



An  
Bord  
Pleanála

## Inspector's Report ABP-310561-21

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<b>Development</b>	Retention of an extension to an existing domestic garage.
<b>Location</b>	8 Windsor Terrace, Dun Laoghaire, Co. Dublin
<b>Planning Authority</b>	Dun Laoghaire-Rathdown County Council.
<b>Planning Authority Reg. Ref.</b>	D21A/0266
<b>Applicant(s)</b>	Malgorzata Sztompka
<b>Type of Application</b>	Retention
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Observation</b>	Tonya Costello
<b>Date of Site Inspection</b>	1 <sup>st</sup> of November 2021
<b>Inspector</b>	Paul O'Brien

## 1.0 Site Location and Description

- 1.1. No. 8 Windsor Terrace comprises of a two-storey terraced house located facing onto the promenade and sea to the south east of Dun Laoghaire town centre. No.8 is listed on the Record of Protected Structures, RPS no. 953 refers. To the west is the Dublin to Rosslare railway line over which the DART operates. The railway is in a cutting and to the west of the railway line is the 'Peoples' Park'.
- 1.2. The subject site comprises of a stated area of 0.004 hectares and on which a single-storey garage with a stated area of 33 sq m is built. Access to garage this is from a laneway to the houses on Windsor Terrace and which is named as Summerhill Parade. The laneway is accessed from Windsor Terrace and terminates to the south of the boundary with no.8. The doors of the garage form the end point of this laneway. The adjoining houses to the laneway have gates to the rear that provide access to it. The elevation addressing the laneway is finished in a brown brick, a large garage door, a smaller door to the garage and a side entrance to the rear of the house.
- 1.3. As stated, the railway line is located to the side of the subject site and the side wall of the garage projects above the stone finished railway cutting. The side elevation of the garage is finished in a white coloured cladding.
- 1.4. As already referenced in this report, the DART operates along this section of railway and their overhead wires and their supporting structures along this section. The supports are attached to the side wall of the cutting.

## 2.0 Proposed Development

- 2.1. The development consists of the retention of 8 sq m of floor area to a 25 sq m domestic garage located to the rear of No. 8 Windsor Terrace, which is a protected structure (RPS no. 953). The subject site is stated to be on the extended curtilage of the protected structure but now within the protected curtilage of No.8.

## 3.0 Planning Authority Decision

### 3.1. Decision

The Planning Authority decided to refuse permission subject to a single reason as follows:

'The development to be retained, by reason of its overall length and height relative to the adjacent DART railway boundary wall, would be visually obtrusive when viewed from the candidate Architectural Conservation Area of The Metals walkway to the west of the subject site and would thus have a negative impact on the character of same, would detract from the visual amenities of the wider area; and furthermore if permitted, would set an undesirable precedent for similar development. The development for retention would, therefore, be contrary to the proper planning and sustainable development of the area'.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Report

The Planning Authority Case Officer's report reflects the decision to refuse permission for the development.

#### 3.2.2. Other Technical Reports

**Municipal Services Department – Drainage Planning:** No objection to this development subject to the provision of suitable SUDs measures to address any surface water drainage runoff.

**Transportation Planning:** No objection.

#### 3.2.3. Objections/ Observations

Two letters of objection were received. Reid Associates – Planning Development Consultants were engaged by T. Costello, of 7 Windsor Terrace, to prepare the following comments:

- The information submitted by the applicant indicates that the garage never had planning permission and was not a pre-1963 structure.

- There is no clarification as to the ownership of the garage or the freehold rights, or the rights of way along this stretch of laneway.
- The lands to the rear of the Windsor Terrace properties are owned by two third properties.
- The garage built in the 1980's was demolished, and the subject unit was built in its place; the right to replace it does not exist and the entire garage is therefore unauthorised.
- The development area has extended onto the public laneway and the applicant has indicated that they do not own the lands having ticked the 'Other' box on the planning application form under the section on legal interest in the site.
- The garage is visually obtrusive when viewed from adjoining properties.
- The description in the public notices is incorrect.
- The land to the front of the garage has been altered in height; the applicant does not own these lands.
- Removal of shrubbery to facilitate the development has resulted in a reduction in noise screening and which gives rise to a significant change in the noise environment.
- Concern that the development may impact on the structural integrity of the retaining wall to adjoining properties and to the Boundary wall with the DART line.
- Existing access to the rear of adjoining property has been removed by the development.
- The subject site is located adjacent to 'The Metals', a candidate Architectural Conservation Area.
- The garage is visually obtrusive through its design and scale.
- No drainage is provided, and this could give rise to flooding of the railway line.

