



An
Bord
Pleanála

Inspector's Report ABP315108-22

Development	Replacement of glass in a bedroom window with opaque glass and retention of a front porch and 2-storey rear extension
Location	8 Warrenstown Green, Mulhuddart, Dublin 15
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	FW22A/0202
Applicant(s)	Valerian and Smida Jurjea
Type of Application	Permission and Retention Permission
Planning Authority Decision	Split decision. To grant with conditions and to refuse
Type of Appeal	First Party against decision to refuse
Appellant(s)	Valerian and Smida Jurjea
Observer(s)	None
Date of Site Inspection	30 th May 2023
Inspector	Brendan McGrath

1.0 Site Location and Description

1.1. The site is a semi-detached house in a mature suburban estate in Blanchardstown. The house is in a cul-de-sac and overlooks a linear green space. There are front and rear gardens. The open area of the rectangular rear garden, allowing for the extension and existing wooden shed, is about 54m².

2.0 Proposed Development

2.1. The main part of the proposal is to retain a 2 storey rear extension and an enclosed front porch. There is also a proposal for a new kitchen window and to replace a bedroom window with opaque glass.

3.0 Planning Authority Decision

3.1. Decision

Grant with standard conditions the retention of front porch and grant new side window for kitchen

Refuse permission to retain 2-storey rear extension and proposed replacement of bedroom window for the following reasons:-

1. Having regard to the nature of the room served by the first floor window in question, the proposed development would be detrimental to the residential amenities of the property, which would be contrary to the 'RS' zoning objective of the Fingal Development Plan 2017-2023, the objective of which is 'to provide for residential amenity' and would therefore be contrary to the proper planning and sustainable development of the area.'
2. Having regard to the distance of the first floor windows in the rear extension from the opposing site boundary and from the first opposing floor windows, the development would fail to accord with Objective DMS28 of the Fingal Development Plan 2017-2023 would result in overlooking of adjoining properties which would negatively impact upon the amenities and depreciate the value of same, would be contrary to the 'RS' zoning objective

in the Fingal Development Plan 2017-2023 to 'provide for residential development and protect and improve residential amenity' and would therefore be contrary to the proper planning sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The planning report forms the basis of the decision.
- The report gives detailed consideration to three previous planning applications on the site (summarised below). One of those applications, FW21B/0170, was a refusal of permission for the development which is the subject of this proposal
- The report states that, contrary to the assertion of the applicant, a development plan objective DMS28, requiring a minimum separation distance of 22 metres between directly opposing rear first floor windows, does apply to this proposal
- The report states that the rear of the house with extension is a measured 8.347m from the rear boundary
- It is accepted that neither the porch nor the rear 2-storey extension for retention have an adverse visual impact
- Screening for AA concluded that proposal will not have a significant effect on any European site
- Screening for EIA concluded that there were no aspects of the proposal which required an EIA to be undertaken

3.2.2. Other Technical Reports

There are reports from Irish Water and the water services council department stating no objection to the proposal

4.0 Planning History

- FW22A/0065 Planning application for permission and retention in April 2022. Application for the same development which is the subject of this proposal. Decision to refuse permission and to refuse retention
- FW21B/0170. Retention application in 2021 concerning developments which are the subject of this proposal. Permission to retain 2 storey rear extension refused for the same reason (number 2) as the current application. This 2021 decision does not make reference to the porch for retention
- FS5W/09/18. Section 5 Declaration in 2018. A declaration issued that the 2-storey rear extension did not constitute exempted development

5.0 Policy and Context

5.1. Development Plan

This proposal and the previous applications were made in the context of the Fingal Development Plan 2017-2023. That plan has been superseded by the Fingal Development Plan 2023-2029. Which came into force in April 2023. The plan zones the site RS 'to provide for residential development and protect and improve residential amenity'.

