



An
Bord
Pleanála

Inspector's Report ABP312374-22

Development

Retention permission for changes to planning application Reg. Ref. F19B/0261. The retention relates to the projection from the rear building line of the first floor extension by 900mm and the ground floor by 1700 beyond that which was permitted, increasing the total area from 27.45m² to 34m²

Location

20, The Green, Melrose Park,
Kinsealy, Co. Dublin

Planning Authority

Fingal County Council

Planning Authority Reg. Ref.

F19B/0261

Applicant(s)

Gary and Samantha Hughes

Type of Application

Retention permission

Planning Authority Decision

Refuse

Type of Appeal

First Party

Appellant(s)

Gary and Samantha Hughes

Observer(s)

Patricia O'Neill

Thomas and Rowena Dunne

Date of Site Inspection

14.04.2022

Inspector

Mary Mac Mahon

1.0 Site Location and Description

1.1. The site is located in a residential estate in Kinsealy, Co. Dublin. The subject site is sited in a row of mainly semi-detached dwellings, overlooking a large green. It is one of a pair of semi-detached, two storey dwellings. The site is attached to No. 18, The Green and adjacent to No. 22, The Green, both observers to this First Party appeal. No.18 is to the north of the subject site and No. 22 is to the south of the subject site. No. 37 and No. 38, The Heights, back onto the development proposed to be retained. The site area is stated as 0.0185 ha and is approximately 6.7 metres wide. The remaining rear garden depth is approximately 6.4 metres. The extension is setback circa 0.95 metres from No. 22, The Green, consistent with the flank building line. The extension roof is hipped.

2.0 Proposed Development

- 2.1. The proposed development is the retention of a proportion of the completed part single and part two storey extension – circa 1.7 metres in depth at ground level and 0.9 metres in depth at first floor level. The additional area is stated as 6.58 square metres in area.
- 2.2. The ground floor extension is circa 4.9 metres in depth from the main rear wall. Please note that stated dimensions on the drawings are internal dimensions.
- 2.3. The first floor extension is circa 3.9 metres, in width and is the same depth (circa 4.9 metres) as the ground floor extension, on the southern side.
- 2.4. There is a window located at first floor on the western (rear) elevation. The rear garden depth is stated as approximately 6.6 metres. There are two plastic sheds in the rear garden.
- 2.5. Please note that the external dimensions referred to above are scaled by hand and are approximate only.

3.0 Planning Authority Decision

3.1. Decision

The planning authority refused for two reasons.

- (1) *The development would contravene materially a condition attached to a previous permission for development on the site. The works seeking retention permission is at variance with condition no. 2 of Reg. ref. F19B/0261 which states that the proposed extension shall project no more than 3.5m from the rear building line of the existing dwelling. The development in its current form negatively impacts upon the residential amenity of the surrounding area in terms of overshadowing and overbearance and undermines the RS Zoning Objective. The development as such is not in accordance with the proper planning and sustainable development of the area.*
- (2) *The proposed development would set an undesirable precedent for other similar developments, which would in themselves and cumulatively be harmful to the residential amenities of the area.*

3.2. Planning Authority Reports

Planning Report

The Planning Officer considered the planning history of the site, the zoning and development plan policy and other matters when assessing the application. The report notes that a number of submissions were made in relation to the development proposed to be retained. This included the prescribed body, the DAA which sought a noise insulation condition, should the permission be granted. Irish Water looked for the imposition of conditions in relation to drainage. Both observers made a submission on the application.

The Planning Officer noted the previous assessment of the permitted development and why it was considered necessary to reduce the first floor depth. This arose over concerns relating to the residential and visual amenity of the neighbouring properties. The report considers the current form of development on site and refers to the 45 degree rule and the impact on No. 22 in terms of overshadowing and overbearance. The Planning Officer recommended refusal of retention permission.

Other Technical Reports

The Water Services Department recommended conditions.