A number of photographs and legal documentation is provided in support of this letter of objection.

The second observation was from Francis van Steenberge of 9 Windsor Terrace and the following comments were made:

- The laneway was altered by the applicant in May 2017 and works were carried out on lands that were outside of his control.
- The proposed development resulted in a slope being provided to access the garage.
- The development has resulted in a change in the character of the laneway.
- The use of cobblestones is out of character with the tarmac finish of the existing laneway.
- There is a loss of car parking and children's play area due to the constructed development.

## 4.0 Planning History

D16A/0133 refers to a May 2016 decision to grant permission for the Change of Use from Commercial to Residential & 2 (a) Alterations & (b) Extension with (c) Ancillary site development works at 8 Windsor Terrace a protected structure. (RSP 953).

Alterations to the original house include (a) the provision of a bathroom, 1 wc, 1 en-suite, kitchen, dining room, living room, study, 4 bedrooms, utility/store and family room. (b) Extension includes provision of utility/rear kitchen, store, bathroom and rear stairs, on the approximate footprint of a recent extension it is proposed to demolish. (c) Ancillary works include works to the rear garden, services, provision of new rear gate and associated reconstruction of the rear boundary wall.

Condition no. 5 states:

'All works to the rear boundary including the provision of a new rear gate, shall be carried out and finished to match the existing laneway boundary treatments'.

## 5.0 Policy and Context

### 5.1. Guidelines

- 'Architectural Heritage Protection – Guidelines for Planning Authorities', 2004 and updated in October 2011.

## 5.2. Development Plan

- 5.2.1. Under the Dun Laoghaire-Rathdown County Development Plan 2016 – 2022, the subject site is zoned A, 'To protect and/ or improve residential amenity'. Residential development is listed within the 'Permitted in Principle' category of this zoning objective.
- 5.2.2. No.8 Windsor Terrace is listed on the Record of Protected Structures and is described as a 'House Terrace'. All the houses from 1 to 16 Windsor Terrace are listed on the RPS.
- 5.2.3. 'The Metals' walkway to the west of the railway line/ the subject site are designated as a Candidate Architectural Conservation Area.

Chapter 6 of the Dun Laoghaire-Rathdown County Development Plan 2016 – 2022 refers to the Built Heritage Strategy and Chapter 8 refers to 'Principles of Development', and section 8.2 'Development Management' is noted.

## 5.3. Natural Heritage Designations

None.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The applicant has engaged the services of IMG Planning to prepare an appeal against the decision of Dun Laoghaire-Rathdown County Council who refused the retention of an extension to a domestic garage. The following points are made in support of the appeal:

- The property was previously in commercial use but planning permission granted in 2016 changed the use to residential and included extensions to the rear of the property.
- Permission is sought for the retention of an extension of 8 sq m to an existing domestic garage.

- The reason for refusal as issued by the Planning Authority is noted and the impact of the appearance of the development when viewed from 'The Metals' seems to be the key planning issue.
- The applicant does not accept this and considers that the development provides for an improvement on the appearance of this site, has removed an eyesore, protects the railway line by removing invasive scrub and trees and has reduced the structural burden on the wall by the garage now supported by independent foundations, offset away from the railway boundary wall.
- The Candidate Architectural Conservation Area (cACA) has no statutory basis in a Development Plan. There has been on progress in designating it as a full ACA. Only 6 of 17 cACAs are proposed for re-designation in the development plan review.
- The impact of development to the rear of the houses on Windsor Terrace may be overstated as the nature of the importance of 'The Metals' has not been provided to date by the Planning Authority. The subject site does not adjoin the cACA and it cannot be construed as being out of character with the cACA.
- The Conservation Officer has not expressed any opinion on the potential impact on the cACA.
- The view from 'The Metals' towards the subject site is not listed as one to be preserved.
- The materials used in the finish of this garage could be replaced with alternatives if requested to do so.

