision of a garden room to the rear of the dwelling together with all associated site works and services.

7.2. On the matter of retention, I consider it is incumbent to first note that the Development Management Guidelines for Planning Authorities, 2007, make it clear that, in dealing with such applications, they must be considered "*as with any other application*". This is in accordance with planning law and with proper planning practice, in that all applications for retention should be assessed on the same basis as would apply if the development in question were proposed. Therefore, no account can, or should, be taken of the fact that the development has already taken place.

7.3. Further, the current Development Plan indicates where a development is neither listed as being '*permitted in principle*' or '*not permitted*' it should be assessed in terms of its contribution towards the achievement of the applicable zoning objective, the vision for the zoning objective and its compliance as well as consistency with the policies and

objectives it contains. With Objective Z01 of the Development Plan stating that the Planning Authority will seek to: “*secure the implementation of the Zoning Objective and Vision applied to each area of the County*”.

- 7.4. In relation to the appeal site and its immediate setting, together they are situated within an area of suburban land zoned ‘RS’ which aims to: “*provide for residential development and protect and improve residential amenity*” under the Fingal County Development Plan, 2017-2023. The zoning objective for such land is to provide for residential development alongside protecting and improving residential amenity and the vision for such areas is to ensure that any new development in existing residential areas like this would have a minimal impact on and would enhance existing residential amenity.
- 7.5. Therefore, I consider that the general principle of residential development sought under this application on ‘RS’ zoned land is deemed to be acceptable, subject to safeguards.
- 7.6. In relation to the decking structure this has been provided in a staggered pattern corresponding to the orientation of the dwelling house alongside provides a step-down area circa midway to its rear edge that corresponds with the significant change in gradient present between the rear elevation of the subject property and the main rear garden area (Note: between c1.56m to c1.76m).
- 7.7. For the most part it extends westwards between 3.6m to 4.5m from the principal rear elevation and its later rear single storey extension with a small section that essentially runs alongside the northern elevation of the said extension to where it meets the aforementioned steps having a more significant depth of c8.1m. This decking structure essentially wraps around the entirety of the original and extended rear of the subject property and projects further northwards to where it joins with a paved area that provides pedestrian linkage from the driveway in the front garden area and to a modest detached single storey garage structure.
- 7.8. In terms of setback the decking structure is at its nearest point 16.913m to the rear boundary wall which consists of an attractive and historic period stone wall. The rear elevation of the existing dwelling to the said rear boundary wall at its nearest point is 21.394m. This boundary appears to demarcate the subject property and the adjoining rear gardens of three adjoining Glencarraig properties, i.e. No.s 35, 36 and 37. With

theses adjoining properties consisting of two storey semi-detached properties with the nearest rear elevation being over 20m from the rear boundary of the site. However, these properties like the main rear garden area of the subject property have lower finished floor levels which in the absence of robust boundary treatments results in a greater level of overlooking and perception of being overlooked which in turn reduces the privacy of these properties, in particular their private amenity space.

- 7.9. I therefore acknowledge that the previous evergreen boundary within the perimeter boundaries of the site offered significant visual screening between the subject property and the adjoining Glencarraig properties.
- 7.10. Notwithstanding, the type of evergreen hedge that was *in situ* in my view was not one that could be considered as being a permanent solution nor a particularly sensitive landscape solution in terms of biodiversity.
- 7.11. Its loss together with the provision of decking has resulted in a situation where the appellants properties, the adjoining and immediately neighbouring Glencarraig properties given the significant different ground levels and finished floor level of their properties relative to those of the subject site are now subject to a greater level of overlooking than when the mature evergreen hedge was *in situ*.
- 7.12. Notwithstanding, given the ample separation distance between the deck and the adjoining as well as neighbouring properties of Glencarraig, the applicants willingness to provide a site sensitive more biodiversity friendly evergreen rear boundary treatment with this including evergreen pleated trees which are already in place and are semi-mature as well as of a high quality with standard stems in excess of 1.8m. At present they are recently planted, and it is normal practice to keep their canopy habit tight so that the tree anchors it successfully into its new situation. These pleated trees also have the advantage of allowing for the rear boundary period stone wall to be maintained as a visible attractive period feature within the subject properties curtilage that can be appreciated as well as incorporated as a man-made feature in the rear garden landscaping scheme.
- 7.13. I therefore consider that over time the level of overlooking would again be minimised, and I do not consider that this would take the timescale of 10 years given by the appellants before there would be a notable improvement over and above the existing situation.

