



An
Bord
Pleanála

Inspector's Report ABP-312731-22.

Development	Permission & Retention: Demolition of porch roof and side garage. Construction of extension to front, side and rear of house together with associated site works.
Location	No. 37 Saint Annes Avenue, Clontarf East, Dublin 5.
Planning Authority	Dublin City Council – North.
Planning Authority Reg. Ref.	WEB 5001/21.
Applicant(s)	Gavin Beaddie & Jennifer Roche.
Type of Application	Planning Permission & Retention Permission.
Planning Authority Decision	Grant with conditions.
Type of Appeal	Third Party.
Appellant(s)	Thomas Butterly.
Observer(s)	None.
Date of Site Inspection	25 th day of March, 2022.
Inspector	Patricia-Marie Young.

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1.0 Site Location and Description

- 1.1. No. 37 Saint Anne's Avenue, the appeal site has a stated 518.7m² area and it is located at the northern side of the junction of Saint Anne's Avenue and Saint Anne's Terrace, c220m to the south of Watermill Road, as the bird would fly, in the north Dublin city suburb of Raheny, in County Dublin.
- 1.2. The site contains a two-storey end of terrace dash dwelling with side garage that would appear to date in construction to circa 60 to 70 years ago. This dwelling is setback from the Saint Avenues by a front garden area that accommodates a separate drive and pedestrian access to the roadside boundary with the remaining area in grass.
- 1.3. There is a separate single storey mono-pitch roof structure to the rear of the main dwelling. This structure appears to have been recently constructed and appears to abut the adjoining property of No. 23 Saint Annes Terrace which bounds the site's rear boundary.
- 1.4. The side garden that runs along the southern side of the site is separated from the area associated with the rear of the subject dwelling by a solid tall wall which contains a wooden pedestrian gate providing access to the area to the immediate rear of the property. This side garden area has an unkempt appearance.
- 1.5. The surrounding area has a mature residential character.

2.0 Proposed Development

- 2.1. PERMISSION & RETENTION: The development sought under this application consists of planning permission for the demolition of the existing front porch roof and side garage at ground floor level. The construction of a new single-storey extension to the front, side, and rear of the existing dwelling to include a porch, utility, playroom & new kitchen/living/dining space. Also included is a proposed new vehicular access from St Anne's Avenue. Retention of 31m² single-storey structure to the rear garden of existing dwelling. The development is to include internal alterations, landscaping along with new boundary walls to the side and front of the site together with all ancillary site works and drainage.
- 2.2. According to the planning application form provided the floor area of new buildings sought under this application is 78.82m²; the total floor area of buildings to be

demolished is 15.5m²; the total of buildings of residential extensions exempt or not is given as 15.5m²; the total floor area of buildings to be retained is 31.2m²; and, the total floor area of new and retained is 186.42m². In addition, the proposed site coverage is given as 29.25%.

- 2.3. On the 14th day of December, 2021, the applicant submitted their **further information** response. Their response dealt with the drainage concerns raised by the Planning Authority and puts forward a number of drainage improvements only.

3.0 Planning Authority Decision

3.1. Decision

On the 19th day of January, 2022, the Planning Authority decided to **grant** planning permission and retention permission subject to ten number mainly standard conditions. The conditions included:

Condition No. 2: Payment of Development Contributions.

Condition No. 4: Relates to Noise Controls during construction.

Condition No. 6: Restricts the use of the development permitted.

Condition No. 8: Sets out the requirements of the Transportation Planning Division.

Condition No. 9 & 10: Relates to drainage requirements.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The final Planning Officer's report, dated 19th day of January, 2022, is the basis of the Planning Authority's decision. It sets out that the applicant has satisfactorily addressed the drainage concerns raised in the Planning Authority's further information request. In addition, it was considered by the Planning Officer that the development sought under this application was consistent with the prevailing pattern of development in the area, that it would not give rise to any undue visual and/or residential amenity impact. Thus it concludes that the development sought under this application accords

with the proper planning and sustainable development of the area and a grant of planning permission and retention permission, subject to conditions, is recommended.

3.2.2. **Other Technical Reports**

Drainage: Final report (dated the 21st day of December, 2021). No objection, subject to safeguards.

Transportation: No objection, subject to safeguards.

3.3. **Prescribed Bodies**

3.3.1. None.

3.4. **Third Party Observations**

3.4.1. During the course of the Planning Authority's determination of this application they received one third party observation. This was submitted by the appellant in this appeal case. A copy of this submission is attached to file. I consider that the planning concerns raised therein correlate with those raised by them in their appeal submission to the Board. (See: Section 6.1 of the report below).

