



An
Bord
Pleanála

Inspector's Report

ABP-314758-22

Development	Retention for extra height as shown above eaves on rear extension. Retention for a front timber garden shed.
Location	No. 9 Goatstown Close, Goatstown, Dublin 14.
Planning Authority	Dun Laoghaire Rathdown County Council.
Planning Authority Reg. Ref.	D22B/0301.
Applicant(s)	Connor McCann.
Type of Application	Retention Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party.
Appellant(s)	Michael & Patrick MacDonagh.
Observer(s)	None.
Date of Site Inspection	7 th day of December, 2022.
Inspector	Patricia-Marie Young.

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1.0 Site Location and Description

1.1. No. 9 Goatstown Close, the appeal site has a stated area of 0.0177ha. The irregular rectangular shaped site is located within Goatstown Close, a high-density, low-rise housing estate predominated by two storey terraces. No. 9 comprises a mid-terrace narrow plan 2-storey dwelling with small front and rear back garden. In the front garden area, there is a timber shed structure and to the rear it has been extended by way of a part single and part two storey extension. The rear boundary adjoins the rear garden of No. 7 Charlton Lawn which comprises of a two-storey detached extended dwelling. The dwelling overlooks a small green area and associated group parking. The site is situated 220m by road to the north east of the R825 Goatstown Road, in the Dublin city suburb of Goatstown, with the surrounding area having a residential character.

2.0 Proposed Development

2.1. Retention planning permission for:

- Extra height of eaves on rear extension.
- A front timber garden shed.
- All associated site development works.

According to the submitted planning application form the gross floor area of the existing building on site is 122m.

The submitted drawings show that the rear first floor extension has a flat roof uniform height of 5.925m with the first-floor level rear extension containing a box shaped window serving an ensuite bathroom. In addition, the first-floor level ground floor extension has a flat roof uniform height of 3.32m.

2.2. On the 18th day of August, 2022, the applicant submitted their **further information** response. The Planning Authority did not deem this to be significant and no new public notices were requested. Of note the response comprised of a revised eastern side elevation and sets out that there is no window on this elevation. In addition, details of the extension and shed area is provided, i.e., 18m².

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On the 9th day of September, retention permission was **granted** subject to five number standard conditions. Of note Condition No. 2 required the amendments granted on foot of this permission to be otherwise carried out in strict accordance with the terms and conditions attached to ABP-3011841-18 (P.A. Ref. No. D17B/0598) in the interests of proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The **final Planning Authority's Planning Officer's report** is the basis of their decision. It considered that the development for which retention is sought would not detract significantly from the amenities of the area and that it was generally consistent with the provisions of the Development Plan. It concludes with a recommendation to grant retention permission subject to safeguards.

The **initial Planning Authority's Planning Officer's report** concluded with a request for further information on the following:

Item No. 1: Seeks for updated correct drawings of the side (east) elevation.

Item No. 2: Clarification on floor area of extension and shed.

3.2.2. Other Technical Reports

None.

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 2 No. Third Party Observations which raised residential amenity diminishment as well as surface water drainage concerns.

4.0 Planning History

4.1. Site.

ABP-301184-18 (P.A. Ref. No. D17B/0598): On the 21st day of August, 2018, the Board **granted** permission for a part single storey and part two storey rear extension to the subject property. Of note, the documentation submitted with this application indicate that the site has a larger area of 0.018ha; a 80m² gross floor area of existing buildings and a 60m² gross floor area of proposed works.

4.2. Setting

4.2.1. No recent and/or relevant planning history.

5.0 Policy Context

5.1. Development Plan

5.1.1. The relevant Development Plan is the Dun Laoghaire Rathdown County Development Plan 2022-2028. The site is zoned 'A' residential with the objective to: *"provide residential development and improve residential amenity while protecting the existing residential amenities."*

5.1.2. Section 12.3.7 of the Development Plan relates to additional accommodation in existing built-up areas with Section 12.3.7.1 relating to extensions.

5.1.3. Section 12.4.8.1 of the Development Plan sets out general specifications for residential developments.

5.2. Natural Heritage Designations

5.2.1. The site is not located within a designated Natura 2000 site. The nearest Natura site is situated c2.6km to the north east, i.e., South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024).

