



An
Bord
Pleanála

Inspector's Report ABP 310509-21.

Development	Amendments to prior grant of permission under P. A. 3773/28: Alterations to roof materials and roof height of front porch, main ridge and rear parapet and boundary and metal railing around east elevation and associated works.
Location	No 66A Clarence Mangan Road. Blackpitts, Dublin 8.
Planning Authority	Dublin City Council
P. A. Reg. Ref.	2450/21.
Applicant	Will Ferguson
Type of Application	Permission for Retention.
Decision	Grant Permission for Retention
Type of Appeal	Third Party
Appellant	Peter and Ann Crotty
Date of Site Inspection	1 st September, 2021
Inspector	Jane Dennehy

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1.0 Site Location and Description

1.1. The site has a stated area of 140 square metres and is that of a dwelling which has been constructed on a corner garden site subdivided from that of an existing dwelling at the junction of Clarence Mangan Road and Blackpitts. No 1 Hammond Street, the Appellant party's property which is an end of terrace house with ground and first floor extensions, incorporating a large window in the rear façade adjoins the rear boundary of the application site. There is a small, hard surfaced courtyard area to the rear of the dwelling with a gated access off Blackpitts providing for vehicular access. The house entrance is to a single storey centrally positioned projecting element forward of the front façade, facing onto Clarence Mangan Road and at the time of inspection a timber fence and pedestrian gate was located on the front boundary.

2.0 Proposed Development

2.1. The application lodged with the planning authority indicates proposals for permission for retention of modifications to a previously permitted development, further to the opening of an enforcement file by the planning authority. (The modifications provided for in the application are:

Alterations to roof materials and an increase in the height of the porch by 300 mm.

A reduction in the height of the main ridge by 300 mm.

An increase in the height of the rear parapet by 500 mm. The roof substituted for that originally permitted constructed in a flat fiberglass with the parapet

Changes to the boundary, it being stated the boundaries were incorrectly shown in the documents lodged in connection with the original application and the site has a marginally shorter depth. The dwelling is increased from seven to 7.62 metres in width with the front building line being unaltered.

A metal railing wrapped around the site on the east elevation and,

All associated and ancillary site and development works.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. By order dated, 4th May, 2021 the planning authority decided to grant of permission for retention with a condition with a requirement for compliance with conditions attached to the prior grant of permission under P. A. Reg. Ref. 3773/18.

3.2. Planning Authority Reports

- 3.2.1. The report of the planning officer indicates a recommendation for a grant of permission for retention
- 3.2.2. The report of the Drainage Division indicated no objection to the proposed development.

3.3. Third Party Observations

- 3.3.1. A submission was lodged by the appellant party in which issues of concern raised relate to dwelling size, design, height and footprint, (owing to increased width) and overlooking.

4.0 Planning History

P.A. Reg. Ref: 3180/18: Permission was refused for two, two storey townhouses with terraces at first floor level and associated works on ground of conflict with Section 16.10.9 of the CDP for reasons of overdevelopment, insufficient private open space provision and unsatisfactory footprints, proportion and parapet levels.,

P.A. Reg. Ref: 3773/18. (PL 302956): Following third party appeal, the planning authority decision to grant permission for a house and a new vehicular entrance off Blackpitts. The current application is for permission for retention of modifications to the permitted development.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The operative development plan is the Dublin City Development Plan, 2016-2022 (CDP) according to which the site is subject to the zoning objective Z1: *“To protect, provide for and improve residential amenities.”*

Indicative site coverage is 45 to 60 percent. (Section 16.6) Indicative Plot Ratio is 0.5-2.0 (section 16.5)

Development Management standards are in Chapter 16 with extensions and alterations are set out in Section 16.10.12, (with supplementary guidelines in Appendix 17) and corner site/side garden development in Section 16.10.9.

