



An
Bord
Pleanála

Inspector's Report

ABP-315604-23

Development	New porch and retention of gym/office building in rear garden
Location	Feenagh, St. Margaret's Raod, Malahide, Co. Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F22A/0583
Applicant(s)	Rory O'Sullivan
Type of Application	Permission + retention permission
Planning Authority Decision	Split decision - Grant for porch + refusal for gym/office structure
Type of Appeal	First Party
Appellant(s)	Rory O'Sullivan
Observer(s)	None
Date of Site Inspection	10 th August 2023
Inspector	Bernard Dee

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1.0 Site Location and Description

- 1.1. The appeal site is located to the rear (north) of a two storey pair of semi-detached houses that front onto St. Margaret's Avenue which runs east-west just south of Main Street in Malahide town centre. The western boundary of the appeal site is bounded by St. Margaret's Road (north-south orientation), to the north is 1 Killeen Terrace which is a Protected Structure and in the ownership of the appellant. To the east of the appeal site there are two terraces of modern two storey houses with walled and gated parking areas to front.
- 1.2. The appeal site is comprised of a single storey flat roofed building of contemporary design which houses a gym and home office and can be used for family dining events also which is located in the rear garden of Feenagh and projects approximately 1m into the rear garden area (paved surface) of 1 Killeen Terrace. Retention is sought for this structure and also for the 5m² element of this structure which projects beyond the boundary into the rear garden area of 1 Killeen Terrace. A gabion wall in line with the north wall of the gym/home office defines the mutual property boundary. An access gate is provided to permit pedestrian movement between Feenagh and 1 Killeen Terrace.
- 1.3. During the site visit on 10th August 2023 visit it was noted that several unauthorised structures – plant room and store – were located in the rear garden areas of Feenagh and 1 Killeen Terrace as referenced in the Planner's Report and First Party submission relating to this appeal.

2.0 Proposed Development

- 2.1. The First Party appeal relates only to the gym/home office structure and the extension of the rear garden area of Feenagh (on which the gym/home office structure is constructed) into that of 1 Killeen Terrace. The appeal does not relate to a new 2m² entrance porch on the west elevation of Feenagh which was granted permission by the Planning Authority.

Retention permission is sought to extend the rear garden by 5m² into the curtilage of 1 Killeen Terrace which is in the same legal ownership and for the retention of a 35m² single storey flat roof annex (detached) in the rear garden of Feenagh for use as a gym/home office and all associated site works. The gym/home office projects approximately 1.2m into the rear area (used for parking) of 1 Killeen Terrace.

2.2. The site area is stated to be 0.045ha.

3.0 Planning Authority Decision

3.1. Decision

The planning authority issued a split decision in this case. Permission was granted for a new entrance porch on the west elevation of Feenagh on 15th December 2022 subject to 4 no. standard conditions for the type of development proposed.

Permission for the two items for which retention was sought was refused on 15th December 2022 for the following reason:

The cumulation of this annex structure and the structures built without the benefit of planning permission within the landholding and curtilage of a Protected Structure and within an ACA diminishes the character of the area and has a negative impact on the visual and residential amenity of the site and landholding, contravenes Objective DMS157 and Objective CH20 of the Fingal Development Plan 2017-2023 and as such would not be in keeping with the proper planning and sustainable development for the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's Report notes the MC 'Major Town Centre zoning of the site where the objective is to 'protect, provide and/or improve major town centre facilities and the fact that the site is located in an Architectural Conservation Area and that 1 Killeen Terrace is a Protected Structure (RPS No. 398). The Planner's Report notes that the development for which retention was sought would be considered consistent with areas zoned MC. The Planner then cites the relevant Development Plan provisions (see Paragraph 5.0 of this Inspector's Report) and the planning history of the site.

The Planner's Report notes the following:

- The side porch extension is considered to be acceptable and does not impact negatively on the dwelling or the area in general.
- The gym/home office building to the rear of Feenagh breaches the curtilage of 1 Killeen Terrace a Protected Structure and encroaches on the amenity space of 1 Kelleen Terrace.
- The Conservation Officer believes that the boundary between the two properties should be reinstated by building a boundary wall.
- The gym/home office building in conjunction with other unauthorised structures at the appeal site impacts negatively on the visual and residential amenity of the area.
- The Planner's Report did not deem that either AA or EIA was required in relation to the development for which permission and retention permission was sought.

3.2.2. Other Technical Reports

- The Water Section stated that there was no objection to the development subject to appropriate conditions being applied.
- The Conservation Officer recommended refusal of retention permission for the gym/home office building.

3.2.3. Prescribed Bodies

- No responses received.

3.2.4. Observations

- No Observations were received during the five week period.

4.0 Planning History

4.1. On the Appeal Site

- Ref. F09A/0282: permission granted for the amalgamation of two semi-detached houses into one residential unit.

- ENF 22/055A: a warning letter was issued to the First Party regarding an unauthorised building in the rear garden of Feenagh.

4.2. In the Vicinity of the Site

- Ref. F19A/0524: permission granted for the conservation and provision of 5 no. apartments in 1 Killeen Terrace.
- Ref. PL.06F.119116 (F00A/0063): permission refused for the alteration and extension of 1 Killeen Terrace to the south (the area currently paved and used for car parking purposes) to provide a two storey dwelling.

5.0 Policy and Context

5.1. Development Plan

Fingal Development Plan 2023-2029 has come into effect since the Planning Authority assessment of this application and the issuing of a grant of permission. The 2023-2029 Development Plan is the statutory plan for the area and any references in the appeal documentation to the 2017-2023 Development Plan may be disregarded.

The appeal site is located within zoning objective MC – Major Town Centre Objective - Protect, provide for and/or improve major town centre facilities.