4.0 **Planning History**

4.1. **Recent and Relevant: Site & Setting**

4.1.1. There are no appeal cases relating to the site or its setting that are of relevance.

5.0 **Policy Context**

5.1. **Development Plan**

5.1.1. The operative development plan is the Dublin City Council Development Plan, 2016-2022.

5.1.2. The site is located in an area zoned objective 'Z1 - *Sustainable Residential Neighbourhoods*' under the said Plan, with a stated objective '*to protect, provide and improve residential amenities*'.

- 5.1.3. Section 16.2.2.3 of the Plan deals with the matter of 'Alterations' and 'Extensions' to existing dwellings. It sets out these should be designed to respect the existing building, its context, and the amenity of adjoining occupiers.
- 5.1.4. In addition, Section 16.10.12 of the Development Plan also deals with 'Alterations and Extensions to Dwellings' and recommend that proposals should respect the character of the area and should protect the residential amenity of adjoining properties.
- 5.1.5. Appendix 17 'Guidelines for Residential Extensions' sets out detailed advice and guidance on extensions to existing dwellings.

5.2. Natural Heritage Designations

- 5.2.1. None relevant.

5.3. EIA – Screening

- 5.3.1. Having regard to the existing development on site, the nature and scale of the development sought under this application and the location of the site on serviced brownfield suburban land, 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. The grounds of appeal can be summarised as follows:
- Concern is raised that the structure for which retention is sought has been used for habitable purposes since the 24th day of November, 2021.
 - The applicant contends that the applicant informed him of his intention to live in this structure whilst renovations were being carried out on the main dwelling.
 - The use of the shed structure is restricted by way of condition by the Planning Authority. However, concern is raised that its part contended use as a gym would result in noise nuisance.

- Of concern no condition restricting the type of office use has been provided.
- The drawings submitted with this application fail to show the presence of a window on the north eastern elevation of this structure.
- Concern is raised in relation to temporary boundary treatment provided encroaching onto the curtilage of No. 39 Saint Annes Avenue.
- The drawings fail to show the new side entrance which has been erected on the existing south west wall parallel to Saint Anne's Terrace.
- A four-inch soil vent pipe protrudes above the structure is not shown on the elevational views submitted. This vent pipe is positioned at the boundary and is unsightly.
- The garden height to the rear of the property has been raised and is higher than adjoining properties. This therefore adds to the height of the structure for which retention is sought for.
- The structure for which retention is sought has an overbearing impact on their property. It also diminishes privacy and access to sunlight as well as daylight.
- The design of the structure for which retention is sought is not in keeping with the prevailing character of buildings in this area.
- The Planning Authority's Planning Officer was incorrect in their assumption that No. 39 Saint Anne's Avenue has a similar sized structure to the rear. The size of the shed to structure to the rear of the said property is 23m² and is of a less substantive scale.
- The applicant continued building works despite enforcement action being issued on them.
- It is not accepted that this development is consistent with the provisions of the Development Plan for extensions and alterations to dwellings.
- The drawings provided give no clarity on ground levels.
- The proposed extension and the building for which retention is sought are not in keeping with the character, design and finish of existing buildings on Saint Annes Avenue and Saint Anne's Terrace.

- It is questioned whether this development would have been permitted as sought under this application if part of the development had not already been constructed.
- The applicant did not discuss the works carried out and the works proposed to be carried out with them.

6.2. Applicant Response

6.2.1. None.

6.3. Planning Authority Response

6.3.1. None.

6.4. Observations

6.4.1. None.

7.0 Assessment

- 7.1. Having carried out an inspection of the site, examined the appeal and application documentation including having had regard to planning history of the site and its setting, together with having regard to all relevant planning policy provisions, I consider that the main issue that arises in this appeal case are the issues raised in relation to one of the components sought under this planning application, i.e., the retention of a 31m² single storey structure to the rear.
- 7.2. In relation to this concern the appellant also puts forward a concern that the amended boundary treatments which include pedestrian access to the immediate rear garden area between the rear elevation of No. 37 Saint Anne's Avenue and the aforementioned single storey structure for which retention is sought gives rise to adverse residential and visual amenity impacts.
- 7.3. Of further concern the appellant raises concern that the use of this structure is not as indicated by the applicant in that they contend that it has been and is being used for habitable purposes by the applicant and that the separate access provided to it in the amended boundary treatments are integral to its use as a habitable unit.

