



An
Bord
Pleanála

Inspector's Report

ABP-312036-21

Development	Demolition of extension to rear of house and construction of storey-and-a-half extension to rear and sides of house, construction of wall.
Location	Sheebru, 46 Fairyhill, Blackrock, Co. Dublin, A94 W7X0
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	D21A/0557
Applicant(s)	Ciaran Forde
Type of Application	Planning Permission
Planning Authority Decision	Grant with Conditions
Type of Appeal	Third Party Appeal
Appellant(s)	Noel O'Sullivan and Meadhbh O'Sullivan
Observer(s)	None
Date of Site Inspection	20 th June 2022
Inspector	Susan Clarke

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1.0 Site Location and Description

- 1.1. The site (measuring 0.087ha) is located at Sheebru, No. 46 Fairyhill, Blackrock, Co. Dublin, on the intersection of Newtownpark Avenue and Fairyhill. It is situated within an established low density suburban housing area comprising single and two storey, detached and semi-detached dwellings, with varying architectural styles.
- 1.2. The site comprises a single storey detached, pitched roof house (134 sq m) with a flat roof extension to the rear. There is a small, detached shed along the eastern boundary of the site, and a large front and side garden. The site has a vehicular entrance off Fairyhill. There are a number of mature trees and vegetation on the site. There was a mobile home parked on the front garden at the time of my site visit.
- 1.3. A set of photographs of the site and its environs taken during the course of my site inspection is attached.

2.0 Proposed Development

- 2.1. The proposed development consisted of:
 - Demolition of the existing flat roofed rear extension (37 sq m),
 - Construction of a new storey and a half extension to the rear and side of the house (216 sq m) and internal alterations,
 - Construction of a new wall along the roadside boundaries, and
 - Associated works.

Following a Request for Further Information, the proposed gable end to the eastern elevation was amended to a half hipped roof, the width of the proposed vehicular entrance was reduced from 6m to 3.5m, and a rainwater harvesting system and soakaway scheme was proposed.

3.0 Planning Authority Decision

3.1. Decision

A Notification of Decision to Grant Permission was issued by the Local Authority on 1st October 2021 with 12 No. conditions attached.

Condition No. 4 states:

The disposal of surface water shall be in accordance with the requirements of the County Council. In this regard:

a. The Rainwater harvesting system shall be in accordance with BS EN 16941-1:2018/EN 16941-1:2018 On-Site Non-Potable Water Systems and The SuDS Manual (CIRIA C753).

b. The over flow from the rain water harvesting butt shall not be discharged to the sewer but shall be infiltrated locally, to soakpit or similar, as shown on the planning drawing. The runoff from the pavements/hardstanding shall not be discharged to the sewer but shall be infiltrated locally, to a soakpit or similar, as shown on the planning drawing. The soakpits shall be designed to BRE Digest 365, shall be at a min. 5m from the house and shall have no impact on neighbouring properties. If the applicant does not consider soakpits a feasible solution, the applicant shall prove that by submitting a report signed by a Chartered Engineer, showing a completed infiltration test (with results, photos, etc), and shall propose an alternative SuDS measure.

REASON: In the interest of public health and amenity.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Officer considered that the proposed development would not unreasonably comprise the residential amenity of the properties to the north and west by reasons of overshadowing or by being visually overbearing. Furthermore, the Officer considered that the proposed elevational alterations were consistent with the pattern of development in the area. However, the Officer had concerns regarding the visual impact of the eastern gable of the proposed rear extension, which would be

visible from the public realm on Newtownpark Avenue. As such, the Planning Authority requested that the Applicant amend the proposed development by way of a request for Further Information and provide a hipped roof profile, rather than a gable end. In addition, the RFI required drainage details be submitted, that the proposed vehicular entrance be reduced from 6m to 3.5m, and that drawings of the proposed boundary wall be submitted. On receipt of the Further Information, the Planning Officer was satisfied with the response and recommended planning permission be granted.

3.2.2. Other Technical Reports

Drainage Planning: Requested further information requiring an alternative proposal to direct disposal of surface water runoff generated by the extension to the sewer. On receipt of the Further Information, the Department stated that it had no objection to the proposed development subject to condition.

Transportation Planning: No comments received.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

No Third-Party Observations were submitted to the Local Authority in respect of the application within the statutory public consultation period.

