



An
Bord
Pleanála

Inspector's Report

ABP-311686-21

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| Development | Extension to front of house and associated site works. |
| Location | 35 Charlestown Green, Meakstown, Dublin 11, D11 Y327 |
| Planning Authority | Fingal County Council |
| Planning Authority Reg. Ref. | FW21B/0130 |
| Applicant(s) | Suzanne Carroll & Austin Carroll |
| Type of Application | Permission |
| Planning Authority Decision | Grant with conditions |
| Type of Appeal | First Party |
| Appellant(s) | Suzanne Carroll & Austin Carroll |
| Observer(s) | None |
| Date of Site Inspection | 26 th of February 2022. |
| Inspector | Adrian Ormsby |

1.0 Site Location and Description

- 1.1. The appeal site is c. 7.km to the north west of Dublin City centre at 35 Charlestown Green, Meakstown, Dublin, 11. The existing house has a stated floor area of 80 sq.m and a stated site area of 0.178 ha. The site is c. 850m to the southeast of junction 5 on the M50 and N2 and c. 300m east of the Charlestown Shopping Centre.
- 1.2. The site is in an established residential area and is a house on the east side of Charlestown Green c. 20m north of the junction with Charlestown Way. The house is two storey with a standard pitch roof. It is located at the northern end of a small terrace block of three houses, all orientated west. The front building line of this terrace is staggered behind a separate block of terraced houses to the immediate north No's 31-34.
- 1.3. The application house is attached to the house to its immediate south No. 36. The boundary to the front of these houses is demarcated with a high level boundary wall that extends a short distance to the front of the house, a narrow strip of unsurfaced land finished with some minor planting and another short stretch of low level wall to the path. There is a vehicular entrance, an area of hardstanding and a lawn area to the front of the house. The site is bound to the public road by a low level wall, save for the entrance.
- 1.4. The block of houses and other houses on this road are finished in brick at ground level and plaster at first floor.

2.0 Proposed Development

- 2.1. The proposed development is for a 10 sq.m ground floor extension to the front of the existing 80 sq.m house.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority decided to grant permission on the 20/09/21, subject to eight conditions, generally of a standard nature. Condition 2 states-

Prior to the commencement of development on site, the developer shall submit for the written agreement of the Planning Authority revised plans and elevations which show the proposed extension projecting no greater than 2m forward of the front building line of the existing house.

REASON: In the interest of the visual and residential amenity of the area.

4.0 Planning Authority Reports

4.1. Planning Reports

The Chief Executives' Order/ Planning Report (20/09/21) reflects the decision of the Planning Authority. The following is noted from the report:

- The principle of increased living space associated with an existing residential house is acceptable in an area subject to the RS zoning objective
- This projection to the front of the property, is considered excessive and will impact unduly in a negative manner upon the visual amenities of the area.
- The projection of 2.98m will appear overbearing on the attached house to the south i.e. no. 36 Charlestown Green.
- The proposed development infringes forward of the building line established by no. 34 by a stated 1.86 metres and will have a negative impact on that property through overshadowing.
- Reducing the forward projection of the proposed extension to a maximum of 2m from the front building line of the house will ameliorate these issues.

4.2. Other Technical Reports

- Transportation- No objection subject to condition
- Water Services- No objection subject to condition

4.3. Prescribed Bodies

- Irish Water- No objection

4.4. Third Party Observations

- None

5.0 Planning History

- None recent

6.0 Policy Context

6.1. Fingal County Development Plan 2017-2023

6.1.1. The site is zoned RS with a stated objective to-

‘Provide for residential development and protect and improve residential amenity’.

6.1.2. The following objectives are also considered relevant-

- Objective PM46- *Encourage sensitively designed extensions to existing dwellings which do not negatively impact on the environment or on adjoining properties or area.*
- Objective DMS42- *Encourage more innovative design approaches for domestic extensions*
- Objective DMS30- *Ensure all new residential units comply with the recommendations of Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice (B.R.209, 2011) and B.S. 8206 Lighting for Buildings, Part 2 2008: Code of Practice for Daylighting or other updated relevant documents.*

6.1.3. Development Management Standards – Chapter 12

- Extensions to Dwellings-

“The need for people to extend and renovate their dwellings is recognised and acknowledged. Extensions will be considered favourably where they do not have a negative impact on adjoining properties or on the nature of the surrounding area.....

The Planning Authority must be satisfied there will be no significant negative impacts on surrounding residential or visual amenities. The following factors will be considered:

- *Overshadowing, overbearing and overlooking, along with proximity, height and length along mutual boundaries.*
- *Remaining rear private open space, and its usability.*
- *External finishes and design, which shall generally match the existing.*

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

.... Though in certain cases a set-back of an extension's front facade and its roof profile and ridge may be sought to protect amenities, integrate into the streetscape and avoid a 'terracing' effect. External finishes shall generally match the existing."

6.2. Ministerial and Other Guidance

6.2.1. Development Management Guidelines for Planning Authorities June, 2007- Section 5.13- Issues relating to title to land

'The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not be entitled solely by reason of a permission to carry out any development.