6.0 The Appeal

6.1. Grounds of Appeal

An appeal was lodged by Ann and Peter Crotty of No 1 Hammond Street on their own behalf on 14th June, 2021 and the submission includes photographs and drawings. According to the appeal:

- The drawings lodged with the original application do not accurately show the distance to the rear boundary.
- The increase in site width to 8,250 mm and the dwelling width to 8090 from 7451 mm and the width of the rear wall has increased by 520 mm from 4600 mm to 5120 mm though it is shown on the plan drawings as 4600 mm. The 550 mm breaks the building line and corresponds with the reduced distance to the boundary wall so the separation distance is not maintained. The reduction is shown on the first-floor plan from which it is estimated the distance is 2700 metres whereas on the approved first floor plan it is 3200 metres.
- The applicant should have reduced the depth of the house to correspond with the shorter depth of the site as this would be applying the same reasoning as that given for the decision to widen the house to reflect the building line and maintain the private open space requirement.

- The increase in floor area should be subject to additional development contributions.
- If the height of the development had not been (unnecessarily) changed, the decision to match the roof finishes to those at No 1 Hammond Street would have been appropriate. The height could have been the same as at No 56 Clarence Mangan Road giving a six metres' height at the rear wall. The increased width of the rear parapet and reduced separation distance to the boundary negatively affects the amenities of no 1 Hammond Street due to domineering impact of the 6.7 m high wall and overshadowing. The actual height of the parapet walls of the fibreglass roof section is 6700 mm which is 600 mm more than the original 6100 mm specified. The zinc roof has an increase of one and a half blocks if super imposed on the approved 'street elevation – east' elevation drawing.
- There is no justification for the raised roof in having regard to the requirement for the 2.4 metres ceiling height. There is a generous height of 3150 mm for the ceiling height for the ground floor which could be reduced to provide for the first-floor height.
- The impact of the development is affected by inconsistencies in the drawings. Section BB of the first-floor plan from the rear wall to the rear boundary gives a measurement of 2800 mm if the red line boundary represents the midpoint of the boundary wall. The section BB of the elevations and sections show 3700 mm which is a difference 900 mm.
- The inspector in her report on the original proposal indicated issues about the depth and setback from the boundary. The current proposal is 600 mm higher, 520 mm wider and 500 – 600 mm closer to the boundary.
- The separation distance between the windows and those at No 1 Hammond Street is reduced in that they are four metres from the boundary wall and 7.5 metres from the appellant property and overlook the outdoor space and through patio doors to the interior. The windows should be in opaque glazing.
- The development is contrary to condition No 9 of the prior grant of permission as there is no confirmation of a compliance agreement with the planning authority. The altered footprint of the dwelling affects the footprint of the

private open space and the details of the reduced distance from the boundary could then have been provided.

- As sunlight to the ground floor kitchen at No 1 Hammond Street will be reduced and shadowing increased resulting in loss of solar gain, energy costs at No 1 Hammond Street will be increased.
- It is requested that the windows of Bedroom 2 be in frosted glass and that the development increased in setback from the rear boundary wall between the two properties.

6.2. Applicant Response

6.2.1. A submission was received from the applicant's agent on 15th July, 2021 attached to which are floor plan drawings in which it is requested that the appeal be rejected and that the decision to grant permission for retention be upheld. Extracts from Sections 16.10.12, 10.10.2, and 16.10.9 of the CDP are provided and reference is also made to Appendix 17 of the CDP. According to the submission:

- It was discovered that the site is marginally shorter than the length taken from the OS mapping on which it was assumed that the boundaries were accurately shown and wider than initially considered. It was then decided to retain the front building line at the front and extend the dwelling width to 7.62m from seven metres with the dwelling size increasing by four metres as a result and the flat fibreglass roof with parapet was substituted for the slated zinc roof.
- These alterations are minor only and without conflict the CDP's relevant provisions.
- The development as constructed satisfactorily integrates in form and finish with the surrounding development and is subordinate in scale. The fibreglass roof reflects the form, finish and is equally proportioned with the rear of No 1 Hammond Street in height, bulk, scale and form and distance from the boundary between the properties as is apparent in views from Blackpitts.
- The planning officer took the observations of the appellant into account in his report but considered the proposals for retention satisfactory.

