



An
Bord
Pleanála

Inspector's Report ABP-312133-21.

Development	Removal of roof over extension and construction of extension at first floor level to side & rear. Dormer window to attic, skylights to front elevation and window to landing. associated development works.
Location	No. 59A Blackthorn Close, Portmarnock, Co. Dublin, D13 DW30.
Planning Authority	Fingal County Council.
Planning Authority Reg. Ref.	F21A/0507.
Applicant(s)	Mr. & Mrs. Mark Walsh.
Type of Application	Planning Permission.
Planning Authority Decision	Grant.
Type of Appeal	First Party - V - Condition No. 2(a).
Appellant(s)	Mr. & Mrs Mark Walsh.
Observer(s)	None.
Date of Site Inspection	22 nd day of April, 2022.
Inspector	Patricia-Marie Young

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1.0 Site Location and Description

- 1.1. No. 59A Blackthorn Close, the appeal site has a stated area of 0.0213ha and it consists of a detached two-storey dwelling that was constructed on what was once the side garden of No. 59 Blackthorn Close. The site is situated c117m to the north of Blackthorn Close's junction with Wendell Avenue and c437m, by road from Strand Road, in the suburban area of Portmarnock, in north County Dublin.
- 1.2. This rectangular shaped site has an east west alignment. The subject dwelling fronts on to the western side of Blackthorn Close and it occupies an end of cul-de-sac location. Its principal façade is set back from the roadside edge by an area accommodating in-curtilage off street car parking. The northern boundary of the site adjoins a linear strip of open space that lies between it and the cul-de-sac of residential cul-de-sac of Kelvin Close.
- 1.3. The surrounding area is characterised by mature residential development.

2.0 Proposed Development

- 2.1. Planning permission is sought for the following:
 - Removal of pitched roof over kitchen extension ground floor level and construct extension at first floor level attached to side and rear of house with flat roof finish.
 - Construction of dormer window in attic area on rear elevation of roof with flat roof finish and two sky lights on front elevation of roof.
 - Installation of new window on northern elevation in landing area.
 - Replacement of timber boundary fence on northern side to rear of site with block wall 2.1m high and pedestrian entrance to rear of site.
 - All associated site works and services.
- 2.2. According to the planning application documentation the existing building on site is given as 108m² and the gross floor space of works is given as 11.7m².

3.0 Planning Authority Decision

3.1. Decision

By order dated the 15th day of November, 2021, the Planning Authority granted permission is subject to conditions. Of relevance to this appeal case is Condition No. 2(a) which reads:

“The proposed development shall be amended as follows;

(a) The proposed extension at first floor level shall be omitted”

“Prior to the commencement of the development the developer shall submit for the written agreement of the Planning Authority revised plans and elevations at scale 1:100 to demonstrate the amendments.”

The stated reason reads:

“In the interest of the proper planning and sustainable development of the area.”

3.2. I note that all other conditions and advisory notes are standard in nature.

3.3. Planning Authority Reports

3.3.1. Planning Reports

The Planning Officer’s report, dated the 11th day of November, 2021, is the basis of the Planning Authority’s decision. In this report the Planning Officer considered that the first-floor extension would give rise to unacceptable overlooking of the opposing dwelling to the west in a manner that would not be compliant with local planning provisions. They therefore recommend that the first-floor level extension be omitted by condition. The proposed development was otherwise deemed to be acceptable, and this report concludes with a recommendation to grant permission.

3.3.2. Other Technical Reports

- **Water Services:** No objection, subject to safeguards.

3.4. Prescribed Bodies

3.4.1. **Irish Water:** No objection, subject to safeguards.

3.4.2. **DAA:** No objection, subject to safeguards.

3.5. **Third Party Observations**

3.5.1. None.

4.0 **Planning History**

4.1. **Site**

4.1.1. **P.A. Ref. No. F03A/01277:** Planning permission **granted** for alterations and additions to No. 59 Blackthorn Close and planning permission was granted for the subdivision of its side garden alongside the construction of a detached two-storey detached dwelling house together with associated site works and services.