However, subsequent to the Local Authority issuing the Notification of Decision to Grant Permission (1st October 2021) in respect of the proposed development, an application for Leave to Appeal was made to An Bord Pleanála on 20th October 2021 (Reg. Ref. 311711). The Board granted the Leave to Appeal application on 11th November 2021.

4.0 Planning History

No relevant history on the subject site.

5.0 Policy Context

5.1. Development Plan

Since the Local Authority issued a Notification of Decision to Grant Permission for the proposed development, a new development plan has been prepared and adopted for the County. The applicable plan is the Dun Laoghaire Rathdown County Development Plan, 2022-2028.

The subject site is zoned A: To provide residential development and improve residential amenity while protecting the existing residential amenities. Residential development is acceptable in principle under this zoning.

The policies and objectives relating to additional accommodation in existing built-up areas is set out in Section 12.3.7 of the Development Plan. Section 12.3.7.1 provides guidance in relation to extensions to dwellings:

Extensions to the Rear

- Ground floor rear extensions will be considered in terms of their length, height, proximity to mutual boundaries and quantum of usable rear private open space remaining. The extension should match or complement the main house.
- First floor rear extensions will be considered on their merits, noting that they can have potential for negative impacts on the amenities of adjacent properties, and will only be permitted where the Planning Authority is satisfied that there will be no significant negative impacts on surrounding residential or visual amenities. In determining applications for first floor extensions the following factors will be considered:
 - Overshadowing, overbearing, and overlooking - along with proximity, height, and length along mutual boundaries.
 - Remaining rear private open space, its orientation and usability.
 - Degree of set-back from mutual side boundaries.
 - External finishes and design, which shall generally be in harmony with existing.

Extensions to the Side

- Ground floor side extensions will be evaluated against proximity to boundaries, size, and visual harmony with existing (especially front elevation) and impacts on adjoining residential amenity.
- First floor side extensions built over existing structures and matching existing dwelling design and height will generally be acceptable. However, 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.
- Side gable, protruding parapet walls at eaves/gutter level of hip-roofs are not encouraged.

5.2. Natural Heritage Designations

The appeal site does not form part of, it does not adjoin or is it located within close proximity to any designated Natura 2000 site. I note that the nearest such sites are the South Dublin Bay & River Tolka Estuary SPA (Site Code: 004024) and South Dublin Bay SAC (Site Code: 000210) which are located c1.7km at its nearest point to the north of the site.

5.3. EIA Screening

Having regard to the modest scale of the proposed development and its location within an appropriately zoned and serviced area there are no likely significant environmental impacts arising therefrom.

6.0 The Appeal

As stated above, subsequent to the Local Authority issuing the Notification of Decision to Grant Permission (1st October 2021) in respect of the proposed development, an application for Leave to Appeal was made by Noel O'Sullivan and Meadhbh O'Sullivan (No. 127 Newtownpark Avenue, Blackrock, Dublin) to An Bord Pleanála on 20th October 2021 (Reg. Ref. 311711). The Board granted the Leave to Appeal application on 11th November 2021.

The grounds of appeal can be summarised as follows:

- The proposed two storey extension will extend for 18.165m along the common boundary at a distance of 1.4m from the boundary (double the length of the existing extension). The extension will extend beyond the front of No. 127 by 10.5m on the part nearest the extension and c3.6m on the further away apart.
- The proposed development would break the original streetscape line by 3.6m.
- The height of the proposed extension (7.05m) is over double the height of the existing extension, which generates overlooking and overshadowing impacts.
- The proposal goes much further than what might reasonably be defined as an extension to the existing property and instead effectively represents the insertion of a substantial two storey building in the relatively narrow space between the two original dwellings, each of which is a single storey bungalow.
- The front garden will be substantially overshadowed for large parts of the year as will the house be internally.
- The proposed extension will overlook the front property of No. 127, notably two bedrooms.
- Condition No. 4b attached to the Notification of Decision to Grant Permission does not provide comfort to the owners of No. 127 for the following reasons:
 - It is not clear if the 5m separation distance referenced relates to the existing house or extended house. No separation distance is referenced in relation to the common boundary.
 - The statement in Condition No. 4b *“and shall have no effect on neighbouring properties”* (in relation to a soakpit option) is a catch-all protection and is unacceptable for practical reasons including: due to the height difference between No. 46 Fairyhill and No. 127 Newtownpark Avenue, any poor design of surface water system (soakpit or alternative) will result in gravity discharge of unwanted surface water on to No. 127. Any malfunction of the systems will pose a constant threat to No. 127. In addition, the available space for effective surface water attenuation

measures on the subject site would be greatly reduced thereby increasing the risk of any overflow/discharge flowing directly onto No. 127.

