



An  
Bord  
Pleanála

## Inspector's Report ABP-311381-21

<b>Development</b>	A two-storey extension and alterations to side and rear of previously approved development (Planning Reg. Ref. No. D20B/0013) and original semi-detached dwelling.
<b>Location</b>	44 Ballinteer Drive, Ballinteer, D16 Y8K0.
<b>Planning Authority</b>	Dún Laoghaire Rathdown County Council
<b>Planning Authority Reg. Ref.</b>	D21A/0582
<b>Applicant(s)</b>	Owen & Joan MacCarthy
<b>Type of Application</b>	Permission for Retention
<b>Planning Authority Decision</b>	Grant subject to conditions
<b>Type of Appeal</b>	First Party v. Conditions
<b>Appellant(s)</b>	Owen & Joan MacCarthy
<b>Observer(s)</b>	Brian Murray & Nessa Murphy
<b>Date of Site Inspection</b>	16 <sup>th</sup> November, 2021
<b>Inspector</b>	Robert Speer

## 1.0 Site Location and Description

1.1. The proposed development site is located at No. 44 Ballinteer Drive, Ballinteer, Dublin 16, in an established residential area predominantly characterised by conventional two-storey, semi-detached housing with front & rear garden areas and off-street car parking. It has a stated site area of 0.045 hectares, is irregularly shaped, and is occupied by a two-storey, semi-detached dwelling house and a single-storey garage. The property is bounded by the public road to the immediate east and by existing housing to the north and west while a pedestrian laneway extends along the southern site boundary between Ballinteer Drive (to the east) and Ballinteer Close (to the west).

## 2.0 Proposed Development

- 2.1. The proposed development involves the retention of the following:
- The construction of a two-storey extension (floor area: 22m<sup>2</sup>) to the rear of the original semi-detached dwelling house and the extension previously permitted under PA Ref. No. D20B/0013. These works effectively amount to an enlargement of the approved extension and provide for an expanded kitchen area and a dining room at ground floor level in addition to a larger master bedroom with ensuite bathroom on the first floor.
  - Associated alterations to the internal layout / configuration of the original dwelling house and the permitted extension, including the relocation of the downstairs W.C. and the provision of a first-floor family bathroom.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. On 17<sup>th</sup> August, 2021 the Planning Authority issued a notification of a decision to grant permission for the retention of the proposed development, subject to 11 No. conditions. These conditions are generally of a standardised format and relate to issues including external finishes, drainage works, and construction management,

however, the following conditions are of relevance in the context of the subject appeal:

3.1.2. *Condition No. 2:*

- The glazing within the south facing window within the corner window arrangement at first floor level shall be manufactured of fixed and opaque glass and shall be permanently maintained. The application of film to the surface of clear glass is not acceptable.

*Reason:* In the interests of residential amenities.

3.1.3. *Condition No. 5:*

- The entire dwelling shall be used for human habitation. Home-based economic activities that involve visiting members of the public (including customers or potential customers) are not permitted unless a separate permission for a change of use is obtained.

*Reason:* In the interest of proper planning.

3.1.4. *Condition No. 8:*

- The Developer shall, prior to commencement or as otherwise agreed in writing with the Planning Authority, pay the sum of €64.90 to the Planning Authority as a contribution towards expenditure that was/or is proposed to be incurred by the Planning Authority in respect of the provision of Surface Water Public Infrastructure and Facilities benefiting development in the area of the Authority, as provided for in the Development Contribution Scheme made by Dún Laoghaire-Rathdown County Council on the 14<sup>th</sup> December, 2015. These rates of contribution shall be updated effective from 1 January each year during the life of the Scheme in accordance with the SCSi Tender Price Index (See Article 12 of the Scheme) commencing from 1<sup>st</sup> January, 2018. Contributions shall be payable at the index adjusted rate pertaining to the year in which implementation of the planning permission is commenced, as provided for in Note 1 to the Table at Article 9 of the Scheme. Outstanding balances may be subject to interest charges.

*Reason:* It is considered reasonable that the payment of a contribution be required in respect of the provision of the Surface Water Public Infrastructure

and Facilities benefiting development in the area of the Planning Authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.

