



An
Bord
Pleanála

Inspector's Report

ABP-311571-21

Development	Retention of a single storey garden structure
Location	12 Seapark Road, Clontarf, Dublin 3, D03 HN73
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	WEB1798/21
Applicant(s)	John Giles
Type of Application	Retention
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Anne O'Brien & Enda McKay
Observer(s)	None
Date of Site Inspection	6 th January 2022
Inspector	Alaine Clarke

1.0 Site Location and Description

- 1.1. The subject site is located on the eastern side of Seapark Road, a mature residential street in the north Dublin suburb of Clontarf. The street is characterised by large semi-detached dwellings on generous plots, many of which have been extended to the side and rear.
- 1.2. The subject site, 'Wylan', no. 12 Seapark Road, comprises a two-storey semi-detached dwelling on an overall site area of 615.7sq.m. The site extends a distance of c.34m (from the rear elevation of the dwelling) and the single storey garden structure, the subject of this appeal, is located along the eastern site boundary.
- 1.3. There is a mature hedgerow for the most part along the northern boundary, although a new timber fence is erected at the location of the garden room. There is a timber fence along the extent of the southern boundary.
- 1.4. There is a single storey garage abutting the appeal site to the east, belonging to No. 18 Dollymount Grove. The structure to be retained is indicated to be c.2.5m from the side elevation of No. 18 Dollymount Grove and c.8m from the side elevation of No. 18B Dollymount Grove.
- 1.5. A laneway abuts the south-eastern corner of the subject structure and continues in southerly and easterly directions.

2.0 Development to be Retained

- 2.1. The development to be retained comprises:
 - Retention permission is sought for a single storey garden structure containing a family room, toilet and tool shed, to the rear garden. There is a chimney on the apex of the roof adjoining the eastern boundary.
 - The structure is c.4.5m in height and has a stated area of 33.7sq.m. There are grey tiles on the roof, and the structure is generally externally clad in timber to the north and west. The external east elevation which abuts No. 18 Dollymount Grove is plastered in smooth render.
 - The structure to be retained is part A-frame and part flat roof and includes a projecting canopy above a tiled external seating and cooking area.

- The structure is served with a saniflo foul water pumping system and is connected to an existing foul water main on the site.

3.0 Planning Authority Decision

3.1. Decision

On the 20th September 2021 Dublin City Council issued a notification of decision to GRANT retention permission subject to 4 no. conditions. Conditions no. 2 and 3 are as follows:

2. *The developer shall comply with the requirements set out in the Codes of Practice from the Drainage Division, the Transportation Planning Division and the Noise & Air Pollution Section.*

Reason: To ensure a satisfactory standard of development.

3. *The proposed garden room the subject of this permission shall adhere to the following:*

a) *The structure shall not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses or for any use other than as a use incidental to the enjoyment of the dwelling house as such, unless authorised by a prior grant of planning permission.*

b) *The structure shall not be divided or subdivided from the existing house by means of sales, lease or otherwise without a prior grant of planning permission.*

c) *There shall be no access from the subject site to the rear laneway without a prior grant of planning permission whether or not it would be exempted development.*

Reason: In the interests of residential amenity.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Officer notes the location of the site, the relevant development plan policy, the zoning of the site and the observation received. The report notes that the development should have no adverse impact on the scale and character of the existing dwelling and have no unacceptable effect on the amenities

enjoyed by the occupants of adjacent buildings. The report notes that the burning of fossil fuels comes under a different legal code. The report notes that the proposed development does not involve any access to the adjoining laneway. The Planning Officer recommends a grant subject to conditions.

3.2.2. Drainage Division Report

The Drainage Division has no objection to the development, subject to specified standard conditions relating to drainage.

3.3. Prescribed Bodies

A referral was made to Irish Water – no report returned.

3.4. Third Party Observations

Two third party observations were received by Dublin County Council.