The appeal comments on the third-party observations and the following points are made:

- Impact on the children's play area is as much to do with the third party as that of the applicant – parking of boats and cars is referenced.
- Third parties have negatively impacted on the road surface of the laneway. They were offered the opportunity to upgrade the laneway, but this was refused.
- Litter gathering in the area is nothing to do with the development of this site.
- The cobble finish enhances the visual character of the area.

- There is no encroachment into the lane.
- The previous garage probably predated the introduction of the 1963 Planning Act.
- The previous garage was substantially but not totally demolished, part of it supports the current structure.
- The structure is not within the curtilage of the protected structure and exempted development on these lands is permissible as accepted by the Planning Authority.
- Submitted drawings and measurements are acceptable.
- The roof of the garage is 1 m lower than that of the former garage and the floor level is 390 mm lower than previously.
- The structure does not impact on the railway wall; it is constructed totally within the applicant's lands.
- No surface water run-off discharges onto the railway lands.
- There is no change or impact on car parking on the laneway.
- There was no evidence of any laneway to the side of the previous garage, and it was not a right of way to houses on the terrace.
- Foliage has very little impact on noise and vibration from an adjoining railway line.
- It is accepted that there is an issue over the ownership of a small parcel of land outside of the garage area, the applicant is willing to settle this matter as the land has little value to them.

A site plan from a 2015 survey is submitted in support of the appeal. A number of additional elevational and site plans, and photomontages have also been submitted in support of the development. It is requested that permission for the development be granted.

## 6.2. Third Party Response

- 6.2.1. Tonya Costello has engaged the services of Reid Associates – Planning to prepare an observation on the submitted appeal. The following points are made:



- Query over the legal and planning status of the garage and the previous garage on site.
- The garage built in the 1980's was demolished, and the subject unit was built in its place; the right to replace it does not exist within the Planning and Development Regulations 2001 as amended, and the entire garage is therefore unauthorised.
- The development area has extended onto the public laneway and the applicant has indicated that they do not own the lands having ticked the 'Other' box on the planning application form under the section on legal interest in the site. The letter of consent appears to be from the applicant's architect.
- The garage is visually obtrusive when viewed from adjoining properties and therefore has a negative impact on the visual and residential amenity of the area.
- The land to the front of the garage has been altered in height; the applicant does not own these lands.
- Removal of shrubbery to facilitate the development has resulted in a reduction in noise screening and which gives rise to a significant change in the noise environment in the area.
- Concern that the development may impact on the structural integrity of the retaining wall to adjoining properties and to the Boundary wall with the DART line.
- Existing access to the rear of adjoining property has been removed by the construction of this development.
- The subject site is located adjacent to 'The Metals', a candidate Architectural Conservation Area and its proximity to the 'People's Park' is referenced.
- The garage is visually obtrusive through its design, height and scale.
- No drainage is provided, and this could give rise to flooding of the railway line.
- Raises a number of concerns throughout the observation regarding procedural issues such as development description and right of way issues.

A number of photographs and legal documentation is provided in support of this observation. In conclusion it is requested that the decision to refuse permission be upheld.

### 6.3. **Planning Authority Response**

- 6.3.1. The grounds of appeal do not raise any new matters, so no additional comment is made by the Planning Authority.

## 7.0 **Assessment**

- 7.1. The main issues that arise for consideration in relation to this appeal can be addressed under the following headings:

- Nature of Development
- Impact on the Visual Amenity of the Area
- Impact on Residential Amenity
- Other Issues
- Appropriate Assessment Screening

### 7.2. **Nature of Development**

- 7.2.1. The development is described as the retention of an 8 sq m extension to an existing domestic garage. From the submitted plans and elevations, the extension is to the rear/ north west of the existing garage and to the area to the south west, to the side between the railway boundary wall and the previous garage wall. The submitted plans do not indicate that the garage has moved forward/ to the south east.