5.3. EIA Screening

5.3.1. Having regard to the nature, scale, and extent of the development for which retention is sought, the site location within an established built-up urban area which is served by public infrastructure, the nature of the receiving environment and the existing

pattern of residential development in the vicinity, and the separation distance from the nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the development sought under this application. 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 this Third-Party appeal can be summarised as follows:

- Building Regulations compliance concerns raised.
- The works that have occurred on site have resulted in surface water drainage issues in their property.
- The window at first floor level is non-compliant with the grant of permission and has resulted in serious residential diminishment by way of overlooking.
- The additional height has resulted in a loss of light and diminished the enjoyment of their property.

6.2. Applicant Response

6.2.1. The First Party's response can be summarised as follows:

- The extension is less than 40m² and the flat roof was chosen to keep the height of the extension to a minimum.
- The design minimises overlooking of neighbouring properties.
- The bathroom window of concern is of a modest size and is fitted with opaque glass. When open there are minimal views available out from it.
- There are examples of this type of extension in the area.

6.3. **Planning Authority Response**

- 6.3.1. The Planning Authority refers the Board to their planners report and state that the grounds of appeal do not raise any new matters of concern that would justify a change of attitude towards the proposed development.

6.4. **Observations**

- 6.4.1. None.

7.0 **Assessment**

7.1. **Overview**

- 7.1.1. I consider that the key planning issues relating to the assessment of the appeal can be considered under the following broad headings:

- Principle
- Amenity Impact
- Drainage
- Appropriate Assessment
- Other Matters Arising

- 7.1.2. Prior to my assessment, I note that the development sought under this application relates to permission for a development that consists of retaining extra height to the rear extension and the installation of a garden shed in the front garden area.

- 7.1.3. As this application seeks retention permission, for clarity 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.

- 7.1.4. I also note that during the Planning Authority's determination of this application the Planning Authority sought further information. This further information request sought

clarity on firstly whether the eastern side elevation as depicted in the submitted drawings was correct and secondly the floor area of both the shed as well as shed subject of this application. The applicant's response was received by the Planning Authority on 18th day of August, 2022, and my assessment below is based on the development as clarified by this response.

- 7.1.5. Further to the above, I note to the Board that the appellants raise concern that the extension development as constructed may not be compliant with Building Regulations. This matter is outside of the Boards remit in their deliberations of this appeal case.
- 7.1.6. Moreover, the concerns raised in relation to the procedural handling of this application by the Planning Authority is also outside of the Boards remit whose deliberation of this case is *de novo*, considering the development sought from first principles and as such it does not have an ombudsman role for such concerns.

7.2. Principle of Development Sought

- 7.2.1. No. 9 Goatstown Close forms part of a larger parcel of suburban land zoned 'A' under the Dun Laoghaire Rathdown County Development Plan, 2022-2028. The objective for such land is to: "*provide residential development and improve residential amenity while protecting the existing residential amenities*".
- 7.2.2. This application seeks permission for the retention of raised eaves height of a part single storey and part two storey rear extension permitted subject to conditions by the Board under ABP-301184-18 (P.A. Ref. No. D17B/0598) at No. 9 Goatstown Close. In addition, permission for the retention of a garden timber structure shed in the front garden is also sought.
- 7.2.3. As stated above, retention applications must be considered on the same basis as would apply if the development in question were proposed and the circumstances as to why the retention development was carried out is not a relevant consideration or indeed justification for these works.
- 7.2.4. The general principle of residential development including the improvement of residential amenity is however acceptable, subject to such improvements not giving rise to any undue diminishment of existing residential amenities, is consistent with the

planning history of the site through to the acceptance or otherwise of site specifics / other policies within the development plan through to relevant government guidance.

7.3. Amenity Impact

- 7.3.1. At the time of inspection there was no access or views of the development to the rear of the subject property, No. 9 Goatstown Close, but there are photographs available of it in the history documents as well as in publicly available aerial photography of the site and its setting. The shed structure was visible from the public domain and the semi-private domain of the front garden area.
- 7.3.2. In relation to the latter structure, it was not dissimilar to other structures present in the front gardens of Goatstown Close in terms of overall built form and palette of external materials.
- 7.3.3. The Planning Authority and the Appellants in this case raise no specific visual and/or residential amenity concerns in relation to this structure.
- 7.3.4. Though visible from the public domain of Goatstown Close, views of this structure are localised and as said as a structure it is similar to others present to house bins within its streetscape scene. I also consider it occupies a small footprint, it is not of an excessive height and its timber external envelope is not inconsistent with other external materials in its setting nor out of character with the overall palette of materials that characterises properties in Goatstown Close.
- 7.3.5. I consider that there is no substantive visual and/or residential amenity impact arising from the front garden shed that would warrant its refusal.
- 7.3.6. In relation to the rear extension, this structure is not visible from the public domain but is visible from the private domain of adjoining and neighbouring properties, including the appellants property which is situated directly to the rear.
- 7.3.7. The appellants raise concern that the amendments made to the extension that was permitted under ABP-301184-18 has resulted in a diminishment of their residential amenity by way of overlooking and reduced levels of daylight accessing their property.
- 7.3.8. No concerns are raised by them or the Planning Authority in relation to the visual amenity impact of the part single part two extension as modified from that permitted by the Board under ABP-301184-18.