- 7.14. Moreover, it is not realistic also for the appellants to be reliant upon natural features or otherwise within the grounds of another property to provide the only effective screening to ensure that their privacy is protected in a suburban context where overlooking is to be expected. Particularly in the context where the previous hedging was a poor-quality solution, of poor biodiversity and amenity value as well as one that could not be realistically expected to provide a long-term solution given the lifespan and growing habit of such hedge species.
- 7.15. In this context I consider the proposed landscaping put forward is a more qualitative response that would be more site sympathetic and appropriate alongside would provide in the not-so-distant future a more qualitative long-term solution given the planting species chosen alongside the willingness of the applicants to provide qualitative reinforcement also of the planting along the rear boundary.
- 7.16. This planting will also add to the preference of soft landscaping features that is evident and predominates along the rear boundaries of properties on the western side of Offington Park backing onto the residential scheme of Glencarraig.
- 7.17. Whereas the provision of a similar timber screen to that provided along part of the boundary with No. 20 Offington Park and the subject property would be visually intrusive; out of character with the types of rear boundaries present between Offington Park and adjoining Glencarraig properties; and, would not have the lifespan of a qualitative evergreen landscaping boundary screen.
- 7.18. In terms of relationship and setback with the adjoining properties to the south the timber panel screen effectively blocks out and mitigates against any new levels of overlooking arising from the deck area and additional landscaping along the northern boundary adjoining No. 16 Offington Parks rear garden space could be reinforced by additional planting but will also benefit from the separation that exists between the northernmost edge of the decking, the proposed provision of a garden room, the existing garage and other boundary treatments present.
- 7.19. Moreover, as said a level of overlooking is to be expected in suburban settings like this and the residential properties to the north as well as south share the same topographical changes from the finished floor level of their dwellings to that of their main rear garden spaces.

- 7.20. In respect of the proposed flat roof garden room its finished floor level would correspond with the lower ground levels of the main rear garden area of the subject property and though finished with a western wall of glazing, which I note is the only glazing proposed for it, its overall height is a modest 2.86m.
- 7.21. This, together with its separation distance from properties in its immediate vicinity and their rear amenity spaces alongside the presence of a mature evergreen planting in its immediate vicinity along the northern boundary of the site will negate any adverse residential amenity impacts arising.
- 7.22. Moreover, its simple design does not clash with the character of the dormer dwelling on site or its later building layers.
- 7.23. Whilst I consider that an opportunity is missed in its design to provide a green roof over this flat roof structure given that the garden room and the decking subject of this application has effectively significantly reduced the deep soil present on this site I note that subject to the provision of the surface water drainage requirements of the Planning Authority's Water Services Department there should be no increased burden from the development sought under this application on the public drainage infrastructure. Further additional surface water burden on such infrastructure to facilitate such a development on a generous sized plot where there are ample opportunities to deal with surface water on site is not in my opinion acceptable.
- 7.24. Based on the above considerations I concur with the Planning Authority's recommendation to grant retention and planning permission for the development sought under this application as subject to appropriate conditions this development would not give rise to serious residential and/or visual amenity injury on properties in its vicinity or its setting.
- 7.25. **Other Matters Arising**
- 7.25.1. **Oversailing/Encroachment:** Given the location of the northernmost elevation of the proposed garden room I raise a concern for the potential for this structure to overhang, oversail and/or encroach onto third party lands. I note that a letter of support for the development sought under this application has been submitted by the current occupiers of this property; notwithstanding, this provides no clarity on the matter of whether they have consented to any infringement from this development, if it were permitted over and onto this property. Further, it does not account for changes in

ownership in future. I therefore advise the Board should they be minded to grant retention permission and planning permission for this development that a condition be imposed requiring this component of the proposed development to be constructed within the confines of the site and an advisory note reiterating Section 34(13) of the Planning & Development Act, 2000, as amended by included.