4.2. **Setting**

4.2.1. No recent and/or relevant Board cases.

5.0 **Policy Context**

5.1. **Development Plan**

5.1.1. The policies and provisions of the Fingal Development Plan, 2017-2023, as varied, apply. The site lies within an area zoned 'RS' which has an aim to: "*provide for residential development and protect and improve residential amenity.*"

5.1.2. Chapter 3 of the Development Plan deals residential development with Section 3.4 recognising the need for people to extend and renovate their dwellings. It indicates that extensions will be considered favourably where they do not have a negative impact on adjoining properties or on the nature of the surrounding area.

5.1.3. The following Development Plan provisions are considered relevant:

- **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.

- Objective DMS28: *“A separation distance of a minimum of 22 metres between directly opposing rear first floor windows shall generally be observed unless alternative provision has been designed to ensure privacy”.*
- 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.

5.1.4. Chapter 12 of the Development Plan in relation to the matter of extensions to dwellings indicates that they will be supported where they have no significant negative impact on the surrounding area.

5.2. Natural Heritage Designations

5.2.1. None within the zone of influence of the project.

5.3. EIA Screening

5.3.1. Having regard to the modest nature, scale, and scope of the proposed development which includes a modest increase in footprint of an existing dwelling on brownfield land and the location of No. 59A Blackthorn Close within an established residential suburban setting of Portmarnock, the serviced nature of the site and its surroundings, the separation distance as well as lack of hydrological or other form of connectivity to the nearest Natura 2000 sites, I consider that there is no real likelihood of significant effects on the environment arising from the proposed development. I therefore consider that 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. A first-party appeal has been lodged against Condition No. 2(a) of the Fingal County Council’s notification of the decision to grant permission for the development sought under this application. It can be summarised as follows:

- The wording and content of this condition puts unnecessary constraints on the appellants, as it omits the two-bedroom extension at first floor level.
- The bedroom extension is essential and necessary residential family accommodation for the appellants family.
- The extension has been designed in a manner to integrate with the main dwelling and ensures the maintenance of their private amenity space to the rear.
- No objections were raised by neighbours to the proposed development.
- This type of extension is common place in this area and across the country.
- It is contended that the existing separation distance at first floor level is 22.7m and the separation distance between opposing windows is 20.4m.
- The first-floor extension would result in no undue diminishment of residential amenity for properties in its vicinity.
- It is sought that Condition No. 2(b) is omitted or amended.

6.2. Planning Authority Response

6.2.1. The Planning Authority's response can be summarised as follows:

- Whilst the principle of development is acceptable, this site is constrained by the depth of the rear garden and the proposed development fails to comply with the requirements of Objective DMS28 of the Development Plan which requires a minimum 22m separation distance from opposing windows at first floor level. Unless alternative provision has been designed to ensure privacy.
- It is requested that the Board maintain Condition No. 2(a).

7.0 Assessment

7.1. This is a First-Party appeal against Condition No. 2(a) of Fingal County Councils Notification of the Decision to Grant Permission, which requires that the proposed development shall be amended to omit the first-floor extension and that prior to the commencement of the development that the developer shall submit for the written

agreement of the Planning Authority revised plans and elevations showing this amendment for their written agreement.

- 7.2. I also note includes another sub condition requiring the proposed dormer structure to be maintained at a setback from the eaves level and to be set down 300mm from the main ridge of the dwelling.
- 7.3. The stated reason for the amendments required under Condition No. 2 is given as being: "*in the interest of the proper planning and sustainable development of the area*".
- 7.4. Following my examination of the planning file, the grounds of appeal, the Planning Authority's response and having carried out an inspection of the site, I consider it appropriate that the appeal should be confined to Condition No. 2(a) only. Accordingly, 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 that 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.
- 7.5. It is clear in the Planning Officer's report and in the Planning Authority's response to the grounds of appeal in recommending by way of condition the omission of the first - floor level extension that it based this on the fact that its design and in particular, the lateral separation distance between its first floor level window and the opposing windows of the property immediately to the west of it, i.e., No. 61 Alder Court, that the minimum standard of 22 metres is not achieved. As such they considered that as the proposed design did not achieve this that to permit the proposed development would be contrary to Objective DMS28 of the Development Plan.
- 7.6. Though the appellant recognises that the design does not achieve the required 22m separation distance required under this Development Plan objective they put forward no meaningful improvement to the design that would deal with the resulting adverse level of overlooking that would arise.
- 7.7. Of further concern in my view is that the drawings provided with this application, and on appeal, fail to illustrate by way of accurate as well as appropriately detailed scaled drawings the existing and proposed relationship between these two properties. They also exclude the property to the south of No. 61 Alder Court. In addition, the drawings submitted with this appeal do not accurately represent the actual separation distance that would arise between the proposed first floor extension and the adjoining opposing

first floor window of No. 61 Alder Court opposite. They attempt to suggest greater opposing separation distances than would be the case.