**3.1.5. Condition No. 9:**

- The Developer shall, prior to commencement or as otherwise agreed in writing with the Planning Authority, pay the sum of €1,485.83 to the Planning Authority as a contribution towards expenditure that was/or is proposed to be incurred by the Planning Authority in respect of the provision of the Roads Public Infrastructure and Facilities benefiting development in the area of the Authority, as provided for in the Development Contribution Scheme made by Dún Laoghaire-Rathdown County Council on the 14<sup>th</sup> December, 2015. These rates of contribution shall be updated effective from 1 January each year during the life of the Scheme in accordance with the SCSi Tender Price Index (See Article 12 of the Scheme) commencing from 1<sup>st</sup> January, 2018. Contributions shall be payable at the index adjusted rate pertaining to the year in which implementation of the planning permission is commenced, as provided for in Note 1 to the Table at Article 9 of the Scheme. Outstanding balances may be subject to interest charges.

*Reason:* It is considered reasonable that the payment of a contribution be required in respect of the provision of the Roads Public Infrastructure and Facilities benefiting development in the area of the Planning Authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.

**3.1.6. Condition No. 10:**

- The Developer shall, prior to commencement or as otherwise agreed in writing with the Planning Authority, pay the sum of €963.88 to the Planning Authority as a contribution towards expenditure that was/or is proposed to be incurred by the Planning Authority in respect of the provision of the Community & Parks Public Infrastructure, Facilities and Amenities benefiting development in the area of the Authority, as provided for in the Development Contribution Scheme made by Dún Laoghaire-Rathdown County Council on the 14<sup>th</sup> December, 2015. These rates of contribution shall be updated

effective from 1 January each year during the life of the Scheme in accordance with the SCSi Tender Price Index (See Article 12 of the Scheme) commencing from 1<sup>st</sup> January, 2018. Contributions shall be payable at the index adjusted rate pertaining to the year in which implementation of the planning permission is commenced, as provided for in Note 1 to the Table at Article 9 of the Scheme. Outstanding balances may be subject to interest charges.

*Reason:* It is considered reasonable that the payment of a contribution be required in respect of the provision of the Community & Parks Public Infrastructure, Facilities and Amenities benefiting development in the area of the Planning Authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.

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

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

States that the development proposed for retention is consistent with the provisions of the Development Plan and will not adversely impact on the residential amenity of adjacent properties by reason of overlooking, overshadowing or an overbearing appearance, subject to conditions, including a requirement that the south-facing window within the corner window arrangement at first floor level be permanently glazed in fixed opaque glass so as to avoid undue overlooking of the private open space serving No. 44A Ballinteer Drive.

#### **3.2.2. Other Technical Reports**

*Transportation Planning:* No objection, subject to conditions.

*Municipal Services Dept., Drainage Planning:* No objection, subject to conditions.

### **3.3. Prescribed Bodies**

None.

### **3.4. Third Party Observations**

- 3.4.1. A single submission was received from a neighbouring third party and the principal grounds of objection / areas of concern raised therein can be summarised as follows:

- The unauthorised nature and extent of the works.
- Detrimental impact on the residential amenity of the neighbouring property of No. 44A Ballinteer Drive due to increased overlooking of its private open space as a result of the first-floor window configuration proposed for retention.
- The extension proposed for retention will undermine the future development potential of No. 44A Ballinteer Drive.
- In the event that the public right-of-way between the subject site and No. 44A Ballinteer Drive is extinguished, it is envisaged that the laneway itself will be incorporated into the garden area of the observer's property and, therefore, due cognisance should be taken of this scenario in the assessment of the proposed development.
- Concerns that the alterations to the internal configuration of the property could be used to accommodate an unauthorised business operation / commercial enterprise, particularly in light of the erection of signage advertising the residence of a 'Notary Public' on site.

## 4.0 Planning History

### 4.1. *On Site:*

PA Ref. No. D20B/0013. Was granted on 17<sup>th</sup> September, 2020 permitting Owen and Joan MacCarthy permission for the part demolition of an existing garage to the side of an existing dwelling and the construction of a two-storey extension to the side of the dwelling and all associated site works.

### 4.2. *On Adjacent Sites (to the immediate south / southwest):*

PA Ref. No. D21A/0193. Was granted on 3<sup>rd</sup> June, 2021 permitting Nessa Murphy & Brian Murray permission for a development consisting of alterations to the existing driveway, new steps with ramp, alterations to the existing porch to include new corner window and new roof light, internal alterations at ground floor, new side window and modifications to existing side window, new rear patio and new sliding door to replace existing window, and all ancillary site and other works. All at 44A Ballinteer Drive, Ballinteer, Dublin 16.