- 7.3.9. In relation to the planning history of the site I note that Condition No. 2 (a) of the Boards grant of permission for appeal case ABP-301184-18 required that: “*the first floor element of the rear extension comprising Bedroom Number 3 and en-suite together with the proposed rear window to serve existing Bedroom Number 2*” be omitted. With revised drawings showing compliance with these requirements to be submitted to, and agreed ‘*in writing*’ with, the Planning Authority prior to the commencement of development. The given reason for this was in the interest of residential amenity.
- 7.3.10. It would appear from the information on file and the planning history pertaining to this site that this was not complied with.
- 7.3.11. The submitted drawings show for the development sought under this application show internal and external modifications from the development permitted and the development as carried out on this site. With this including not only the omission of ‘Bedroom Number 3’. This omission I consider to be a positive outcome given the lack of 22m distance between the rear elevation and the opposing first floor window of the appellants property to the rear. The provision of the large window serving ‘Bedroom Number 3’ would have resulted in serious overlooking and perception of overlooking of the appellants property to the rear as well as other properties adjoining the site.
- 7.3.12. The submitted drawings accompanying this application also show that the ensuite window in the first-floor level rear extension was maintained in a non-compliant manner with Condition No. 3.
- 7.3.13. I note that the dimensions of glazing of this window measures c500mm by c500mm.
- 7.3.14. In addition, I note that the drawings submitted with this application also show that the ‘Bedroom Number 2’ large window was omitted and that a smaller first floor window instead has been provided (Note: c1m height and 0.5m width) with this window as presented now serving a bathroom as opposed to said Bedroom Number 2.
- 7.3.15. Of concern the original rear elevation did not appear to include the presence of such a window. This window is not sought for retention under this application and as such is an enforcement matter for the Planning Authority to deal with as they see fit.
- 7.3.16. As such the only first floor level rear window arising from the subject extension is the aforementioned en-suite window.

- 7.3.17. Rear extensions of single and two-storey built forms are not uncommon within suburban settings like this where the majority of dwelling units are two storey.
- 7.3.18. It is also the case in suburban locations like this that overlooking can be expected given the pattern and density of development that characterises these areas. The pattern of development that characterises the site's setting is one where there are first floor level opposing windows between the majority of properties with little in terms of visual buffers between them. In generality the distance between opposing windows is the generally required 22m with the space in between by and large consisting of private amenity spaces.
- 7.3.19. I am not convinced that the modest bathroom window, which is fitted with opaque glazing, even if open, would give rise to any significant additional overlooking despite the lack of 22m separation distance between it and the rear first floor level opposing windows of No. 7 Charlton Lawn.
- 7.3.20. I am also not convinced that this window would give rise to any undue perception of overlooking that is out of character with this suburban setting where there is an established level of overlooking arising from the density of development, the two-storey built form and the presence of first floor level windows, including clear glazed windows, at first floor level facing into opposing properties elevations as well as private domain.
- 7.3.21. Moreover, I am of the view that appropriately worded condition requiring the permanent maintenance of opaque glazing would be satisfactory to deal with any residential amenity issues that potentially could arise from this subject window. The Board could also consider restricting the opening mechanism of this window should it be minded to grant permission for the development sought under this application.
- 7.3.22. In relation to the residential amenity of No.s 8 and 10 Goatstown Close, there are no first-floor level side windows that would give rise to any overlooking concerns from the rear extension.
- 7.3.23. In relation to the concerns raised by the appellant in relation to diminishment of residential amenity arising from the increased height of the eaves of the rear extension gives rise to any significant additional loss of daylighting and/or overshadowing to that of the extension permitted under the grant of permission ABP-301184-18.