The new plan, like its predecessor, contains design guidance relevant to this application. That guidance endorses general principles from the previous plan, but does not have any guidance corresponding to Objective DMS28 of the previous plan, namely:-

A separation distance, a minimum of 22metres between directly opposing rear first floor windows, shall generally be observed unless alternative provision has been designed to ensure privacy. In residential development over 3 storeys, minimum separation distances shall be increased in instances where overlooking or overshadowing occurs.

The nearest guidance statement in the new plan is '*excessive overlooking of adjacent properties should be avoided*' (See Fingal County Development Plan , 2023-2029, Sections 14.10.2.1 and 14.10. 2.5, V1, page 547-549 of interim copy of plan)

5.2. Natural Heritage Designations

None relevant

5.3. EIA Screening

Having regard to the nature and modest scale of the proposed development, its location in a built-up urban area and the likely emissions therefrom it is possible to conclude that the proposed development is not likely to give rise to significant environmental impacts and the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

6.0 The Appeal

6.1. Grounds of Appeal

The appeal is on behalf of the first party. The main points are:-

- The development for which retention is sought has been in place for 'almost 20 years' and there have never been objections or complaints about the development,
- Overshadowing, visual intrusion and other design issues are not at issue,
- The only issue is council insistence on a 22m separation distance, which, the appellant asserts, is a mis-application of the 2017 development plan policy DMS28

6.2. Planning Authority Response

The planning authority has repeated its requirement of a 22m separation distance but requested that a financial contribution should be attached if the appeal is successful.

6.3. Observations

There are no observations

7.0 Assessment

7.1. In my opinion the design of the extensions and alterations, which are the main subject of this appeal, is of a good standard, and superior to other extensions in the vicinity. The only material issue, in my opinion, is the requirement of a 22m separation distance, a requirement which does not feature in the new county development plan. Photograph 4 in the appeal report submitted on behalf of the appellant, shows the view to the rear from the first floor window of the subject extension. From the submitted scaled drawings, I measure the distance between the opposing first floor windows to be approximately 19 metres. High block boundary walls and small trees ensure a reasonable degree of privacy in the respective rear gardens. I do not therefore consider, referring to the new development plan that 'excessive overlooking of adjacent properties' is an issue at this site

7.2. In respect of the proposed replacement of a bedroom window in a side elevation, with permanently obscured glazing, I cannot understand why this preference of the applicant should be a concern of the planning authority. In respect of the loss of private rear space, I consider that sufficient remains of the garden to meet requirements.

7.3. In respect of other matters which are part of the proposal, i.e. retention of a brick faced front porch and a window to kitchen/utility room in a side elevation, these do not raise planning concerns and are not objected to by the local planning authority.

7.4. Appropriate Assessment Screening

7.5. Having regard to the nature and scale of the proposed development, the nature of receiving environment as a built up urban area and the distance from any European site/the absence of a pathway between the application site and any European site it is possible to screen out the requirement for the submission of an NIS and carrying out of an EIA at an initial stage.

8.0 Recommendation

8.1. I recommend that planning permission be granted for the retention of the development that has been undertaken and permission granted for replacement of a first-floor bedroom window by obscure glazing

9.0 Reasons and Considerations

9.1. Having regard to the RS zoning of the Fingal Development Plan 2023-2029 'to provide for residential development and protect and improve residential amenity' and also having regard to the design guidance of the new plan, the proposed development would be in accordance with the proper planning and sustainable development of the area.

9.2. 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.

10.0 Conditions

1.	The development shall be carried out and completed in accordance with the plans and particulars lodged with the application Reason: In the interest of clarity.
2.	Development described in Classes 1 or 3 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, or any statutory provision modifying or replacing them, shall not be carried out within the curtilage of of the house without a prior grant of planning permission. Reason: In order to ensure that a reasonable amount of private open space is provided for the benefit of the occupants of the dwelling.

3.	<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>

Brendan McGrath
 Planning Inspector

15th. June 2023