



An
Bord
Pleanála

Inspector's Report ABP-312396-22.

Development	Retain structure in rear garden for use for storage and home office.
Location	154 Claremont Court, Dublin 11.
Planning Authority	Dublin City Council .
Planning Authority Reg. Ref.	3192/21.
Applicant	Pat McCann.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party
Appellant	Derek Nolan.
Observers	None.
Date of Site Inspection	11 February 2022.
Inspector	Mairead Kenny.

1.0 Site Location and Description

- 1.1. The site is located towards the rear of the housing estate of Claremont which is located between Glasnevin and Finglas and is accessed from the R135 Finglas Road opposite Glasnevin Cemetery. To the rear of the site is an industrial estate.
- 1.2. The subject dwellinghouse is a mid-terrace two-storey dwellinghouse. The rear garden contains an unusual dog-leg type area which extends to the rear of the house at no. 152. Within this area is a low profile flat roofed structure which is subject of this appeal. I am satisfied following inspection that the subject building is as shown on the application drawings. The building is of 2570mm height and 11620mm in width.

2.0 Proposed Development

- 2.1. Permission is sought to retain the existing structure.
- 2.2. The stated area of the structure is 49.5 sq. m.
- 2.3. The intended use of the structure is for storage and home office use.
- 2.4. The planning authority issued a request for further information relating to legal interest.
- 2.5. The applicant replied on 4 November 2021. The response was in the form of a statutory declaration signed by a Commissioner for Oaths testifying to exclusive use of the lands for 25 years.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission subject to conditions including:

- To be in accordance with plans and particulars as amended by further information received 4 November 2021.
- The use of the structure shall not be for human habitation, the keeping of animals or for uses other than use incidental to the enjoyment of the dwellinghouse.

- No commercial use.
- Drainage and code of practice requirements.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The significant points of the planner's report include:

- The site zoning is Z1 although the structure is within lands which are zoned Z6.
- A separation distance of 17.9m is maintained between the front elevation of the rear garden structure and the rear elevation on the main dwelling.
- On site it was noted that the structure included two separate home office and a small kitchenette. There was no evidence of use as a separate residential unit.
- There is no objection in principle or on the grounds of overlooking or overshadowing.
- The applicant has indicated that they are the owners. The request for further information was issued in the context of possible doubt re sufficient legal interest to make the application. The planning authority has no reason to doubt the response.
- Permission should be granted

3.2.2. Other Technical Reports

Transport Infrastructure Ireland – the site falls within the Section 49 Levy Schedule for Light Rail. A contribution would apply unless exempted.

Drainage Division – no objection subject to standard requirements.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

The points made in the observation are reiterated in the appeal and relate to the ownership of the lands. Points are also made relating to the suitability of the structure for habitable use and the arrangements for foul and surface water drainage. There is reference also to the fence erected at the rear of the applicant's own rear garden wall.

4.0 Planning History

There is no recent relevant planning history.

5.0 Policy Context

5.1. Development Plan

The site is zoned Z1 the objective of which is 'to protect, provide and improve residential amenities'. Part of the site is zoned Z6 'to provide for the creation and protection of enterprise and facilitate opportunities for employment creation'.

Policies relating to alteration and extensions to dwellinghouses are set out in section 16.2.2.6, 16.10.12 and Appendix 17.

5.2. Natural Heritage Designations

None in the immediate vicinity.

6.0 The Appeal

6.1. Grounds of Appeal

The main points of the appeal submitted by the owner of 152 Claremont are:

- The planning authority took the applicant's unsupported statements at face value.
- There was no such use of this land by the applicant until 2020 when the construction took place.

- I refer to the attached aerial photographs.
- These show that there was a boundary between the extended lands to the rear of 154 and 152. I refer also to the shed.
- I have an agreement pending approval with DCC to purchase and acquire title to the land to the rear of my property at no. 152. DCC has not indicated that they have abandoned their ownership and as the adjoining property owner I am the person primarily entitled to purchase the land.
- The permission is fundamentally compromised.

6.2. Applicant Response

The response submitted on behalf of the applicant was received on 23 January 2022. The response comprises a solicitor's letter which sets out further information relating to the land ownership.

6.3. Planning Authority Response

The planning authority response was received on 31 January 2022.

It states that the land on which the subject development took place is registered to Dublin City Council. No consent was granted for the making of the application.

DCC is amendable to disposal of lands to the rear of the relevant garden abutting the property. The subject plot extends across to the rear of more than one property. The owner of no. 152 applied in 2021 to DCC to acquire the plot behind his property.

6.4. Further Responses

The applicant and appellant both responded to the comments of DCC.

The appellant states confirms that he applied to acquire the land area.

The applicant provided a further solicitor's letter stating that DCC is incorrect in the assumption of full title. The ownership of the lands by DCC has been abandoned.

