



An
Bord
Pleanála

Inspector's Report

ABP-310261-21

Development

Amendments to Planning Reg Ref: 2509/20 comprising single storey entrance porch to front (north) of dwelling, change of 2 Velux roof lights to box dormer to side (east) roof hip.

Location

67 Kilbarrack Road, Kilbarrack, Dublin 5 D05 PP94

Planning Authority

Dublin City Council North

Planning Authority Reg. Ref.

2329/21

Applicant(s)

Michael and Cynthia Hurley

Type of Application

Permission

Planning Authority Decision

Grant Permission

Type of Appeal

First Party against financial contributions (s.48 appeal)

Appellant(s)

Michael and Cynthia Hurley

Date of Site Inspection

None undertaken.

Inspector

Stephen Kay

1.0 Site Location and Description

- 1.1. The appeal site is located in the Kilbarrack area of Dublin and comprises a detached single storey house that fronts the Kilbarrack Road. The existing house on the site is a villa style design and is one of 9 no. such houses on this section of the Kilbarrack Road.
- 1.2. The existing house on the site currently has a flat roofed element to the side which was originally a garage and is now used as habitable accommodation. The house has also been extended to the rear at ground floor level.

2.0 Proposed Development

- 2.1. The development is advertised as comprising amendments to Dublin City Council Ref. 2509/20 which granted retention permission for the demolition of a chimney breast and permission for the demolition of a second chimney, removal of flat roof and hipped roof and construction of new roof in these areas to facilitate habitable accommodation at roof level. Increase in ridge height of the roof to be a maximum of 600mm and new roof to include 1 no. box dormer to the rear (south) of the roof, 2 no. rooflights to the side (east), 2 no. new rooflights to the side (west) and 2 no. rooflights to the side (west) as well as internal modifications and ancillary works.
- 2.2. The proposed amendments are described as comprising a single storey entrance porch to the front elevation, and the change of 2 no. permitted rooflights in the east facing roofslope to a box dormer.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority issued a Notification of Decision to Grant Permission subject to 10 no. conditions. For the purposes of this appeal the condition of note is as follows:

- Condition No.2 – Requires the payment of a contribution of €7,257.48 in accordance with the provisions of the development contribution scheme.
- Condition No.3 states that '*the terms and conditions of the permission for the original development, which was issued under Reg. Ref. 2509/20 shall be fully complied with, except where modified by this permission*'.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

The report of the planning officer notes the nature of the proposed development and the planning history of the site. The works are considered to be consistent with the scale and character of the dwelling and streetscape and to be acceptable. A grant of permission consistent with the notification of decision which issued is recommended.

3.2.2. Other Technical Reports

None on file.

3.3. **Prescribed Bodies**

None on file.

3.4. **Third Party Observations**

None received.

4.0 **Planning History**

Dublin City Council Ref. 2189/17 – Retention granted by the Planning Authority for development comprising a single storey rear extension to existing house on the appeal site and change of use of garage to habitable accommodation. Retention also granted for demolition of 2 no. existing chimneys and replacement of existing flat roof with hipped roof and attic conversion with 1 no. box dormer and 1 no. rooflight to the rear and 1 no. rooflight to the front.

Dublin City Council Ref. 2509/20 – Permission granted by the Planning Authority for the retention of demolition of 1 no. remaining chimney breast and removal of existing flat roof and hipped roof and construction of new roof suitable for habitable space with an increased roof pitch from that of the existing roof and ridge height raised by 600mm to accommodate habitable space within the attic conversion. The new hipped roof to include 1 no. box dormer to the rear (south) roof slope, 2 no. roof lights to the front (north) roof slope, 2 no. roof lights to the side (east) roof slope and 2 no. rooflights to the side (west) roof slope, internal modifications and all ancillary works.

5.0 Policy Context

5.1. Development Plan

The site is located on lands that are zoned Objective Z1 with the stated objective ‘to protect, provide and improve residential amenities’ under the provisions of the Dublin City Development Plan, 2016-2022.

5.2. Natural Heritage Designations

The site is not located within or in close proximity to any European site.

5.3. EIA Screening

Having regard to the nature and limited scale of the development 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

The following is a summary of the main issues raised in the first party appeal received:

- That the original grant of permission was Ref. 2509/20 was for development that included extension into the attic of the house at No.67 Kilbarrack Road. Under Ref. 2329/21 permission was subsequently granted for minor modifications to the permitted extension, including new single storey porch to the front, change of 2 no. rooflights to a box dormer to side (east) roof hip, increase in height of lower section of hip roof by 250mm and new box dormer to same section of roof to create additional storage space. .
- That the floor areas for each of the above elements are as follows:
 - First floor storage area incorporating new box dormer – 15.5 sq. metres.
 - Replacement box dormer to the side (east) hip of roof – 4.5 sq. metres (this floor area contained within the box dormer was already permitted under Ref. 2509/20),
 - New front porch – 2.8 sq. metres.
 - Total floor area within the planning application – 22.8 sq. metres.
- That the figure of €7,257.48 contained in Condition No.2 is considered to be excessive. Application of the residential rate per sq. metre of €92.10 to the proposed floor area of 22.8 sq. metres given a total of €2,100.
- That the Planning Authority did not attach any financial contribution condition to Ref. 2509/20, and it would appear that this was an error on the part of the council.
- Submitted that the development contributions imposed under the current application should only relate to the floor area relating to this application.