4.0 Planning History

4.1. ABP 247657-20 F16B/0239 on the subject site.

Planning permission for a part one and part two storey extension that extended to the southern side of the boundary was refused by An Bord Pleanála following third party appeal, for the following reason:

“Having regard to the pattern of development in the vicinity, and to the provisions of the current Development Plan for the area, it is considered that the proposed development, by reason of its two storied nature to the side of the existing house, and its proximity to the mutual boundary with the adjoining property to the south, would be overbearing and would seriously injure the residential amenities of this property, and would conflict with the provisions of the Development Plan, and in particular with objectives DMS28 and DMS29, which require separation distances between the side walls of houses of at least 2.3 metres, in order to allow for adequate maintenance and access. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.”

That application was 2.7 metres in depth, internally measured and stepped out beyond the southern flanking wall of the existing dwelling.

4.2 F19B/0261 (permitted 21.11.2019) on the subject site

The Planning Officer noted that the proposed development had been amended from the application that was refused so as all works are to the rear of the existing dwelling. Therefore the proposed development would not be visually obtrusive or prominent. The depth of the first floor extension was stated as 4.3 metres. The Planning Officer considered the proposed development could give rise to overshadowing of No. 22, The Green. Therefore, Condition 2 was imposed to limit the projection to 3.5 metres in depth. The northeastern quarter of the ground floor remained undeveloped. A window is shown in the northern elevation as well as the eastern elevation at first floor level. No condition refers to this window. This window appears to serve an en-suite.

4.3 FS5/043/21 on the subject site

This sought a Declaration of Exemption for the development to be retained. It found that the works were development and not exempted development. This was due to the contravention of Condition 2 of F19B/0261, which limited the projection to 3.5 metres.

5.0 Policy and Context

5.1. Development Plan

The current development plan is the *Fingal Development Plan 2017-2023*. The site is zoned 'RS', the objective of which is to *'Provide for residential development and protect and improve residential amenity.'*

There are a number of development plan policies which relate to residential extensions in the development plan. The plan states:

"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 PM46 Encourage sensitively designed extensions to existing dwellings which do not negatively impact on the environment or on adjoining properties or area."

In relation to first floor rear extensions:

"First floor rear extensions will be considered on their merits, noting that they can often have potential for negative impacts on the amenities of adjacent properties. The Planning Authority must be satisfied there will be no significant negative impacts on surrounding residential or visual amenities. The following factors will be considered:

- Overshadowing, overbearing and overlooking, along with proximity, height and length along mutual boundaries.*
- Remaining rear private open space, and its usability.*
- External finishes and design, which shall generally match the existing.*

Ground floor rear extensions will be considered in terms of their length, height, proximity to mutual boundaries and remaining usable rear private open space. Side extensions will be evaluated against proximity to boundaries, size and visual harmony with existing (especially front elevation), and impacts on residential amenity. 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 facade and its roof profile and ridge may be sought to protect amenities, integrate into the streetscape and avoid a 'terracing' effect. External finishes shall generally match the existing.

Roof alterations/expansions to main roof profiles, for example, changing the hip-end roof of a semi-detached house to a gable/'A' frame end or 'half-hip', will be assessed against a number of criteria including:

- Consideration and regard to the character and size of the structure, its position on the streetscape and proximity to adjacent structures.*
- Existing roof variations on the streetscape.*
- Distance/contrast/visibility of proposed roof end.*
- Harmony with the rest of the structure, adjacent structures and prominence.*

"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. In residential developments over 3 storeys, minimum separation distances shall be increased in instances where overlooking or overshadowing occurs."

5.2. Natural Heritage Designations

The development proposed to be retained is not of a nature where natural heritage areas would be affected and no appropriate assessment issues arise.

5.3. EIA Screening

The development proposed to be retained does not come within a class for Environmental Impact Assessment and so no EIA screening is required.