6.2.2. Other Guidance

- Quality Housing for Sustainable Communities, DoEHLG, 2007.
- BRE209 - Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice'.

6.3. Natural Heritage Designations

- None relevant

7.0 The Appeal

7.1. Grounds of Appeal

A first-party appeal has been lodged against condition no. 2 of the Planning Authority's notification of a decision to grant permission. The grounds of appeal can be summarised as follows-

- The decision notice is flawed by reference to a grant of 10 sq.m yet condition 2 reduces the size to 9.06 sq.m
- Discrepancies in the Chief Executives Order
- No consideration has been given to the fact the applicants have engaged in the planning process and neighbours have not objected.
- Other neighbours in the area have built a porch to the boundary line (see photo). The proposed development will not dominate the road like this one.
- The applicants have submitted a sun study and it is considered there will be little or no overshadowing to No. 34.
- The permitted extension reduced to 2m would provide for 6.576 sq.m of internal space and is not considered adequate to meet the applicant's needs.
- The current build fails all and any standards espoused in the Quality Housing for Sustainable Communities (2007). A number of these are listed.
- The appeal is accompanied by a USB stick which includes-
 - two letters of support from the neighbour to the north No. 36 and from the opposite side of the road No. 4. Both letters detail the poor layout of existing houses.
 - The planning drawings
 - Photographs of an 'obtrusive front development' at Charlestown Park
 - Digital copies of the Development Plan and the Quality Housing for Sustainable Communities (2007).
 - Fingal's Chief Executives Order.

7.2. **Planning Authority Response**

The Planning Authority's response to the grounds of appeal can be summarised as follows-

- The Board is referred to the Chief Executive's Report. There are no further comments and it is respectfully requested that the decision is upheld.
- In the event the appeal is successful, provision should be made in the determination for applying a financial contribution.

7.3. **Observations**

- None

8.0 **Assessment**

8.1. **Introduction**

- 8.1.1. This is a first-party appeal against Condition No. 2. Having regard to the nature and scale of the proposed development and the content of condition no. 2, it is considered that the determination by the Board of the application, as if it had been made to it in the first instance would not be warranted. Therefore, the Board should determine the matters raised in the appeal only, in accordance with Section 139 of the Planning and Development Act 2000, as amended.

8.2. **Legal Entitlement to do the Works**

- 8.2.1. There is an existing shared boundary wall to the front and between No's 35 and 36. Having inspected the site, I observed that this wall hosts essential services for No.36. The application proposes demolishing this wall and building the southern extension wall in its place.
- 8.2.2. Given this is a shared boundary wall, it is considered that a letter of consent from the owner of No. 36 consenting to the application being made should have been submitted with the application as per Article 22 (2) (g) of the Planning and Development Regulations 2001 as (amended).

8.2.3. I have not been able to identify a letter of consent on the file and note the Planning Authority did not seek one through further information. I also note a third party submission from the owner of No. 36 has not been received with the application or in support of the appeal.

8.2.4. In the absence of a letter of consent, I refer to section 5.13 of the Development Management Guidelines 2007 which states-

'The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not be entitled solely by reason of a permission to carry out any development'

8.2.5. A decision to grant permission will not entitle the applicants to carry out the development as proposed. Having considered the decision of the Planning Authority and Section 34 (13) of the Act, I consider it reasonable to determine the appeal. However, the Board may wish to consider if it is precluded from giving further consideration to the appeal as the applicants have not supplied a letter of consent to carry out the proposed works that will clearly burden land they do not own.

8.3. **Condition 2**

8.3.1. The Planning Authority's reason for the proposed amendments as set out in Condition 2 are in the interest of the visual and residential amenity of the area. The CE/Planning Report considers the proposed development projects excessively to the front and will impact unduly on residential amenities in the area through overshadowing and overbearance. Reducing the forward projection of the extension to 2m from the existing front building line is considered to ameliorate these issues.

8.3.2. Chapter 12 of the Development Plan sets out Development Management Standards. In terms of house extensions it requires the Planning Authority to be satisfied that such proposals will have no significant negative impacts on surrounding residential amenities including overbearance and overshadowing.

8.3.2.1. **The Development**

- a) The proposed ground floor extension to the front elevation will be c. 4.48m wide and in keeping with the existing width of the house. On its northern side it will protrude 2.64m from its existing front wall with an additional 0.3m overhanging canopy. The roof of the extension at this side will be mono-pitched falling from a height of 3.65m to c.2.7m. This part of the development will provide for an extended kitchen area.
- b) On the site's southern side, the application proposes demolishing the existing boundary wall that projects from the front elevation between No. 35 and No. 36. The extension will be built in the walls place and will extend 2.98m forward from the front elevation. This side of the extension will provide a new door and entrance hallway and extends slightly further forward (c. 0.38m) than the extended kitchen area. It will also be finished with a gable fronted style pitch roof to the mono-pitch element off the front elevation. This apex of this pitch will be 3.65m high.