- With regard to the contention as to inconsistencies in the application drawings for the permitted and for the proposed development which were validated, the 'as constructed situation' is accurately shown: There is:

An increase in site width by 1085 mm from 7165mm to 8250 m and reduction in depth by 107 mm from 16,438 mm to 16,545 mm.

The previously permitted separation distance from the rear boundary is 3,262 mm resulting in a separation from the dwelling of 6967 mm.

As constructed, the distance to the boundary is reduced to 2,829 mm resulting in "back-to-back" distance between the two dwellings of 6,248 mm.

- The rear amenity space is increased in the current proposal from twenty-five square metres to 30 square metres owing to the increased site width. The appellant claim as to a reduction in width of this space is incorrect. All the proposed alterations are included in the development description which includes "*all associated and ancillary site and development works*"
- If deemed appropriate, the applicant is willing to pay an additional €345 .60 to in development contributions to over the four square metres' increase in total floor area in the current proposal.
- The roof, as stated in the planning officer report, does not have negative impact on the adjoining property or the character of the area or the streetscape. The design approach for the fibreglass roof and parapet walls are well proportioned, considered and appropriate and precedent can also be taken from the development at the appellant's property.
- The parapet wall heights are accurate in the drawings and the submitted drawing over a photo in the appeal (Annex 7) image in the appeal is not reliable as an accurate measure. There is just a ten cm difference which would be within substantial compliance.
- The amenities of the appellant property would not be subject to any significant additional impacts. The photo provided by the appellant to support a claim as to overlooking of the kitchen's interior is unreliable as the line of sight from the bedroom window in the development is very limited. It would be necessary for

an individual to stand directly at the window with the intention of looking into the kitchen in the appellant property and an extremely limited view would be possible.

- With regard to the contention a failure to comply with condition No 9 of the prior grant of permission, the intention of the condition is primarily an amenity area rather than a parking space. A holding tank for a rainwater harvesting system and heat pump are in the private open space the surface of which is in concrete and the retaining wall on the three sides of the yard is required. It is intended to install 1 x 1 m tiles and to have the space function as an extension of the inside living area with a bi-fold door. Artificial grass, planters and a wall garden are to be provided. It will include sufficient space for a parked car but parking is required on rare occasions.
- With regard to the contention as to increase in utility costs at the appellant property at which standard south facing patio doors and solar power garden lights are installed does not form a basis for claim that the proposed development adversely affects energy consumption and associated costs.

6.3. Planning Authority Response

There is no submission from the planning authority on file.

7.0 Assessment

- 7.1.1. The determination of a decision on the current proposal is confined to that of the modifications in the 'as constructed development', the retention of which is proposed. Notwithstanding the revisions to the site boundaries and to the dwelling footprint, the assessment of the current proposal is based on its own planning merits. The previously permitted development itself is not open to reconsideration.
- 7.1.2. It is considered that the elements of the proposed modifications, included within the descriptions in the notices and that the planning authority was not erroneous in validating the application. However, it is open to the appellant, to seek resolution of any dispute over these matters through the legal system.