- 7.3.24. I note that the appellants have not justified this impact by way of a shadow analysis or otherwise.
- 7.3.25. I am also cognisant that the drawings submitted with this application show that the increase in eaves height relates to the ground floor level rear extension which has been increased in its flat roof height from 2.882m to 3.232m with the height of the first-floor level flat roof having decreased in height from 6.074m to 5.925m under this application. Moreover, there is no increase in depth or width sought.
- 7.3.26. Also, this application is not accompanied by a shadow/daylight analysis to demonstrate in accordance with best scientific measuring what impacts the additional eaves height would have on properties in the vicinity of the development.
- 7.3.27. Despite the lack of this information, having regard to the built form of No. 9 as revised by the development sought, the orientation of the subject property through to the separation distances between its modified rear extension and properties sensitive to change, I am not convinced based on the information before me that any significant additional loss of daylight or overshadowing arises.
- 7.3.28. I am also of the view that having regard to the pattern and density of development in this particular suburban area that there is a level of overshadowing that arises from proximity of structures to one another, including new additions like extensions.
- 7.3.29. Thus, in this context and having regard to the planning history of the site I am not of the view that the limited additional height would give rise to serious additional diminishment of residential amenities of properties in its setting by way of overshadowing/loss of daylight over and above that arising from the extension permitted by the Board under ABP-301184-18.
- 7.3.30. Based on the above considerations I concur with the Planning Authority in this case that no significant adverse residential injury would arise from the development sought under this application that would warrant or sustain a refusal of retention permission and I consider that potential issues that could arise from the rear elevation's first floor level window serving the en-suite can be satisfactorily dealt with by way of appropriately condition.

7.4. Drainage

- 7.4.1. The appellant in this case raises surface water drainage concerns in relation to the works carried out to the rear of No. 9 Goatstown Close. In relation to the development sought under this application the applicant seeks retention permission for the additional eaves height of the rear extension. There is no additional footprint sought for the rear extension as previously permitted by the Board on appeal under ABP-301184-18.
- 7.4.2. This grant of permission included a condition requiring the water supply and drainage arrangement to comply with the requirements of the Planning Authority. It is unclear from the information on this file and that publicly available what agreement was reached between the parties on these matters.
- 7.4.3. I am not convinced that the amended increased eaves height would give rise to any additional drainage issues for properties in the vicinity over and above the development permitted under ABP-301184-18. Should the works permitted under ABP-301184-18 be non-compliant with Condition No. 3 this is an enforcement matter for the Planning Authority and therefore is a matter that should be directed to them to deal with as they see fit so that no undue surface water issues arise on properties in the vicinity.
- 7.4.4. On the basis of the above considerations, I am of the view that the development sought under this application does not give rise to any substantive surface water drainage issues.

7.5. Appropriate Assessment Screening

- 7.5.1. Having regard to the nature and scale of the development for which retention is sought under this application, the location of the site within an adequately serviced urban area, the physical separation distances to European Sites, and the absence of ecological and/ or hydrological connections, the potential of likely significant effects on European Sites arising from the proposed development, alone or in combination effects, can be reasonably excluded.

7.6. Other Matters Arising

7.6.1. Oversailing/Encroachment:

Should the Board be minded to grant permission as precaution given the relationship of the rear extension and shed structure to what appears to be shared boundaries it is advised that Section 34(13) of the Planning and Development Act, 2000, as amended, states that *'a person shall not be entitled solely by reason of a permission under this section to carry out any development'* is attached to any grant of permission for the development sought under this application.

8.0 Recommendation

8.1. I recommend that **retention permission** be **granted**.

9.0 Reasons and Considerations

9.1. Having regard to the provisions of the Dún Laoghaire Rathdown County Development Plan, 2022-2028, the pattern of development in the area and to the nature, form, scale design and layout of the development sought under this application, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area. The proposed development would 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 and as amended by the further plans and particulars submitted on the 18th day of August, 2022, 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 the

commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interests of clarity.

2. Save for the amendments granted on foot of this permission, the development shall otherwise be carried out in strict accordance with the terms and conditions of Planning Permission ABP-301184-18 (P.A. Ref. No. D17B/0598), save as may be required by the other conditions attached hereto.

Reason: In the interests of the proper planning and sustainable development of the area.

3. The rear first floor window serving the extension en-suite shall be permanently fitted with opaque glazing only.

Reason: In the interest of residential amenity.

4. 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: The applicant/developer is advised that Section 34(13) of the Planning and Development Act, 2000, as amended, states that '*a person shall not be entitled solely by reason of a permission under this section to carry out any development*'. Thus, any grant of permission for the subject proposal would not in itself confer any right over private property.

Patricia-Marie Young
Planning Inspector

6th day of March, 2023.