



An
Bord
Pleanála

Inspector's Report ABP-312018-21

Development	Retention of ground floor extension together with all ancillary site works.
Location	No. 10 Maywood Park, Raheny, Dublin 5.
Planning Authority	Dublin City Council.
Planning Authority Reg. Ref.	3484/21.
Applicant(s)	Brian & Geraldine Kavanagh.
Type of Application	Retention Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party.
Appellant	Eileen Crowe.
Observer	1. Anna Maria Crow. 2. Seán Haughey.
Date of Site Inspection	11 th day of February, 2022.
Inspector	Patricia-Marie Young.

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1.0 Site Location and Description

1.1. No. 10 Maywood Park, the appeal site has a stated site area of 264m², on which sits a much modified and altered part two storey and part single storey semi-detached dwelling with attached side garage. This dwelling is located on the northern side of Maywood Park, c60m to the west of Maywood Parks junction with Maywood Road and c220m to the south west of Maywood Road's junction with the Howth Road, in the city suburb of Raheny, c8km to the north east of Dublin's city centre. Like other dwellings addressing Maywood Park cul-de-sac access road the subject site is setback from Maywood Park estate road by what originally would have been a drive and soft landscaped area. This setback area is fully hard surfaced and accommodates off-street car parking. The surrounding area is generally characterised by rows of what were once highly uniform in appearance, built form and building to space relationship pairs of two storey semi-detached dwellings. Over time many of these properties have been subject to a variety of alterations and additions. The predominant land use character of the surrounding area is established residential.

2.0 Proposed Development

- 2.1. Retention permission is sought for a ground floor extension to the rear of an existing house and all ancillary works.
- 2.2. According to the planning application form the floor area of the buildings to be retained on site is 135m²; the floor area of the extension is 28m²; and, the total floor area both new and retained is 163m². In addition, a plot ration of 2.69 and site coverage of 37% is given.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On the 9th day of November, 2021, the Planning Authority decided to grant retention permission subject to four standard conditions. The conditions included:

Condition No. 2: A Section 48 financial contribution.

Condition No. 3 & 4: Drainage requirements.

The notification to grant retention permission was accompanied by advisory notes. Advisory Note No. 2 sets out that a grant of 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. Advisory Note No. 3 sets out that the observations/submissions received by the Planning Authority have been noted.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

The Planning Officer's report, dated the 4th day of November, 2021, is the basis of the Planning Authority's decision. It includes the following comments:

- The principle of the proposed development is acceptable on 'Z1' zoned land.
- It is not considered the rear extension will reduce daylight to a detrimental level to the rear window of No. 12.
- The rear extension is generally acceptable in terms of its scale and height.
- The rear extension is not considered overbearing or obtrusive.
- Adequate private amenity space remains.
- This report concludes with a recommendation to grant retention permission.

3.2.2. **Other Technical Reports**

- **Engineering:** Report dated the 11th day of October, 2021, raises no objection subject to safeguards.

3.3. **Prescribed Bodies**

3.3.1. None.

3.4. **Third Party Observations**

3.4.1. Two Third Party observations were received during the course of the Planning Authority's determination of this application. One was from the Third-Party Appellant and the other was from the Observer, all parties to this appeal case with their

submissions summarised in Section 6 of this report below. Having read these submissions I consider that the substantive concerns raised therein correlate with their submissions to the Board and that they raise no other substantive planning concerns.

4.0 Planning History

4.1. Site

P.A. Ref. No. WEB1053/11: Planning permission was **granted** subject to conditions for a first-floor extension to the east side of the existing dwelling, a new pitched roof over the front porch/lounge to replace an existing flat roof.

4.2. Setting

- **No. 16 Maywood Park**

ABP-306267-19: This First Party appeal case sought the omission of Condition No. 2 which sought: 1) that the first-floor side extension show maintain a separation distance to the shared boundary of 1.01m along its entire depth; 2) As the result of (1) the new window to the bedroom shall be single pane only; 3) As a result of (1) that the hipped roof shall have a standard gutter and the parapet shall be omitted; and, 4) the new smooth render shall be omitted, and the existing finishes shall be replicated in the new extension in regard to materials and colour.

The Board dealt with this case under Section 139 of the Planning & Development Act, 2000, as amended, and required this condition to be removed considering that these amendments to the proposed development which consisted of alterations and additions to an existing dwelling house were not warranted in terms of safeguarding the visual amenities of the area and in terms of compliance with the provisions of Dublin City Development Plan, 2016-2022.