- Condition No. 4 does not provide any real appreciation of the risks to No. 127 or any control measures that would resolve the risks.

6.1. Applicant Response

The Applicant submitted a response to the Board on 20th December 2021. The key points can be summarised as follows:

- The Appellant has not objected to the removal of the existing extension, the planned internal alterations to the dwelling or the construction of a new boundary wall and new access point.
- The proposed extension is not an unreasonable quantum of development given the overall size of the site and its regular shape.
- The area contains a multiplicity of building types and so the proposal would not be out of place in its receiving environment.
- The proposal would not adversely affect the appearance of the Fairyhill/Newtownpark Avenue street scene.
- The proposal is consistent with the principles of the Urban Development and Building Height Guidelines. It is argued that the proposal is not excessive in terms of its overall area.
- The northern elevation of the extension would have no windows on its first floor facing the Appellant's home and it would not be possible to view the adjacent property from this level. The ground floor contains four north facing windows; one serves a bathroom and would be obscured, the others serve a utility room, dinning area, and a bedroom. Due to the boundary treatment the subject site and No. 127 it would not be possible to overlook the Appellant's property at ground floor level and as such there would be no undue loss of privacy as a result of the proposal.
- The Appellant's property would only be affected to a very marginal degree in terms of overshadowing during the summer months. The adjacent garden area

to the immediate northwest of the subject site, would not be affected by this development during afternoon or evening hours. The front of the Appellant's property is largely in shadow and is used for car parking. The amenities of the dwelling to the north of the site would not be affected by this proposal.

- Land levels in this area exhibit a rather gentle gradient. In the absence of development, surface water on the application site will become absorbed into the soil and/or flow towards the Appellant's land, to the immediately north of the appeal site.
- As a large part of the footprint of the development already comprises hardstanding, the erection of the new addition would not alter the stormwater arrangements to a great degree.
- The first and second of the Appellant's surface water concerns relate to distances and dimensions and could be resolved through a rewording of the Condition in a manner which requires the Applicant to agree the location of the soakpits with the Planning Authority prior to the commencement of the development.
- In respect to potential harm to adjacent lands, the Appellant seeks to establish a benchmark for soakpit design viz that the drainage arrangements be adequate to accommodate the quantum of water which would be displaced as a result of the development. Section 34(5) of the *Planning and Development Act, 2000 (as amended)* specifically states that conditions may be imposed which allow for points of detail to be agreed. Reference is also made to the *Haulihan v An Bord Pleanála* ruling, which states that "*some flexibility must be left to a developer*". In addition, reference is made to the *Boland v An Bord Pleanála* ruling in which the Supreme Court held that the Board is entitled to consider the desirability of leaving technical matters to be agreed after permission has been granted, especially where the item in question falls within the scope of expertise of the local authority.

6.2. Planning Authority Response

The Planning Authority advised the Board on 21st January 2022 that it is of the opinion that the Appeal does not justify a change of attitude to the proposed development.

6.3. Observations

None.

6.4. Further Responses

The Appellant submitted a Further Response to the Board on 21st January 2022. The key points can be summarised as follows:

- The negative impact generated by the proposed extension will mostly be borne by the residents of No. 127.
- The Applicant makes no specific reference to the storey-and-half extensions in the Development Plan.
- The Local Authority did not give adequate or reasonable consideration to the negative impact of the proposed development on No. 127.
- The Applicant did not consult with the Appellant.
- There is considerable scope to realise a dwelling of this size on the property in a more balanced manner without negatively impacting on No. 127.
- The core point of the objection is that the proposed large extension is to be accommodated entirely in the narrow space along the common boundary, which is at a higher altitude than No. 127 and is on the northern side of the Applicant's property and the southern side of No. 127.
- The extension will take up almost 85% of the Applicant's rear garden.
- It is suggested that the width of the extension should not exceed 5.9m; the height of the roof should not exceed the height of the original dwelling; and the extension should not extend eastwards into the side garden beyond the building line of the original property.
- The figures referenced in the Appeal in relation to the size of the development are not misleading.
- The Applicant contradicts the argument that it will not be possible to view No. 127 from First Floor Level, by suggesting that the windows should be 1.5m above floor level.