6.0 The Appeal

6.1. Grounds of Appeal

The appeal has been submitted by the First Party's agent, James M. Briscoe, Architect and is accompanied by a letter from the First Party.

- The purpose of the application is to retain the development as constructed. A misunderstanding arose in the relation to the development permitted.
- In reference to the requirement for a 22 metre separation distance, the appellant states that there is no direct overlooking of opposing two storey development.
- The amount of rear private open space remaining exceeds 42 square metres, which exceeds the requirements for the size of remaining private open space following the development of an extension to a dwelling house (which is 25 square metres), as set out in the Planning and Development Regulations, 2001 as amended.
- The appellant notes that save for Condition 2 of F19B/0261, the development to be retained would generally comply with the size of development allowed under Class 1 of Schedule 2, Part 1 of the Regulations. The development is less than 40 square metres in area.
- The development is due north of No.22 The Green, so it will not be affected in terms of daylight and sunlight.
- 2.2.17 of the BRE Site layout and Planning for daylight and sunlight is referred to and it is stated that as the centre of the window lies outside the 45 degree angle on elevation, the impact is likely to be small.
- The first floor window is 2 metres from the party boundary with No. 18, The Green. This comes within the limitations as set out in the Planning and Development Regulations, 2001 as amended.
- Drawings are submitted referring to the 45 degree rule and shadow.
- Precedent cases are cited – F05B/0225 – 15 The Close, Melrose Park, F09B/0030 – 17 Aspen Drive, Drinan and F07B/0082 25 Aspen Drive , Drinan.

- The letter from the appellants give further detail on the circumstances surrounding the development.

6.2. Planning Authority Response

- The planning authority had no further comment on the appeal, save for in the event of a grant of permission, that a financial contribution be attached in the order.

6.3. Observations

Two observations were received. The first was submitted by Feargall Kenny, on behalf of Ms. Patricia O' Neill of 22, The Green, Melrose Park and the occupant of the dwelling to the south of the subject site. The second observation is from Thomas and Rowena Dunne, of 18, The Green Melrose Park and the occupants of the dwelling to the north of the subject site.

The grounds of Ms. Patricia O' Neill can be summarised as follows:

- Ms. O'Neill did not appeal the grant of permission on site, because of the requirement to reduce the depth of the first floor extension. The Section 5 Declaration confirmed that the development required planning permission and is unauthorised. The First Party should not benefit from their actions.
- The loss of residential amenity for Ms. O'Neill relate to visual obtrusion and overbearance. Some level of overshadowing would arise. The depth of the first floor is 4.7 metres when measured externally. A loss of daylight has occurred, particularly in the evenings. The value of her property has depreciated.
- The new window permitted under F19B/0261 overlooks the property.
- Photographs are attached.

The grounds of Thomas and Rowena Dunne observation can be summarised as follows:

- The development to be retained is unauthorised.

- It negatively impacts on the residential amenity of their home in terms of overshadowing and overbearance, contrary to the objective of the residential zoning, which requires these to be protected.
- Photos taken on 16th January, 2022 demonstrate the degree of overshadowing which the first floor extension creates.
- Precedent cases cited are not similar in aspect nor overlooking.
- The grant of permission under F19B/0261 was considered reasonable.
- A grant of permission for the proposed development would set an undesirable precedent.

6.4. Further Responses

No further responses are on the file.