ABP-304276-19 (P.A. Ref. No. 2170/19): This First Party appeal case sought the omission of Condition No. 2 which sought: 1) the omission of a first-floor projecting element from the front building line; 2) it restricted the width of the dormer to a maximum of 2.3m; and 3) it required the existing external finishes to be maintained. The Board dealt with this case under Section 139 of the Planning & Development Act, 2000, as amended, and upheld this condition considering that these amendments to

the proposed development which consisted of alterations and additions to an existing dwelling house were warranted in terms of safeguarding the visual amenities of the area and ensuring that the development was consistent with the provisions of Dublin City Development Plan, 2016-2022.

5.0 Policy & Context

5.1. Development Plan

- 5.1.1. The appeal site has a zoning objective 'Z1 - Sustainable Residential Neighbourhoods' within the Dublin City Development Plan, 2016-2022. The stated objective is: "*to protect, provide and improve residential amenities*". The general objective for these lands is to protect them from unsuitable new developments or works that would have a negative impact on the amenity or architectural quality of the area.
- 5.1.2. Relevant planning policies and objectives for residential development are set out under Section 5 (Quality Housing) and Section 16 (Development Standards) within Volume 1 of the Development Plan. Appendix 17 (Volume 2) of the Development Plan provides guidance specifically relating to residential extensions.

5.2. Natural Heritage Designations

- 5.2.1. At its nearest point this appeal site lies c308m to the west of:
- North Bull Island SPA (Site Code: 004006).
 - North Dublin Bay SAC (Site Code: 000206).

In addition, c 2.3km to the south at its nearest point is South Dublin Bay and River Tolka Estuary SPA; to the north Baldoyle Bay SPA (Site Code: 004016) and Baldoyle Bay SAC (Site Code: 000199) and to the east Howth Head SAC (Site Code: 000202).

5.3. Environmental Impact Assessment - Preliminary Examination

- 5.3.1. Having regard to the existing development on site, the limited nature and scale of the proposed development and the absence of any connectivity to any 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

6.1.1. The Third-Party grounds of appeal can be summarised as follows:

- The appellant's property is No. 8 and is located next door to the site.
- This development has blocked natural light to her living room and kitchen leaving them substantially darkened.
- The site and the alleyway have been elevated which has resulted in a loss of privacy.
- This development has detracted seriously from her residential amenities and has devalued her home.
- This is the third development to No. 10 with the garage converted to a lounge, a first-floor extension built over the garage and along the full length of the house in 2011. This development has added to the undue residential impact on her property.
- This development has adversely impacted upon her health and well-being.
- This development has adversely impacted the use of the impacted rooms.
- The windows impacted by this development have been in situ for 40 years.
- The Planning Authority has not adequately assessed the level of overshadowing and loss of light that this development gives rise to.
- This development results in additional costs in heating and lighting.
- If the applicants had applied firstly for planning prior to constructing this extensions then the concerns in relation to the built form and residential amenity impacts could have been properly considered.

6.2. Applicant Response

6.2.1. The First Party did not respond to the grounds of appeal.

6.3. Planning Authority Response

6.3.1. The Planning Authority did not respond to the grounds of appeal.

6.4. Observations

6.4.1. On the 15th day of December, 2021, the Board received an observation from Anna Maria Crowe, which can be summarised as follows:

- This is the third development at the subject property with a first-floor extension built over the garage and along the full length of the house in 2011. These have reduced the natural light coming into the living room at No. 8.
- The subject rear extension which was constructed in 2021 has resulted in further significant loss of light to No. 8 and requires the living room and kitchen having light on in the afternoon.
- The subject extension will reduce the BER performance of No. 8 making it more expensive to light and heat.
- This development diminishes the value of the appellants property .
- The 25-degree test was not carried out by the Planning Authority in their assessment of this development.
- The City Council did not inspect the interior spaces of No. 8 and therefore they cannot determine that no detrimental residential amenity impact would arise to it.
- This extension has adversely impact upon the observer's mother who lives in this house with it contended that she can no longer carry out the work she used to do in the rooms impacted by this development.
- This development has adversely impacted on the level of privacy of No. 8.
- The roofing material over the extension requires reconsideration in order to allow more light into the interior of No. 8.

