



An  
Bord  
Pleanála

## Inspector's Report ABP315270-22

### Development

Retention Permission for amendments to previously granted planning permission (Reg. Ref. D09/0800, 0800E, 19A/0082) for a 2 storey detached dwelling and associated site works

### Location

Commons Road, Dun Laoghaire

### Planning Authority

Dun Laoghaire County Council

### Planning Authority Reg. Ref.

D22A/0687

### Applicant(s)

Robuild Construction

### Type of Application

Retention Permission

### Planning Authority Decision

Refuse Permission

### Type of Appeal

Third Party & First Party

### Appellant(s)

- Kevin Smith c/o Commons Road Residents Group
- Robuild Construction

### Observer(s)

None

### Date of Site Inspection

9<sup>th</sup> September 2023

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## 1.0 Site Location and Description

- 1.1. The proposed development is located on Commons Road, Dun Laoghaire. The site comprises of a two storey house with large front and rear gardens all on a site area comprising of 0.11ha
- 1.2. There are two gated access to the site into the front garden/parking area. There is a private lane to the west outside of the site boundary which leads to a house and gardens to the rear of the property.
- 1.3. The lands to the rear of the property within the site boundary contains a single storey flat roofed building. There were also some building materials scattered throughout the site. The rear of the property appears to be divided into two areas – one area directly to the rear of the house appears to be used as amenity space for the house and the other area where the flat roofed structure is located and which is accessed via a separate gated access from the side of the house comprises of a hard surfaced area. This is clearly visible from arial photographs pertaining to the site.

## 2.0 Proposed Development

- 2.1. The proposed development comprises of the following: Retention Permission for for amendments to previously granted planning permission (Reg. Ref. D09/0800.0800E, 19A/0082) for a 2 storey detached dwelling and associated site works.
- 2.2. The detailed development description as advertised states the amendments for which retention permission is sought include
  - (1) Construction of a single storey flat roof structure c/w 1 No. roof light containing office and storage areas in rear garden of previously approved development together with all ancillary site works, landscaping and site drainage.
  - (2) Alterations to previously approved splayed vehicular entrance arrangement and front/part side boundary treatment (extending as far as entrance gate to Lisnaroe & Brookfield). Works include provision of 1 Nr vehicular entrance from Commons Road, in line with front boundary, and replacement of existing hedgerow/post and rail fence boundary with mild steel railing between brick piers (overall height not exceeding 2.10m high) along the front boundary and

low level rendered block wall with mild steel railing over between full height piers, overall height not exceeding 2.10 high along the side (western) boundary

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

Refuse Permission for the following reasons:

*The subject site is located in an area identified as within Flood Zone A and, to a lesser extent, Flood Zone B in Appendix 15, Strategic Flood Risk Assessment of the Dún Laoghaire Rathdown County Development Plan 2022-2028. The development proposed to be retained, which includes development comprising retention of a single-storey detached structure, is located in Flood Zone A. Under Section 6.2.10 'Shanganagh River' of Appendix 15, Strategic Flood Risk Assessment of the Dún Laoghaire Rathdown County Development Plan, 2022-2028, it is stated that '.....Until a Flood Relief Scheme to the 1.0% AEP event standard is complete, any development in Flood Zone A is not permitted and development in Flood Zone B should be limited to Minor development, as defined in Section 5.2.1....'. The development proposed to be retained would not therefore be in accordance with the provisions of the Dún Laoghaire Rathdown County Development Plan, 2022-2028 regarding flood risk management, specifically Section 12.10.1 Flood Risk Management and Appendix 15: Strategic Flood Risk Assessment, specifically Section 6.2.10. The development proposed to be retained would, therefore, be contrary to the provisions of the Dún Laoghaire Rathdown County Development Plan, 2022-2028, and to the proper planning and sustainable development of the area.*

#### **3.2. Planning Authority Reports**

##### **3.2.1. Planning Reports**

The report of the Planning Officer (dated 8<sup>th</sup> November 2022) reflects the decision of the Planning Authority.

##### **3.2.2. Other Technical Reports**

- Drainage Planning Report (18<sup>th</sup> October 2022) – Recommends that the proposed development be refused as the proposed development is located within an area designated as Flood Zone A in an area where it is specifically identified as not suitable for development in the 2022-2028 Development Plan.
- Transportation Planning Report (dated 4<sup>th</sup> November 2022) have no objection to the proposed development subject to the east vehicular entrance being permanently closed up with a low wall and railing matching the existing.

