



An
Bord
Pleanála

Inspector's Report

ABP-314957-22

Development

Retention of alterations to a permitted dwelling under P.A. Ref. No. D20A/0394 and planning permission is sought for alterations and additions together with all associated site works and services.

Location

"Regensburg", Carrickbrennan Road, Monkstown, Co. Dublin, A94 Y2C4.

Planning Authority

Dun Laoghaire Rathdown County Council.

Planning Authority Reg. Ref.

D22A/0577.

Applicant(s)

Jan Lorenc & Caroline Harte.

Type of Application

Retention Permission & Planning Permission.

Planning Authority Decision

Grant.

Type of Appeal

Third Party.

Appellant(s)

Sarah Fisher.

Observer(s)

None.

Date of Site Inspection

18th day of July, 2023.

Inspector

Patricia-Marie Young.

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1.0 Site Location and Description

- 1.1. 'Regensburg', the appeal site, is located on the eastern side of Carrickbrennan Road, just over 90m to the north of Carrickbrennan Roads its intersection onto a roundabout that accommodates the heavily trafficked Monkstown Avenue, Mounttown Road Upper and Castle Park roundabout in the Dublin city suburb of Monkstown, south County Dublin.
- 1.2. The site has a given site area of 0.0791m² and accommodates a detached two storey with habitable attic level dwelling house that is setback from the public carriageway of Carrickbrennan Road by a compacted gravel driveway that accommodates the off-street car parking needs of the occupants with an L-shaped soft landscaped area on its western and southern side.
- 1.3. The site backs onto green space amenity that appears to form part of Monkstown Park Junior School and the Christian Brothers College. The site is bound to the north and south by detached dwellings. The surrounding area has a strong residential character.

2.0 Proposed Development

- 2.1. This planning application relates to a **Retention** and **Planning Permission** application. The development as sought in the planning application consists of:

- **Retention Permission** is sought for alterations to development permitted under P.A. Ref. No. D20A/0394) consisting of:

- (1) Cill Levels of two ground floor windows on front elevation dropped.
- (2) Garage door head to front elevation raised.
- (3) Stair layout altered.
- (4) Door to playroom relocated.
- (5) Shower room and coat area at ground floor omitted.
- (6) Two rooflights in lieu of three to kitchen roof to rear.
- (7) First Floor Shower room window north elevation omitted.
- (8) First floor Ensuite layout altered.
- (9) Two first floor bedrooms on South of house combined into one.

- (10) First floor bathroom layout to west side of house altered.
- (11) Attic dormer window retained.
- (12) Front window to hall at ground floor west elevation omitted.
- (13) Alterations to fenestration and materials to rear elevation.
- **Planning permission** is also sought for new rooflight window to south pitch of attic roof.

3.0 **Planning Authority Decision**

3.1. **Decision**

- 3.1.1. On the 30th day of September, 2022, the Planning Authority decided to grant retention and planning permission for the development set out in Section 2 above subject to four conditions, most are standard in nature. I note Condition No. 3 requires the glazing within the side dormer window shall be removed and that this window opening be substituted with external finishes that match the existing dormer extension or alternatively that this window be altered to comprise of a window positioned a minimum of 1.8m above the finished floor level of the attic level within three months of a final grant of permission in the interest of residential amenity.
- 3.1.2. Of further note the advisory notes attached sets out that any attic floorspace which does not comply with Building Regulations in relation to habitable standards shall not be used for human habitation.

3.2. **Planning Authority Reports**

3.2.1. **Planning Reports**

The Planning Officers report is the basis of the Planning Authority decision. Whilst it considers that the general alterations to the previously granted permission to be acceptable it raised overlooking concerns in relation to the alterations made at attic level. It was considered that this issue could be dealt with by way of an appropriately worded condition. This report concludes with a recommendation to grant permission for the development sought subject to four conditions.

3.2.2. Other Technical Reports

Drainage: No objection, subject to safeguards.