7.0 Assessment

- 7.1. The development proposed to be retained is larger than that permitted. I have examined the drawings which have been provided for F19B/0261 and checked the on-line file in the planning authority. The first floor plan drawing, PP.4.4 shows the internal floor length as being 4.4 metres. The ground floor plan is shorter on the north-easter quarter, consistent with the drawings submitted with the current application.
- 7.2. There is no disagreement that the development as constructed is unauthorised. The issue to be assessed, in my opinion, are the impacts the additional development creates.
- 7.3. The First Party makes the case that the size of the development generally comes within the scope of the scale of development that would be deemed exempted development, save for the particular condition (Condition 2) of F19B/0261 which provides an express limitation on the depth of the first floor.
- 7.4. I have examined Class 1 of Schedule 2 of the Planning and Development Regulations, 2001 as amended. This allows for a development of 12 square metres in size in a semi-detached dwelling. Any above ground floor development shall not be less than 2 metres from any party boundary. In addition, any above ground floor window shall not

be 11 metres from the boundary it faces. Therefore, irrespective of the planning authority's decision not to consider the matter further than Condition 2 of F19B/0261, the development proposed to be retained would not comply with the conditions and limitation of Class 1, due to proximity to boundaries.

- 7.5. The ground floor of the development to be retained has been constructed so that it is flush with the new rear building line. There are no windows on the flanking walls of the extension. The overall internal area of the ground floor is circa 22.4 square metres. I am satisfied that the 'squaring off' of this element does not give rise to a significant loss of residential amenity to No. 18, The Green.
- 7.6. The first floor extension is located on the southern section of the extension. It is no closer to No. 18 than previously permitted but is longer in depth. The photographs provided by the observers, the Dunnes, clearly show the overshadowing impact of the development to be retained, during the time of year when shadows are longer in the winter months. The photographs also provide a baseline situation, prior to any extension, when one compares the shadows experienced by No.16, The Green, to No. 18, The Green. The photographs are taken from 12:42 to 16:10 on 16.01.2022.
- 7.7. The shadows demonstrate that at this time of year, the majority of the windows in No. 18 are in shadow from the development proposed to be retained. I would suggest that had the development been completed in accordance with its permission, the extent of shadowing of the windows and patio of No. 18 would be broadly similar.
- 7.8. The impact on No. 22, which is south of the subject site is also shown in photographs from the observer. The flanking wall of the extension has not been rendered. As a result, none of the radiance i.e., reflected light, that the wall would bring to No. 18, has been achieved, which would help offset loss of light, if this rendering had been completed. The wall is setback a metre from No. 22. The wall increases privacy to the patio area beside the door. Therefore, I am satisfied that the overbearance of the extension is moderated by the increase in privacy and the completion of the render would help to restore daylight levels to No. 22.
- 7.9. The ground floor window in the existing flanking wall is larger than that shown on the plans. However, it serves a utility room and I am satisfied no overlooking arises from this non-habitable room.

- 7.10. In relation to the dwellings on the Heights which are set at an angle to The Green, notwithstanding the closer distance of the first floor window to the western boundary, I do not consider that the overlooking to be much greater, beyond that already permitted.
- 7.11. I can understand that the observers would be aggrieved that the applicants would benefit from failing to comply with the rules of the system and that this would undermine the planning system. However, in my opinion, the issue of proportionality must also come into play – the degree of harm which the development as constructed would give rise to relative to the remedy. I am satisfied that while the development to be retained has given rise to a worsening of effects, that the majority of the effects would come about if the development was completed as originally conditioned.
- 7.12. The planning authority's second reason for refusal, relates to the undesirable precedent a grant of permission for similar developments. The planning authority is an enforcement authority and has concerns that the decision would encourage more unauthorised development. An Bord Pleanála has no remit in enforcement and has to assess the appeal on its own merits.

8.0 Recommendation

- 8.1. I am therefore, recommending a grant of permission.

9.0 Reasons and Considerations

Having regard to the residential zoning of the site under the Fingal Development Plan 2017-2023, planning history of the site, the extent of development to be retained and the impacts on residential amenity of properties in the vicinity of the site, it is considered that the development proposed to be retained would not seriously injure the residential or visual amenities of the area. The development proposed to be retained would, therefore be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	That the development proposed to be completed, shall be rendered within 6 months of the date of this order. Reason: In the interest of residential and visual amenities.

Mary Mac Mahon
Planning Inspector

29 April 2022