## **8.0 Appropriate Assessment**

- 8.1.1. Having regard to the nature and scale of the development and its location relative to European sites, I consider it is reasonable to conclude on the basis of the information on file, which I consider to be adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on a European site.

## **9.0 Recommendation**

- 9.1. I recommend that retention permission and planning permission is **granted**.

## **10.0 Reasons and Considerations**

- 10.1. Having regard to the location of the site on residentially zoned lands under the Fingal County Development Plan, 2017 to 2023; to the provisions set out in the said Development Plan for this type of development; alongside the nature, scale and design of the development sought under this application, it is considered that, subject to compliance with the conditions set out below, that this development would not give rise to seriously injury to the residential and visual amenities of the area. The proposed development would, therefore, be in accordance with 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 as amended by the further plans and particulars submitted on the 27th day of November, 2020, except as may otherwise be required in order to comply with the following conditions. Where such conditions

require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

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

2. The northern elevation of the proposed garden room shall be setback from the northern boundary of the site so that it does not oversail or encroach it in any way. Revised drawings shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development showing this revision.

**Reason:** In the interest of clarity and orderly development.

3. All materials, colours, and textures of all the external finishes shall harmonise with the existing dwelling.

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

4. (a) The entire premises shall be used as a single dwelling unit apart from such use as maybe exempted development for the purposes of the Planning and Development Regulations.

(b) The garden room shall not be used for the carrying on of any trade of business.

(c) The roof structure over the garden room shall not be used as additional amenity open space.

**Reason:** In the interest of clarity and to ensure proper planning and sustainable development.

5. The final planting scheme for the western and northern boundary of the site shall be submitted to, and agreed in writing with, the planning authority, within 3 months of the Boards Order.

**Reason:** In the interest of residential amenity and in the interest of the proper planning and sustainable development of the area.



6. The following requirements of the Planning Authority shall be complied with:

- (a) The proposed garden room will increase the nett impermeable area and subsequent runoff volume. Prior to the commencement of construction, the developer shall submit for the written agreement of the Planning Authority an acceptable surface water drainage design and details. The surface water drainage proposal must follow the principles of Sustainable Drainage Systems (SuDS) and be in compliance with the GDSDS (Greater Dublin Strategic Drainage Study) Regional Drainage Policies Volume 2 New Development, Aug 2005.

In the event that the proposal incorporates a soakaway, said soakaway must comply with BRE Digest 365, the GDSDS, designed to accommodate the 30-year critical duration storm event, include for climate change, use local rainfall data and site-specific infiltration values, and be at least 5m from any structure and 3m from any boundary. Design calculations are to be included in the submission, including the determination of the size of the soakaway and the time of emptying calculation, all based on site specific infiltration test results, which are also to be submitted.

- (b) No surface water/rainwater shall discharge into the foul water system under any circumstances.
- (c) The surface water drainage shall in compliance with the 'Greater Dublin Regional Code of Practice for Drainage Works, Version 6.0, FCC, April, 2006.

**Reason:** In the interest of public health.

7. The developer shall comply in full with the following:

- (a) All necessary measures shall be taken by the developer to prevent the spillage or deposit of any materials including clay, rubble, or other debris on adjoining roads during the course of development. In the event of any such spillage or deposit, immediate steps shall be taken to remove the material from the road surface at the developers own expense.

(b) The developer shall be responsible for the full cost of repair in respect of any damage caused to the adjoining public road arising from the construction work and shall either make good any damage to the satisfaction of Fingal County Council or pay the Council the cost of making good any such damage upon issue of such requirement by the Council.

**Reason:** To protect the amenities of the area and in the interests of road safety.

8. 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.

9. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery, and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

**Reason:** In the interest of sustainable waste management.

10. 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

***Advisory Note:***

1. The applicant is advised that under the provisions of Section 34(13) of the Planning and Development Act, 2000, as amended, a person shall not be entitled solely by reason of a permission to carry out any development.

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Patricia-Marie Young  
Planning Inspector

30<sup>th</sup> day of May, 2021.