



An
Bord
Pleanála

Inspector's Report

ABP-311916-21

Development	Single storey extension to front & rear and first floor extension over attached garage to side together with all associated works.
Location	No. 5, Hawthorn Drive, Dublin 16.
Planning Authority	Dun Laoghaire Rathdown County Council.
Planning Authority Reg. Ref.	D21B/0453.
Applicant(s)	Emmet & Gillian O'Grady.
Type of Application	Planning Permission.
Planning Authority Decision	Split Decision.
Type of Appeal	First Party.
Appellant(s)	Emmet & Gillian O'Grady.
Observer(s)	Dermot Kelly.
Date of Site Inspection	14 th day of January, 2022 & the 21 st day of January, 2022.
Inspector	Patricia-Marie Young.

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1.0 Site Location and Description

1.1. No. 5 Hawthorn Drive, the appeal site has a given site area of 0.034ha, c34m to its junction with Acorn Road and c222m to the west of Ballinteer Road, as the bird would fly, in south western suburbs of Dublin city. The site comprises of a 2-storey semi-detached house with a converted into habitable accommodation adjoining single storey side garage with single storey gable fronted rear extension and single storey rear sunroom which together expands the width of the original side and rear elevation. This property forms part of a group of semi-detached properties that front onto a public open space on the side of the road that since their completion been subject to varying alterations and additions. The surrounding area has a mature residential character.

2.0 Proposed Development

2.1. Planning permission is sought for:

- Construction of a single storey extension to the front (west) and rear (east).
- Construction of a first-floor extension over converted garage to the side (south).
- Together with all associated site works.

According to the Planning Application the total gross floor space of the proposed works is 52m².

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On the 15th day of October, 2021, the Planning Authority decided with a SPLIT DECISION which granted planning permission for the construction of the single storey extension to the front and rear for the following stated reasons and considerations:

“Having regard to the Objective A zoning of the site, and policies and objectives as set out in the 2016-2022 Dún Laoghaire-Rathdown County Development Plan, it is considered that the development would not detract significantly from the amenities of the area and is therefore considered to be in accordance with the proper planning and sustainable development of the area”.

This was subject to six mainly standard conditions including:

Condition No. 2: The subject premises shall be used as a single dwelling unit.

Condition No. 4: Sets out the requirements for the velux roof lights.

Condition No. 5 & 6: Sets out requirements for surface water runoff/drainage.

And which **refused** planning permission for the first-floor extension over the converted garage over the existing converted garage to the site for the following single stated reason:

“The proposed development would create an undesired terracing effect, which would be contrary to the provisions of Section 8.2.3.4 (i) of the Dún Laoghaire-Rathdown County Development Plan 2016-2022. The proposed development would cause a negative impact on the streetscape and would detrimentally impact on the character of the area in terms of visual amenity. The proposed development would set an undesirable precedent.”

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planner’s report recommended a **split decision** as per the manager’s order set out under Section 3.1 above.

3.3. Other Technical Reports

3.3.1. **Drainage:** No objection, subject to safeguards.

3.4. Prescribed Bodies

3.4.1. None.

3.5. Third Party Observations

3.5.1. The observer in this appeal case submitted a Third-Party Observation during the course of the Planning Authority’s determination of this application. I consider that the substantive issues contained therein are the same. Notwithstanding, I note that concerns are also raised on the matter of flooding and that the area was subject to a

major flooding event ten years prior as well as a recent flooding event in 2021. Drainage concerns are raised in terms of the foul sewer which is contended to run parallel to the rear of these semi-detached pairs.

4.0 Planning History

4.1. Site.

4.1.1. None.

4.2. Vicinity

4.2.1. ***No. 24 Acorn Road to the south west of the site and addressing the same public open space.***

ABP Ref. No. PL06D.307668 (P.A. Ref. No. D20A/0209):

On appeal to the Board planning permission was **granted** subject to conditions for a development consisting of 1) conversion of side garage for home study; 2) construction of a first-floor bedroom extension above; 3) construction of a single storey rear extension as family room; attic conversion with roof lights to rear for storage together with all associated site works.

Decision date: 1st day of October, 2020.

4.2.2. No other recent and/or relevant Board cases in the visual curtilage of the site's streetscape setting.

5.0 Policy & Context

5.1. Development Plan

5.1.1. The Dún Laoghaire Rathdown County Development Plan, 2016-2022, is the operative plan for the site and its wider setting. Under this plan the appeal site is located in an area zoned as 'A' with the stated land use zoning objective: "*to protect and/or improve residential amenity*".