- 7.8. While the general principle of extensions, including floor extensions are generally permissible on residentially zoned land like this. Notwithstanding, this is subject to safeguards.
- 7.9. In this respect Chapter 12 of the Development Plan, whilst recognising and acknowledging the need for people to extend and renovate their dwellings, also clearly sets out that: *“extensions will only be considered favourably where they do not have a negative impact on adjoining properties or on the nature of the surrounding area”*.
- 7.10. This chapter of the Development Plan further states in relation to first floor rear extensions that these will be considered on their merits noting that: *“they can often have potential for negative impacts on the amenities of adjacent properties”* and that: *“the Planning Authority must be satisfied there will be no significant negative impacts on surrounding residential or visual amenities”* with factors for consideration including overlooking, height, and proximity to mutual boundaries.
- 7.11. Moreover, this chapter of the Development Plan in relation to separation distances indicate that alongside the 22m lateral separation distance between opposing windows also sets out a rear garden depth of 11m. This I note is not achievable in this site as the site has an irregular rectangular shaped due to the alignment of the public roads serving site and Alder Court, the more limited depth of the Blackthorn Close and Alder Court properties to the immediate west, south west and south. It would also appear to be the case that the increase in bedroom number would give rise to a private amenity space provision that cannot be achieved within the confines of the site. Though it is of note that the site is immediately adjoined by a long linear green space.
- 7.12. I am also cognisant that this site once formed part of the side garden of the property to its immediate south and that this fact is reflected in its more limited width and more limited rear private space amenity. Which I observed is significantly built upon by way of what appears to shed type structures. These structures further limit the potential of this site to accommodate any significant extensions at ground and upper floor level to the side and rear as well as limit qualitative and quantitative private open space for occupants of this dwelling.

7.13. I consider that the first-floor extension would, if permitted, would be contrary to Development Plan Objective DMS28, and, it would be contrary to the 'RS' zoning of the site due to the overlooking as well as the visual overbearance that it would give rise to for the property to the rear, i.e. No. 61 Alder Court, by way of it extending towards this adjoining properties rear first floor level elevation and private amenity space. Therefore, this component of the proposed development would be contrary to the proper planning and sustainable development of the area.

7.14. **Conclusion**

7.14.1. Based on my considerations above, I am satisfied that the imposition of Condition No. 2(a) is necessary and reasonable in this instance as it protects the residential amenity of properties in its vicinity in a manner that accords with relevant local planning provisions for this type of development. In my considered opinion, the Planning Authority should be directed to maintain Condition No. 2(a) as part of the Planning Authority's notification of the decision to grant permission for the development sought under this application.

7.15. **Appropriate Assessment**

7.15.1. Having regard to the nature and scale of the proposed development and its location relative to Natura 2000 sites, no appropriate assessment issues arise, and it is not considered that the proposed 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**

8.1. I recommend that the Planning Authority be directed to maintain Condition No. 2(a) for the reasons and considerations set out below.

9.0 **Reasons and Considerations**

Having regard to the residential land use zoning of the site and its setting; the design, nature, scale, mutual separation distance between opposing first floor windows and boundaries, it is considered that the modifications and requirements of the Planning Authority, in its imposition of Condition No. 2(a), are warranted, and that the proposed development, with this condition, would give rise to no serious injury of residential

amenities of properties in its vicinity, it would give rise to no significant negative visual impact on the dwelling or its setting and it would accord with Objective DMS28 of the Fingal Development Plan, 2017-2023, as varied, as well as the 'RS' land use zoning objective of the site and its settings. Thus, the proposed development would be in accordance with the proper planning and sustainable development of the area.

Patricia-Marie Young
Planning Inspector

25th day of April, 2022.