6.2. Planning Authority Response

The following is a summary of the main issues raised in the response received from the Planning Authority:

- That the application has been reviewed and a development contribution is applicable.
- That the contribution was based on the cumulative total of all extensions as per the 2020-2023 development contribution scheme.
- That the applicant has not however received the exemption in respect of the first 40 sq. metres of development / extension.
- That the application of this exemption reduces the applicable floor area from 78.8 sq. metres to 38.8 sq. metres. The contribution payable is therefore €3,573.48 (which equates to a rate of €92.11 per square metre).

6.3. Further Responses

Details of the response received from the Planning Authority including the revised calculation was circulated to the first party for comment however no response is recorded as being received.

7.0 Assessment

7.1. The following are considered to be the main issues in the assessment of this appeal:

- Introduction / Basis of Appeal,
- Relationship with Previous Permissions on the Site and Assessment of Additional Floor Area Permitted,
- Appropriate Assessment.

7.2. Introduction / Basis of Appeal,

- 7.2.1. The appeal submitted is against Condition No.2 only attaching to the Notification of Decision to Grant Permission issued by the Planning Authority. This condition requires the payment of a development contribution of €7,257.48 in accordance with the development contribution scheme for Dublin City. No appeal against the decision has been brought by any other party and the first party appeal relates solely to Condition No.2 and the application of the development contribution scheme. In these circumstances the provisions of Section 48(13)(a) are applicable, and the Board is restricted to consideration of the matters under appeal and does not have the option of considering the case as if it had been made to it in the first instance. The assessment below proceeds on this basis.

7.3. Relationship with Previous Permissions on the Site and Assessment of Additional Floor Area Permitted,

- 7.3.1. Condition No.2 attached to the Notification of decision issued by the Planning Authority requires the payment of a development contribution of €7,257.48 which is calculated on the basis of an extension of 78.8 sq. metres. This floor area figure has been calculated on the basis of the 60 sq. metres of attic accommodation permitted under Ref. 2509/20, plus an additional 16 sq. metres proposed in the current application at attic level plus the 2.8 sq. metres for the porch also proposed in the current application. As noted in the planning history summarised at Section 4.0 above, the Planning Authority did not attach any financial contribution condition to Ref. 2509/20 even though the scale of extension would appear to be such that such a condition should have been attached. The first issue therefore is whether it is appropriate that the decision on the current application should incorporate a financial contribution requirement in respect of both it and previous permissions, namely 2509/20.
- 7.3.2. The current application the subject of appeal is advertised as development comprising '*amendments to Dublin City Council Planning Register Ref. 2509/20....*'. On the basis that it comprises amendments to the extant permission on the site, the case made by the appellants is that the contribution applicable under the current permission should only relate to any additional residential floor area permitted. The

alternative position, though not explicitly stated or argued by the Planning Authority, in its response to the appeal is that an application for amendments to a permission is effectively an application for the same development incorporating a number of amendments / extensions, that development of the revised layout would effectively be undertaken on foot of this amending permission and that therefore any grant of permission should include a requirement for the payment of a development contribution for the whole permitted additional floor area.

- 7.3.3. This latter interpretation would be supported by the fact that there is no specific provision under s.34 of the Planning and development Act, 2000 (as amended) for a type of permission comprising an 'amendment' to an existing permission. Against this however, the High Court decision in *South West Regional Shopping Centre vs. ABP* 2016 IEHC 84 recognised the concept of an application for permission to amend an extant permission even though the planning act didn't explicitly do so and introduced the principle that only the changes from the extant permission should be assessed in the second application. On balance therefore, having regard to the basis of this legal interpretation I consider that the principle of an application for 'amendments' to an original permission is established and that in such circumstances only the changes from the extant permission should be assessed in the second application.
- 7.3.4. I also note that the assessment of an appeal under s.48(13) of the Act is restricted to the application of the terms of the adopted development contribution scheme. In this case, a review of the relevant scheme which is the Dublin City Council development Contribution Scheme 2020-2023, does not explicitly provide for a claw back of development contributions in situations such as the subject case where no contributions were attached to the original permission granted (Ref. 2509/20).
- 7.3.5. Having regard to the above, it is therefore in my opinion follows that the applicable floor area for the purposes of calculation of a development contribution in accordance with any scheme adopted under s.48 should only relate to any additional floor area that arises on foot of the amendment application. For this reason, I do not consider that the approach of the Planning Authority in the calculation of the contribution required in Condition No.2 as attached to the Notification of Decision to Grant Permission is correct as it is based on the overall floor area and not that as permitted under the current application.