### 3.3. Submissions/Observations

There is one submission on file from (Kevin Smith obo Commons Road Residents Group) which raise the following issues:

- That the site was a greenfield site prior to any building works. The applicant was granted permission for a house on the same in 2018.
- The flat roof structure which is part of the components for which the applicant is seeking retention was built in 2019. The said structure was refused retention previously and the owner did not remove the same.
- The building is being used for residential purposes and not as an office/storage facility as stated in the application. With respect of the same there are photographs submitted of the internal of the building and a bed is visible within the same
- This structure is right up against party boundary walls
- The rest of the site is used as a builders yard
- Extra traffic is generated as a consequence of the same.
- The house and site and associated rear garden is separated from the remainder of the site by way of a fence with its own electric gate access
- The rear garden associated with the house is below the size required under the current development plan

### 4.0 Planning History

On Site

- D19A-0082 – Permission & Retention Permission to complete amendments to previously granted planning permission (Reg. Ref. D09A/0800, 0800/E) for a 2 storey detached dwelling. The amendments for which Retention Permission is sought include: 1. Provision of sand and cement render finish to both side (east and west) elevations in lieu of approved brick finish. 2. Provision of brick finish to bay window structure on front (north) elevation in lieu of approved render finish. 3. Revised fenestration arrangement to side (west) elevation. 4. Omission of canopy over front entrance door. The works for which Permission to complete is sought include: Alterations to previously approved splayed vehicular entrance arrangement and front/part side boundary treatment (extending as far as entrance gate to Lisnaroe & Brookfield). Works include provision of 2 nr. vehicular entrances from Commons Road, in line with front boundary and replacement of existing hedgerow/post and rail fence boundary with low level rendered block/brick wall with mild steel railing over between full height piers, overall height not exceeding 2.0m high – granted permission subject to conditions. These conditions include for condition 2 which is for the removal of the vehicular entrance to the west of the front boundary to the site
- D09/0800 – Permission granted for a two storey dwelling on site
- D09/0800/E - Permission granted to the extend the appropriate period with respect of the above by a further 3 years.
- D15A/0502 - Permission to make amendments to permission under reference D09A/0800. The proposed amendments will consist of the provision for a revised house type/design consisting of a 7m high, 2 storey modern flat roof dwelling in a revised location on revised site layout, also incorporating revisions to the site boundaries and site entrance together with associated site works and landscaping – refused planning permission by the local authority and on appeal to the Board. Sole reason for refusal is on basis that the site is located within a designated Flood Zone and is therefore contrary to the then development plan serving the area.

Adjacent to East

D19A/0721 The proposed development will comprise the construction of 3 no. 3-bedroom residential units over 2-storey – refused by the planning authority and by

the Board on appeal. reason for refusal is on basis that the site is located within a designated Flood Zone and is therefore contrary to the then development plan serving the area.

## 5.0 Policy and Context

### 5.1. Development Plan

- Dun Laoghaire Rathdown County Development Plan 2022-2028 is the statutory development plan in the area where the proposed development site is located.
- Within the plan the site is subject to zoning objective A, which seeks *'to provide residential development and improve residential amenity while protecting the existing residential amenities'*
- 12.10.1 Flood Risk Management

Applications shall adhere to the policies and objectives set out in Appendix 15 Strategic Flood Risk Assessment and Section 10.7 Flood Risk while having regard to 'the 'Planning System and Flood Risk Management' Guidelines for Planning Authorities' DEHLG (2009) and DECLG Circular PL2/2014.

The Flood Zone maps are set out in Appendix 15

### 5.2. Natural Heritage Designations

There are no designated areas in the immediate vicinity of the site.