- The large window on the eastern gable facing Newtownpark will allow significant overlooking of the front garden of No. 127.
- The windows serving the dining room will be 3m in advance of the front of No. 127, thereby facilitating a clear line of sight to the bedroom windows and front lounge.
- Query the necessity for the proposed secondary dining room window.
- No information is provided on the source in terms of assumptions and parameters of the shadow diagrams prepared by the Applicant. The analysis should not focus on the summer and winter solstices, but on March equinox at 10am, 12midday, and 2pm. Most of the overshadowing is caused by the height of the existing trees on the subject site. The sustainability of the trees should not be assumed. An assessment of current overshadowing in the absence of the trees is necessary in order to provide a more complete analysis of the likely impact of the proposed development.
- No indication is given as to when the photographs in the First-party Response were taken. The photographs greatly overstate the extent to which the front garden is in shadow over the course of a year. The proposed development will result in an impenetrable and permanent barrier that will place large parts of the front garden in almost permanent shadow.
- Insufficient information was provided by the Applicant to the Planning Authority to enable it to undertake a full and proper assessment of the proposed drainage and rainwater management systems prior to the adoption of the Grant of Permission. The additional information provided by the Applicant confirms rather than alleviates the concerns regarding potential overflowing and malfunctioning.
- Drainage and rainwater management should be accepted as important and integral components of any development.

7.0 **Assessment**

- 7.1. Having examined the application details and all other documentation on file, including the Third-Party Appeal, First-Party Response and the Appellant's Further Response,

and inspection of the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues on this appeal are as follows:

- Principle of Development
- Impact on Residential Amenity
- Surface Water Drainage
- Appropriate Assessment.

Each of these issues is addressed in turn below.

7.2. Principle of Development

- 7.2.1. The proposed development comprises a refurbishment and extension to an existing residential use in an area zoned for residential amenity in the current County Development Plan. The proposed development is acceptable in principle.

7.3. Impact on Residential Amenity

- 7.3.1. Concerns are raised over the scale of the proposed development and its visual impact on the residential amenity of the area. In terms of the overall scale and architectural treatment of the proposed development, I do not consider the proposal excessive having regard to its location on a relatively large site, in a suburban area, which contains a mix of single and two storey dwellings with varying architectural styles. The proposed rear extension has a length of 18.165m (i.e. it is 6m greater than the existing rear elevation of the dwelling) and a width of 6.9m. The extension is setback approximately 1.2m from the common boundary with No. 127. The neighbouring property's garage is located along this boundary, while the dwelling is approximately 2.2m from the proposed extension. There is a number of mature trees, a hedgerow, a recently erected palisade fence, a low level wall along the eastern section and a high level wall along the western section of the common boundary (see photographs 4, 7 and 8 attached to this Report). The proposed rear extension has a dormer style roof and measures 7.05m at its highest point. Whilst I note from my site visit that the topography falls gently in a northern direction towards No. 127, having regard to the dimensions and design of the proposed extension, I do not consider its scale to be excessive and it will not have undue overbearing impacts on the neighbouring property that would adversely impact the residential amenity of the area. Furthermore, I note

that the site will maintain a large private front and side garden for residential amenity purposes.

- 7.3.2. In terms of overlooking, I note that the extension does not include any windows along the northern elevation at First Floor Level. Four rooflights are proposed along this elevation, two of which will serve an office and the landing and will be the only sources of natural light in these spaces. The other two windows will serve a master bedroom. Due to the height and slope of the roof, overlooking will not be an issue from the four rooflights and as such, I do not consider it necessary that the subject windows are constructed with opaque glazing. I do not consider that the rooflights will detract from the character or residential amenity of the area in any significant manner. In relation to the ground floor windows along the northern elevation, I note that the two windows to serve the bedroom and bathroom are located directly oppose the side garage attached to No. 127. Furthermore, as stated above, there are mature trees and a hedgerow along the common boundary which would reduce the potential for any overlooking. Due to the position of the proposed windows serving the dining area and the orientation of No. 127, there will be no direct overlooking of the neighbouring dwelling.
- 7.3.3. The proposed materials for the extensions will match the existing property, and as such they will be in keeping with the character of the area and not cause any adverse visual impacts. I note the Appellant's concerns in relation to breaking the building line along Newtownpark Avenue, however due to the varying architectural designs and mix of semi-detached and detached units, the building line is not particularly strong along the street. Furthermore, I note that the site is a corner site. The property is not a Protected Structure, nor are there any such Structures in the area. Furthermore, the area is not an Architectural Conservation Area. In relation to the internal alterations to the existing dwelling, I consider them to be acceptable and will have no negative visual impact on the area. In addition, I do not consider that the proposed new boundary wall will adversely impact the visual amenity of the area, subject to it being reduced to 1.8m in height.
- 7.3.4. The grounds of appeal express concern that having regard to the scale of the proposal it will result in significant overshadowing. The subject property and proposed extension are located south of the Appellant's property. I note that the Appellant's concerns regarding the sources of the Applicant's overshadowing analysis diagrams and the