3.3. Prescribed Bodies

3.3.1. None.

3.4. Third Party Observations

3.4.1. The appellant in this appeal case submitted an observation to the Planning Authority during its determination raising concerns that the proposed alteration to the previously permitted development has and would diminish their residential amenity.

4.0 Planning History

4.1. Site:

- **P.A. Ref. No. D20A/0394:** Planning permission was **granted** subject to conditions for a development consisting of the enlargement of the existing vehicular entrance to 3.5m from Carrickbrennan Road, landscaping and associated site works, demolition of existing single storey extensions to rear, removal of one chimney stack and construction of new single, two storey and dormer extensions to rear. Significant remodelling will include alterations to window openings and replacement of all external joinery, provision of external insulation to existing elevations, significant internal alterations to layout, provision of stairs in new location to three levels, and provision of new patio and landscaping to rear. Of note are the requirements of Condition No. 3. It reads:

“The proposed side dormer window at attic level shall be omitted and replaced with a high-level window or standard velux window.

REASON: In the interest of residential amenity.”

Decision date: 29th day of July, 2020.

4.2. Site: Other

4.2.1. **P.A. Ref. No. ENF 10422:** This relates to non-compliance with Condition No. 3 of P.A. Ref. No. D20A/0394.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. Dun Laoghaire County Development Plan, 2022-2028, is the applicable Development Plan, under which the site forms part of a larger parcel of suburban land zoned Objective 'A'. The stated land use objective for such land is '*to provide residential development and improve residential amenity while protecting the existing residential amenities*'. Residential development is permitted in principle under this zoning objective.
- 5.1.2. Section 12.3.7.1 of the Development Plan deals with the matter of extensions to dwellings.
- 5.1.3. Section 12.3.7.1(iv) deals with alterations at roof/attic level, including dormer extensions to roofs.

5.2. Natural Heritage Designations

- 5.2.1. None within the zone of influence.

5.3. EIA Screening

- 5.3.1. See completed Form 2 on file. Having regard to the nature, size, and location of the proposed development and to the criteria set out in Schedule 7 of the Regulations I have concluded at preliminary examination that there is no real likelihood significant effects on the environment arising from the proposed development. EIA, therefore, is not required.

5.4. Built Heritage

- 5.4.1. The site is located in close proximity to Recorded Monuments DU01896 (GRAV), DU01897 (CHHO) and DU01895 (CHUR) which are listed on the Record of Monuments and Places (RMP) and are therefore subject to statutory protection under Section 12 of the National Monuments (Amendment) Act, 1994. These Recorded Monuments are located in Carrickbrennan Church yard which is located just over 20m to the south of the site at its nearest point.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The grounds of this Third-Party Appeal can be summarised as follows:

- This permission of a velux window which overlooks their property is objected to.
- The grant of permission approved under P.A. Ref. No. 20A/0394 allowed for a window in the rear elevation which would have allowed for a secondary fire escape. This would not have overlooked their property.
- The rear elevation as built is shown in the drawings as timber cladding to gable however the photographs provided show that this gable is fully glazed.
- The development can be altered to accommodate an opening as originally submitted.

6.2. Applicant Response

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

- This appeal is vexatious and not made in the interests of the proper planning and sustainable development of the area.
- The velux of concern is essential for fire escape purposes and to comply with Building Regulations.
- Improvements to the subject dwelling were approved under P.A. Ref. No. D20A/0652.
- The velux window is located on the left-hand side of the property is closer to another neighbour but this was not considered to be of residential amenity concern.
- Every house on Carrickbrennan Road has upper-level clear glazed side windows and some with velux windows.
- There are multiple examples of dormer windows and velux windows that overlook into their property, including at the appellants property.
- This velux window would have limited views from it due to its design, its height and positioning relative to the floor level.

- The Planning Authority's decision requires the glazing to be raised by just under 20cm to a height of 1.8m and undergo extensive remodelling and building to accommodate this.
- Its not their intention to overlook the appellants property.
- The also dormer affords ventilation to a large space.