8.3.2.2. Overbearance

- a) The existing house is located at the northern end of a terrace of three houses. This row of houses is staggered c.1m behind the row of houses to the north. In this context the proposed extension will protrude past the building line of No. 34 by 1.86m. It will be set back from No.34 by 2m. I do not consider the proposed extension to be overbearing on No. 34.
- b) The extension is to be built on the shared boundary with No. 36. There is an existing high wall protruding between these houses. The proposed extension will be higher and will protrude further than the existing wall. As already discussed, the owner of No. 36 has not made a submission in favour or against the development and a letter of consent for the works on the shared boundary is not on file. The applicant will not be legally entitled to carry out the development as proposed without agreement from the owner of no. 36.
- c) Notwithstanding this, I consider the height and depth of the extension will be visually evident when entering or exiting No. 36. However, I do not consider this be unduly obtrusive or overbearing in the context where consent will be required to build as proposed. If the extension was to be setback entirely

within the property of No. 35 I also would not consider it to be unduly obtrusive or overbearing.

- d) In conclusion, I do not consider the proposed extension to be overbearing on neighbouring property, nor will it detract significantly from the visual amenity and character of the wider area. As regards to visual and residential amenity in this context, Condition 2 is not considered necessary.

8.3.2.3. Overshadowing

- a) Objective DMS30 of the Plan details that all new residential units shall comply with the recommendations of Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice (B.R.209, 2011) and B.S. 8206 Lighting for Buildings, Part 2 2008: Code of Practice for Daylighting or other updated relevant documents. The proposed development is not a 'new residential unit' however the provisions of BRE209 are relevant for considering residential amenity impacts from developments such as that proposed.
- b) The applicants have submitted a 'Sun Study' (Drawing No.A005). This study looks at the shadows cast from the proposed development at 0900hrs, 1200hrs and 1600hrs on the 21/12/21 and 0900hrs, 1200hrs and 1800hrs on the 21/06/21 i.e. the Winter and Summer Solstice. Having considered these I do not consider the impact of shadows cast from the proposed development to be significant.
- c) Notwithstanding the impacts of shadows, it is the loss of diffuse daylight to adjoining properties as a result of the proposed development that has the greater potential to significantly impact on residential amenity.
- d) Having examined the grounds of appeal, BRE209 and the reasoning behind condition 2 it is appropriate to consider the impact of the proposed development on 'diffuse daylight' to the front of No. 34 and 36 Charlestown Green.
- e) Section 2.2 of BRE209 titled 'Existing Buildings' details it is important to safeguard daylight to nearby buildings. The guidelines are clear in that they relate to rooms in adjoining dwellings where daylight is required including

living rooms, kitchens and bedrooms. Windows to circulation areas such as hallways need not be analysed.

f) Section 2.2.14 deals with domestic extensions which adjoin the front or rear of a house and provides a 'quick method' to assess diffuse daylight impacts on the houses next door. Figure 17 and 18 of BRE209 illustrates the application of 'the 45° approach' and if such impacts are likely to be significant. I have applied this methodology to the proposed development, using the drawings submitted and find that-

- The centre of the window to No. 34 lies outside the 45° angle from the roof of the proposed extension on both plan and elevation. I did not consider the door as an assessment is not required to circulation space. I have taken the angle to No. 34 from the closest and highest point (3.65m high) to represent the worst possible case scenario.
- The centre of the window to No. 36 lies inside the angle of 45° from the roof of the proposed extension in plan but outside the 45° angle from the proposed roof in elevation. I did not consider the door as an assessment is not required to circulation space.
- The centre of the window to No. 36 does not lie inside the angle of 45° from the roof of the proposed extension in **both** plan and elevation. As per BRE209 a significant amount of daylight is therefore not likely to be blocked by the proposed development.

g) Having considered the above I am satisfied the proposed development will not have a negative impact on the residential amenity of neighbouring properties in terms of overshadowing and loss of daylight. As regards to residential amenity Condition 2 is not considered necessary.

8.4. **Appropriate Assessment**

8.4.1. Having regard to the minor nature and scale of the proposed development and the distance from the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the proposal would be likely to have a significant effect, individually, or in combination with other plans or projects, on a European site.

9.0 Recommendation

9.1. Having inspected the site and reviewed the drawings and documents on file, I am satisfied that the determination by the Board of this 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, it would be appropriate to use the provisions of Section 139 of the 2000 Act, as amended to –

- **REMOVE** condition number 2 and the reason therefor.

10.0 Reasons and Considerations

Having regard to the nature and scale of the proposed development, the 'RS' zoning objective for the site to '*provide for residential development and protect and improve residential amenity*', the pattern of development in the area and the provisions of the Fingal County Development Plan 2017-2023, it is considered that the proposed development would not seriously injure the residential and visual amenities of the area and would therefore, be in accordance with the proper planning and sustainable development of the area.

Adrian Ormsby

Planning Inspector

28th of February 2022