6.4.2. On the 7th day of December, 2021, the Board received an observation from Seán Haughey TD, which can be summarised as follows:

- The grant of retention permission is objected to.
- This development blocks light to the occupier's home of No. 8.
- The side windows are the sole source of light for the living room of No. 8.
- The 25-degree test should have been carried out as the windows impacted are directly opposite and the 45-degree test should be for the kitchen window to the rear of the property.
- No one from the Council inspected the appellants property.
- The use of artificial light and additional heating will affect No. 8's BER rating.
- There is a loss of privacy for the occupants of No. 8 arising from this development.
- The impact on the appellants health and wellbeing should be considered.

7.0 Assessment

7.1. Overview

7.1.1. Having carried out an inspection of the site and its setting, having examined the documentation on file including all submissions and responses contained therein, and had regard to all relevant planning provisions, I consider that the following are the main issues arising in the *de novo* assessment of the subject appeal are:

- Principle of Proposed Development
- Civil Matters
- Residential Amenity Impact
- Procedural Matters
- Other Matters Arising

7.1.2. The matter of 'Appropriate Assessment' also requires examination.

7.1.3. Prior to commencing my assessment, I note that this application relates to retention of a development for which all works have been carried out and which now forms part of

the habitable space associated with No. 10 Maywood Park, the property subject of this appeal case.

- 7.1.4. In this regard, I note that the Development Management Guidelines for Planning Authorities, 2007, make it clear that, in dealing with applications for retention, they must be considered “*as with any other application*”. This is in accordance with planning law and with proper planning practice, in that all applications for retention should be assessed on the same basis as would apply if the development in question were proposed.
- 7.1.5. Therefore, no account can, or should, be taken of the fact that the development has already taken place.
- 7.1.6. Further, the current Development Plan indicates where a development is neither listed as being ‘permitted in principle’ or ‘not permitted’ it should be assessed in terms of its contribution towards the achievement of the applicable zoning objective, the vision for the zoning objective and its compliance as well as consistency with the policies and objectives contained within the applicable Development Plan.

7.2. Principle of the Proposed Development

- 7.2.1. No. 10 Maywood Park, the appeal site is located in an area that is zoned Objective Z1. The land use zoning objective for such lands is: “*to protect, provide and improve residential amenities*” under the provisions of the Dublin City Development Plan, 2016 to 2022.
- 7.2.2. In general, residential development such as the additions and alterations to existing dwellings are deemed to be acceptable on land subject to this land use zoning, subject to safeguards.
- 7.2.3. Whilst forming part of a once coherent and highly homogenous group of semi-detached pairs, Maywood Park, which the subject property forms part of, has since its completion been subject to a variety of alterations and extensions. With the latter including but not limited to part single, part two storey extensions to the side and rear. As such the development sought under this application which essentially consists of a single storey rear extension is a type of development that is consistent with the pattern of development in this established suburban area. Therefore, its coherence has been diminished and the pattern of development within Maywood Park is in part characterised by its later single and two storey side as well as rear extensions. I

therefore raise no substantive concern in relation to the principle of the proposed development.

7.3. Civil Matters

- 7.3.1. Before I examine the residential amenity impacts of the single storey rear extension on properties in its vicinity which I note is the substantive concern raised by both the appellant and observer in this appeal case, in particular, the appellants purported right to light from windows present on ground floor level of their property, i.e., No. 8 Maywood Park.
- 7.3.2. I am cognisant that a right to light is a type of easement, which means it is the right on one landowner to make use of another nearby piece of land, which is not in their legal interest, for the benefit of their own land. In this situation, allowing light to enter through side windows from No. 10 Maywood Park. A right-to-light easement effectively stops the owner of the subservient land, i.e., No. 10 Maywood Park, from obstructing the light in such a way that it would be a nuisance to the land of the dominant owner. A right-to-light is a legal right as opposed to a planning one and on that basis, it could have substantial impact on a future development.
- 7.3.3. The Land and Conveyancing Law Reform Act, 2009, and the supplementary Civil Law (Miscellaneous Provisions) Act, 2011, a transitional period of 12 years from 2009, was established where any rights acquired under the old 20-year prescription period were valid until 2021, where by buildings built by 2009, will have acquired an easement under the new 12-year fixed period. It also allowed for an application to be made directly to the Property Registrar without a court order. As such this allowed the Prescription Act of 1832 to apply until 2021 by which time properties could have applied for a right to light easement under the 2009 Reform Act.
- 7.3.4. Thus, in effect the Land and Conveyancing Reform Act 2009 has abolished all easements to light or rights to light unless they are registered before 2021 or where the right is given by way of an express grant as the law has held that no person or building has an automatic right to light. In this case the appellant has not demonstrated that they have an existing right to light or an express grant in place between their property and No. 10 Maywood Park.
- 7.3.5. I do not consider this matter to be a planning matter, but a civil matter and the Board has no statutory powers to adjudicate upon it.