6.3. **Planning Authority Response**

- 6.3.1. This response considers that the grounds of appeal do not raise any new matter which would justify a change of attitude to the proposed development.

6.4. **Observations**

- 6.4.1. None.

7.0 **Assessment**

- 7.1. The primary issue in this appeal case, as I consider them, are the impacts of the development sought under this application on the residential amenity of adjoining properties, in particular the appellants property which occupies the adjoining residential plot to the south which the Appellant asserts would be adversely impacted by way of undue overlooking.
- 7.2. I am also cognisant that the First Party in this appeal case seeks that the appeal itself be thrown out on the grounds that the appellants motivations to make this appeal are frivolous and vexatious.
- 7.3. Notwithstanding, this concern, it is my view, that the residential amenity concerns arising from a development as permitted by a Planning Authority and as raised by the Appellant in their grounds of appeal submission is in itself a legitimate planning issue that warrants examination by the Board by way of this appeal. I also consider that the Appellants grounds of appeal focus solely on the issue of residential amenity impact by way of overlooking and that there are no other substantive planning issues or otherwise raised by them.

- 7.4. In relation to the matter of the applicants lack of compliance with the grant of permission P.A. Ref. No. D20A/0394, this issue I consider is an enforcement matter that falls under the jurisdiction of the Planning Authority to deal with as they see fit.
- 7.5. Further the issues raised by the First Party in terms of the Appellants actions in terms of limiting access to the northern side of the property due to the lack of any meaningful separation distance between 'Regensburg' and the appellants property is not a planning matter, but rather a civil matter that requires resolution between both parties. In such circumstance Section 34(13) of the Planning and Development Act 2000, as amended, is of note as it stipulates that a person shall not be entitled solely by reason of a planning permission to carry out any development, and, therefore, any grant of permission for the subject property would not in itself confer any right over private property in order to implement it.
- 7.6. I also note that the First Party in their grounds of appeal response raise concerns over the onerous requirements of Condition No. 3 of the Planning Authority notification order to grant retention permission and planning permission. This condition also relates to the issue of residential amenity and seeks to reduce the potential overlooking concerns that the provision of a dormer window that was previously omitted from the previous grant of permission would give rise to. The First Party did not submit an appeal to the Board in relation to addressing their concerns with the requirements of this condition.
- 7.7. The site is located on residentially zoned land under the applicable Development Plan and on such zoned land developments such as alterations and additions to existing dwelling houses are favourably considered subject to normal planning criteria being satisfied.
- 7.8. In relation to extensions at roof level Section 12.3.7.1(iv) of the Development Plan sets out that these will be assessed against a number of criteria including but not limited to proximity to adjacent structures regard to the character and size of the structure, its position on the streetscape, regard to the character and size of the structure, its position on the streetscape and proximity to adjacent structures through to existing roof variations on the streetscape.
- 7.9. In relation to dormer extensions, it sets out that a balance will be sought between the quality of residential amenity and the privacy of adjacent properties. It is also of note

that Section 12.3.7.1(ii) of the Development Plan in relation to extension to the rear seek that these above first floor level will be considered on their merits and only be permitted where no significant negative impacts on surrounding residential or visual amenities arise.

