



An
Bord
Pleanála

Inspector's Report ABP- 313212-22

Development	Construction of a new first floor extension over existing single storey dwelling.
Location	27 Warren Green, Baldoyle, Dublin 13.
Planning Authority	Fingal County Council.
Planning Authority Reg. Ref.	F22B/0019.
Applicant	Suzanne & Brendan Maguire.
Type of Application	Permission.
Planning Authority Decision	Grant Permission.
Type of Appeal	Third Party v Grant of Permission
Appellant	Liz Murray.
Observer(s)	None
Date of Site Inspection	27 th September 2022
Inspector	Enda Duignan.

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	4
4.0 Planning History.....	5
5.0 Policy and Context.....	6
6.0 The Appeal	7
7.0 Assessment.....	8
8.0 Recommendation.....	11
9.0 Reasons and Considerations.....	11
10.0 Conditions.....	11

1.0 Site Location and Description

- 1.1.** The address of the appeal site is No. 27 Warren Green, Baldoyle, Dublin 13. The site is located on the southern side of Warren Green. Warren Green is a cul-de-sac which connects to Warrenhouse Road, c. 200m to the north-west of the site. On site is a single storey, detached dwelling with car parking provided within the front setback and an area of private amenity space to its rear. The site has a stated area of c. 0.05ha.
- 1.2.** The site is located within an established residential area which typically comprises detached and terraced style dwellings of a similar architectural form. I note a terrace of two storey dwellings are located to the east and west of the appeal site and the site is bound to the south by the rear amenity space of existing properties on Burrowfield Road.

2.0 Proposed Development

- 2.1.** Planning permission is sought for internal alterations and the construction of a first floor level extension. The layout of the internally modified and extended dwelling shall comprise:

2.2. *Ground Floor Level*

- Entrance hall;
- Living room;
- Snug/Guest room;
- 2 no. bedrooms;
- WC; and,
- Kitchen/dining room.

2.3. *First Floor Level*

- 2 no. bedrooms;
- Bathroom;
- Workspace; and,
- Master bedroom with ensuite and wardrobe.

3.0 Planning Authority Decision

3.1. Decision

Fingal County Council granted planning permission for the development subject to compliance with 7 no. standard conditions.

3.2. Planning Authority Reports

3.2.1. Planning Report

The Fingal County Council Planning Report forms the basis for the decision. The report provides a description of the appeal site and surrounds and provides an overview of the proposed development, the planning history of the site and surrounds and the policy that is applicable to the development proposal. The report also summarises the observations on the application.

In terms of visual and residential amenity, the Planning Authority refer to the planning history of the appeal site, whereby it is noted that planning permission had been granted previously for similar developments but had not been carried out. The Planning Authority therefore note that the precedent for a development of this nature has been established on site. Having regard to the pattern of development in the area, the Planning Authority raised no concerns with respect to scale and form of the extensions and deem the proposal to be in keeping with the character of the surrounding area. They also form the opinion that the proposed development will not give rise to adverse amenity impacts on properties within the surrounds of the site.

A grant of permission was recommended within the Planning Report subject to standard conditions.

3.2.2. Other Technical Reports

Water Services Planning Section: Report received stating no objection subject to compliance with conditions.

3.2.3. Prescribed Bodies

None.

3.2.4. Third Party Observations

3 no. observations were received by third parties. The issues raised within the observations can be summarised as follows:

- The proposal will negatively impact on the residential amenity of properties within the vicinity by reason of overlooking, overshadowing and loss of light.
- The proposed development is visually overbearing.
- The dwelling has already been extended and currently adversely impacts the residential amenity of the property within the surrounds.
- The subject site is burdened by a negative easement in respect of light and will compromise the residential amenity of the adjoining property.
- The proposed development is not in keeping with the character of the area and is located on a visually prominent bend.
- By virtue of its scale and size, the proposed development is contrary to the proper planning and sustainable development of the area.

4.0 Planning History

4.1. Subject Site

F11B/0004: Planning permission granted for the demolition of the existing sunroom to the rear, ground floor and first floor extensions to the existing house consisting of the removal of the existing roof, construction of a new first floor level and roof, a new porch to the front, a single storey annex to the rear and side and associated site works.