### 5.3. EIA Screening

Having regard to the nature and scale of the proposed development it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for EIA can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 6.0 The Appeal

- A first party appeal was lodged c/o DK Planning & Architecture on 5<sup>th</sup> December 2022

### 6.1. Grounds of Appeal

- That the planning authority have not taken into account the minor footprint associated with the flat roofed structure for which retention has been sought with respect flooding impact.
- This is in variance to Section 5.2.8 of the Planning System and Flood Risk Management Guidelines for Planning Authorities which allows for minor developments such as extensions and re-use of existing buildings
- That the said structure for retention is only marginally larger than that which would otherwise be exempt under Part 1 Class 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended. Class 3 allows for detached structures up to 25sq.m. to the rear of a house for purposes ancillary to the use of the house
- That the case planner in his assessment seems to accept the proposed entrance for retention. There are no reasons for refusal with respect of this aspect of the development

6.2. A third party appeal was also lodged (by Kevin Smith obo Commons Road Residents Group) received 5<sup>th</sup> December 2022. The issues raised in the appeal in summary are as follows:

- That they support the case planners recommendation
- That the building for which retention is been sought is not for an office and storage but is currently in residential use
- That there is not sufficient private open space to serve the existing house on site



### 6.3. Planning Authority Response

- The Planning Authority responded on the 10<sup>th</sup> January 2023 asking the Board to refer to the planners report on the file

### 6.4. Observations

- None

### 6.5. Further Responses

- The first party c/o Doyle Kent Planning Partnership responded to the appeal on the 10<sup>th</sup> January 2023. The response in summary is as follows:
  - That the lands to the rear of the house are for sole use of the house as amenity space. It is accepted that part of the garden has been made secure with fencing and the applicant has a right to do so. It does not reduce the amount of private open space available to the house.
  - That the building for which retention is being sought is not used for residential purposes. The applicant would welcome a condition stipulating the use of the said building.
  - The applicant accepts that building material has been stored on the site and that this is not unusual when building a house

## 7.0 Assessment

### 7.1. Introduction

7.1.1. I have examined the application details and all other documentation on file and I have inspected the site and have had regard to the relevant local development plan policies, history files and other relevant guidance documents.

7.1.2. I am satisfied the substantive issues arising from the grounds of the third and first party appeal relate to the following matters-

- Principle of Development

- Vehicular Access
- Issues with respect of the Flood Zone

## 7.2. Principle of Development

- 7.2.1. The proposed development site is located within an area designated as zoning objective A, in the Dun Laoghaire Rathdown County Development Plan 2022-2028. Zoning objective A seeks *'to provide residential development and improve residential amenity while protecting the existing residential amenities'*
- 7.2.2. The proposed development is for retention of
- A flat roofed building to the rear of the residence for office/storage use and
  - Amendments to the front boundary which I understand, though it is not clear from the drawings submitted includes for the blocking up of one of the entrances
- 7.2.3. In terms of use, I am satisfied that the principal of a detached building in the rear garden for uses ancillary to that of the main dwelling on site are acceptable. The building in question is located directly adjacent to the rear boundary of the adjacent property to the west and is marginally higher than the party boundary wall. I note that the said structure has a green roof. In terms of impact on residential amenity I do not consider that the said structure would impact upon the residential amenities of the adjacent dwelling to the west of the proposed development site.
- 7.2.4. It is noted that the said structure is somewhat removed from the house. A small part of the overall lands are enclosed immediately to the rear of the house by hedge and are divided from the majority of the site lands which comprise of hardcored areas and the area associated with the flat roofed building. Aerial photography shows that the enclosed area to the rear of the house appears to be used for residential amenity use and the other larger area for parking and the flat roofed building. This larger area is accessed via a separate gate on the western side of the house. These features are not shown on the site layout plan submitted with the application. The third party contends that this larger area of the site is used for the purposes of a builders yard and that the flat roofed building is used for residential purposes. The third parties have witnessed deliveries of building materials made to the same. There are photographs

on the submission from the third party showing this part of the development site and it would appear that the site is used as a builder's yard. The first party contends that this is associated with the construction of the house. I note that the house is now constructed.

7.2.5. It is questionable therefore if application being considered should have been validated by the planning authority having regard to the lack of detail on the site layout plan submitted. However, the planning authority carried out a site visit and would have seen the discrepancies between the site layout plan submitted and the features on site which have not been shown. While the case planner did detail this in the report he did not recommend that the file be invalidated. Furthermore, he did not consider that a commercial builders storage use was taking place on site.

