



An
Bord
Pleanála

Inspector's Report

ABP-312151-21

| | |
|-------------------------------------|---|
| Development | Detached recreational room in rear garden of house. |
| Location | 4, Wainsfort Manor Crescent, Terenure, Dublin 6W |
| Planning Authority | South Dublin County Council |
| Planning Authority Reg. Ref. | SD21B/0505 |
| Applicant(s) | Fergal Halligan |
| Type of Application | Permission |
| Planning Authority Decision | Grant Permission |
| Type of Appeal | First Party v Condition No. 2 |
| Appellant(s) | Fergal Halligan |
| Observer(s) | Kathleen Dowling |
| Date of Site Inspection | 5 th March 2022 |
| Inspector | Anthony Kelly |

1.0 Site Location and Description

- 1.1. The site is located in a residential area approx. 250 metres north of Templeogue College and approx. 900 metres south west of Kimmage Crossroads in the south west area of Dublin city.
- 1.2. There is a two-storey semi-detached house on site, typical of the streetscape. The proposed garden room is to the rear of the house. The rear garden area is relatively substantial in area.
- 1.3. The site has an area of 0.0585 hectares.

2.0 Proposed Development

- 2.1. Permission is sought for a detached recreational garden room to the rear of the house.
- 2.2. The proposed structure has a floor area of 21.94sqm with an indicated height of 3.075 metres. The exterior to the front and sides is indicated as cedar wood cladding or similar, and the rear elevation appears to be render.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Permission was granted by South Dublin Co. Co. subject to five conditions. Conditions related to, inter alia, an amendment to the proposed garden room, surface water treatment, and a detailed condition incorporating external finishes, restrictions on the use of the proposed structure, Irish Water infrastructure, and construction practices.
- 3.1.2. Of particular relevance to the first party grounds of appeal is Condition 2.
 2. The large window on the north elevation of the proposed development shall be omitted.

Reason: To ensure the privacy of neighbouring dwellings.

3.2. **Planning Authority Reports**

3.2.1. The Planning Report forms the basis of the planning authority decision. It concludes that, having regard to the provisions of the South Dublin County Council Development Plan 2016-2022, and the overall design and scale of the proposed development, subject to conditions, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, and would be in accordance with the proper planning and sustainable development of the area.

3.2.2. **Other Technical Reports**

Surface Water Drainage – The planning authority’s Planning Report states a report was received which indicated ‘No objection, conditions recommended’. This report was not submitted to the Board and is not available on the planning authority’s website.

3.3. **Prescribed Bodies**

Irish Water – No objection. Observations made.

3.4. **Third Party Observations**

3.4.1. An observation was received from Kathleen Dowling, the neighbour adjacent to the north. The issues raised are largely covered by the observation made on the grounds of appeal with the exception of the following:

- Objecting to the principle of the proposed development on overlooking/privacy grounds.
- Overdevelopment of the site in combination with previous grants of permission.
- Surface water drainage.
- Additional pressure on existing service infrastructure.
- Opposed to the apparent felling of a tree.
- Suggested conditions relating to omission of the north facing window, restrictions on the use of the proposed structure, and possible surface water remediation measures.

4.0 Planning History

4.1. The planning history of the site is as follows:

P.A. Reg. Ref. SD18B/0178 – In 2018 permission was granted for a 10.4sqm ground floor extension to the rear of the house.

P.A. Reg. Ref. SD05B/0246 – In 2005 permission was granted for ground and first floor extensions to the side and rear of the house (112sqm in total). This has been constructed.

5.0 Policy Context

5.1. South Dublin County Council Development Plan 2016-2022

5.1.1. The site is in an area zoned 'Objective RES – To protect and/or improve residential amenity'.

5.2. Natural Heritage Designations

5.2.1. The closest Natura 2000 site is Glenasmole Valley SAC (Site Code 001209) approx. 6.6km to the south west. The closest heritage area is Dodder Valley pNHA (Site Code 000991) approx. 2.4km to the south west.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The grounds of appeal are submitted by Fergal Halligan and Shirley McDermott, 4 Wainsfort Manor Crescent, Terenure, Dublin 6W (only Fergal Halligan was named as the applicant in the planning application to the planning authority). The main points made can be summarised as follows:

- The applicant would like to appeal against the removal of the corner window on the north side of the proposed building i.e. condition 2 of the permission.

- The garden room is of modular construction built off-site by the supplier. It is an out-of-box design with the only variable being that of size. The corner window is an integral part and a standard feature.
- The room was deliberately restricted to 22sqm to minimise impact on No. 6. It was positioned not adjacent to the neighbouring garden, to reduce the line of sight to the neighbouring house so that it does not overlook. The applicant believes the garden room including north-facing window would in no way encroach on the privacy of the adjoining property.
- Supporting photographs are submitted illustrating how any sightline would be blocked by the neighbouring shed and tree and would not encroach on the privacy of the neighbouring property. A photograph of the proposed garden room is also provided.