sustainability of the trees along the mutual boundary. Notwithstanding this, having regard to the size of the neighbouring property, the scale and massing of the proposed development, and the existing overshadowing of the neighbouring property by the trees on the subject site, I do not consider that the proposal will result in significant overshadowing impacts on No. 127, which will be largely over the car parking and vehicular entrance area to the adjoining property. Furthermore as noted by the Appellant, the proposed development will have no overshadowing impact on its rear garden. I am satisfied that no undue loss of light or overshadowing would occur to the neighbouring property as a result of the proposed development.

- 7.3.5. The Planning Authority had no concerns regarding the architectural design of the proposed development or impact of neighbouring properties in terms of overbearing, overlooking or overshadowing. As outlined above, similarly, I consider that the overall scale and massing of the development to be acceptable and in keeping with the character of the area when viewed from the public road. In summary, in my view the proposed development is compliant with Section 12.3.7.1 of the Development Plan.

7.4. Surface Water Drainage

- 7.4.1. The Appellant raises a number of concerns in relation to Condition No. 4 attached to the Local Authority's Notification of Decision to Grant Permission (see section 3.1 above.) To recap, the Applicant did not submit any drainage details with the original application, however confirmed at RFI stage that the proposal will include soakaways designed to BRE Digest 365 and a rainwater harvesting tank. Whilst I acknowledge the points raised by the Appellant in relation to the separation distances between the soakaway and house not been referenced, I consider these to be minor points of details that can be agreed with the Local Authority's Drainage Department and are unlikely to impact the proposed development or the surrounding environment. I am not aware of any flooding instances in the area, and the proposed development will not result in a significant increase in hard surfaced areas. Furthermore, the subject site benefits from a large front and side garden and all the proposed works and equipment will be contained within the site. Whilst the topography gently slopes in a northwardly direction, there is nothing unique or particularly challenging about the proposed development, either at construction phase or operational phase, that would create potential significant risks to the neighbouring property. Subject to the installation of the

drainage equipment, which in my view is a standard scheme, the integrity of the adjoining property can be protected.

7.5. Appropriate Assessment

- 7.5.1. Having regard to the nature and scale of the proposed development, serviced nature of the site, and its location relative to Natura 2000 sites, no appropriate assessment issues arise and it is not considered that the development would be likely to have a significant effect, either individually or in combination with other plans or projects, on a European site.

8.0 Recommendation

I recommend that planning permission be granted, subject to the conditions outlined below.

9.0 Reasons and Considerations

Having regard to the residential land use zoning of the site, the nature, scale and location of the proposed development, and the provisions of the Dun Laoghaire Rathdown County Development Plan 2022-2028, it is considered that, subject to compliance with the conditions set out below, the development would not seriously injure the residential amenities of the area or of property in the vicinity in terms of visual, overbearing, overlooking, or drainage impacts. 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 as amended by the further plans and particulars received by An Bord Pleanála on the 8th day of September, 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
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	<p>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 external finishes of the proposed extension (including roof tiles/slates) shall be the same as those of the existing dwelling in respect of colour and texture.</p> <p>Reason: In the interest of visual amenity.</p>
3.	<p>The height of the proposed boundary wall along Fairyhill and Newtownpark Avenue shall be reduced to a maximum of 1.8m.</p> <p>REASON: In the interests of visual amenity.</p>
4	<p>The proposed vehicular entrance shall not exceed 3.5 metres in width and shall not have outward opening gates. The footpath and kerb shall be dished at the road junction in accordance with the requirements of the planning authority. Details indicating the proposed compliance with the above requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interests of clarity, and pedestrian and traffic safety.</p>
5	<p>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 and shall be agreed in writing with the Local Authority prior to the commencement of the development.</p> <p>Reason: In the interest of public health.</p>
6	<p>Site development and building works shall be carried out only between the hours of 0700 to 1800 Mondays to Fridays inclusive, 0800 to 1400 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>

7	<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 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.</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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Susan Clarke
Planning Inspector

29 June 2022