



An  
Bord  
Pleanála

## Inspector's Report ABP-311480-21

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<b>Development</b>	Retention of garden room accommodation for family use only in rear garden.
<b>Location</b>	43 Whitebarn Road, Churchtown, Dublin, D14 RX97.
<b>Planning Authority</b>	Dún Laoghaire Rathdown County Council
<b>Planning Authority Reg. Ref.</b>	D20B/0421
<b>Applicant(s)</b>	Sandra Velthuis & Trevor Hodkinson
<b>Type of Application</b>	Permission for Retention
<b>Planning Authority Decision</b>	Refusal
<b>Type of Appeal</b>	First Party v. Decision
<b>Appellant(s)</b>	Sandra Velthuis & Trevor Hodkinson
<b>Observer(s)</b>	Lillian Lawlor Boothman & Séan Boothman
<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 to the rear of No. 43 Whitebarn Road, Churchtown, Dublin 14, in an established residential area predominantly characterised by a combination of conventional two-storey, semi-detached and terraced housing with front & rear garden areas and off-street car parking. It is broadly rectangular in shape and occupied by a two-storey, mid-terrace dwelling house with a freestanding, single-storey 'garden room' within the rear garden area. The site is bounded by the public road to the northeast and by neighbouring housing to the northwest and southeast while a narrow laneway extending from Nugent Road to the south provides pedestrian access to the rear.

## 2.0 Proposed Development

- 2.1. The proposed development consists of the retention of a freestanding, single storey 'garden room' in the rear garden area of the mid-terrace property occupied by No. 43 Whitebarn Road. It is based on a simple rectangular plan with a mono-pitched roof construction and has a stated floor area of 20.95m<sup>2</sup> with an overall height of 2.82m. External finishes include dark-stained timber cladding. The structure is described as comprising 'accommodation for family use only' and includes a combined bedroom / living area, a bathroom, and a small kitchenette / cooking area.
- 2.2. The proposal will connect to the public mains foul sewer via an existing manhole on site while surface water runoff from the structure will be drained to a new water butt with overflow to an adjacent 'raingarden'.
- 2.3. In response to a request for further information, revised public notices were submitted which amended the description of the development to 'residential garden room accommodation'. It was further stated that the structure would only be used by the applicants' family (for a variety of purposes such as sleeping accommodation, storage space, leisure, home working, and for studying etc.) and that its primary use was currently as semi-independent accommodation occupied by the applicants' eldest son.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. Following the receipt of a response to a request for further information, on 1<sup>st</sup> September, 2021 the Planning Authority issued a notification of a decision to refuse permission for the retention of the proposed development for the following single reason:

- The proposed development to be retained is functioning as a family member / granny flat extension and fails to meet the criteria contained in section 8.2.3.4 (iii) of the Dún Laoghaire Rathdown County Development Plan 2016 – 2022, as the proposed development is not interlinked with the primary dwelling nor is it capable of being subsumed back into same. In addition, no valid justification for the proposal in use terms has been made. The proposed development therefore contravenes section 8.2.3.4 (iii) of the Dún Laoghaire Rathdown County Development Plan 2016 – 2022 and is contrary to the proper planning and sustainable development of the area.

### 3.2. Planning Authority Reports

#### 3.2.1. *Planning Reports*

An initial report notes that while the proposed 'garden room accommodation' is identified for 'family use only', it includes a combined bedroom / living area, bathroom, and a kitchenette and would therefore appear to be used for residential purposes. It was subsequently indicated that the Planning Authority would have serious concerns if the development were to be retained as residential accommodation (noting the potentially negative impact on the residential amenity of neighbouring property). It was then recommended that the applicants provide clarity as to the nature and extent of the proposal and to amend the development description and public notices accordingly.

Following the receipt of a response to a request for further information which indicated that the primary use of the garden room was as semi-independent accommodation for use by a family member (i.e. the applicants' son), a subsequent report concluded that the development was being used as a 'family member / granny

flat' extension which failed to accord with the requirements of Section 8.2.3.4(iii) of the Development Plan in terms of design and the lack of a valid justification. It was therefore recommended that permission be refused for the reason stated.

### 3.2.2. *Other Technical Reports*

*Municipal Services Dept., Drainage Planning:* An initial report recommended that further information be sought in relation to the foul and surface water drainage arrangements serving the development. Following the receipt of a response to a request for further information, a subsequent report indicated that there was no objection to the proposal, subject to conditions.

