



**Development**

Permission is sought for the extension and alterations to existing detached dwelling, consisting of construction of new single storey ground floor extension and all associated site works.

**Location**

108 Foxrock Avenue, Foxrock, Dublin 18.

**Planning Authority**

Dun Laoghaire Rathdown County Council

**Planning Authority Reg. Ref.**

D21B/0293

**Applicant(s)**

Victoria and Stewart Thompson

**Type of Application**

Permission

**Planning Authority Decision**

Grant Permission

**Type of Appeal**

Third Party

**Appellant(s)**

1. Tony and Marguerite Duggan
2. Orla and Eric Mullane
3. Gay McSwiney

**Observer(s)**

None

**Date of Site Inspection**

29<sup>th</sup> November 2021

**Inspector**

Emer Doyle

## **1.0 Site Location and Description**

- 1.1. The subject site is located at No. 108 Foxrock Avenue, Foxrock, Co. Dublin. The site itself contains a detached two storey dwelling on a plot with a stated area of 0.061 hectares. The site has an exceptionally long rear garden which has a significant slope. A terrace leads directly from the ground floor kitchen area and an additional room labelled as a 'study' on the plans and alternatively termed as a 'garden room' in the appeal documentation, has been constructed partially beneath, and extending beyond the terrace. There is a set of steps leading from the terrace down to the garden at a lower level.
- 1.2. The area is a mature residential area with mainly two storey detached and semi-detached dwellings. Deansgrange Cemetery is located to the rear of the site.

## **2.0 Proposed Development**

- 2.1. Permission sought for ground floor extension together with changes to the roof profile including amendments to two existing rear dormers to create one large dormer window.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. Permission granted subject to 5 No. Conditions. Condition 2 required that the rear dormer roof extensions and main roof profile extensions and changes shall be omitted.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

- The planner's report had no objection to the extension element of the development and considered that it would not adversely impact on residential amenities of neighbouring properties. It considered that the provision of the

large dormer was not acceptable and recommended that this element was omitted by condition.

### 3.2.2. Other Technical Reports

**Drainage:** No objection subject to conditions.

### 3.3. Prescribed Bodies

3.3.1. No reports.

### 3.4. Third Party Observations

3.4.1. Three No. third party submissions were received. The main issues raised are similar to those raised in the third party appeals to the Board.

## 4.0 Planning History

### **PA D18B/0500**

Retention permission granted for 2 No. dormer roof windows in the rear roof space of the attic.

### **PA D99B/0992**

Permission granted for extensions over former garage to first floor and attic at side together with projecting dormer windows at rear roof level and conservatory at rear.

### **ABP 06D. RL2073**

Referral case: The question asked was whether decking, surround railing and side fencing is or is not development or is or is not exempted development. The Board decided that it was development and it was not exempted development.

## **5.0 Policy Context**

### **5.1. Development Plan**

- 5.1.1. The relevant Development Plan is the Dun Laoghaire Rathdown County Development Plan 2016-2022. The site is zoned Objective 'A' with a stated objective 'to protect and/or improve residential amenities.'

#### **Other Relevant Sections/ Policies**

Section 8.2.3.4 Additional Accommodation in Existing Built-up Areas.

### **5.2. Natural Heritage Designations**

- 5.2.1. None in the vicinity of the site.

### **5.3. EIA Screening**

- 5.3.1. Having regard to the nature and scale of the proposed development in a serviced urban area 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**

- 6.1.1. The main issues raised relate to the following:
- Concerns regarding overlooking.
  - Concerns relating to construction over ground level study and history of previous referral case.

- Development should not be assessed as a ground floor extension due to topography.
- Considered that submitted details do not accurately reflect the height differences between the site and adjoining sites.
- Concerns regarding drainage in the area.

## 6.2. Applicant Response

The response submitted on behalf of the applicant can be summarised as follows:

- Referral case not relevant.
- Inspector made a subjective comment in referral report regarding overlooking. This does not have any legal basis.
- The referral report also considered that the garden room was exempted development. This is correct in our opinion.
- The Board determination with regard to the terrace was clear and subsequent to the referral case, the size of the terrace was reduced.
- The referral case did not rule on whether works back in 2004 amounted to appropriate development or not.
- The privacy and amenity of adjacent houses will not be impacted negatively.

## 6.3. Planning Authority Response

- The Board is referred to the previous planner's report. It is considered that the grounds of appeal do not raise any new matter which in the opinion of the Planning Authority, would justify a change of attitude to the proposed development.

## 6.4. Observations

- None.

## 7.0 Assessment

7.1. The main issues in this appeal are as follows:

- Impact on Residential Amenities
- Other Matters
- Appropriate Assessment

### 7.2. Impact on Residential Amenities

7.2.1. Concern is raised in the appeal with regard to impact on the privacy and overbearing impacts on adjoining dwellings.

7.2.2. This is an unusual site in that the site is located adjacent to Deansgrange Cemetery with a very long rear garden with a significant drop between the ground floor level of the house to the rear and the rear garden. This drop is so significant that an additional room has been constructed in the garden at the lower level which is linked to the house via stairs in close proximity to the eastern boundary. A terrace has been constructed on top of this room which extends out c. 2.8m from the kitchen and dining room area of the existing house.