- 7.2.2. The status of the garage was also raised as an issue of concern. It is stated in the appeal that part of the garage was retained to form part of the extended structure. The submitted drawings and documents do not clearly indicate if any of the previous garage remains in place. The garage has a floor area of 31 sq m and is therefore in excess of the 25 sq m exempted under the Planning and Development Regulations 2001 as amended. Considering the extent and nature of the development, the entire structure should be considered to be a new build.

### 7.2.3. **Impact on the Visual Amenity of the Area**

- 7.2.4. The Planning Authority issued a single reason for refusal though which has a number of elements to it including impact on a candidate Architectural Conservation Area, negative visual impact on the character of the area and the setting of an undesirable precedent for similar developments in the area.

7.2.5. I note the comments made in the appeal regarding the status of a candidate Architectural Conservation Area (cACA). The 'Architectural Heritage Protection' guidelines refer to cACAs a number of times under:

- Section 3.2 'Identifying Areas for Protection' – 3.2.2 'The character and special interest of many localities within the functional area of a planning authority will suggest themselves as candidate ACAs. These should be carefully assessed. Many planning authorities are already engaged in fruitful participatory processes with community groups and interested parties to devise planning policies for towns, villages and urban areas across the country'.
- Section 3.2.5 – 'The boundaries of a candidate ACA should make physical, visual and planning-control sense. It may be necessary to refer back to the core characteristics of the area in order to establish the most appropriate boundary lines. The choice of boundary may be influenced by considering the importance of the various views into and out of the area, but it is not necessary to include all territory encompassed by such views. The character of the edges of the area may gradually degenerate in some parts due to dereliction. Whether or not degraded parts should be included may be resolved by reference to the historical research to see if these areas once formed a coherent part of the overall place'.
- Section 3.2.6 – 'In preparing a draft development plan, a planning authority should evaluate all potential ACAs. These candidate areas should be inspected, and their distinctiveness, significance and special interest evaluated and documented'.

7.2.6. The Metals are designated as a cACA. Having regard to Section 3.2.5 of the guidelines, the boundary is clearly set between the walls/ edge of the walkway. The subject site lies outside of this boundary, however, there is little doubt that the finish and height of the garage has a negative visual impact when viewed from 'The Metals'. Whatever the status of the cACA is in the future, following the adoption of the next Dun Laoghaire-Rathdown County Development Plan, I consider that the garage is visually obtrusive when viewed from the west of the subject site and has a significant negative impact on the setting of the protected structures on Windsor Terrace.

- 7.2.7. The existing white finish and use of cladding presents a significant contrast with the existing stone walls that are a key feature of the area. The contrast in materials is significant and not appropriate to this location. Whilst the starkness of the white colour of the finish may weather/ darken in time, the use of such materials is not in keeping with the nature and character of this residential area comprising of protected structures. The use of modern materials/ methods of construction can provide a good design approach when considering protected structures, however such a contrast does not work in this case and from the site visit I found that the view from 'The Metals' was dominated by this finish and the extent of cladding used, which is excessive and appears industrial when viewed from some points.
- 7.2.8. The applicant has proposed that alternative materials could be applied to the external treatment, however the submitted 'Photographic Collage' does not adequately demonstrate that the visual impact can be reduced to an acceptable level. Whilst the use of salvaged brick may work, this is not demonstrated here as the contrast with the stone wall is too great. The stone wall has a random effect applied; the use of brick would provide for a very defined pattern. I have a concern that the view from 'The Metals', which was defined by the random nature of the wall, will be adversely impacted by the retention of this garage. The front elevation, facing the laneway, is generally acceptable though again I would have a concern about the use of brick in this area.
- 7.2.9. The development should therefore be refused due to the impact on the visual amenity of the area and negative impact on the cACA.
- 7.2.10. The issue of precedent was raised in the reason for refusal. The nature of the laneway is such that other garages would be unlikely to be constructed, however I do have a concern that the use of this form of cladding could be considered to be acceptable if permission were granted. This would have an adverse impact on the setting of the protected structures and on the cACA.