## 5.0 Policy and Context

### 5.1. Dún Laoghaire Rathdown County Development Plan, 2016-2022:

#### 5.1.1. Land Use Zoning:

The proposed development site is zoned as 'A' with the stated land use zoning objective '*To protect and-or improve residential amenity*'.

#### 5.1.2. Other Relevant Sections / Policies:

*Chapter 8: Principles of Development:*

*Section 8.2.3: Residential Development:*

*Section 8.2.3.4: Additional Accommodation in Existing Built-up Areas: (i) Extensions to Dwellings:*

First floor rear extensions will be considered on their merits, noting that they can often have potential for negative impacts on the amenities of adjacent properties, and will only be permitted where the Planning Authority is satisfied that there will be no significant negative impacts on surrounding residential or visual amenities. In determining applications for first floor extensions the following factors will be considered:

- Overshadowing, overbearing and overlooking - along with proximity, height and length along mutual boundaries.
- Remaining rear private open space, its orientation and usability.
- Degree of set-back from mutual side boundaries.
- External finishes and design, which shall generally be in harmony with existing.

Ground floor rear extensions will be considered in terms of their length, height, proximity to mutual boundaries and quantum of usable rear private open space remaining.

Side extensions will be evaluated against proximity to boundaries, size and visual harmony with existing (especially front elevation), and impacts on residential amenity. First floor side extensions built over existing structures and matching existing dwelling design and height will generally be acceptable, though in certain

cases a set-back of an extension's front façade and its roof profile and ridge may be sought to protect amenities, integrate into the streetscape and avoid a 'terracing' effect. External finishes shall normally be in harmony with existing.

Any planning application submitted in relation to extensions shall clearly indicate on all drawings the extent of demolition/wall removal required to facilitate the proposed development and a structural report may be required to determine the integrity of walls/structures to be retained and outline potential impacts on adjoining properties. This requirement should be ascertained at pre-planning stage. A structural report must be submitted in all instances where a basement or new first/upper floor level is proposed within the envelope of an existing dwelling.

Side gable, protruding parapet walls at eaves/gutter level of hip-roofs are not encouraged.

The proposed construction of new building structures directly onto the boundary with the public realm (including footpaths/open space/roads etc) is not acceptable and it will be required that they are set within the existing boundary on site. The provision of windows (particularly at first floor level) within the side elevation of extensions adjacent to public open space will be encouraged in order to promote passive surveillance

Roof alterations/expansions to main roof profiles - changing the hip-end roof of a semi-detached house to a gable/'A' frame end or 'half-hip' for example - will be assessed against a number of criteria including:

- Careful consideration and special regard to the character and size of the structure, its position on the streetscape and proximity to adjacent structures.
- Existing roof variations on the streetscape.
- Distance/contrast/visibility of proposed roof end.
- Harmony with the rest of the structure, adjacent structures and prominence.

Section 8.2.3.5: *Residential Development – General Requirements*



## 5.2. Natural Heritage Designations

5.2.1. The following natural heritage designations are located in the general vicinity of the proposed development site:

- The Fitzsimon's Wood Proposed Natural Heritage Area (Site Code: 001753), approximately 1.3km southeast of the development site.

## 5.3. EIA Screening

5.3.1. Having regard to the minor nature and scale of the development proposed, the site location in an established built-up area outside of any protected site and the nature of the receiving environment, the limited ecological value of the lands in question, the availability of public services, and the separation distance from the nearest 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 Removal of Condition No. 2:*

The corner window arrangement serving the new master bedroom at first floor level has been included in an effort to avail of the natural light received by the southern aspect of the property. Moreover, it was felt that its impact would be broadly comparable to that of the south-facing landing window in the gable of the original dwelling house.

It is considered that the new window arrangement does not result in any additional overlooking or loss of privacy over and above that associated with the original dwelling house or the extension approved under PA Ref. No. D20B/0013.

The existing screen planting along the northern boundary of No. 44A Ballinteer Drive with the adjacent laneway affords a high level of privacy to

that property. In addition, the applicants are willing to provide additional screen planting within the fence along this boundary so as to maintain the privacy of that property.

By way of precedent, and for comparison purposes, the Board is referred to the Planning Authority's assessment of PA Ref. No. D19B/0103 at No. 91 Stillorgan Wood when it granted permission for a first-floor window in close proximity to the property boundary without the use of obscured glazing and notwithstanding the resultant overlooking of a neighbouring private garden area. In this respect, it is submitted that planning decisions should not be arbitrary and that the Planning Authority has been inconsistent in its decision-making.