7.2.6. The proposed development for retention is not for a commercial builder's yard, it is for retention of the flat roofed structure for use as an office and store, and the retention and amendment to the front boundary of the site. In principal and having regard to the A1 zoning objective associated with the site, I consider that the proposed developments for retention are considered acceptable in this instance subject to

- The use of the flat roofed building being for storage and office use only ancillary to the use of the house and that the said structure is not used for residential purposes.
- That the remainder of the site is used for amenity purposes ancillary to the use of the house and no commercial operation by way of storage of construction materials or rubble or for the storage of any vehicles associated with construction shall be allowed.

### 7.3. **Vehicular Access**

7.3.1. The proposed development for retention comprises of the retention of the front boundary fence and the two entrances to the site. I note both entrances have separate post boxes and key pads to for access to the site. The eastern entrance is directly opposite the side passage between the house and the party boundary wall where there is another gate which leads to the larger part of the rear lands associated with the house where the said flat roofed building for retention is located.

- 7.3.2. I note that there is a traffic consultant's report submitted with the application. I note that the said report sets out a proposal to retain the vehicular entrance to the west and close up the entrance to the east
- 7.3.3. This is in accordance with the recommendation from the Transportation Planning Office report on file which does not object to the proposal and sets out conditions which necessitate the eastern entrance been closed up.
- 7.3.4. On the basis of the above, I consider that the proposal with respect of vehicular access to the site is acceptable.
- 7.3.5. However, and notwithstanding the above, I find the drawings submitted with respect of the same to be unclear as is the development description with respect of the same.

#### **7.4. Issues with respect of the Flood Zone**

- 7.4.1. The Drainage Planning report on file references Appendix 15 (Strategic Flood Risk Assessment) of the Dún Laoghaire Rathdown County Development Plan 2022-2028, and Section 6.2.10 Shanganagh River
- 7.4.2. Section 6.2.10 states - *Until a Flood Relief Scheme to the 1.0% AEP event standard is complete, any development in Flood Zone A is not permitted and development in Flood Zone B should be limited to Minor Development, as defined in Section 5.2.1. Care should also be taken to ensure minor developments will not have a negative impact on the CFRAM's POR outline scheme, or the FRS as the design progresses. Upon completion of a Flood Relief Scheme to the 1.0% AEP event standard, proposals for all development will be considered subject to a Site Specific Flood Risk Assessment satisfying the requirements of Section 5 of this SFRA.*
- 7.4.3. The proposed development site is located within Flood Zone A which is an area which is specifically identified as not permitting any development and as such the proposal (with specific reference to the retention of the flat roofed building is not in accordance with the requirement of Appendix 15 of the Dun Laoghaire Rathdown County Development Plan 2022-2028. On this basis it is recommended that the proposed development be refused notwithstanding the Flood Risk Assessment Report

submitted with the application. I refer to the response to the appeal submitted by the first party where it is stated thereon that the planning authority did not consider the minor footprint of the flat roofed structure. I have had regard to the same and I refer to Section 6.2.10 which specifically forbids any form of development in Flood Zone A.

## 7.5. Appropriate Assessment Screening

- 7.5.1. Having regard to the nature and scale of the proposed development, the distance from any European site and 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.

## 8.0 Recommendation

I recommend that permission be refused for the following reason:

1. The subject site is located in an area identified as within Flood Zone A and ,to a lesser extent, Flood Zone B in Appendix 15, Strategic Flood Risk Assessment of the Dún Laoghaire Rathdown County Development Plan 2022-2028. The development proposed to be retained, which includes development comprising retention of a single-storey detached structure, is located in Flood Zone A. Under Section 6.2.10 'Shanganagh River' of Appendix 15, Strategic Flood Risk Assessment of the Dún Laoghaire Rathdown County Development Plan, 2022-2028, it is stated that *'Until a Flood Relief Scheme to the 1.0% EP event standard is complete, any development in Flood Zone A is not permitted and development in Flood Zone B should be limited to Minor development, as defined in Section 5.2.1'* The development proposed to be retained would not therefore be in accordance with the provisions of the Dún Laoghaire Rathdown County Development Plan, 2022-2028 regarding flood risk management, specifically Section 12.10.1 Flood Risk Management and Section 6.2.10 of Appendix 15: Strategic Flood Risk Assessment. The development proposed to be retained would, therefore, be contrary to the provisions of the Dún Laoghaire Rathdown County Development Plan, 2022-2028, and to the proper planning and sustainable development of the area.

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

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Andrew Hersey  
Planning Inspector

6<sup>th</sup> October 2023