5.1.2. Section 8.2.3.4 of the Development Plan deals with the matter of Additional Accommodation in Existing Built-up Areas (i) Extensions to Dwellings.

5.1.3. Section 5.1.1 of the Development Plan sets out general commitments on the part of the planning authority to meet water quality standards.

5.2. **Natural Heritage Designations**

5.2.1. Not relevant.

5.3. **EIA Screening**

5.3.1. Having regard to the nature of the development comprising a part single and part two extension together with its associated works, the site's location in a built-up area zoned for residential development where public water mains and sewerage are available the need for environmental impact assessment can be excluded at preliminary examination and a screening determination is not required.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

6.1.1. The grounds of this First Party Appeal can be summarised as follows:

- The appeal relates only to the Planning Authority's refusal of the first-floor extension.
- The applicants have an acute need for space at first floor level in their home.
- The first-floor level extension as proposed is not overbearing, it does not give rise to overlooking and it is consistent with other developments in this locality whereby a first-floor level side extension has been provided over the single storey side element.
- This first floor level extension is a modest one which has been designed not to give rise to a terraced effect on its streetscape setting.
- The Planning Authority have failed to take account of the environs where there are other such extensions present, including the adjoining property of No. 4 (Note: P.A. Ref. No. D94B/0408). This development was permitted to extent to the party boundary of their property and is flush with its front elevation.

- The first-floor extension as proposed has a lower ridge height when compared to the houses on either side. In addition, the eaves are lower than the main dwelling. The design is one which seeks to ensure that it is legible as infill into the void between No. 5 and the neighbouring property.
- Precedents in the area are referred to.
- The buildings of Hawthorn Avenue have changed over time as they have evolved to meet the changing needs of residents.
- The proposed first floor level element would not be detrimental to the visual amenity of the area.
- The proposed development is in accordance with the zoning objective for the area.

6.2. **Planning Authority Response**

6.2.1. The Planning Authority Response can be summarised as follows:

- The grounds of appeal do not raise any new matter which would justify a change in attitude to the proposed development.

6.3. **Observations**

6.3.1. The observation submission can be summarised as follows:

- The observer raises concerns that the proposed extension does not appear to include a new wall against the existing party wall between No. 4 and 5 Hawthorn Drive to comply with building and fire regulations. Therefore, they are concerned that it would give rise to fire and noise issues for No. 4.
- The structural works involved in the construction of the proposed first floor level extension gives rise to structural stability concerns for their property.
- Similar works in Acorn Road resulted in damage to the adjoining roof which had to be removed and reconstructed.
- Concerns are raised as to who will certify their property as structurally sound if these works go ahead.

- The observer would like that the existing rear boundary wall remain unaltered during construction works and that no undermining of the foundations of their property occurs.
- Health and safety of the occupants of the observer's property whilst works are on-going is a concern.
- The concerns raised in relation to flooding and drainage were not addressed by the Planning Authority.
- Suggested safeguards by way of conditions are proposed to deal with construction hours, deliveries and any mud/debris on the public road or adjoining property are sought.

6.4. Further Responses

6.4.1. None.

7.0 Assessment

7.1. Preliminary Comment

7.1.1. Having inspected the site and its setting, having had regard to the information presented by the parties to this appeal and in the course of the planning application, I consider the key planning issues relate to the Planning Authority's split decision which refused planning permission for the first floor extension over what is described as an existing converted garage to the side (south) of No. 5 Hawthorn Drive and the issues raised by the observer in this appeal case.

7.1.2. In relation to the remainder of the development sought under this application for planning permission, i.e. the construction of a single storey extension to the front (west) and to the rear (east) together with their associated site development works as these components of the proposed development give rise to no serious injury to residential and the visual amenity of their setting together with these components of the proposed development being a type of development deemed to be permissible under the site and its setting zoning Objective 'A' I concur with the Planning Authority's decision to grant them subject to the mainly standard in nature conditions set out in the accompanying schedule.

7.1.3. I therefore consider it is appropriate that the appeal case in terms of the assessment of the proposed development should be confined to the proposed first floor extension over the converted garage only.