### 3.3. **Prescribed Bodies:**

None.

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

3.4.1. A total of 2 No. submissions were received from interested third parties and the principal grounds of objection / areas of concern raised therein can be summarised as follows:

- The overall size (floor area) of the development and the amount of private open space remaining to serve the dwelling house.
- The need / justification for the accommodation type proposed as opposed to a conventional house extension.
- Detrimental impact on the residential amenity of neighbouring properties as a result of late-night noise and general disturbance arising from the use / occupancy of the development.
- Undesirable precedent for similar development in the area.
- The development has been purposively constructed to provide for independent rental / living accommodation or commercial use.
- The failure to obtain planning permission and the unauthorised nature of the development.
- Concerns as regards the capacity of the foul sewerage network to accommodate the additional loadings consequent on the development.

- The need to maintain the adjacent laneway free from obstruction.

## 4.0 Planning History

### 4.1. On Site:

- 4.1.1. PA Ref. No. D18A/0523. Was granted on 30<sup>th</sup> August, 2018 permitting Sandra Velthuis & Trevor Hodkinson permission for the creation of a 3m x 6m car parking space with permeable paving, involving the dropping of the roadside kerb, removal of a section of the front wall and one pier, and the building of a new pier to match the existing.

## 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:*

*(iii) 'Family Member/Granny' Flat Extension*

A 'Family' or 'Granny' flat refers to a temporary subdivision of a single dwelling - often by adding an extension to the dwelling or converting an attached garage - for a subsidiary element, for use by a member of the immediate family (e.g. elderly parent) but not as a fully independent dwelling. These will be assessed against the criteria applied to 'normal' domestic extensions. The Planning Authority will generally consider such sub-division and/or extension favourably subject to ensuring no negative impacts on the integrity of the primary dwelling. Applications for granny / family flats within the rural area will be assessed under the provisions of Section 8.2.3.6(vi).

Proposals should be:

- Interlinked with the primary dwelling and capable of being readily subsumed back into same.
- Such that the Planning Authority is satisfied that there is a valid justification for the proposal in use terms.

Permission will normally be on condition that:

- The flat can be subsumed back into the main dwelling when it is no longer required.
- It shall not be let or sold, other than as an intrinsic part of the overall property.
- Where the owner wishes it to remain subdivided on a permanent basis, an application shall be made for sub-division which will be assessed on the more demanding criteria as would be applied to a separate dwelling house.

*(iv) Detached Habitable Room:*

This can provide useful ancillary accommodation such as a playroom, gym or study for the main residence. It should be modest in floor area and scale, relative to the main house and remaining rear garden area. The applicant will be required to demonstrate that neither the design nor the use of the proposed structure will detract from the residential amenity of adjoining property or the main house.

Any such structure shall not be to provide residential accommodation for a family member / granny flat.

## **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 Grand Canal Proposed Natural Heritage Area (Site Code: 002104), approximately 3.9km north of the site.
- The Dodder Valley Proposed Natural Heritage Area (Site Code: 000991), approximately 4.5km west of the site.

- The Booterstown Marsh Proposed Natural Heritage Area (Site Code: 001205), approximately 4.7km northeast of the site.
- The South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code: 004024), approximately 4.7km northeast of the site.
- The South Dublin Bay Proposed Natural Heritage Area (Site Code: 000210), approximately 4.8km northeast of the site.
- The South Dublin Bay Special Area of Conservation (Site Code: 000210), approximately 4.8km northeast of the site.

### 5.3. EIA Screening

- 5.3.1. Having regard to the minor nature and scale of the development under consideration, the site location in an established built-up area outside of any protected site, 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 garden room is for private family use only and is required to satisfy the accommodation needs of the applicants' wider family given the modest size of the existing dwelling house and the increased need to facilitate working / studying from home in response to the COVID-19 pandemic.
- The applicants' eldest son attends college and lives at home through his occupation of the garden room. Ideally, he would be studying elsewhere and living independently, however, due to the well-publicised housing crisis, including a lack of student accommodation, this was simply not an option. The garden room provides an acceptable compromise in that he can live semi-

independently while still making use of the facilities / services available in the main house. In addition, the room is occasionally used by the wider family for additional storage, showering etc.