- Anne O'Brien and Enda McKay (of No. 18 Dollymount Grove) raised the following issues:
 - The chimney is a health hazard and should be removed,
 - The adjusted height of the chimney on 22nd July does not address concerns,
 - the structure could be used as a dwelling,
 - proximity of toilet to another house may have health implications,
 - exit to the public lane following construction should be permanently closed.
- O Laighin (of No. 20 Dollymount Grove) raised the following issue:
 - proximity of chimney to neighbouring houses poses a serious health risk related to smoke from burning solid fuel, particularly so due to prevailing winds, which could cause an increase in respiratory and ventilation problems.

4.0 Planning History

4.1. Appeal Site

- Dublin City Council (DCC) Reg. Ref. 5527/07: permission granted for alterations to previously approved reg. ref. 3327/07 comprising omission of condition no. 5 and reinstatement of width of previously proposed first floor extension to front/side.
- DCC Reg. Ref. 3327/07: permission granted for the construction of a pitched roof extension to first floor over existing garage to front/side elevation and new roof lights to front/side of existing roof and a single storey pitched roof extension to rear of existing house.

4.2. Adjoining site: 18A Dollymount Grove

- DCC Reg. Ref. 1697/02: planning permission granted for alterations to existing entrance to provide new vehicular entrance to existing dwelling and construction of a new 2 storey 3 bed dwelling with garden, vehicular entrance and car parking facility at the front and garden of 18A Dollymount Grove.

5.0 Policy Context

5.1. Dublin City Development Plan 2016-2022

5.1.1. The Dublin City Development Plan 2016-2022 is the relevant development plan for the area. The site is located within Zoning Objective Z1, 'to protect, provide and improve residential amenities'.

5.1.2. There is no specific policy contained in the plan relating to the form of development proposed, namely garden rooms.

5.1.3. Section 16.10.12 of the Plan relating to Extensions and Alterations to Dwellings and states that:

The design of residential extensions should have regard to the amenities of adjoining properties and in particular the need for light and privacy. In addition, the form of the existing building should be followed as closely as possible, and the development

should integrate with the existing building through the use of similar finishes and windows. Extensions should be subordinate in terms of scale to the main unit. Applications for planning permission to extend dwellings will only be granted where the planning authority is satisfied that the proposal will:

- *Not have an adverse impact on the scale and character of the dwelling*
- *Not adversely affect amenities enjoyed by the occupants of adjacent buildings in terms of privacy, access to daylight and sunlight.*

5.1.4. Appendix 17 of the Plan also relates to residential extensions. Relevant excerpts include:

- *It is important to make sure that any extension does not unacceptably affect the amenities of neighbouring properties. This includes privacy, outlook, daylight, and sunlight.*
- *Extensions should not result in any significant loss of privacy to the residents of adjoining properties.*
- *Extensions should be designed so as not to dominate or appear overbearing when viewed from adjoining properties.*
- *Consideration should be given to the proportion of extensions, height and design of roofs as well as taking account of the position of windows including rooms they serve to adjacent or adjoining dwellings.*

5.2. Natural Heritage Designations

The site is located c. 600m west of the following designated sites:

- North Dublin Bay proposed Natural Heritage Area (pNHA) (site code 000206)
- North Bull Island Special Protection Area (SPA) (site code 004006)
- North Dublin Bay Special Area of Conservation (SAC) (site code 000206).

The site is located c. 3.8km north east of the Royal Canal pNHA (site code: 002103).

5.3. EIA

A pre-screening exercise has been carried out. The proposed development is not of a class (Schedule 5, Part 1 or 2 of the Planning and Development Regulations, 2001 (as amended)). No EIAR is required.

6.0 The Appeal

6.1. Grounds of Appeal

A third party appeal has been lodged by Anne O'Brien and Enda McKay, 18 Dollymount Grove, Clontarf, Dublin 3. The grounds of appeal can be summarised as follows:

- request clarity as to whether the developer has complied with the relevant noise and air codes of practice, includes reference to good practice guide,
- object to the retention of the chimney due to impact of smoke on their residential amenity within their own home; the air quality within their house becomes badly affected,
- an adjustment to the height of the chimney after initial construction has not improved the situation,
- a chimney should not discharge to a prohibited zone, Building Regulations, Part J refers.
- State that they oppose the chimney only.