- 7.4. Having examined all the documentation provided with this application, having regard to the prevailing character of development in this suburban residential setting where similar alterations and additions have occurred to existing dwellings within what was once a highly coherent, uniform and formally designed residential scheme, I concur with the Planning Authority that the other components of the proposed development, subject to the safeguards imposed by way of condition, is an acceptable form of development on land that is residentially zoned (Note: 'Z1') under the Dublin City Development Plan, 2016-2022.
- 7.5. In concluding this I consider that there are no other substantive planning issues arising in this appeal case and that the Boards remit can, in my view, be restricted to its deliberation to the specific matters raised in the appeal submission, namely the concerns outlined above.
- 7.6. Further, for clarity purposes on the matter of the development that is sought under this application for retention, I note that the Development Management Guidelines for Planning Authorities, 2007, make it clear that, in dealing with applications for retention, they must be considered "*as with any other application*". This is in accordance with planning law and with proper planning practice, in that all applications for retention should be assessed on the same basis as would apply if the development in question were proposed. Therefore, no account can, or should, be taken of the fact that the development has already taken place.
- 7.7. In relation to the residential impacts arising from the shed structure for which retention is sought. I note that this structure is of recent construction and has a given width of 6.055m; a depth of 6.52m and a flat roof height of 2.91m. Its external finish consists of a simple palette of render finish which is proposed to match the extension to the host dwelling I observed has yet to be applied; PVC window as well as door openings on its eastern elevation; plastic eaves and rainwater goods. The materials associated with the roof structure over are not specified. It has a given setback of 871mm from the northern boundary; 656mm from the western boundary and 771mm from the southern boundary.
- 7.8. There is a pattern in this suburban setting of ancillary buildings constructed to the rear of dwellings. In my view the proposed design is one which would not give rise to undue

overlooking, overshadowing or overbearing over and above that to be expected within the context of this suburban-scape setting.

- 7.9. In addition, the design of this shed is not out of character with the proposed extensions sought under this application to the host dwelling that include the same flat roof design over and utilise the same palette of materials.
- 7.10. The shed structure when taken in conjunction with the alterations and additions proposed under this application to the host dwelling do not result in substandard amenity open space remaining given that No. 37 Saint Anne's Avenue occupies an end of terrace site with a generous side garden.
- 7.11. In this context it is not out of character to provide an element of privacy in the form of additional boundary treatments to the rear of the property with access to the main rear private amenity space to provide for screening as well as access from Saint Anne's Terrace which bounds the southern boundary of the site.
- 7.12. Under this application permission is not sought for the habitable use of the structure for which retention is sought and given the concerns raised in relation to its use for such purposes it was reasonable for the Planning Authority to restrict its use by way of condition to purposes incidental to the habitable use of No. 37 Saint Anne's Avenue as one dwelling unit. The use of such a condition is not uncommon where structures of this permanency and nature are sought to the rear of dwelling units in this type of context in order to ensure clarity with the nature of the development that is permitted. Should any deviation of use occur this would be enforcement matter for the Planning Authority to deal with as they see fit.
- 7.13. In terms of nuisance arising from the use of the structure for which retention is sought should occupants of No. 37 Saint Anne's Avenue I note the concerns raised in relation to noise and office use. However, the applicant has not applied for any commercial use of this unit and as said unauthorised use of the property falls within the jurisdiction of Dublin City Council whereas anti-social behaviour falls outside of the remit of the Board and lies with the gardai or where necessary the courts.
- 7.14. I also consider that the boundary treatments do not give rise to any undue visual or residential amenity impact on the streetscape setting of Saint Anne's Avenue and Saint Anne's Terrace that would warrant or support their refusal.

- 7.15. Further, I consider that the documents as provided are sufficient to make a determination on this application and any omissions from the drawings including the north east elevation window and other boundary amendments including the provision of the pedestrian gate fall outside of the scope of works sought and for determination under this application.
- 7.16. Based on the above I consider that the structure for which retention is sought does not give rise to any undue residential and/or visual amenity concerns that are sufficient in their own right to merit refusal of planning permission or to consider it a type of development that is inconsistent with the land use zoning of the site or the Development Plan provisions set out under Section 16.2.2.3 and 16.10.12 which relates to alterations and extensions to existing dwellings. With these sections of the Development Plans setting out that such developments will only be considered where the protection of amenity of adjoining occupiers and their residential amenities through no other significant injuries arise.
- 7.17. Based on the above considerations I concur with the Planning Authority that the structure for which retention is sought should be permitted subject to it not being used for habitable purposes and that it together with the other alterations as well as additions sought for the host dwelling are restricted so that the host dwelling is maintained as a single dwelling unit in the interests of orderly development and in the interest of residential amenity.

7.18. **Other Matters Arising**

- 7.18.1. **Condition No. 7:** Should the Board be minded to grant permission for the development sought under this application I recommend that it includes the requirements set out under this condition of the Planning Authority's notification to grant planning permission and retention permission so that the extension to the host dwelling, particularly in relation to its principal building line, remains a subservient feature. Alongside that is in keeping with other single storey projections that have facilitated porches and extensions to the building footprint of dwellings within this formally designed and originally highly coherent as well as uniform in their appearance residential scheme. The requirements under this condition ensure that the alterations and extensions to the host dwelling do not give rise to any undue diminishment of the streetscape scene the site forms part of visual amenities. Particularly, given the site's

high visibility within the residential scheme it forms part of due to No. 37 Saint Anne's Avenue occupying a corner site with a larger side garden at an internal road junction. On this basis I consider that they are reasonable and appropriate in terms of ensuring protection of the visual amenities of the area.