F11B/0266: Planning permission granted for single storey extensions to the rear and side of the existing house, modifications to the existing roof and fenestration and associated site works.

4.2. Enforcement History

None known.

5.0 Policy and Context

5.1. Fingal County Development Plan, 2017-2023 (CDP)

The site is within an area zoned 'RS' (Residential) of the Fingal County Development Plan (CDP), 2017-2023, the objective of which is 'Provide for residential development and protect and improve residential amenity'. All lands within the immediate surrounds of the subject site are also zoned 'RS'. The vision for 'RS' zoned lands is to 'Ensure that any new development in existing areas would have a minimal impact on and enhance existing residential amenity'.

The need for people to extend and renovate their dwellings is recognised and acknowledged in the current CDP. The policy notes that extensions will be considered favourably where they do not have a negative impact on adjoining properties or on the nature of the surrounding area. 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.

Policy objectives relevant to the development proposal include:

- **Objective DMS42:** Encourage more innovative design approaches for domestic extensions.

5.2. Natural Heritage Designations

There nearest designated Natura site is the Baldoyle Bay Special Protection Area (SPA) (Site Code: 004016), c. 160m to the north-east of the site and the Baldoyle Bay Special Area of Conservation (SPA) (Site Code: 000199), c. 160m to the north-east of the site. The 'Proposed Natural Heritage Area: Baldoyle Bay' is also located c. 160m to the north-east of the site.

5.3. EIA Screening

- 5.3.1. The proposed development does not fall within a Class of Development set out in Part 1 or Part 2, Schedule 5 of the Planning and Development Regulations, 2001 (as amended), therefore no EIAR or Preliminary Examination is required.

6.0 The Appeal

6.1. Grounds of Appeal

The main points made can be summarised as follows:

- The Planning Authority did not give sufficient weight to the objection put forward in respect of the easement by way of rights to light, which has benefited the adjoining property for a period greater than 30 years.
- With respect to the rights to light easement, this is an “ancient lights” right. The height, scale and orientation of the proposed development would negatively impact upon the enjoyment of these ancient lights for a considerable portion of daylight hours. This impact would be greater in the winter months.
- It is submitted that the Planning Authority erred in law in not giving due consideration to the fact that the adjoining property is entitled to the continued enjoyment of the amenities and the easements attached to that land.
- It is considered that the Planning Authority failed to give due consideration to the fact that the existing dwelling was previously extended. The further extension of the dwelling will cause considerable overshadowing and possible over sailing to which it is strongly objected.
- The proposed development would amount to an overdevelopment of the site and would be contrary to the zoning objective.
- The scale of the development and the closeness to the boundary may have implications for development of the adjoining site in the future, giving rise to a possible devaluation of the property.
- The initial development of Warren Green was laid out in a manner consistent with the easements attached to the lands so that all properties erected on those lands were orientated to retain the rights associated with the easements over the lands.

6.2. Planning Authority Response

- 6.2.1. Response received dated 28th April 2022 which refers the Board's attention to the planning history of the site and requests the decision of the Planning Authority to be upheld.

6.3. Observations

None.

6.4. Further Responses

None sought.

7.0 Assessment

The main issues to be considered are those raised in the Third Party's grounds of appeal, and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Visual Amenity & Streetscape
- Residential Amenity
- Appropriate Assessment.

7.1. Visual Amenity & Streetscape

- 7.1.1. The proposal seeks planning consent for works to an existing dwelling which shall comprise the construction of a first floor level extension. The proposal requires the demolition of a significant portion of the existing roof to provide a bathroom, 2 no. bedrooms and a master bedroom with ensuite and wardrobe at first floor level. The modified dwelling will have a pitched roof with a hipped form which will have a height that matches that of the properties to the east and west of the appeal site.
- 7.1.2. Warren Green is an established residential area which is typically characterised by double storey dwellings of a similar architectural style. I also note that there are examples of single storey properties within the area and there are dormer style

dwellings located further to the north-west, proximate to the junction of Warren Green and Warrenhouse Road. Having regard to overall scale, height and form of the modified dwelling and the pattern of development in the immediate area, I am satisfied that the proposed development does not detract from or negatively impact the area's established character. I note a similar development was permitted under F02B/0298 at No. 34 Warren Green (north-west of the appeal site), whereby planning permission granted for the construction of a first floor level extension above the existing single storey dwelling. I therefore consider the design of the proposal to be consistent with the pattern of development in the area and is acceptable having regard to the visual amenity of the surrounding area.