- The use of the garden room is expected to evolve over time (albeit for purposes incidental to the main dwelling) in that it may be used as accommodation for the applicants' younger son or as a home office while it could also revert to a storage / hobby space. There is no intention to rent out the structure on either a permanent basis or as a holiday let.
- Support can be found for the retention of the garden room as ancillary accommodation by reference to the wider housing and sustainability provisions of the current Dún Laoghaire Rathdown County Development Plan, 2016-2022.
- The Draft Dún Laoghaire Rathdown County Development Plan, 2022-2028 renews the commitment to increased densification, mews living, lifetime adaptable and / or multi-generational homes, and addresses the need for student accommodation.
- For comparison purposes, it is of relevance to note that the development plans of neighbouring local authorities include various policy provisions in support of '*semi-independent accommodation for an immediate family member*' or the provision of a '*family / granny flat extension*' etc.
- There are multiple examples of similar 'garden rooms' / structures within the Dún Laoghaire Rathdown area which are being used as regular or occasional sleeping quarters for family members or are otherwise in operation as commercial endeavours.
- There are numerous instances of permission having been granted in the Dún Laoghaire Rathdown area for similar structures with no restriction on their use as sleeping quarters e.g. PA Ref. Nos. D03A/0919, D10A/0024, D12A/0168 & D12B/0216. In addition, various mews dwellings have been permitted in the immediate locality e.g. PA Ref. Nos. D05A/0915, D07A/0955 & D18A/0557.
- In response to the third-party objections to the proposal:



- The floor area of the construction and the private open space provision adhere to the requirements of the exempted development regulations.
  - There is a wide variety of construction of varying quality to the rear of housing in the area which includes extensions, garden rooms, sheds and garages.
  - No activities such as karaoke or music video recording have ever taken place on site and no evidence has been provided to the contrary. The applicants are highly respectful of their neighbours, particularly as regards noise levels.
  - Any party undertaking development is subject to planning law.
  - The applicants have no intention of selling / disposing of their property.
  - The observers' claims as regards sound / noise levels are irrelevant in light of the lack of night-time / early morning noise from the site.
  - It is not proposed to rent out the structure for commercial gain / use.
  - The applicants have followed the instructions of the Planning Authority since receiving the original warning letter.
  - There are no problems with wastewater disposal at the site and it is the applicants' understanding that no such difficulties have been experienced by the neighbouring property owners at No. 41 Whitebarn Road. In addition, the drainage plans provided with the application were considered acceptable by the Planning Authority.
  - No changes have been made to the use of the rear laneway and the proposal in no way impedes pedestrian or vehicular access by other residents.
  - The Planning Authority will be responsible for ensuring compliance with any grant of permission.
- A significant proportion of local residents is supportive of the proposed development.

## 6.2. Planning Authority Response

- States 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.

## 6.3. Observations

### 6.3.1. *Lillian Lawlor Boothman & Séan Boothman:*

- The floor area of the structure is excessive.
- Concerns as regards the adequacy / suitability of the private open space arrangement between the 'garden room' and the existing dwelling house.
- The structure was in use as accommodation for the applicants' son prior to the decision to refuse planning permission.
- Late-night / early-morning activities and access to the development via the rear laneway results in the disturbance of neighbouring residents.
- It is unclear if the structure satisfies the minimum health and safety standards as regards use as residential accommodation.
- Previous experience has shown that the 'garden room' is being used as overnight accommodation for persons who are not members of the applicants' family.
- Light overspill from the proposed development detracts from the residential amenity of neighbouring property.
- In the event the 'garden room' is used as residential accommodation it should be subject to local property tax and have separate utility bills.
- There have been previous incidences of anti-social behaviour (including several fires) within the laneway accessing the site.
- There are concerns as regards the adequacy of the local sewerage system to accommodate the additional loadings consequent on the proposed development.

- The overall standard of the construction is more suited to use as a games room etc. than residential accommodation.
- The devaluation of neighbouring property.