7.18.2. **Condition No. 8:** This condition of the Planning Authority's notification to grant permission is standard in its nature and reflects the design provisions and guidelines for the provision of entrances onto the public domain where they are permitted. On this basis I consider that they are reasonable and appropriate in ensuring that the driveway entrance proposed is consistent with local planning provisions and that it does not give rise to any undue road safety or traffic hazards. Further, these requirements also protect the pattern of development in this area where driveway entrances have been provided and ensures that this component of the development is consistent with this pattern of development that also informs the streetscape scene of Saint Anne's Avenue and Saint Anne's Terrace.

7.18.3. **Section 48 - Development Contribution:** Applicable to the development sought.

7.18.4. **Section 34(13) of the Planning & Development Act, 2000, as amended:** Should the Board be minded to grant planning permission and retention permission for the development I advise that they include Section 34(13) of the said Act, which states that '*A person shall not be entitled solely by reason of a permission under this section to carry out any development*' and, therefore, any grant of permission for the subject proposal would not in itself confer any right over private property, as a precaution given the developments proximity to adjoining properties.

7.19. **Appropriate Assessment**

7.19.1. Having regard to the nature of the development sought under this application, which essentially comprises of alterations and additions to a suburban dwellinghouse on serviced lands 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 planning permission and retention permission is **granted**.

9.0 Reasons and Considerations

9.1. Having regard to the pattern of development characterising this area; the design, built form and layout of the development sought under this application; and, to the provisions of the Dublin City Development Plan, 2016-2022, it is considered that, subject to compliance with the conditions set out below, the development sought under this application would not seriously injure amenities of nearby dwellings or would it seriously injure the visual amenities of the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 14th day of December, 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 development hereby approved shall incorporate the following amendments:

(a) The proposed extension to the front shall have a maximum depth of 1.5m from the primary front building line of the dwelling.

(b) The proposed boundary wall to the south-west shall have a maximum height of 2m and shall not extend forwards of the primary front building line of the dwelling.

Reason: In the interests of orderly development and visual amenity.

3. The entire premises shall be used as a single dwelling unit and shall not be subdivided in any manner or used as two or more separate habitable units.

Reason: To prevent unauthorised development.

4. The domestic outbuilding shall be solely for purposes incidental to the enjoyment of the dwelling house and shall not be used for other type of residential use, industrial, business and/or commercial purposes.

Reason: In the interest of residential amenity and in the interest of the proper planning and sustainable development of the area.

5. The external finishes of the proposed extension and the outbuilding to be retained shall respect those of the existing dwelling in of colour and texture. Samples of the proposed materials shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

6. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

7. The following requirements of the Planning Authority's Transportation Planning Division of Dublin City Council shall be complied with:

- (a) Driveway entrance shall not exceed 3.0m in width and shall not have outward opening gates.

- (b) Footpath and kerb to be dished and entrance provided to the requirements of the Area Engineer, Roads Maintenance Division.

- (c) All costs incurred by Dublin City Council including any repairs to the public road and services necessary as a result of the development, shall be at the expense of the developer.

- (d) The developer shall be obliged to comply with the requirements set out in the Code of Practice.

Reason: To ensure a satisfactory standard of development.

8. Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

9. (a) During the construction and demolition phases, the development shall comply with the British Standard 5228 'Noise Control on Construction and Open Sites, Part 1, Code of Practice for basic information and procedures for noise control'.

(b) The developer shall comply with the requirements set out in the Codes of Practice from the Drainage Division, the Transportation Planning Division, and the Noise & Air Pollution Section.

Reason: In order to ensure a satisfactory standard of development and in the interests of residential amenity.

10. The site development works, and construction works shall be carried out in such a manner as to ensure that the public roads are kept clear of debris, soil, and other materials and if the need arises for cleaning works or repair to be carried out to the same, the said cleaning works shall be carried out at the developer's expense.

Reason: To ensure that the adjoining lane and roads are kept in a clean and safe condition during construction works in the interests of orderly development.

11. The construction of the development shall be managed in accordance with a Construction and Demolition Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

12. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Advisory Note: Section 34(13) of the Planning and Development Act, 2000 as amended, indicates that: *“a person shall not be entitled solely by reason of a permission or approval under this section to carry out a development”*.

Patricia-Marie Young
Planning Inspector

28th day of March, 2022.