



An
Bord
Pleanála

Inspector's Report ABP-310691-21

Development

Permission for the conversion of the existing attic space into accessible storage space above the existing first floor apartment along with new internal access stairs.

Location

Apartment 8, St. Nesson's,
Thormanby Road, Howth, D13 AK25

Planning Authority

Fingal County Council

Planning Authority Reg. Ref.

F20B/0247

Applicant(s)

Brendan O'Brien.

Type of Application

Planning Permission.

Planning Authority Decision

Grant Permission

Type of Appeal

Third Party

Appellant(s)

Connie Lahert & Members of St.
Nesson's Management Company.

Observer(s)

No Observers.

Date of Site Inspection

29th November 2021.

Inspector

Elaine Sullivan

1.0 Site Location and Description

- 1.1. The subject site is located within St. Nesson's apartment development, known which is located on the eastern side of Thormanby Road, on the outskirts of the village of Howth. Access to the apartment development is from Thormanby Road and is controlled by electric gates. The development comprises 2 no., two-storey blocks with hipped roof profiles laid out on a north-south axis. The appeal relates to Apartment No. 8 which is a first-floor unit in the block to the rear of the development.

2.0 Proposed Development

- 2.1. Planning permission is sought for the conversion of existing attic space above a first-floor apartment in a purpose built apartment development, along with the construction of an internal access stairs within the apartment.

3.0 Planning Authority Decision

3.1. Decision

Planning permission was granted by the PA subject to 5 planning conditions which are standard in nature.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Two planning reports were prepared during the assessment of the proposal. The report of the Planning Officer dated the 20th November 2020 noted that the proposed development is in accordance with the 'RS' zoning for the site. It was also considered that the proposed development would not impact on the residential amenity of neighbouring properties or the surrounding residential area. An issue was raised by third parties regarding the legal ownership of the roof, joists, rafters and outer walls which may be impacted by the development. It was recommended that further information be sought to demonstrate that all of the structure within which the development was within the ownership of the applicant or submit a letter of consent from the legal owner.

A response to the further information request was submitted by the applicant on the 11th May 2021. The response included a letter from the applicant in his capacity as Director of St. Nessans Management Company Limited, authorising planning permission to be sought for the works proposed along with an extract from the leasehold which notes the areas in the applicant's ownership.

The second report of the Planning Officer dated the 1st June 2021 noted the response and that Section 5.13 of the Development Management Guidelines for Planning Authorities states that the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land. It was recommended that planning permission be granted.

3.2.2. Other Technical Reports

- No technical reports on file.

3.3. Prescribed Bodies

- No referrals.

3.4. Third Party Observations

One third party observation was received by the Planning Authority during the initial statutory period. The observation raised the following points:

- The Management Company are the legal owners of the roof, external walls, all structural parts of the structural walls within the apartment and the joists and beams to which the floors and ceilings are attached.
- The terms of the Lease state that the Lessee shall not make any structural alterations or additions without prior approval in writing by the Management Company.
- The applicant does not have sufficient legal interest in the structure to make the planning application.
- There are concerns regarding the impact of the works on the other apartments in the building in terms of fire safety.

A second observation was lodged on the 24th May 2021 in response to the further information submitted by the applicant. It includes the following:

- The Management Company did not give its written consent to the applicant to carry out the works and did not authorise the letter submitted to the Planning Authority.

4.0 Planning History

F97B/0299 – Planning permission granted by the PA in July 1997 for the conversion of attic space to storage area with 2 Velux roof lights to apartment No. 8 Saint Nessian's, Thormanby Road.

5.0 Policy Context

5.1. Development Plan

5.2. Fingal Development Plan 2017-2023

The site is zoned 'RS', to "provide for residential development and to protect and improve residential amenity".

The following sections of the Development Plan are of relevance to the subject application;

Section 12.4; Design Criteria for Residential Development;

Residential Extensions will be considered favourably where they do not have an impact on adjoining properties or on the nature of the surrounding area.

5.3. Natural Heritage Designations

5.4. No designations apply to the appeal site.

5.5. EIA Screening

The proposed development relates to minor works to an apartment block. Having regard to the existing development on site, the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, 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 grounds of appeal include the following:

- The planning permission as granted allows the applicant to make structural alterations to the apartment structure which is not within his ownership.
- The wording of condition No. 3 attached to the grant of permission is ambiguous.
- The applicant installed 2 no. velux roof lights into the roof structure in 2002 without the consent of the Management Company. These roof lights are shown as existing windows on the planning drawings.
- There are concerns that the attic could be used as a habitable room which could have implications for fire safety.
- Under the terms of the Lease for Apartment No. 8, the applicant does not own the roof, external walls, all structural parts of the structural walls within the apartment and the joists and beams to which the floors and ceilings are attached. The Management Company for the apartment block is the legal owner of these structures and have not given consent for the proposed development.
- The letter submitted in response to the further information request was not approved or authorised by the Management Company.

