



An
Bord
Pleanála

Inspector's Report

ABP-312588-22

Development

Retention permission for development. The development consists of: The retention of 2 no. existing single storey outbuildings. (1) A shed to the rear of the existing house for use as study/gym. (2) A temporary external WC to the side of existing house which was erected due to safety concerns regarding the Covid-19 pandemic and the elderly residents who live in the existing house.

Location

Balnootra, No. 19 Alma Road, Monkstown, Co. Dublin which is a Protected Structure

Planning Authority

Dun Laoghaire Rathdown County Council

Planning Authority Reg. Ref.

D21A/0956

Applicant(s)

Michael Fitzgerald

Type of Application

Retention

Planning Authority Decision

Grant

Type of Appeal	First Party against Condition
Appellant(s)	Michael Fitzgerald
Observer(s)	None
Date of Site Inspection	13/03/2022
Inspector	Gillian Kane

1.0 Site Location and Description

- 1.1.1. The subject site is located on the western side of Alma Road, a mature residential road running from Seapoint Avenue on the north to Monkstown Road on the south, in the south Dublin suburb of Monkstown.
- 1.1.2. Currently on the subject site is a large two-storey over basement semi-detached dwelling with a coach house to the side. The coach house is now a separate dwelling.
- 1.1.3. The two structures to be retained are a single storey shed structure in use as a gym & study in the rear garden and a single storey wooden structure that houses a WC, on the side elevation of the dwelling.

2.0 Proposed Development

- 2.1.1. On the 2nd November 2021, planning permission was sought for the retention of works constructed within the curtilage of a protected structure, comprising two single storey structures – a shed to the rear of the dwelling used as a gym / study and an external WC to the side of the existing house. Total floor area 14.38sq.m.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On the 17th December 2021, the Planning Authority issued a notification of their intention to GRANT permission subject to 3 no. conditions. Condition no. 2 states:
2. Within 3 months from the date of a final grant of permission, the external W.C. facility located to the side of the dwelling house shall be removed from the subject site.

Reason: The siting of the proposed W.C. to be retained is considered to detract from the visual character and setting of the protected structure and in this regard, it is considered that the proposed development is contrary to Policy AR 1 of the County Development Plan 2016-2022.

3.2. Planning Authority Reports

- 3.2.1. **Drainage Planning:** No objection.

- 3.2.2. **Conservation Officer:** Shed is to the rear and does not have a detrimental impact. External WC is to the side and detracts from the character and setting of the Protected Structure and therefore opposed to the retention as it is contrary to Policy AR1 of the development plan.
- 3.2.3. **Planning Report:** Gym / shed is not visible from the public realm and is acceptable. External WC to be retained detracts from the character and setting of the Protected structure and therefore should be refused permission to be retained.

3.3. **Observations**

- 3.3.1. Two submissions were submitted to the Planning Authority, in one support, one objecting to the development to be retained.

4.0 **Planning History**

- 4.1.1. None on subject site.

5.0 **Policy Context**

5.1. **Architectural Heritage Protection – Guidelines for Planning Authorities**

- 5.1.1. This guidance, which is a material consideration in the determination of applications, sets out comprehensive guidance for development in conservation areas and affecting protected structures. It promotes the principle of minimum intervention (Para.7.7.1) and emphasises that additions and other interventions to protected structures should be sympathetic to the earlier structure and of quality in themselves and should not cause damage to the fabric of the structure, whether in the long or short term (7.2.2).
- 5.1.2. With regard to **curtilage**, section 13.3.1 of the guidelines state that features within the curtilage and attendant grounds of a protected structure can make a significant contribution to the character of that structure. The designed landscape associated with a protected structure was often an intrinsic part of the original design concept and, as such, inseparable from the building. Where proposals are made for alterations to a designed landscape, ancillary buildings, structures or features within the curtilage or attendant grounds of a protected structure, a site inspection should be carried out by the planning authority in order properly to understand the potential effects of the proposed development. **Section 13.3.2** states that when assessing the

contribution of structures or features within the curtilage or attendant grounds to the character of a protected structure, and when considering any proposals to alter such features, certain criteria must be considered.

5.2. **Dun Laoghaire Rathdown County Development Plan 2016-2022.**

- 5.2.1. The operative Development Plan is the Dun Laoghaire Rathdown County Development Plan 2016-2022. The site is zoned objective A – to protect and/or improve residential amenity.
- 5.2.2. Relevant policies and objectives include section **8.2.3.4(iv) Additional Accommodation in Existing Built-up Areas** which states that “Detached Habitable Room This can provide useful ancillary accommodation such as a playroom, gym or study for the main residence. It should be modest in floor area and scale, relative to the main house and remaining rear garden area. The applicant will be required to demonstrate that neither the design nor the use of the proposed structure will detract from the residential amenity of adjoining property or the main house. Any such structure shall not be to provide residential accommodation for a family member/ granny flat”.
- 5.2.3. **Policy AR1: Record of Protected Structures** It is Council policy to: i. Include those structures that are considered in the opinion of the Planning Authority to be of special architectural, historical, archaeological, artistic, cultural, scientific, technical or social interest in the Record of Protected Structures (RPS). ii. Protect structures included on the RPS from any works that would negatively impact their special character and appearance. iii. Ensure that any development proposals to Protected Structures, their curtilage and setting shall have regard to the Department of the Arts, Heritage and the Gaeltacht ‘Architectural Heritage Protection Guidelines for Planning Authorities’ (2011). iv. Ensure that new and adapted uses are compatible with the character and special interest of the Protected Structure.