7.2.3. In terms of the impact on privacy and overlooking, I consider that the single storey extension proposed is very modest in size (c. 31 square metres) and I consider that the impact of same on adjoining dwellings would be less than the existing terrace with associated stairs at this location. I note that additional measures have been taken by the applicant to reduce the impact of any potential overlooking on neighbouring properties including a high level narrow window in the proposed extension, together with a 1.8m screen on both sides of the proposed terrace. I also note that the terrace is set back from adjoining boundaries.

7.2.4. In terms of the modifications to the dormer windows and roof profile, I note that one large dormer is proposed in lieu of two permitted smaller dormer windows. These effectively read as a fourth storey when viewed from the rear garden, adjoining rear gardens, and the cemetery. I do not consider that the dormer windows will increase overlooking over and above that of the existing dormer windows at this location. I note that the Planning Authority have omitted the changes to the dormer roof

extensions and main roof profile based on the impact on visual amenity. I note that the appeal requests the Board to consider the proposed development de nova. Section 8.2.3.4 of the Development Plan outlines the policy in relation to dormer windows. It states that 'dormer extensions will be considered in relation to impacts on existing character and form, and the privacy of adjacent properties.' I note that the planning report considered that the proposed scale of dormer was excessive relative to the scale of the roof profile and the alterations to the roof profile would negatively impact on the established streetscape at this location.

- 7.2.5. I consider that whilst the dormer window proposed is very large, the main views of same will be from the rear of the house/ adjoining rear gardens and the adjacent cemetery. As such, I do not consider that it will be unduly prominent from the public realm and taken together with the alterations to the roof profile, will not unduly detract from the character of Foxrock Avenue.
- 7.2.6. Having regard to the sloping nature of the site, the distance to other properties, and the mitigation measures proposed in the design as outlined above, I am satisfied that the proposal would not have any material significant adverse visual, overbearing, or overlooking impacts.

### 7.3. Other Matters

#### Legal Issues/ Referral Case

- 7.3.1. I note that there is a significant amount of detail in the appeals and the response to same in relation to the site history and referral case ABP Ref. PL06D.RL2073. This Section 5 referral related to the following question: '*whether decking, surrounding railing and side fencing is or is not exempted development.*' I have read the Inspector's report on this case in full and consider that it may aid the Board in understanding this unusual site together with the history behind it.
- 7.3.2. Nevertheless, I concur with the appeal response which states that the referral case is not relevant. The purpose of a Section 5 referral is not to determine the acceptability or otherwise of any development in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development.



- 7.3.3. The main issue raised in the appeal is that the garden room over which it is proposed to develop the study and patio, is unauthorised and as such any development above it would 'undermine the principle of clarity and orderly development.'
- 7.3.4. I note that the planner's report considers that the existing garden room is permitted based on the Inspector's referral report.
- 7.3.5. The garden room (though referred to in the Inspector's report) was not part of the referral to the Board and as such, I disagree with the planner's report in relation to this issue.
- 7.3.6. My view is that the garden room has never been the subject of a referral case to determine whether it was or was not exempted development, nor has it ever been granted planning permission. I note that it has been in existence for c. 20 years and the Planning Authority has not taken any enforcement action against it.
- 7.3.7. Planning enforcement is a matter for the planning authority and does not fall within the jurisdiction of the Board. As such, I consider that the previous referral case has no bearing on this application or the status of the garden room and the Board have no role in relation to the planning status or any enforcement action in this case.
- 7.3.8. I also note that there is reference in the appeals to a childminding/ creche service at this location. There was no evidence of any childminding at the site inspection and the appeal response states that any childminding activity has taken place in accordance with planning law which provides for exempted development in relation to this matter. As such, if there is any unauthorised development in relation to childminding, this matter is an enforcement matter for the Planning Authority and the Board has no role in relation to this matter.

#### Drainage

- 7.3.9. I note that concerns have been raised in the appeals in relation to surface water and sewerage drainage. I note that the Drainage Section of the Council have not raised any issues in relation to this matter. I note that Condition 3 of the Planning Authority addressed the matter of surface water. Having regard to the size of the extension proposed, I am satisfied that the proposal will not unduly impact on drainage in the

area. Should the Board be minded to grant permission, I consider that a similarly worded condition could be included by the Board.

#### **7.4. Appropriate Assessment**

- 7.4.1. Having regard to the nature and scale of the proposed development, the availability of public services, the nature of the receiving environment, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the proposed development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

#### **8.0 Recommendation**

- 8.1. I recommend a grant of permission.

#### **9.0 Reasons and Considerations**

Having regard to the pattern of development in the area and the design and scale of the proposed extensions and to the provisions of the Dún Laoghaire-Rathdown County Council Development Plan 2016-2022 it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual amenities of the area or the character of the streetscape and would not seriously injure the amenities of nearby dwellings. 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 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. Water supply and drainage arrangements, including the attenuation and 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.

3. Details of the materials, colours and textures of all the external finishes to the proposed extension shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenity.

4. Site development and building works shall be carried out only between the hours of 0700 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.

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Emer Doyle  
Planning Inspector

20<sup>th</sup> December 2021