- 7.3.6. I note the content of the Planning Authority response to the grounds of appeal where a reduced financial contribution figure of €3,573.48 is presented. However, the basis of this calculation remains on the overall floor area of 78.8 sq. metres and the reduction in the amount is justified on the basis of the application of the exemption for the first 40 sq. metres of residential extension as per Section 11 of the Dublin City Council Development Contribution Scheme 2020-2023. This exemption is not in my opinion applicable in this case as the house on the site has previously been extended to the rear and also to the side in the form of conversion of the original garage to habitable accommodation. As per the planning application form, the floor area of existing extensions is stated to be 47 sq. metres and it would appear from the floor plans that this only relates to the extension constructed to the rear.
- 7.3.7. On the basis that the financial contribution required under Condition No.2 should be calculated on the basis of the additional floor area permitted under the subject permission for alteration of Ref. 2509/20, the issue is the determination of the exact amount of this additional floor area and consequent financial contribution figure. The appropriate additional floor area figure is not however completely clear from the information on file. The first party appeal proposes that the relevant figure should be 22.8 sq. metres which it is stated was clearly identified on the drawings submitted for approval. In fact, the drawings submitted show a floor area for the attic / loft accommodation of 60 sq. metres on Drg. No.2101-P-101 which shows the permitted layout and an area of 76 sq. metres for the attic / loft plan on Drg. No. 2101-P-02 which shows the proposed amended layout. This additional 16 sq. metres taken in conjunction with the 2.8 sq. metres of the porch would give a total additional floor area of 18.8 sq. metres on which the financial contribution should be based. It is noted that a figure of an additional 18.8 sq. metres is also cited on the planning application form.
- 7.3.8. A review of the submitted drawings however indicates that there are three elements to the additional floor area. There is the porch with an area of 2.8 sq. metres. At attic level there is an additional area of storage to be accommodated in a new box dormer at the south west corner of the attic floorplan and an area under the newly permitted dormer in the east facing elevation. Both of these areas are indicated shaded yellow on Drg. No. 2101-P-102. The additional storage area at the south west corner is clearly labelled as having an area of 15.5 sq. metres on this drawing.

The additional floor area under the newly permitted box dormer on the east facing elevation is not so clear. The yellow shaded area indicated on Drg. No. 1201-P-102 scales to approximately 4.5 sq. metres, however a comparison with the previously permitted layout (Drg. No. 1201-P-101 shows that the extent of additional floor area in this location would appear to be less than that shown shaded yellow. The exact extent of additional floor area in this location is hard to calculate as the drawings on file do not scale exactly as indicated, however I estimate the increase in floor area below the box dormer over that previously permitted under Ref. 2509/20 at c.1.3 sq. metres. On this basis, I calculate the additional floor area permitted on foot of the amendment application the subject of this appeal to be approximately 19.6 sq. metres broken down as follows:

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|---|-------------------------------|
| Additional storage provided at south west corner of attic floorplan | 15.5 sq. metres |
| Additional floor area permitted under east facing dormer relative to previously permitted layout with rooflights in this location | 1.3 sq. metres |
| Porch extension to front elevation | 2.8 sq. metres |
| <i>Total additional floor area permitted to be subject of development contribution</i> | <i>19.6 sq. metres</i> |

7.3.9. Having regard to the above, it is my opinion that the appropriate figure for the financial contribution to be required under the adopted Dublin City Development Contribution Scheme 2020-2023 is €1,805.16 which is based on an additional permitted floor area of 19.6 sq. metres at a rate per sq. metre of residential development of €92.10.

7.4. **Appropriate Assessment**

7.4.1. Having regard to the nature and scale of the proposed development and its location relative to Natura 2000 sites, no appropriate assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. Having regard to the above, based on the following reasons and considerations, it is recommended that the Planning Authority be directed to revise the wording of condition No.2 to be attached to the final Grant of Permission to that set out below:

9.0 Reasons and Considerations

Having regard to the extent of additional floor area permitted under the current application, to the nature of the permission which is for amendments to the previous grant of permission on the site Ref. 2509/20, to the scale of previous extensions undertaken to the house on the site and to the specific provisions of the adopted *Dublin City Council Development Contribution Scheme, 2020-2023* which does not explicitly provide for the calculation of contributions in such circumstances on the basis of permitted and proposed floor area, it is considered that the relevant additional floor area for the purposes of calculation of the development contribution is 19.6 sq. metres which, at a rate of €92.10 per square metre of residential development, gives a contribution requirement of €1,805.16.

10.0 Conditions

2. The developer shall pay to the planning authority a financial contribution of €1,805.16 (one thousand eight hundred and five euro and 16 cent) 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. The application of any indexation required by this condition 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.

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.

Stephen Kay
Planning Inspector

3rd August, 2021