- 7.1.3. It is agreed with the planning authority that the drawings lodged with the application to represent the red line boundary, the dwelling footprint and separation distances are sufficient in detail to facilitate the assessment of the proposals and determination of a decision.
- 7.2. There is no objection to the substitution of the fibreglass flat roof and parapet wall proposed for retention for the permitted zinc roof, having regard to the application documentation and further to visual inspection in terms of compatibility with the existing development and integration into the streetscape. The resultant development represents a relative symmetry in design and form which are positive in views from the public realm. The claim on behalf of the applicant as to precedent in the development at the appellant property for the current proposal is reasonable.
- 7.3. It is considered that the proposed parapet wall, and fibreglass flat roof, which do involve a relatively minor increase in height of the development relative to that of the permitted zinc roofed development would be marginal in terms of increased potential for overshadowing impact or potential for overbearing impact on the adjoining property the private amenity space of which is overshadowed by the existing boundary wall between the properties. Furthermore, it is not considered that the appellant claim as to implications for utility costs at the appellant property are substantive or could be taken into consideration and the applicant's agent's contentions in this regard are considered reasonable.
- 7.4. It is agreed with the applicant's agent that the overlooking potential to the interior of the appellant property is restricted, and that a view to the interior of the dwelling would necessitate standing at the upper floor bedroom with the intention of viewing into the kitchen area. There is no significant difference in the current proposal that would materially alter the impact on adjoining property relative to the previous permitted proposal that would warrant or justify a reconsideration and departure from prior grant of permission and with a view to an additional for opaque glazing for the north facing upper floor bedroom window.
- 7.5. In view of the foregoing, there is no objection to the revised footprint and marginally enlarged dwelling incorporating the proposed retention of the roof and parapet wall, as constructed.

- 7.6. The private open space is increased in area, at circa thirty square metres and incorporates an element of dual use in including use as the parking space as has been authorised through the prior grant of permission. There is no objection to this private open space provision and the layout particularly having regard to the inner-city location and the accommodation of the rainwater harvesting system within it. and The applicant's proposals to provide for hard landscaping over the surface and planting scheme is noted
- 7.7. It is of note that the relationship between the appellant property, which has been extended at two storey level providing for a larger and higher quality dwelling and the applicant property is somewhat reciprocal and appropriate to an inner-city area in which higher densities and infill and development on underutilised lands are to be encouraged.
- 7.8. With regard to the liability for payment of development contributions in respect of the proposed development in that an additional floor area of four square metres would be reckonable and it would appear that the planning authority waived the matter. Section 48 and Section 49 development contribution conditions with reference to the condition attached to the prior grant of permission and which provide for deduction of any amount previously paid can be attached if permission is granted.
- 7.9. **Environmental Impact Assessment – Screening.**
- 7.9.1. Having regard to the minor nature of the proposed development and its location in a serviced inner suburban area, removed from any sensitive locations or features, there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.
- 7.10. **Appropriate Assessment Screening.**
- 7.10.1. Having regard to the scale and nature of the proposed development and to the serviced central city location, no Appropriate Assessment issues arise. The proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. In view of the foregoing, it is recommended that the planning authority decision be upheld and that permission for retention be granted based on the reasons and considerations and subject to the conditions which follow.

9.0 Reasons and Considerations

Having regard to the Dublin City Development Plan, 2016-2021 according to which the site is within an area subject to the zoning objective: Z1: *“To protect, provide for and improve residential amenities,”* to the corner site location and site configuration and, to the established pattern of adjoining and surrounding development in the area, it is considered that the proposed development, subject to compliance with the conditions set out below, would not seriously injure the residential amenities of the adjoining property by reason of overlooking, overshadowing or overbearing impact, or the residential amenities and visual amenities of surrounding development and character of the area. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions.

1. The development shall be in accordance with condition Nos 1-9 attached to the grant of permission under P. A. Reg. Ref 3773/18 on 12th February, 2019 except as amended to conform with the provisions indicated in the plans lodged in connection with the application and the following conditions.

Reason: To ensure consistency with the development as previously permitted.

2. 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. The contribution shall be paid prior to the

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 contribution payable shall be subject to deduction of any amount previously paid in connection with the development permitted under P. A. Reg. Ref. 3778/18 written confirmation of which shall be provided. 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 the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 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.

3. The developer shall pay to the planning authority a financial contribution in respect of the Metro North Scheme, in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000. The contribution shall be paid prior to the 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 contribution payable shall be subject to deduction of any amount previously paid in connection with the development permitted under P. A. Reg. Ref. 3778/18 written confirmation of which shall be provided. 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 the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Supplementary

Development Contribution Scheme made under section 49 of the Act is applied to the permission.

Jane Dennehy

Senior Planning Inspector

1st October, 2021.