6.2. Applicant Response

The applicant's response to the grounds of appeal can be summarised as follows:

- refers to the Building Regulations and includes several drawings relating to the chimney submitting compliance with the Regulations as currently constructed,
- having regard to concerns raised the applicant states that he is willing to raise the chimney by 1.15m to have smoke discharge at a higher point; revised drawings are included illustrating proposed alteration to the chimney.

6.3. Planning Authority Response

A response was received from Dublin City Council advising that observations of the Planning Officer on the grounds of the appeal have been sought and would be

forwarded. No further response has been received from Dublin City Council in respect of the appeal.

6.4. Observations

No observations were received in respect of the appeal.

6.5. Further Responses

A further response was received from the appellants and is summarised as follows:

- The proposal to raise the chimney by 1.15m would be an improvement.
- The health hazard from the chimney remains.

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including the appeal, and having inspected the site, and having regard to the relevant local policy and guidance, I consider the main issues in relation to this appeal are as follows:

- Principle of the development,
- Design, scale and visual impact,
- Impact on residential amenity: smoke from chimney
- Other issues,
- Appropriate Assessment

7.2. Principle of Development

7.2.1. The appeal site is located on a site that is zoned Objective Z1 under the provisions of the Dublin City Development Plan, 2016-2022 with the stated objective 'to protect, provide and improve residential amenities'. A garden room is therefore considered to be acceptable in principle and consistent with the residential zoning of the site, subject to it not having an unacceptable impact on the residential amenities of surrounding properties.

- 7.2.2. I consider that the rear garden of 12 Seapark Road is sufficiently large to accommodate the structure. There is a separation distance of c.28m between the rear elevation wall of the house and the front elevation of the garden room, thus ensuring an adequate amount of private open space (c. 290 sq.m) remains.
- 7.2.3. I note the fact that the structure contains a chimney, which while unusual in a garden room is not at odds with the use of the structure as a garden room. The structure would be sub-standard as a separate dwelling unit and does not have a separate street entrance with a necessity to pass through the existing dwelling to access the structure. In the event of a grant of permission a condition I consider that it would be appropriate to restrict the use of the structure to be used for purposes ancillary to enjoyment of the existing dwelling house and that it shall not be used as, sold, leased or rented as a residential unit independent of the main dwelling house on site.

7.3. Design, Scale and Visual Impact

- 7.3.1. The structure for retention has a floor area of 33.7 sq.m. and ridge height 4.5m. The structure is single-storey and is located to the rear of the existing dwelling along the eastern boundary. One window addresses the northern boundary and is located a sufficient distance (c.4m) from the well-screened northern boundary such that no overlooking issues would arise. Remaining windows face west towards the existing house. I do not, therefore, have any concerns regarding over-looking or loss of privacy. I am satisfied that the overall scale and visual impact of the structure is satisfactory in the context of the site's location and would not have a negative impact on the visual amenity or character of the area.
- 7.3.2. The applicant's response to appeal includes amended drawings for the Board's consideration. Turning to these amended drawings, the applicant proposes to increase the height of the chimney by 1.15m. I consider that the visual impact of this increased height is marginal and would be most pronounced for the appellants, their house being located closest to the chimney/garden room. I consider, however, that the visual impact of the garden room is generally acceptable from a visual perspective from the appellant's property having regard to the fact that the garden room adjoins an existing garage in the appellants property and the garden room roof reads as an extension to the garage. I further consider that the chimney, as presently

constructed, or with an increased height of 1.15m would not be overly dominant or of such a scale, that it would have an undue visual impact on the residential amenities of the occupants of No. 18 Dollymount Grove or other residences which are further removed from the structure.

7.3.3. With respect to neighbouring residential amenity and with the exception of smoke egress into the appellants' dwelling, which is addressed at section 7.4, I note section 16.10.12 and Appendix 17 of the development plan seeks to ensure that extensions do not unduly affect the amenities of neighbouring properties, which includes privacy, outlook, daylight and sunlight. I am satisfied having regard to the single storey nature of the garden room, associated windows which do not cause overlooking, it's overall height, scale and use would not unduly affect the amenities of neighbouring properties.

7.3.4. In conclusion, having regard to the design and scale of the garden room and its location adjoining an existing garage, I consider that the garden room is acceptable and would not have an impact on the visual amenities of the area. I further consider that an increased height of the chimney, as proposed by the applicant in amended drawings, would not have a negative visual impact on adjoining residential properties.