6.2. Applicant Response

A response from the applicant was received on the 28th July 2021 and included the following:

- Planning permission is sought for internal modifications to an apartment to provide additional storage within an attic space. There is no change to the footprint of the apartment, to the height of the roof or the rear building line. No additional windows are proposed on the elevations.
- The works were previously granted permission under Reg. Ref. F97B/0229 but were not implemented.
- The applicant can confirm that the attic room will be for storage and will be incidental to the enjoyment of the apartment.
- The applicant has been legally advised that they can carry out the works as proposed and has submitted an extract from the Leasehold for the apartment and a copy of the applicant's membership of the management company.

6.3. Planning Authority Response

A response from the PA was received on the 23rd July 2021. They have no further comment to make.

6.4. Observations

- No third-party observations were received.

7.0 Assessment

7.1. I consider the main issues in determining this appeal are as follows;

- Legal / Procedural Issues
- Impact on Residential Amenity
- Appropriate Assessment

7.2. Legal / Procedural Issues

- 7.2.1. The grounds of appeal raise an issue as to whether or not the applicant has sufficient legal interest to carry out development on the site. The appellant contends that the applicant does not have ownership of the roof, external walls, all structural parts of the structural walls within the apartment and the joists and beams to which the floors and ceilings are attached. These areas are within the ownership of the Management Company who have not given consent for the works or for the application to proceed. In response to the ground of appeal the applicant states that he has been legally advised, and so believe, that they have the authority to carry out the works as proposed. In support of this argument, he has submitted an extract from the Leasehold for the apartment and a copy of the applicant's membership of the management company.
- 7.2.2. In terms of the legal interest, I am satisfied that the applicant has provided sufficient evidence of his legal interest for the purposes of the planning application and decision. Any further consents that may have to be obtained are essentially a subsequent matter and are outside the scope of the planning appeal. In any case this is a matter to be resolved between the parties, having regard to the provisions of S. 34(13) of the Planning and Development Act 2000 (as amended). Furthermore, under Chapter 5.13 of the 'Development Management – Guidelines for Planning Authorities', (DoECLG 2007), is states, inter alia, the following: *'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...'*

7.3. Impact on Residential Amenity

- 7.3.1. On the occasion of the site visit I was unable to gain access to the gated apartment development. However, the development is visible from the public road and due to the nature of the proposal, I had sufficient information at hand to make an informed assessment of the proposal.
- 7.3.2. The works proposed are minor in nature and comprise internal works to the apartment and to the attic above the unit to allow for its use as storage. A new stair would be installed within the hallway to allow access to the attic. No external works are proposed, and the external appearance of the property would not be altered.

- 7.3.3. Drawings submitted with the appeal show two velux rooflights on the front plane of the roof. Third parties have queried the status of these rooflights and state that the applicant did not obtain the permission of the management company for their installation. I note that the planning permission was granted for two velux roof lights under PA Ref. F97B/0299. As noted above, Section 34(13) of the Planning and development Act (as amended) states that, '*A person shall not be entitled solely by reason of a permission under this section to carry out any development*'. As such, any subsequent consents are a matter between the parties. Any alleged unauthorised development should be addressed by the Planning Authority under Part 8 of the Planning and Development Act as amended and is not within the remit of this appeal or within the functions of the Board.
- 7.3.4. The height of the attic is shown as 2.4m to the apex of the roof and 1.2m to the side. Concerns were raised in the grounds of appeal regarding the final use of the attic space. However, I am satisfied that there is sufficient space to allow for the stated use as storage. The issue of compliance with Building Regulations will be evaluated under a separate legal code and thus need not concern the Board for the purposes of this appeal.
- 7.3.5. I am satisfied that the works proposed are minor in nature and would not have any negative impact on the existing residential amenity of adjoining properties.

7.4. Appropriate Assessment

- 7.4.1. The subject site is located within a serviced urban area and is not directly adjoining or adjacent to a designated site. The nearest European site is Howth Head SAC, (Site code 000202), which is approximately 0.14km to the east of the development. Howth Head Coast SPA, (Site code 004113), is beyond this and is approximately 0.68km away. There is no direct hydrological connection to either of these sites.
- 7.4.2. Having regard to the nature and scale of the proposed development which relates to the carrying out of internal works within an apartment block in a serviced urban area and separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is considered that 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. I recommend that planning permission be granted.

9.0 Reasons and Considerations

Having regard to the nature and scale of the proposed development for the conversion of an attic to storage space with internal access stairs within an apartment development, it is considered that the proposed development would be acceptable within the context of the site and would not result in a negative impact on the existing character of the area or the amenities of adjoining properties and would be in accordance with the policies and objectives of the Fingal Development Plan 2017-2023 and the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The site development and construction works shall be carried out such a manner as to ensure that the adjoining streets are kept clear of debris, soil and other material and cleaning works shall be carried on the adjoining public roads by the developer and at the developer's expense on a daily basis.</p> <p>Reason: To protect the residential amenities of property in the vicinity.</p>
3.	<p>Site development and building works shall be carried out only between the hours of [0800] to [1900] Mondays to Fridays inclusive, between [0800] to</p>

	<p>[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.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
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Elaine Sullivan
Planning Inspector

9th December 2021