



An
Bord
Pleanála

Inspector's Report

ABP-309971-21

Development	Construction of extension to the side and rear, works to the side boundary, provision of a pedestrian gate to access the rear garden from Orwell Woods,
Location	47, Orwell Park, Dublin 6, D06 FA34
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	2097/21
Applicant(s)	Veronica and David Reichental
Type of Application	Permission
Planning Authority Decision	Grant with Conditions
Type of Appeal	Third Party
Appellant(s)	Helvar Management Limited
Observer(s)	None
Date of Site Inspection	29/05/21
Inspector	Adrian Ormsby

1.0 Site Location and Description

- 1.1. The site is located c. 4.5km south of Dublin City centre, at No. 47, Orwell Park, Dublin 6. The site is bounded to the front and northern boundary by Orwell Park Road and is c. 150m south west of the junction with Dartry Road. The eastern boundary of the site includes a private access road to the Orwell Woods residential development.
- 1.2. No. 47 Orwell Park is a high two storey style detached red brick house with a pitch roof and converted attic space. The house has a stated floor area of 234 sq.m and is on a stated site area of 358 sq.m. No. 47 is located at the end of a row of six semi-detached, similar style and finished houses.
- 1.3. Boundary treatment to the north and east of the site includes a low level wall, with high piers and railing with planting behind. There is a vehicular entrance to the front of the house off Orwell Park and a pedestrian entrance close to the junction with the private road to Orwell Woods.

2.0 Proposed Development

- 2.1. The proposed development comprises-
 - A single storey extension to the side and rear (20 sq.m)
 - alterations to ground floor rear elevations,
 - provision of a new pedestrian gate to access the existing rear garden from Orwell Woods,
 - removal of the existing garden shed c. 6.88 sq.m and replacement with shed c. 6.07 sq.m

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority decided to grant permission on the 23/03/21, subject to six conditions, generally of a standard nature. Condition 2 amends the development and states-

- The proposed extension shall be setback a distance of 1 metre, from the existing side boundary with Orwell Woods. The existing boundary wall and pillars along Orwell Woods shall be retained apart from the section required to facilitate the pedestrian entrance. Prior to commencement of development, revised plans indicating this requirement shall be submitted to the planning department, for written agreement and approval.

Reason: In the interests of visual amenity.

4.0 Planning Authority Reports

4.1. Planning Reports

The report of the Planning Officer (19/03/21) reflects the decision of the Planning Authority. The following is noted from the report:

- It is considered that the proposal is of an acceptable scale and design which would not have an adverse impact on the scale and character of the dwelling and would not adversely affect the amenities enjoyed by the occupants of adjacent buildings in terms of privacy, access to daylight and sunlight.
- There are concerns regarding the visual impact of the proposal on the existing boundary along Orwell Woods which will require a section of the existing boundary wall, pillar and landscaping to be removed. It is recommended that the extension be set back at least 1metre from the boundary.
- There is no objection in principle to the proposed new pedestrian gate to access the existing rear garden from Orwell Woods. It is proposed to remove a 2.433m wide section of the boundary and install a 1.10m wide pedestrian gate with adjoining wooden panel.

4.2. Other Technical Reports

- Drainage Division- No objection subject to condition

4.3. Prescribed Bodies

- None received

4.4. Third Party Observations

There are two submissions on file-

- The first submission generally included the matters raised in the third party appeal and are set out in the Grounds of Appeal in section 7.1 of this report.
- The second submission refers to the prominence of the corner site and proposed finishes.

5.0 Planning History

This site-

- None relevant

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 ‘Z12 - Institutional Land (Future Development Potential) within the Dublin City Development Plan 2016-2022, with a stated objective ‘To ensure existing environmental amenities are protected in the predominantly residential future use of these lands.’ Residential uses are Permissible Uses within Z12 zonings.
- 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 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 Helvar Management Limited. The grounds of the appeal can be summarised as follows-

- Helvar Management Limited is the registered owner of the common areas for Orwell Woods which adjoin the application site.
- DCC appreciated the importance of the railing/wall garden from Orwell Woods and condition ed the existing railings and wall be retained and the extension set back 1m. The pedestrian gate should also be refused in order to maintain the character and integrity of the railing and wall.
- The applicant has shown they only own half of the party wall adjoining Orwell Woods. The applicant has applied to do works to the boundary that is not in his possession.
- The application includes works that are outside the curtilage of the application site and is an interference with the property rights of the adjoining owner.