- 7.10. In addition, Section 12.3.7.1(ii) of the Development Plan in relation to side extensions also sets out that these will be evaluated against impacts on adjoining residential amenity.
- 7.11. In relation to the Planning Authority's Planning Officer's report which is the basis of their decision overlooking concerns were raised that the side dormer window had been previously omitted under P.A. Ref. No. D20A/0394 and replaced with a high-level window. This application now seeks the retention of this dormer as constructed with a cill height of 1.58m above floor level. It is noted that this window is not the only window serving the master bedroom it is recommended that its glazing be removed or alternatively the glazing element be repositioned 1.8m above finished floor level. It was recommended that this be required by way of condition (Note: Condition No. 3 of the Notification Order) in the interest of safeguarding adjoining property from undue residential diminishment by way of overlooking from this window opening.
- 7.12. Given the 7m lateral separation distance between this window and the adjoining property to the south, the 1.58m cill height from floor level when taken together with its c2.3m width and 0.7m height fitted with clear glazing, it cannot be reasonably considered that this constitutes a high level window and crucially in the context of the adjoining property to the south a window that would not give rise to actual overlooking and the perception of being overlooked. In the absence of this issue being addressed the dormer window insertion would be a type of addition that would be contrary to the circumstances where additions and alterations to existing dwellings are normally permitted. Whilst a level of overlooking can be expected in a suburban context in this situation the dormer windows southern elevation glazing would give rise to undue diminishment of the residential amenity of the property to the south in a manner that would be contrary to the site and its setting residential land use zoning. This land use zoning seeks in my view to provide a balance between residential development and protection of existing residential amenity.

- 7.13. Further it would be a type of addition that would be contrary to the provisions set out under Section 12.3.7.1 of the Development Plan on the basis of the actual potential of the subject window of concern to give rise to adverse overlooking of the neighbouring property.
- 7.14. Against this context I consider the amendments sought under Condition No. 3 of the Planning Authority's notification order a reasonable compromise given that the dormer extension was omitted from the grant of permission P.A. Ref. No. D20A/0394 on the basis of its potential to give rise to adverse residential amenity impacts on properties in its vicinity.
- 7.15. In relation to the velux window on the southern pitch of the attic roof serving the master bedroom I note that this window is positioned in the sloping roof of the attic level over the rear extension and has given dimensions of 780mm by 1400mm. The submitted plans also indicate that this window would be fitted with opaque glazing. I concur with the Planning Authority that this window would not give rise to any undue overlooking of the adjoining residential property to the west.
- 7.16. In conclusion, having regard to the above, I am satisfied subject to the safeguards set out under Condition No. 3 of the Planning Authority's notification order for P.A. Ref. No. D22A/0577, would be a type of development that is consistent with local planning provisions, the pattern of development that characterises its setting through to it would not give rise to any undue detrimental residential amenity impact on properties in its vicinity. I therefore consider that the development sought under this application accords with the proper planning and sustainable development of the area.

7.17. **Other Matters Arising**

- 7.17.1. **Building Regulations and Fire Safety:** It is my opinion that Building Regulations and Fire Safety related issues are essentially building control matters which are subject to other regulatory control / legislative provisions and thus are not pertinent to the consideration of the subject appeal.

8.0 **Appropriate Assessment**

- 8.1. Having regard to the minor nature and scale of the development under consideration, the site location within an existing suburban built-up area outside of any protected site,

the nature of the receiving environment, the availability of public services, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise, and that the development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

9.0 Recommendation

9.1. I recommend that the Board upholds the decision of the Planning Authority to **grant** retention permission and planning permission for the development sought under this planning application.

10.0 Reasons and Considerations

10.1. Having regard to the zoning objective of the area, the design, layout, and scale of the development sought under this application and the pattern of development that characterises this built up serviced suburban area, it is considered that, subject to compliance with conditions below, the development sought under this application would not seriously injure the visual amenities or residential amenity of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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 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 Reg. Ref. D20A/0394, save as may be required by the other conditions attached hereto.

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

3. (a) The glazing within the side dormer window shall be removed within three months of this order and shall be substituted with external finishes to match the existing dormer extension.

Or alternatively,

(b) The window within the side dormer extension shall be modified to comprise of a window positioned a minimum 1.8m above finished floor level of the attic level within three months of this order.

Reason: In the interest of residential amenity.

4. The disposal of surface water shall be in accordance with the drainage conditions of Planning Permission Reg. Ref. D20A/0394.

Reason: In the interest of public health.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Patricia M. Young
Planning Inspector

6th day of September, 2023.