7.4. Residential Amenity Impact

- 7.4.1. The appellant, who is occupant of No. 8 Maywood Park, the adjoining property to the east of the subject property, raises concerns that the rear extension by itself and cumulatively with other additions to the subject property have diminished their residential amenities by way of diminished natural light into the interior spaces of their home and by way of giving rise to additional overlooking onto their property.
- 7.4.2. In relation to the rear extension for which retention permission is sought it is a single storey structure of 28m² with a mono-pitched roof which has a maximum given height of 3.95m reducing to 2.95m, a projection of 4m from the rear elevation and extending the width of the rear of the subject property with a lateral separation distance between it and the shared boundary with No. 8 Maywood Park of 0.881m. This lateral separation distance is consistent with the historic separation distance between the side of the semi-detached two storey pairs with attached single storey garages.
- 7.4.3. I further note that this rear extension projects from the original rear elevation and with the previous two storey extension occurring over what was historically a garage which has been integrated into the habitable space of No. 10 Maywood Park.
- 7.4.4. Within the group of semi-detached properties No. 10 Maywood Park forms part of several of these properties have been extended to similarly to the side and rear extensions. Though the predominant rear extension is single storey in nature with many extending the entire width of the rear elevation including to the rear of the garage structure there are also a smaller number of examples of two-storey extensions also present.
- 7.4.5. The appellants contends that the addition of this rear extension has significantly diminished light into the side and rear windows of their property. They have submitted a number of photographs with their submission to demonstrate this and on the day of my inspection there was no one present at the property.
- 7.4.6. The drawings submitted with this application appear to suggest the presence of a shared boundary of concrete block construction with a timber lattice attached to project above it. These suggest that the concrete wall itself is c2.2m yet the boundary wall between No. 10 and No. 12 is shown as having a height of c1.8m.
- 7.4.7. I note that the timber lattice is erected inside No. 10 Maywood Park against the boundary wall with No. 8 Maywood Park.

- 7.4.8. I note that the photographs provided by the appellant appear to show that this boundary steps down in height towards the rear elevation of the subject extension. With these photographs shown that the concrete block wall falling in height from 8 and a half blocks to seven and a half blocks with the timber lattice height remaining unchanged.
- 7.4.9. The appellant provides no architectural drawings of their property to show the placement of the side ground level window or otherwise relative to No. 10 Maywood Park. It would appear from the photographs that this window forms part of an extension and modifications made to their property at some point in time in the past. Most likely as a result of the grant of permission under P.A. Ref. No. 1750/98 under which the Planning Authority granted permission for a first-floor extension to the side and rear of the appellants property.
- 7.4.10. Further, the appellant has provided no architectural drawings of the interior of their property as it is currently laid out. Nor have they provided an expert analysis to show that what is essentially a modest in height, built form, through to projection single storey structure is one that when the context of it being in place against when it was not in place together with the nature of the boundary treatments has given rise to what could be considered to be materially significant diminishment of daylight, natural light through to overshadowing of their property.
- 7.4.11. I also note that the windows serving the rear extension given their dimensions and placement relative to the appellants property has given rise to additional potential for overlooking to arise.
- 7.4.12. There is no evidence to support that there has been any significant alteration in ground levels to accommodate the provision of this first floor level extension and the level of overlooking from this ground floor level extension that together with the level of glazing to the rear elevation of the extension. Nor could the level of overlooking that has arisen from what is a modest and quite standard rear extension solution to properties like this is one that has significantly altered the level of overlooking within a suburban context where a level of overlooking is accepted as part of the characteristics of two storey residential schemes like these as part of the original design, layout through to building to space relationship.