The applicant has had possessory title for 18 years.

6.5. **Observations**

None received.

7.0 **Assessment**

7.1. I consider that the issues arising in this case may be considered under the following headings:

- Appeal grounds.
- Visual and residential amenities
- Use of structure.
- Drainage.

7.2. **Appeal grounds**

- 7.2.1. The grounds of the appeal relates solely to the legal issues which were set out in the observation to the planning authority. The observation to the planning authority had raised a wider range of issues including with respect to the nature of the use. The submissions on the appeal include for the first time the comments of the DCC Property Management Section stating that they own the land and have not consented to the application. The applicant continues to claim ownership.
- 7.2.2. I consider that there is no role of the Board in determination of the legal dispute between the parties. In the event that the Board decides to grant permission I recommend that the Board Direction issue a separate note referring to the provisions of section 34(13) of the Planning and Development Act 2000 as amended.
- 7.2.3. At the time of receipt of the application the planning authority was satisfied that the applicant had sufficient legal interest to make the application. The Board has no powers to reverse that decision.
- 7.2.4. I recommend that the Board determine this case based on the planning issues which arise.

7.3. Visual and Residential Amenities

- 7.3.1. The structure which is proposed to retain it is a low-profile building which is devoid of extensive glazing. I agree with the conclusion of the planning authority that there is no question of overlooking from this building. I note the erection of a timber fence, which is within the area defined for the purposes of this site. This provides screening and prevents any inter-visibility between the two garden areas.
- 7.3.2. Subject to appropriate use of the structure I consider that there is no likelihood of any significant adverse effects in terms of the residential amenities of the adjacent properties. I note that the appellant has not raised any such concerns in addition.
- 7.3.3. I conclude that the development is acceptable in terms of visual and residential amenities.

7.4. Use of structure

- 7.4.1. The applicant's cover letter noted that the subject building was constructed for the purposes of providing home accommodation in the pandemic to be used by family members. Inspection of the structure by the planning authority revealed a use of this nature. I made an unannounced inspection to the site in late afternoon on a weekday. A family member was in place and was working from home at the time within the main dwelling house. No person occupied the subject building. The interior was laid out for recreational purposes associated with use the main dwelling house including TV viewing and boxing. There was also evidence of use for domestic storage. I note that there is no bedroom and no proper kitchen.
- 7.4.2. Based on my inspection I am satisfied that the subject building has not been and is not being used as a habitable unit independent of the main dwelling house. Equally I consider that there is no evidence of any commercial use. I note also that there is no independent access. I conclude that the nature of the use would not give rise to any adverse effects on the amenities of the area.
- 7.4.3. I recommend a condition relating to the use of the structure which shall be solely in connection with the use of the dwellinghouse.

7.5. Drainage and other issues

- 7.5.1. The appellant has raised issues relating to the arrangements for site drainage. The report of the Drainage Division sets out certain requirements. I recommend that the Board's standard requirements relating to drainage be attached by condition.
- 7.5.2. The subject lands are adjacent to an industrial premises but have no future potential for use in connection with the industrial estate. As such the zoning objective may be considered not to be reasonable. The Board is not bound by the Z6 zoning objective.
- 7.5.3. I note the comment of TII relating to the s49 contribution. In the circumstances where the planning authority has not attached a condition of this nature, I do not recommend it to the Board.

7.6. Appropriate Assessment

- 7.6.1. Having regard to the nature and scale of the proposed development, the nature of the receiving environment, the likely emissions arising from the proposed development, the availability of public water and sewerage in the area, and distance to the nearest European sites, I am satisfied that no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. I recommend that permission be granted.

9.0 Reasons and Considerations

It is considered that subject to compliance with the conditions set out below, the development which it is proposed to retain would not seriously injure the residential amenities of adjoining properties or the visual amenities of the area, would not be prejudicial to public health or adversely affect the environment, and would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions.

1. The development shall be retained in accordance with the plans and particulars lodged with the application, as amended by the submission received by the planning authority on 4 November 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 and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The existing dwelling and rear garden structure shall be used solely in connection with the main house and shall not be sold, let or otherwise transferred or conveyed, save as part of the dwelling.

Reason: To restrict the use of the rear garden building in the interest of residential amenity.

3. The use of the rear garden structure shall be strictly limited to use for purposes ancillary to the main house, including use for domestic storage, home office and recreational use.

Reason: To restrict the use of the rear garden building in the interest of residential amenity.

4. There shall be no use of the rear garden for any purposes relating to the keeping of animals or for any commercial use.

Reason: To restrict the use of the rear garden building in the interest of residential amenity.

5. Water supply and drainage arrangements shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

Mairead Kenny
Senior Planning Inspector
14 April 2022