7.2. Residential Amenity

- 7.2.1. As noted, the proposal seeks to partially demolish the existing roof and construct a new first floor level extension above the front portion of the dwelling. I note that the Third Party appellant who resides in the property to the east of the site has raised significant concerns with respect to the potential impact of the proposed development on the residential amenity of their property by reasons of overshadowing and loss of daylight/sunlight. I note that the Third Party appellant's property is approximately half the size of the subject site. Given the siting of the existing dwelling, the front building line of the existing dwelling is setback behind the adjoining property to the east. As a consequence, a significant portion of the dwelling extends beyond the rear building line of the property to the east and is sited opposite its rear amenity space.
- 7.2.2. On its eastern side, the proposed first floor level extension has a total length of c. 7m and a maximum height of c. 7.4m above natural ground level (wall height of c. 5m). The proposed double storey extension is set back c. 900mm from the eastern site boundary and will extend by c. 3.5m beyond the rear building line of the property to the east. Given the siting of the proposed extension, whereby it is located proximate to the eastern site boundary and extends beyond the rear building line of the adjoining property, I would share the concerns of the Third Party appellant with respect to the potential impact of the proposal on the residential amenity of the adjoining property by reason of overshadowing. I also note that the size of the amenity area associated with

the adjoining property to the east is restricted relative to the appeal site. The Planning Authority refer to a precedent for development of this nature being established at No. 34 Warren Green (i.e. under Reg. Ref. F02B/0298). In terms of amenity impacts, I note that there is a distinct difference between it and the current proposal, owing to the siting of the existing dwelling relative to the property to the east, whereby a significant portion of the dwelling is sited opposite its rear amenity space.

- 7.2.3. In order to mitigate the potential impact on the adjoining property, I am satisfied that a condition could be included which provides for the omission of Bedroom No. 3 at first floor level. The omission of this bedroom will allow for a greater setback to be provided from the eastern boundary, where this portion of the extension is sited opposite the rear amenity space of the adjoining property. Subject to compliance with this condition, I am satisfied that the proposed development will not unduly compromise the residential amenity of properties to the east of the site by reason of overshadowing, loss of light, overlooking or by being visually overbearing. In terms of the Third Party's commentary with respect to the rights to light easement, I note that the issue of determining rights to light is a matter for the Courts and I do not consider that the Board is in a position to draw any conclusions in relation to the matters raised.
- 7.2.4. As the first floor level extension is set back behind the rear building line of the property to the west, I am satisfied that no adverse amenity impacts shall arise and the proposal is therefore considered acceptable having regard to the residential amenity of the properties to the west.

7.3. Appropriate Assessment

- 7.3.1. The nearest designated site is the Baldoyle Bay Special Protection Area (SPA) (Site Code: 004016) and the Baldoyle Bay Special Area of Conservation (SPA) (Site Code: 000199), c. 160m to the north-east of the site. Taking into consideration the modest nature, extent and scope of the proposed development and to the nature of the receiving environment, with no direct hydrological or ecological pathway to any European site, 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. Grant of permission is recommended.

9.0 Reasons and Considerations

9.1. Having regard to the nature and extent of the proposed extension and to the pattern of development in the area, it is considered that the proposed development, subject to compliance with the conditions set out below, would not seriously injure the residential or visual amenities of the area or of property in the vicinity and would, therefore, be accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The proposed development shall comply with the plans and particulars lodged with the application submitted, 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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The Applicant shall provide for the omission of Bedroom No. 3 at first floor level. Prior to the commencement of development, the Applicant shall submit for the written agreement of the Planning Authority, revised sections, elevation and plans incorporating the amendments.</p> <p>Reason: In the interest of residential amenity and to protect the residential amenity of the existing property to the east of the subject site.</p>
3.	<p>Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p>

	Reason: In the interest of public health.
4.	<p>Site development and building works shall be carried out only between the hours of 8am to 7pm Mondays to Fridays inclusive, between 9am to 2pm 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.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
5.	<p>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. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000 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.</p>

Enda Duignan
 Planning Inspector

28/09/2022