7.1.4. Based on the above, I propose to deal with this appeal case under the following general headings:

- Principle of the Proposed Development
- Visual Amenity Impact
- Residential Amenity Impact
- Other Matters Arising

7.1.5. In addition, the matter of 'Appropriate Assessment' requires examination. This I propose to deal with under a separate heading at the end of my assessment below.

7.2. Principle of the Proposed Development

7.2.1. The site forms part of a larger parcel of land zoned 'A' under the applicable Development Plan. The land use objective for such lands is: "*to protect and/or improve residential amenity*" and on such zoned lands this type of development is deemed to be generally acceptable subject to safeguards. I am therefore satisfied that the principle of the development of proposed development is acceptable at this location subject to the acceptance or otherwise of site specifics / other policies within the development plan and / or other relevant government guidance.

7.3. Visual Amenity Impact

7.3.1. The Planning Authority's stated reason for refusal of the first-floor extension over what is described as an existing converted garage to the side of No. 5 Hawthorn Drive is based on its consideration that it would, if permitted, create an undesirable effect that would be contrary to the provisions of Section 8.2.3.4 (i) of the Development Plan. It also considered that the proposed development would cause a negative impact on the streetscape and would impact on the character of the area in terms of its visual amenity and in addition it would set an undesirable precedent.

7.3.2. In relation to Section 8.2.3.4 (i) of the Development Plan it sets out that side extensions will be evaluated against proximity to boundaries, size, and visual harmony with existing (especially front elevation) and impacts on residential amenity. It indicates that

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.

- 7.3.3. In relation to the site and its setting I observed that this once coherent group of semi-detached dwellings of Hawthorn Drive, Acorn Road, Willow Road and Pine Copse, with principal facades that face onto a public open space on the opposite side of the road is a streetscape scene that is characterised by what was originally designed to be a coherent, uniform in their built form, appearance through to building to space relationship two storey semi-detached pairs. These properties have over the decades since they have been completed and first occupied been subject to a variety of ad hoc and of varying design alterations as well as additions with these eroding their once homogenous appearance.
- 7.3.4. I observed that the alterations and additions in the visual setting of the site have included changes to that are highly visible from the public domain. With these including the addition of front and side extensions that are both single through to two storeys in their built form.
- 7.3.5. Indeed, examples of side first-floor extensions in the immediate visual curtilage of the site, include that of the observer's property No. 4 (P.A Ref. No. D94B/0408) through to a yet to be implemented a recent grant of permission by the Board for a development which included a side first-floor level extension over an existing single storey side projection at No. 24 Acorn Road by the Board under appeal case PL06D.307668 (P.A. Ref. No. D20A/0209).
- 7.3.6. As such I do not accept the Planning Authority's conclusions that if permitted the proposed first floor level extension would establish or create a precedent in this area.
- 7.3.7. I am also cognisant that the semi-detached pairs that make up this streetscape scene and the overall streetscape scene itself are not afforded any specific preservation or conservation under the Development Plan.
- 7.3.8. The first-floor side level extension proposed, unlike some completed examples in the visual setting would have an overall ridge height that sits marginally below (200mm) that of the main dwelling and the neighbouring property to the south with a given height

of 8.315m. In addition to this to the front its eaves level would sit below that of the main dwelling with the first-floor level and roof over having a light weight appearance due to the level of glazing and with the return of this glazing into part of the roof slope. It would appear that the internal attic space over would have a floor to ceiling height of 2450mm with this space indicated in the submitted drawings as storage.

7.3.9. In terms of visual amenity impact, I consider that the proposal is acceptable as it would not give rise to any serious injury to the amenity of its streetscape scene, and it is a type of development though of a varying design solution to similar developments in this setting is not out of character with the pattern of development.

7.3.10. I am cognisant that the floor to ceiling height of the attic space over the proposed first floor level extension is one that would not meet Building Regulations standards for habitable rooms. However, the Board could restrict the use of this attic space by way of condition should it consider this necessary, or it could attach an advisory note as compliance with such standards fall under separate codes and authorities to deal with and/or enforce as appropriate.

7.4. Residential Amenity Impact

7.4.1. Based on the documentation provided and having regard to the pattern of development in this area I consider that the proposed first floor level side extension would not give rise to any significant residential amenity impact on adjoining or neighbouring properties in the vicinity by way of undue additional overlooking, overshadowing or otherwise.