- *The Removal of Condition No. 5:*

It is the applicants' understanding that planning permission is not necessarily required to work from home and that the criteria whereby a material change of use arises is based on whether the overall character of the dwelling will change as a result of the business (as became evident during the COVID-19 lockdown when the Government encouraged people to work from home with a continuation of this approach being advocated on environmental and economic grounds).

The subject property will continue to be used as a private residence with only occasional client visits associated with the business activities of the applicants' daughter (Nicola MacCarthy) as a public notary and practising solicitor who is resident on site (please refer to the supporting statement provided with the grounds of appeal that outlines the business practices of Ms. MacCarthy). The use of the dwelling for light business purposes does not give rise to any marked increase in traffic or visits to the property nor does it result in the disturbance of neighbouring residents by reason of noise or nuisance.

- *The Removal or Reconciliation of Condition Nos. 8, 9 & 10:*

On the basis that Condition Nos. 5, 6 & 7 of the grant of permission issued in respect of PA Ref. No. D20B/0013 have already been complied with (please

refer to the attached proof of payment), the imposition of these conditions is not considered fair or appropriate.

## 6.2. Planning Authority Response

- No new information has been provided that would warrant a change to the decision to grant permission for the retention of the proposed development.
- With respect to Condition No. 5, in general, no issues arise as regards the use of a dwelling for working from home / remote working as this is considered ancillary to the residential amenity of the property. However, concerns arise in relation to the type of activity described by the applicant in the grounds of appeal which would seem to suggest a hybrid use of the property for both residential and commercial purposes. In addition to its residential use, the dwelling (or part thereof) would effectively also be used as an office that could be attended by clients for work-related purposes (irrespective of the frequency of any such visits). It is considered that any such usage would amount to a material change of use outside the scope of the application and would require a separate grant of planning permission. Therefore, the Board is requested to impose Condition No. 5 to prevent unauthorised development.

## 6.3. Observations

### 6.3.1. *Brian Murray & Nessa Murphy (No. 44A Ballinteer Drive):*

- The observers object to the first party appeal to remove certain conditions attached to the grant of permission, with particular reference to Condition Nos. 2 & 5.
- The development proposed for retention should be refused permission or, alternatively, the two windows closest to the observers' private garden should be relocated or screened / glazed in opaque glass.
- The entirety of the dwelling house should be used for human habitation in accordance with Condition No. 5 as imposed by the Planning Authority.
- The development as constructed is a serious breach of the planning regulations.

- No credence should be given to the advice issued to the applicants by the Planning Authority which incorrectly suggested that the subject works would constitute exempted development.
- With respect to the suggestion that the new corner window arrangement will not result in any overlooking over and above that associated with the original landing window, it is submitted that as the former window served a stairway it was unlikely that passing persons would overlook the neighbouring garden area for any length of time. In addition, the original window was at a lower level and positioned further forward than the current proposal while it was also more distant from the site boundary and glazed in opaque glass.
- The screen planting within the observers' property has been allowed to grow in order to mitigate the overlooking from the unauthorised windows. This high hedging has the effect of blocking light to the observers' property and it is not considered reasonable to expect the hedging to be maintained at such a height as to prevent overlooking.
- The closer proximity of the first floor construction and the associated corner window arrangement allow for direct overlooking and intrusive views over the observers' private side and rear garden areas to the detriment of their residential amenity (the side garden is extensively used as a private area and is screened from the wider front garden for privacy purposes).
- In the event that the public right-of-way between the development site and No. 44A Ballinteer Drive is extinguished, it is envisaged that the laneway itself will be incorporated into the garden area of the observers' property and, therefore, due cognisance should be taken of this scenario (i.e. the enlargement of the observers' garden) in the assessment of the proposed development.
- The extension proposed for retention could undermine the future development potential of No. 44A Ballinteer Drive.
- There are concerns that the alterations to the internal configuration of the property could be used to accommodate an unauthorised business operation / commercial enterprise, particularly in light of the erection of signage advertising the presence of a 'Notary Public' on site. It is further evident from the grounds of appeal that the resident in question plans to use the house for

economic activities that involve visiting members of the public contrary to the requirements of Condition No. 5 as imposed by the Planning Authority. This is a different scenario from “working from home” and, therefore, Condition No. 5 should be retained and enforced.