7.4. Impact on Residential Amenity: Smoke from Chimney

7.4.1. A fundamental concern of the appellants relates to smoke egress from the chimney into their dwelling. As stated, the chimney is located abutting the appellants' party boundary; presently the stack measures 600mm from which a flue extends giving an overall height of 900mm. I note that the applicant's response to appeal includes detailed drawings demonstrating compliance with the relevant Building Regulations, Part J, 'Heat Producing Appliances'.

7.4.2. While the issue of compliance with the Building Regulations is matter for evaluation under a separate legal code, I am mindful that smoke egress into a dwelling can impact on residential amenity of that property. Based on the observations and appeal documentation I accept that the appellants experience smoke egress into their dwelling. I note however, that notwithstanding the findings of the assessment undertaken by the applicant's architect demonstrating compliance with the Part J,

Building Regulations, the applicant proposes to increase the height of the chimney by 1.15m. I further note the response of the appellants to the amended drawings and their acknowledgment that the increase of height of the chimney would improve the situation.

- 7.4.3. Having regard to the first party response to the appeal and associated drawings demonstrating compliance with the relevant Building Regulations and the applicant's proposal to increase the height of the chimney, which in my opinion would improve the situation, on balance I consider that the proposed increase to the chimney is acceptable and warranted in this instance.
- 7.4.4. The appellants raise a further concern that smoke from the chimney is a health hazard to those using the adjoining lane located to immediate east of the structure to be retained. The laneway connects Dollymount Grove with Seapark Road. I am satisfied having regard to the scale of the laneway, being narrow and short, that its use is transitory and limited in nature. I do not consider that smoke from the chimney, which would also be limited, insofar as the fire is unlikely to burn continually, would have a significant impact on the amenity of the laneway or those using same.
- 7.4.5. In conclusion, I am of the opinion that the development to be retained, subject to an increase in height of the chimney of 1.15m, would not impact the residential amenities of the area and is acceptable having regard to the height, scale and use of the overall structure to be retained.

7.5. **Other Issues**

- 7.5.1. Codes of Practice - I note the reference in the appeal to compliance with Codes of Practice from the Noise and Air Pollution Section, condition no.2 of the DCC decision refers, and am of the opinion that the issue of compliance with Building Regulations is evaluated under a separate legal code and thus need not concern the Board for the purposes of this appeal.
- 7.5.2. Development Contributions – I note that no financial contribution condition was attached by the planning authority. I refer to the Dublin City Council Development Contribution Scheme 2020-2023. Section 13 states that no reductions in whole or in part shall apply to permissions for retention of development. It is therefore

recommended that should the Board be minded to grant permission that a suitably worded condition be attached requiring the payment of a Section 48 Development Contribution in accordance with the Planning and Development Act 2000.

7.6. **Appropriate Assessment**

Having regard to the nature and scale of the development, being a garden room to an existing house in a built-up suburban area and having regard to the location of the development c. 600m from the nearest European site, it is concluded that no Appropriate Assessment issues arise as 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**

In light of the above assessment, I recommend that retention permission be granted in accordance with the following conditions for the following reasons and considerations.

9.0 **Reasons and Considerations**

9.1. Having regard to the residential zoning objective for the area and the pattern of development in the area, it is considered that, subject to compliance with conditions below, the development to be retained would not seriously injure the residential and visual amenities of the area or of property in the vicinity. The development to be retained would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 **Conditions**

1.	The development shall be retained and completed in accordance with the plans and particulars lodged with the application, as amended by the
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	<p>further plans and particulars received by An Bord Pleanála on 20th October 2021, 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 existing dwelling and garden room shall be jointly occupied as a single residential unit and the garden room shall not be sold, let or otherwise transferred or conveyed, save as part of the dwelling.</p> <p>Reason: To restrict the use of the garden room in the interests of residential amenity.</p>
3.	<p>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.</p> <p>Reason: In the interest of public health.</p>
4.	<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 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>
5.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid</p>

	<p>prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>
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Alaine Clarke
Planning Inspector

3rd February 2022