5.3. **Natural Heritage Designations**

- 5.3.1. The South Dublin Bay SAC (000210) and the South Dublin Bay and River Tolka Estuary SPA (004024) are 0.2km to the north of the subject site.

5.4. EIA Screening

- 5.4.1. Having regard to nature and scale of the proposed development and the urban location of the site there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. An agent for the applicant has submitted a first party appeal against condition no. 2 of the decision of the Planning Authority to impose the condition. The grounds of the appeal can be summarised as follows:
- The external WC was constructed in response to Covid-19 requirements. Pupils of the music lessons in the house now have safe and sanitary facilities.
 - The applicant requests that permission be granted for a period of 4 no. years or until such time as Covid-19 no longer poses a fatal risk to the inhabitants of the house.
 - Personal letter from applicant states that children attending music lesson previously used the family facilities in the house. This is no longer feasible due to a health condition of one of the residents.
 - Photographs submitted showing minimal impact of structure to be retained.

6.2. Planning Authority Response

- 6.2.1. The Planning Authority considers that the grounds of the appeal do not raise any new matter which in the opinion of the Planning Authority would justify a change in attitude to the proposed development.

7.0 Assessment

- 7.1.1. I have examined the file and the planning history, considered national and local policies and guidance and inspected the site. Section 139 of the Planning and Development Act 2000- 2016 provides that where an appeal is made to the Board against only a condition of a permission and where the Board is satisfied that a de

novo assessment of the appeal is not required, that the Board may issue a direction to the Planning Authority relating to the attachment, amendment or removal of the condition.

- 7.1.2. In the case of the current appeal against condition no. 2, I am satisfied that the appeal accords with the criteria of section 139 and therefore I restrict my assessment of the appeal to condition no. 2 only.

7.2. Condition no. 2

- 7.2.1. Condition no. 2 of the Planning Authority's decision requires the removal of the external WC within three months of the date of the final grant. The applicant has requested that this condition be removed or amended to provide for a period of 4 no. years or for as long as Covid-19 poses a fatal risk.

- 7.2.2. Policy AR1 of the development plan, which forms the reason for the Planning Authority's condition has two elements of relevance to the subject works to be retained. The first is to protect RPS structures from any works that would negatively impact their special character and appearance. The subject external WC has a footprint of 0.97sq.m. and overall height of 2.4m and a width of 1.265m. It is approx. 225mm from the side elevation of the protected structure. It is made of dark timber cladding and has a single door, no window. The structure is not visible from the front of the dwelling, nor is it visible from the public road. It is only visible to those who pass the side of the dwelling. It is largely screened by the hedging directly in front. I am satisfied that the structure does not negatively impact the architectural interest of the dwelling.

The second part of policy AR1 is to ensure that any development proposals to Protected Structures, their curtilage and setting shall have regard to the Department of the Arts, Heritage and the Gaeltacht 'Architectural Heritage Protection Guidelines for Planning Authorities' (2011). Of relevance to the subject application is section 6.8.3. of the Guidelines which states that generally, attempts should not be made to disguise new additions or extensions and make them appear to belong to the historic fabric. The subject structure is demonstrably a new structure and one that could be removed without any damage to the protected structure.

- 7.2.3. 6.14.2 of the Guidelines states that where an application for retention of unauthorised works to a protected structure is lodged, a planning authority should

apply the same consideration to the works as for planning applications and should, if considering granting permission, seek to ensure that the works for which retention permission is granted have the minimum possible impact on the character of the structure. I am satisfied that were the application for permission rather than retention my assessment would remain the same – that the subject structure does not negatively impact the architectural interest or character of the protected structure and when the structure is removed, no damage to the protected structure will be caused.

7.2.4. Regarding a time limit on the retention permission, I note section 7.5 of the Development Management Guidelines 2007. The guidelines states that in deciding whether a temporary permission, which can apply to a particular structure or use, is appropriate, three main factors should be taken into account: first the grant of a temporary permission will rarely be justified where an applicant wishes to carry out development of a permanent nature that conforms with the provisions of the development plan. Secondly, it is undesirable to impose a condition involving the removal or demolition of a structure that is clearly intended to be permanent. Lastly, it must be remembered that the material considerations to which regard must be had in dealing with applications are not limited or made different by a decision to make the permission a temporary one. Thus, the reason for a temporary permission can never be that a time limit is necessary because of the adverse effect of the development on the amenities of the area. If the amenities will certainly be affected by the development they can only be safeguarded by ensuring that it does not take place.

7.2.5. The Applicant has made the case that the structure is required for a very particular reason - Covid 19. Whilst it is not possible to know when that reason will no longer be germane, the applicant has indicated a willingness to remove the structure after 4 no. years. I consider this reasonable and consider that condition no. 2 should be amended to reflect this.

7.3. Appropriate Assessment

7.3.1. Having regard to the nature and scale of the proposed development to be retained in a fully serviced built-up urban area, no appropriate assessment issues arise, and it is

considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects, on a European site.

8.0 Recommendation

- 8.1.1. 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 and Development Act, 2000 to AMEND condition number 2 and the reason therefore, as follows:

2. Within four years from the date of a final grant of permission, the external W.C. facility located to the side of the dwelling house shall be removed from the subject site.

Reason: In the interest of clarity.

Gillian Kane
Senior Planning Inspector

13 March 2022