6.2. Planning Authority Response

- 6.2.1. The planning authority confirms its decision, and the appeal raises no new issues.

6.3. Observations

- 6.3.1. An observation was received from Kathleen Dowling, 6 Wainsfort Manor Crescent (the two-storey semi-detached property adjacent to the north). The main points made can be summarised as follows:

- It is not plausible to suggest that a manufacturer of a modular design structure cannot moderate the location/removal of a window, and there is no evidence provided to support this. The image supplied indicates the doorway is north facing, not the window, contradicting the applicant's contention.
- The applicant's first supporting photograph is taken from below eye-line level and is obscured by a recently erected shed which according to the application is to be removed. The removal of this shed will provide an uninterrupted line of sight into the observer's property.
- The branches of the tree referred to are above eye level therefore the view is not blocked. This, and the removal of the existing shed, would give

uninterrupted views into the observer's property. This shed is oversailing the boundary wall.

- Submitted photographs 3 and 4 fail to give a clear indication of the true line of sight.
- Overturning the planning authority decision will reduce the observer's expectations of privacy as it will look onto the internal and external living space and garden. The observer is elderly, unable to drive and walk any significant distance, and the garden is a vital amenity.

6.4. Further Responses

6.4.1. None requested.

7.0 Assessment

7.1. The first party appeal relates specifically to condition 2 of South Dublin County Council's decision to grant permission. The condition requires the omission of the north facing/side window from the proposed structure.

7.2. Having regard to, inter alia:

- the content of the observation received by the Board which relates specifically to the grounds of appeal and is not based on an objection to the grant of permission for the subject structure in principle,
- the zoning objective of the site and the residential nature of development in the vicinity,
- the nature and scale of the proposed development,
- the relative area of the rear garden which could accommodate the proposed structure while retaining adequate private open space,
- conditions 1(b) and 5(b) of the grant of permission which state that the proposed structure shall not be used for habitation or commercial purposes and that it shall not be sold, let, leased, or otherwise transferred or conveyed except as part of the single dwelling unit, and,

- the absence of any impact on any Natura 2000 site as a result of the proposed development, individually or in combination with other plans or projects,

I consider that the proposed development is acceptable in principle. Therefore, I intend to limit my consideration to the matters raised in relation to the terms of the condition and not carry out a de novo assessment of the proposed development.

7.3. Condition 2 is as follows.

The large window on the north elevation of the proposed development shall be omitted.

Reason: To ensure the privacy of neighbouring dwellings.

7.4. The applicant contends that the north facing/side window is an integral part of the design of the modular structure and the positioning of the proposed structure on site would reduce line of sight to the neighbouring property. The line of sight would also be blocked by a tree and shed in the neighbouring property. The neighbouring property owner/observer disputes that the subject window cannot be omitted from the design and considers that overturning the planning authority's decision would result in overlooking and a reduction in privacy.

7.5. The proposed structure is 21.94sqm in floor area with glazing to both the front/west and side/north elevations. The site layout plan indicates there would be a 4 metres separation distance to the party boundary and it is offset by approx. 400mm from the rear/eastern site boundary.

7.6. The rear garden area of the site is relatively large and there would be a 12 metres separation distance between the rear of the applicant's house and the proposed structure. The observer's house is angled away from the applicant's rear garden area and there would be a separation distance of approx. 21 metres between the proposed structure and the adjacent house. The proposed structure is single-storey in scale and therefore, any overlooking that could occur would effectively be no different to that from a normal shed or anybody using the rear garden area, notwithstanding the likely intensity of use of the proposed structure. There are existing structures either side of the party boundary and a tree which restricts overlooking potential. I do not consider that the proposed single-storey structure as applied for, set back 4 metres from the party boundary, would have an undue adverse impact on the residential amenity of

the observer's property. The omission of the north facing window would not have any material impact on maintaining the privacy of the adjoining property and I do not consider it necessary to remove this window to reduce or eliminate any overlooking potential.

7.7. Having regard to the foregoing, I recommend the removal of condition no. 2 of the planning authority decision.

8.0 Recommendation

Having regard to the nature of the condition the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and, based on the reasons and considerations set out below, directs the said Council under subsection (1) of section 139 of the Planning & Development Act, 2000 (as amended) to remove Condition 2.

9.0 Reasons and Considerations

Having regard to the single storey scale of the proposed development, the separation distances to the adjoining property, and the existing structures to both sides of the boundary which would interfere with lines of sight, the north facing window on the proposed garden room would not have any undue adverse impact on the residential amenity of the adjacent property. The planning authority's condition no. 2 requiring omission of the north facing window is, therefore, not warranted.

Anthony Kelly

Planning Inspector

7th March 2022