### **7.3. Impact on Residential Amenity**

- 7.3.1. A number of issues were raised in the original letters of objection and in the observation to the appeal in relation to impact on residential amenity. The removal of scrub and trees to facilitate the development was considered as reason for the change in noise levels in the area. I would agree with the applicant/ the submitted

appeal, that noise and vibrations from the railway line would not be significantly reduced by the presence of such vegetation. The railway is at the rear of the houses on Windsor Terrace and the reduction in noise levels will not be provided by the random planting of scrub etc.

- 7.3.2. The loss of play areas for children was raised as an issue. There is no indication that the development has extended into the laneway, and I would therefore dismiss this issue. I note also that the houses here have rear gardens and are located next to a public park and the promenade along the sea. Similarly, there is nothing to suggest that car parking has been reduced in the area by this development.

#### **7.4. Other Issues**

- 7.4.1. A number of legal issues were raised about consent to undertake this development. I have no information to suggest that the developer has encroached onto third party lands though the applicant has made clear that there is an issue over the ownership of a piece of land that is outside of the subject site. These are matters for the applicant to address and are not for the Board to consider.
- 7.4.2. Concern was raised about the structural integrity of the garage and the impact on the boundary wall to the west with the railway line. No report was received from Iarnród Éireann and there is no indication that they are even aware of the development adjacent to the railway line. Similarly, there is no indication that the applicant has or has not contacted them about the development at the time of construction. I am not aware of what the procedure is for development beside an overhead live electric cable used to provide power to DART trains. Similarly, I would be concerned that if the garage were permitted but re-clad to the western side, that this may impact on the operations of the railway line, even though the nature of the development is relatively minor.
- 7.4.3. Concern was raised about the lack of detail regarding surface water drainage and the Municipal Services Department sought a condition that would ensure that a suitable form of drainage be provided. The appeal refers to the provision of a soakaway on site, though it is not clear from the submitted plans where this is and where it would eventually drain to. I would consider it to be appropriate that a suitable form of surface water drainage be provided that ensures that water is disposed off away from the western side of the site/ away from the railway line. The

development of the garage adjacent to the boundary wall may result in an increased level of surface water run-off to the railway line.

#### **7.5. Conclusion:**

I have no objection to the provision of a garage on this site, even one of 31 sq m, however the design should have regard to the unique characteristics of the area located to the rear of a protected structure and adjacent to/ visible from an cACA. The retention of this structure would have a negative impact on the visual amenity of the area, on the cACA, and on a protected structure. The proposed alternative finish with brick would also not be appropriate as brick is not the dominant/ characteristic material found in this area. I would have a concern also about the provision of a drainage system that is appropriate to this location and also that any development on this site has regard to the operation of an active railway line.

#### **7.6. Appropriate Assessment Screening**

- 7.6.1. Having regard to the modest nature and scale of the proposed development and the location of the site in a serviced urban area, zoned for residential development, and the separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the development would be likely to give rise to a significant effect individually or in combination with other plans or projects on a European site.

### **8.0 Recommendation**

- 8.1. I recommend that permission be refused for the following reason and considerations as set out below.

### **9.0 Reasons and Considerations**

1. The retention of this development, by itself or by the precedent which the grant of permission for it would set for other similar development, would adversely affect the character of 'The Metals', which is listed as a Candidate Architectural Conservation Area in the Dun Laoghaire-Rathdown County Development Plan 2016 – 2022, and the houses on Windsor Terrace, which are listed on the Record of Protected Structures. The inappropriate use of

white coloured cladding and a brick finish to the front elevation, provide for a stark contrast with the render finish of the houses on Windsor Terrace and the random stone wall that forms the railway boundary. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The retention of the garage, by reason of its location, design, and material finishes, especially when viewed from 'The Materials' which is a public walkway to the west of the site, would be out of character with the pattern of development in the vicinity and would constitute a visually discordant feature. The retention of such a structure may set a precedent for similar undesirable developments along Summerhill Parade, which is a laneway with a distinctive architectural and historic character, and which serves houses on Windsor Terrace all of which are listed on the Record of Protected Structures and which it is appropriate to preserve this laneway. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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Paul O'Brien  
Planning Inspector

11<sup>th</sup> November 2021