#### **6.4. Further Responses**

None.

### **7.0 Assessment**

7.1. From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised by the appeal relate to the inclusion / imposition of Condition Nos. 2, 5, 8, 9 & 10.

Furthermore, in accordance with the provisions of Section 139 of the Planning and Development Act, 2000, as amended, I am satisfied that this appeal should relate only to the merits of the aforementioned conditions.

#### **7.2. Condition No. 2:**

7.2.1. This condition requires the south-facing fenestration within the corner window arrangement serving the first-floor master bedroom to be of fixed opaque glass in order to prevent overlooking of the private open space to the side of No. 44A Ballinteer Drive. In the grounds of appeal, the applicants have submitted that the new window arrangement will not result in any additional overlooking or loss of privacy over and above that associated with the original dwelling house or the extension approved under PA Ref. No. D20B/0013 while the existing screen planting along the northern boundary of No. 44A Ballinteer Drive affords that property a high level of privacy.

7.2.2. Given the orientation and proximity of the new bedroom window relative to No. 44A Ballinteer Drive, the level of privacy formerly enjoyed within the side garden area of that property by its residents, and as the intervening screen planting is not under the control of the applicants and thus cannot be relied upon in perpetuity, it is my opinion that the revisions sought by Condition No. 5 represent a reasonable compromise between the desire of the applicants to avail of a southern aspect and the need to

preserve the residential amenity & privacy of the neighbouring property. Accordingly, I would recommend that the imposition of Condition No. 5 be upheld.

### **7.3. Condition No. 5:**

- 7.3.1. The imposition of this condition, which requires the entire dwelling to be used for human habitation while expressly prohibiting any use for home-based economic activities involving visiting members of the public (including customers or potential customers) without the benefit of planning permission, would seem to derive from third party concerns that the subject dwelling (in part) may be intended to be used for commercial purposes. In this regard, I note the configuration of the ground floor layout, including the proposal to install a new ramped side access and entrance lobby capable of providing independent access to the proposed study, and the reference by observers to the appeal that the services of a public notary have been advertised on site. Notably, while the Planning Authority declared that it had no evidence that any commercial activity was being or was intended to be carried out at the property, it was considered appropriate in any event to impose the condition with a view to limiting the use of the dwelling.
- 7.3.2. In response to the inclusion of this condition, the first party has submitted that their daughter (Ms. Nicola MacCarthy) resides on site and that she works from home in her capacity as a notary public and a practising solicitor which gives rise to occasional visits from clients. In addition, the case has been put forward that due to the limited nature of Ms. MacCarthy's work and her small client base, it would not be viable for her to rent a premises, while her ability to work from home also allows her to provide care for her son who has a diagnosis of autism.
- 7.3.3. Having considered the available information, it should be noted at the outset that the extension of the original dwelling house approved under PA Ref. No. D20B/0013 was assessed as such with no consideration being given to any prospective commercial / business use. Similarly, on the basis of the plans and particulars lodged with the current application, the Planning Authority assessed the subject proposal as relating solely to the further extension of a domestic property for residential purposes with Condition No. 5 clarifying the nature of the development permitted.

- 7.3.4. Given the domestic nature of the development as evident from the particulars submitted with the application as initially lodged, I would not have expected the imposition of a condition specifying the nature of its use to have been necessary (unless there was some degree of doubt or need for clarity). Therefore, considering the admission by the Planning Authority that it had no evidence of any existing or intended commercial activity on site, I am inclined to suggest that the imposition of Condition No. 5 would not have been warranted in the first instance and thus the Board may wish to consider its outright omission from the grant of permission. However, in light of the new and additional information provided as part of the first party appeal, it is my opinion that there is now a clear need to clarify the use of the development authorised by the grant of permission.
- 7.3.5. The wording of Condition No. 5 has sought to accommodate certain home-based economic activities to the exclusion of those which involve visiting members of the public (including customers or potential customers). This would appear to be intended to differentiate between a person working from their own home in a capacity ancillary to the principal residential use of the dwelling (e.g. in a home office setting) which would not give rise to any planning concerns, and an overtly material change of use arising from the use of the property as a business premises. A 'material' change of use is any change that substantially affects neighbours or the environment, however, what constitutes a material change of use depends on individual circumstances. A material change of use always needs planning permission.
- 7.3.6. Although not all 'home-based' economic activities are necessarily of a 'non-material' nature, I would suggest that Condition No. 5 is intended to prohibit any material change of use of the existing dwelling house for business or commercial purposes. Within the grounds of appeal, the applicants have indicated that their daughter, Ms. Nicola MacCarthy, resides on site and works from home in her capacity as a notary public and a practising solicitor. Notably, the subject site would appear to be Ms. MacCarthy's sole place of business with the nature of her work giving rise to occasional visits to the property by clients. While it is not within the remit of this appeal to speculate on the materiality or otherwise of any 'home-based' economic activity conducted on site, I would accept that the need has arisen as a result of the information provided with the grounds of appeal to impose a condition clarifying the