#### 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 policy provisions, I conclude that the key issues raised by the appeal are:

- The principle and nature of the proposed development
- Appropriate assessment

These are assessed as follows:

#### 7.2. The Principle and Nature of the Proposed Development:

- 7.2.1. From a review of the available information, it is apparent that the pertinent issue in the assessment of the subject appeal is the nature and use of the structure proposed for retention. In this respect, the applicants have openly confirmed that the 'garden room' in question is occupied by their eldest son as a form of self-contained, living accommodation which affords him a semi-independent habitable space while also allowing him to make use of the facilities / services available in the main house. In support of the proposal, the applicants have sought to stress the familial needs / pressures already placed on the limited living arrangements available within their existing dwelling house and that the proposed development represents a pragmatic solution to these demands given the well-publicised housing crisis and a lack of student accommodation. In essence, it has been submitted that the 'garden room' functions as semi-independent living accommodation in an ancillary capacity to the main residence and that parallels may be drawn between this usage and that of more conventional a 'family / granny flat'.
- 7.2.2. Having considered the submitted plans and particulars, and following a site inspection during which it was confirmed that the freestanding 'garden room'

accommodation encompasses a combined bedroom / living area, a bathroom, and a small kitchenette / cooking area, it is my opinion that while the structure may be reliant on shared services (e.g. electricity, water & sewerage etc.) and is accessible through the curtilage of the main dwelling house, it is nevertheless intended to function as a self-contained independent living unit (with the option of separate access via the rear laneway) and thus is distinct from what would normally be considered to involve the extension of a dwelling house or the provision of a 'family member / granny flat' pursuant to Section 8.2.3.4(iii) of the current Development Plan for the area.

- 7.2.3. Section 8.2.3.4: '*Additional Accommodation in Existing Built-up Areas: (iii) 'Family Member/Granny' Flat Extension*' states that a 'family' or 'granny' flat should form 'a subsidiary element' to the main residence 'for use by a member of the immediate family (e.g. an elderly parent)' (but not as a fully independent dwelling). It is of further relevance to note that it is a specific requirement of the Development Plan that the Planning Authority be satisfied that there is a valid justification for any such proposal in use terms.
- 7.2.4. Given the overall design, configuration and free-standing nature of the construction, its stated primary use / occupancy as habitable accommodation, and noting the ability to access the structure independent of the main dwelling via the rear laneway, in my opinion, the usage of the development proposed for retention is more akin to an independent living unit / dwelling as opposed to subsidiary accommodation ancillary to the principal residence. Moreover, its design does not accord with the specific requirements of Section 8.2.3.4(iii) of the Development Plan that it be interlinked with the main house and capable of being readily subsumed back into same. It is of further relevance to note that its current usage would not be permissible under of Section 8.2.3.4(iv): '*Detached Habitable Room*' of the Plan which prohibits any such structure from use as residential accommodation i.e. a family member / granny flat.
- 7.2.5. Therefore, in light of the foregoing, I would concur with the assessment by the Planning Authority that while the 'garden room accommodation' proposed for retention is intended to function as a 'family member / granny flat', it fails to satisfy the requirements of Section 8.2.3.4: '*Additional Accommodation in Existing Built-up Areas: (iii) 'Family Member/Granny' Flat Extension*' of the Development Plan in that

the construction is not interlinked with the main residence nor is it capable of being subsumed back into same. By extension, the overall nature, design and layout of the construction would lend itself to use as a separate dwelling unit as opposed to ancillary accommodation contrary to the provisions of the Development Plan.

- 7.2.6. In relation to the need to establish 'a valid justification' for the proposal in use terms, the applicants have set out a reasonable rationale of their need for additional living space / accommodation and have been open in identifying the occupant of the 'garden room' and his (familial) relationship with the applicants as the owners / occupiers of the principal residence. However, I am inclined to suggest that the explanation for not extending the existing dwelling in a more conventional manner is somewhat lacking.

### 7.3. **Appropriate Assessment:**

- 7.3.1. Having regard to the minor nature and scale of the development under consideration, the site location within 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 foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission for the retention of the proposed development be refused for the reasons and considerations set out below:

## 9.0 **Reasons and Considerations**

1. Having regard to the design, layout and use of the development to be retained, and the lack of integration with the existing dwelling house, it is considered that the proposed development would constitute a sub-standard from of residential development, which would not be interlinked with the primary dwelling or capable of being subsumed back into main residence, and would operate in effect as a separate independent unit at this location,

contrary to the provisions of the Dún Laoghaire Rathdown County Development Plan, 2016 - 2022 in relation to ancillary family accommodation as set out in Section 8.2.3.4: 'Additional Accommodation in Existing Built-up Areas: (iii) 'Family Member/Granny' Flat Extension'. The development proposed for retention would therefore set an undesirable precedent for other similar forms of development and would be contrary to the proper planning and sustainable development of the area.

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Robert Speer  
Planning Inspector

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