- The applicants have not sought consent from Helvar Management Limited and have no legal access to these private lands or to interfere with the party wall.
- The pedestrian gate will interrupt the regularity of the boundary and spoil the character of the entrance to Orwell Woods.
- As the extension is set back 1m the new side gate will no longer be required.
- Granting the permission could appear to acknowledge a right of access to the adjoining property.

7.2. Applicant Response

- None received

7.3. Planning Authority Response

- None received

7.4. Observations

- None received

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
- Condition 2 of the Planning Authority's Decision
- The Grounds of Appeal
- Visual Impact and Character of the Area

- Appropriate Assessment

8.2. Zoning

- 8.2.1. The subject site is located within an area with a zoning objective 'Z12- Institutional Land (Future Development Potential)' within the Dublin City Development Plan 2016-2022, with a stated objective '*To ensure existing environmental amenities are protected in the predominantly residential future use of these lands.*' The proposed Residential uses are Permissible Uses within Z12 zonings.'
- 8.2.2. The proposed development generally seeks to provide a residential extension and a pedestrian entrance to the rear and side of the existing house. The proposed development is, therefore, acceptable in principle.

8.3. Condition 2 of the Planning Authority's Decision

- 8.3.1. Condition 2 of the planning authority's decision requires the setting back of the proposed extension 1m from the eastern side boundary of the site and for the existing boundary to be retained save for a pedestrian entrance.
- 8.3.2. The appellants have not challenged the design of the extension or setting back the extension as per the condition. They have instead only taken issue with the proposed pedestrian entrance and the applicants legal entitlement to proceed with the entrance.
- 8.3.3. Notably, the applicants have not availed of their own entitlement to appeal the condition, nor have they submitted an observation on the appeal. I can only assume they have chosen to accept the setting back of the proposed extension by condition.
- 8.3.4. In my opinion, it would therefore be unreasonable to reconsider or assess the extension element of the proposed development. I intend to focus only on the matters raised in the third party appeal.
- 8.3.5. Accordingly should the board decide to grant permission I recommend the condition setting back the proposed extension should be attached in accordance with the Planning Authority's decision.

8.4. The Grounds of Appeal

- 8.4.1. The appellants grounds of appeal contest the legal entitlement of the applicants to breach a pedestrian entrance accessing a private road to the Orwell Woods development. The appellants argue the applicants do not own the side boundary of the site and do not have the consent from the legal owners to carry out the works or to access the private lands.
- 8.4.2. The appellants detail the proposal includes work that are outside the curtilage of the application site and would interfere with their property rights. They point to 'Drawing No. 100- Level +0 Plans: Existing' which appears to show some of the works outside of the application site boundary. While I note the concerns raised by the appellant in this regard, I refer the Board to the submitted Site Location Map drawing which identifies the application site boundary with a solid red line which would have been used for the purposes of validation. The Planning Authority have not raised any concerns in this regard and have validated the application. Accordingly, and from a planning point of view I also have no concerns in this regard.
- 8.4.3. I acknowledge the legal matters raised by the appellants, however it is not within the remit of An Bord Pleanála to adjudicate on matters such as ownership and rights of way over lands. 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'

8.5. Visual Impact and Character of the Area

- 8.5.1. The appellant has raised concerns over the permitted pedestrian gate and its impact upon the character, regularity and integrity of the boundary railing and wall. They state the pedestrian gate will spoil the character of the entrance to Orwell Roads.

- 8.5.2. Condition 2 of Dublin City Council's grant of permission ensures the existing boundary walls and pillars along Orwell Woods shall be retained apart for a section required to facilitate the pedestrian entrance.
- 8.5.3. Subject to compliance with this condition I do not consider a pedestrian gate along the boundary with the private road to Orwell Woods would negatively impact upon the visual amenity or character of the area.

8.6. Appropriate Assessment

- 8.6.1. 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 that permission is granted 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 Z12 - Institutional Land (Future Development Potential) 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. 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 proposed development shall be amended as follows:

- (a) The proposed extension shall be setback a distance of 1 metre, from the existing side boundary with Orwell Woods.
- (b) The existing boundary wall and pillars along Orwell Woods shall be retained apart from the section required to facilitate the pedestrian entrance.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of visual and residential 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. 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.

5. 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.

Adrian Ormsby
Planning Inspector

29th of May 2021