use of the development under consideration. Therefore, I would recommend that Condition No. 5 be amended in line with comparable conditions imposed by the Board so that the existing dwelling and extension are jointly occupied as a single residential unit while the development itself (including the ground floor study) is not sold, let or otherwise transferred or conveyed, save as part of the dwelling, or used for any business or commercial purpose.

#### 7.4. Condition Nos. 8, 9 & 10:

7.4.1. These conditions require the payment of monies as a contribution towards expenditure that was / is proposed to be incurred by the Planning Authority in respect of the provision of various classes of public infrastructural development as follows:

- Surface water public infrastructure and facilities:	€64.90
- Roads public infrastructure and facilities:	€1,485.83
- Community & parks public infrastructure, facilities and amenities:	€963.88
<b>Total:</b>	<b>€2,514.61</b>

7.4.2. The applicants have sought the removal or reconciliation of these conditions on the basis that their inclusion is both unfair and inappropriate by reference to the fact that development contributions have already been paid in respect of the extension constructed on site pursuant to Condition Nos. 5, 6 & 7 of the grant of permission issued in respect of PA Ref. No. D20B/0013. No other explanation has been offered as to why the conditions in question should be omitted.

7.4.3. From a review of the available information, it would appear that the applicants have misunderstood the methodology by which the additional development contributions arising from the development proposed for retention have been calculated. In this respect, it is of the utmost relevance to note that the monies sought by Condition Nos. 8, 9 & 10 relate solely to the additional 22m<sup>2</sup> of floor area over and above that already approved (and levied for) under PA Ref. No. D20B/0013. For the purposes of clarity, the total overall development contribution can be calculated as follows:

$$22\text{m}^2 \text{ (Additional Floor Area)} \times \text{€}114.3 \text{ per m}^2 \text{ (Domestic Extension Current Rate: €}91.44 \text{ per m}^2 \times 1.25) = \text{€}2,514.60$$



(In accordance with Para. 9: '*Level of Contribution*' of the current Dún Laoghaire-Rathdown County Council Development Contribution Scheme all retention permissions are to be charged at a multiple of 1.25 times the rates outlined in the relevant schedules).

7.4.4. In effect, the development contributions sought are additional to those already paid under PA Ref. No. D20B/0013 and relate to the extra floorspace developed on site i.e. that floor area for which permission for retention has been sought. They do not amount to double-charging and have been calculated in accordance with the terms of the Development Contribution Scheme. Therefore, it is my recommendation that Condition Nos. 8, 9 & 10 should be attached as per the notification of the decision to grant permission.

7.4.5. While I would acknowledge that the applicants may be concerned that the contributions sought would appear to be relatively high when compared to those previously imposed in respect PA Ref. No. D20B/0013 which involved a greater floor area, this can be explained by the exemption afforded to the first 40m<sup>2</sup> of any residential extension pursuant to Para. 10(a) of the Development Contribution Scheme and the 'penalty' rate applicable to retention permissions.

#### 7.5. **Appropriate Assessment:**

7.5.1. Having regard to the minor nature and scale of the development under consideration, the site location in an existing built-up area outside of any protected site, the nature of the receiving environment, the availability of public services, 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 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. Having regard to the nature of the conditions the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and, based on the reasons and considerations set out below, directs the said Council under subsection (1) of Section 139 of the Planning and Development Act, 2000, as amended:

to **ATTACH** Condition No. 2 for the reasons and considerations set out hereunder:

2. The glazing within the south facing window within the corner window arrangement at first floor level shall be manufactured of fixed and opaque glass and shall be permanently maintained. The application of film to the surface of clear glass is not acceptable.