- 7.4.13. In this case, despite the lack of a sunlight, daylight through to shadow analysis of the before and after context of the site and its setting having regard to the nature, extent and scale of the development sought. Notwithstanding, having regard to the documentation provided, the orientation of the site, the building to space relationship, the established pattern and characteristics of development of the site's setting, the presence of solid boundary features I am not satisfied that the appellant has substantiated that the development for which retention permission is sought would give rise to significant material serious injury to their residential amenities by way of diminishment of sunlight, daylight through to additional overshadowing of No. 8 or indeed of any other adjoining or neighbouring property in its vicinity.
- 7.4.14. In addition, I note that this application does not seek modifications of the boundary wall between No. 8 and No. 10 Maywood Park. Improvements to this boundary to achieve enhanced levels of privacy for both properties would potentially require the consent of both parties.
- 7.4.15. Given the scope of the development sought and having regard to the nature of the boundary between No. 10 and No. 8 Maywood Park, I am not convinced that the material and significant diminishment has or would arise from the single storey rear extension with its glazing being at ground level, facing northwards and with no side level glazing included.
- 7.4.16. Moreover, the appellant has provided no evidence from an expert professional to qualify that the single storey extension to the rear of No. 10 Maywood Park would give rise to material depreciation of the property value of No. 8 Maywood Park.
- 7.4.17. In terms of the development for which retention permission is sought and the impact such an extension has had and would have on the appellants health as well as wellbeing is not one that they have substantiated can be supported by material adverse residential amenity impacts that have arisen from the extension. It is also not a planning matter but is as said a civil matter and the extension is as said not uncharacteristic of the pattern of development that has occurred within Maywood Park or indeed the adjoining and neighbouring properties to the rear (Maywood Avenue). Including the height of the mono-pitched roof over the single storey rear extension.
- 7.4.18. In conclusion, I concur with the Planning Authority in this case that this development would not give rise to any adverse residential amenity impacts. I also consider that

the design, built form and layout of the extension is consistent with the pattern of development for extensions within the sites immediate and wider surrounding setting.

7.5. Procedural

- 7.5.1. Concerns are raised in relation to the Planning Authority's procedural handling of this application with their main concern being that they conducted no home visit to inspect the interior spaces of the appellants property. On this matter I note that the Board does not have an ombudsman role in adjudicating such matters, I also note that the Country was in a pandemic situation and is now at the endemic stage, the inspection of interior spaces of adjoining properties are generally not part of the remit of site inspections and the appellants property for planning applications like this. Further the appellants property is not afforded protection as a Protected Structure or is it of any intrinsic merit that would in any way warrant the sterilisation of the rear elevation of No. 10 Maywood Park from any extension despite such extensions being characteristic of the pattern of development that has occurred to Maywood Park since its completion.

7.6. Appropriate Assessment

- 7.6.1. Having regard to the minor nature of the proposed development and to the location of the site in a serviced urban area and the separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

7.7. Other Matters Arising

- 7.7.1. **25° Degree Test and 45° Degree Test:** Concerns are raised by the appellant and observers in this appeal case in relation to the Planning Authority's assessment of daylight, sunlight and overshadowing impact arising from the rear extension to which this application relates. I note that the 25° Degree Test rule applies where the window is opposite the development or extension and that the 45° Degree Test applies where the development is perpendicular to the window. As said the appellant has not provided dimensioned drawings that clearly set out the relationship of the side ground floor window and the ground floor rear kitchen window where they contend substantial impact has arisen from the rear extension and would arise should it be permitted. When either test is applied to this situation with the relatively limited information provided, having regard to the orientation of the site, the nature of the built form, what

appears to be the placement of the side and perpendicular window on the ground floor level of the appellants property, the nature of built features present (in particular the solid boundary wall element in between), the relative similarity in topographical levels of the appeal site and the appellants property, there is some loss of diffuse light to the appellants property but in the context of this suburban setting it could not be considered as materially significant to substantiate a refusal of planning permission for the development sought.

- 7.7.2. **BER Rating:** Concern has been raised that this development has had an impact on the BER rating of No. 8 Maywood Park and with this added to by the additional costs arising from heating as well lighting of its living and kitchen spaces. The appellant in this case has not substantiate that any material and significant impact would arise from the rear extension by way of any supporting evidence.

8.0 Recommendation

- 8.1. I recommend that retention permission be **granted**.

9.0 Reasons and Considerations

- 9.1. Having regard to the pattern of development characterising this area, the separation distance between the development sought and properties in its vicinity, the design, built form and layout of the development and to the provisions of the Dublin City Development Plan, 2016-2022, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure amenities of nearby dwellings or would it seriously injure the visual amenities of the area. 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 and as amended by the further plans and particulars, 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 within three months of the date of the Decision Order and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. 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.

3. 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.

Patricia-Marie Young
Planning Inspector
14th day of February, 2022.