7.4.2. I accept, however, that a grant of permission of the first-floor level side extension together with the other components of the development sought under this application would give rise to some short-term nuisance for residential amenities of properties in the vicinity during the course of construction works.

7.4.3. There are standard conditions to deal with such nuisances including but not limited to those restricting hours and days of construction through to dealing with any mud and/or other forms of debris that may arise from construction works on public roads. The Board as part of any grant of permission could provide additional more robust conditions to allay some of the observers concerns in relation to the construction of the proposed development sought under this application in totality, if permitted.

7.5. **Appropriate Assessment Screening**

7.5.1. Having regard to the modest scale of the proposed development, its location within an appropriately zoned and serviced area and the foreseeable emissions therefrom I am satisfied that no appropriate assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

7.6. **Other Matters Arising**

7.6.1. **Procedural:** The Observer in this appeal case raises concerns in relation to the Planning Authority's determination of this application. For clarity I note that the Board does not have an Ombudsman role and that the current application before the Board by way of this 1st Party appeal is assessed on an entirely de novo basis.

7.6.2. **Encroachment/Structural Integrity of Observers Property:** In relation to the observers concerns that the subject proposal may infringe on the boundary line and the potential for the proposed development to give rise to structural integrity issues for the observer's property, it is my opinion that any instances of damage to, or interference with, the appellants' property attributable to the proposed development would essentially be a civil matter. With this ultimately requiring resolution between the parties concerned. I also refer the Board to Section 34(13) of the Planning and Development Act, 2000, as amended, which states that '*A person shall not be entitled solely by reason of a permission under this section to carry out any development*' and, therefore, any grant of permission for the subject proposal would not in itself confer any right over private property. Further, on matters relating to Building Regulations and Fire Safety, it is my opinion that such issues are essentially building control matters which are subject to other regulatory control / legislative provisions and thus are not pertinent to the consideration of the subject appeal.

7.6.3. **Drainage:** Having regard to the material submitted with the application and the observable features in the area I concur with the Planning Authority that the proposed development may be carried out without an unacceptable impact on the integrity of the surface water sewer within the application site in a manner which would be prejudicial to public health and that the proposed development, if permitted, would not give rise to any additional flooding risk on the site and for neighbouring properties.

8.0 Recommendation

8.1. I recommend that planning permission be granted.

9.0 Reasons and Considerations

9.1. The proposed development comprises a modest domestic extension to an existing residential use in an area zoned for residential development in the Dún Laoghaire-Rathdown County Development Plan 2016 to 2022, it is considered that, subject to compliance with the conditions set out below, the proposed development would be consistent with the established pattern of development in this serviced suburban area and the nature, scale and design of the proposed extension together with its associated works, would not seriously injure the established character or visual amenities of the parent dwelling or of properties in the vicinity, it would not seriously injure the amenities of nearby dwellings, it would not be likely to negatively impact on the surface water network in the area or be prejudicial to public health and the proposed development would accord with the zoning objective for the area as set out in the County Development Plan which seeks to protect and/or improve residential amenity in a manner consistent with Section 8.2.3.4 of the Development Plan deals with the matter of additional accommodation in existing built-up areas. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The entire premises shall be used as a single dwelling unit and shall not be subdivided in any manner or used as two or more separate habitable units.

Reason: To prevent unauthorised development.

3. The proposed velux roof lights shall be fitted, and permanently maintained, with centre hung, swivel type window openings.

Reason: In the interest of residential amenity.

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

Reason: In the interest of visual amenity.

5. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

6. Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

7. The site development works, and construction works shall be carried out in such a manner as to ensure that the public roads are kept clear of debris, soil, and other materials and if the need arises for cleaning works or repair to be carried out to the same, the said cleaning works shall be carried out at the developer's expense.

Reason: To ensure that the adjoining lane and roads are kept in a clean and safe condition during construction works in the interests of orderly development.

8. The construction of the development shall be managed in accordance with a Construction and Demolition Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

9. 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 prior to 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.

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.

Advisory Note:

1. *The applicant is advised of Section 34(13) of the Planning and Development Act, 2000, as amended that “a person shall not be entitled solely by reason of a permission or approval under this section to carry out a development”.*
2. *A grant of planning permission does not entitle the applicant to construct a development that would oversail, overhang or otherwise physically impinge upon an adjoining property without the permission of the adjoining property owner.*

Patricia-Marie Young
Planning Inspector

24th day of January, 2022.