**Reason:** In the interests of residential amenities.

#### **Reasons and Considerations (1):**

It is considered that the attachment of condition number 2 is necessary in the interests of the preservation of residential amenity and the proper planning and sustainable development of the area.

to **ATTACH** Condition Nos. 8, 9 & 10 for the reasons and considerations set out hereunder:

8. The Developer shall, prior to commencement or as otherwise agreed in writing with the Planning Authority, pay the sum of €64.90 to the Planning Authority as a contribution towards expenditure that was/or is proposed to be incurred by the Planning Authority in respect of the provision of Surface Water Public Infrastructure and Facilities benefiting development in the area of the Authority, as provided for in the Development Contribution Scheme made by Dún Laoghaire-Rathdown County Council on the 14th December, 2015. These rates of contribution shall be updated effective from 1 January each year during the life of the Scheme in accordance with the SCSi Tender Price Index (See Article 12 of the Scheme) commencing from 1st January, 2018. Contributions shall be payable at the index adjusted rate pertaining to the year in which implementation of the planning permission is commenced, as provided for in Note 1 to the Table at Article 9 of the Scheme. Outstanding balances may be subject to interest charges.

**Reason:** It is considered reasonable that the payment of a contribution be required in respect of the provision of the Surface Water Public Infrastructure and Facilities benefiting development in the area of the Planning Authority and

that is provided, or that is intended will be provided, by or on behalf of the Local Authority.

9. The Developer shall, prior to commencement or as otherwise agreed in writing with the Planning Authority, pay the sum of €1,485.83 to the Planning Authority as a contribution towards expenditure that was/or is proposed to be incurred by the Planning Authority in respect of the provision of the Roads Public Infrastructure and Facilities benefiting development in the area of the Authority, as provided for in the Development Contribution Scheme made by Dún Laoghaire-Rathdown County Council on the 14th December, 2015. These rates of contribution shall be updated effective from 1 January each year during the life of the Scheme in accordance with the SCSi Tender Price Index (See Article 12 of the Scheme) commencing from 1st January, 2018. Contributions shall be payable at the index adjusted rate pertaining to the year in which implementation of the planning permission is commenced, as provided for in Note 1 to the Table at Article 9 of the Scheme. Outstanding balances may be subject to interest charges.

**Reason:** It is considered reasonable that the payment of a contribution be required in respect of the provision of the Roads Public Infrastructure and Facilities benefiting development in the area of the Planning Authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.

10. The Developer shall, prior to commencement or as otherwise agreed in writing with the Planning Authority, pay the sum of €963.88 to the Planning Authority as a contribution towards expenditure that was/or is proposed to be incurred by the Planning Authority in respect of the provision of the Community & Parks Public Infrastructure, Facilities and Amenities benefiting development in the area of the Authority, as provided for in the Development Contribution Scheme made by Dún Laoghaire-Rathdown County Council on the 14th December, 2015. These rates of contribution shall be updated effective from 1 January each year during the life of the Scheme in accordance with the SCSi Tender Price Index (See Article 12 of the Scheme) commencing from 1st January, 2018. Contributions shall be payable at the index adjusted rate pertaining to the year in which implementation of the

planning permission is commenced, as provided for in Note 1 to the Table at Article 9 of the Scheme. Outstanding balances may be subject to interest charges.

**Reason:** It is considered reasonable that the payment of a contribution be required in respect of the provision of the Community & Parks Public Infrastructure, Facilities and Amenities benefiting development in the area of the Planning Authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.

### **Reasons and Considerations (2):**

The Board considered that in calculating the amounts to be paid with respect to public infrastructure and facilities benefiting development in the area of the planning authority, the relevant terms of the Dún Laoghaire-Rathdown County Council Development Contribution Scheme, 2016-2020, as adopted, had been properly applied in respect of condition numbers 8, 9 and 10.

and to **AMEND** Condition No. 5 for the reasons and considerations set out hereunder:

5. The existing dwelling and extension shall be jointly occupied as a single residential unit and the extension shall not be sold, let or otherwise transferred or conveyed, save as part of the dwelling. The extension shall not be used for commercial purposes.

**Reason:** To protect the amenities of property in the vicinity and in the interests of clarity.

### **Reasons and Considerations (3):**

It is considered that the amendment of condition number 5 is necessary for the purposes of clarity and in the interests of residential amenity.

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Robert Speer  
Planning Inspector

14<sup>th</sup> December, 2021