Vision - Consolidate the existing Major Towns in the County, (Blanchardstown, Swords and Balbriggan). The aim is to further develop these centres by densification of appropriate commercial and residential developments ensuring a mix of commercial, recreational, civic, cultural, leisure, residential uses, and urban streets, while delivering a quality urban environment which will enhance the quality of life of resident, visitor and workers alike. The zone will strengthen retail provision in accordance with the County Retail Strategy, emphasise urban conservation, ensure priority for public transport, pedestrians and cyclists while minimising the impact of private car-based traffic and enhance and develop the existing urban fabric.

3.5.13.1 Residential Extensions

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

- Policy SPQHP41 – Residential Extensions Support the extension of existing dwellings with extensions of appropriate scale and subject to the protection of residential and visual amenities.
- Objective SPQHO45 – Domestic Extensions Encourage sensitively designed extensions to existing dwellings which do not negatively impact on the environment or on adjoining properties or area.

10.5.2.1 Statutory Designated Sites of Protected Structures and Architectural Conservation Areas, Record of Protected Structures

Protected Structures are defined as structures, or parts of structures that are of special interest under one or more of the following categories: architectural, historical, archaeological, artistic, cultural, scientific, social or technical. A Protected Structure, unless otherwise stated, includes the exterior and interior of the structure, the land lying within its curtilage, any other structures and their exterior and interiors lying within that curtilage, plus all fixtures and features which form part of the interior or exterior of any of these structures. Curtilage refers to the parcel of land immediately associated with the Protected Structure and generally forms the boundary of the property ownership. Any works that would materially affect or impact the character of a Protected Structure, including its setting and ancillary buildings that contribute to its character, require planning permission. A Declaration under Section 57 of the Planning and Development Act 2000, (as amended) can be sought from the Council to list the general types of work that do and do not affect the character of a specific Protected Structure.

10.5.2.2 Architectural Conservation Area (ACA)

An Architectural Conservation Area (ACA) is a place, area, group of structures or townscape that is of special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest or value or contributes to the appreciation of Protected Structures. ACAs could encompass, for example, a terrace of houses, a whole streetscape, town centre or a small cluster of structures associated with a specific building such as a mill or country house. Most structures in an ACA are important in the context of their contribution to the streetscape or character of an area and so the protection status generally relates only to the exterior of the buildings or the streetscape, except for Protected Structures within ACAs where the

protection extends to the interior and curtilage of these properties. Any works that would have a material effect on the special character of an ACA require planning permission.

Policy HCAP14 – Architectural Conservation Areas

Protect the special interest and character of all areas which have been designated as an Architectural Conservation Area (ACA). Development within or affecting an ACA must contribute positively to its character and distinctiveness and take opportunities to protect and enhance the character and appearance of the area and its setting wherever possible. Development shall not harm buildings, spaces, original street patterns, archaeological sites, historic boundaries or features, which contribute positively to the ACA.

14.19.3 Architectural Heritage 14.19.3.1 Protected Structures

Where works are being proposed that require planning permission such as alteration of layout, modifications to historic fabric, extension, change of use, new build then the following should inform and direct the proposed design:

Table 14.21: Directions for Proposed Development of Protected Structures

A sensitive design approach is required for development that adjoins or is in close proximity to a Protected Structure as it could have a detrimental visual impact on it, adversely affecting its setting and amenity. The scale, height, massing, building line, proportions, alignment and materials of any development proposed within the curtilage, attendant grounds or in close proximity to a Protected Structure need to respect and compliment the structure and its setting. A statement should be provided as to how the proposal responds to the special interest and the setting of the Protected Structure.

14.19.3.3 Architectural Conservation Areas

Any works that would have a material effect on the special character of an ACA require planning permission and so the normal exemptions from planning will no longer apply where they are considered to impact on the unique or special features and elevations of an ACA.

Table 14.24: Direction for Proposed Development within Architectural Conservation Areas

Extensions to buildings in ACAs that are visible from public places should be of a scale and proportion that respects that of the original building. In general extensions should be subservient in size with materials, finishes and roof profiles that complement the principal structure.

- Objective DMSO187 – Planning Applications within an ACA All planning applications for works in an Architectural Conservation Area shall have regard to the information outlined in Table 14.24.

5.2. Natural Heritage Designations

The following natural heritage designations are located <15km from the appeal site:

- Malahide Estuary SAC – 000205 – approximately 350m from appeal site.
- Malahide Estuary SPA – 004025 – approximately 350m from appeal site.

5.3. EIA Screening

Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity/ the absence of any connectivity to any sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. 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. The relevant planning grounds of the First Party appeal are, in summary, as follows:

- The construction of a gym/home office structure is permitted in principle within the zoning objective for the area and such structures are generally considered acceptable.
- The gym/home office does not block light to neighbouring properties nor is the structure considered to be visually intrusive in its context.
- The contemporary design of the gym/home office is consistent with the policies and objectives of the Development Plan regarding domestic extensions within ACAs as it respects the character and architectural heritage of the area.
- The gym/home office does not negatively impact on the setting of 1 Killeen Terrace which is a Protected Structure due to its small scale and location apart from the Protected Structure which has been fully conserved in line with permission Ref. F19A/0524.
- The floor area of the gym/home office is 35m² which leave ample open space for amenity purposes for the residents of Feenagh – 130m².
- The boundary between the appeal site and 1 Killeen Terrace is defined by a gabion wall which is not original to the curtilage of the Protected Structure and in reality the boundary between the appeal site and 1 Killeen Terrace was always porous. Land take from the 1 Killeen Terrace site by the 1m projection northwards of the gym/home office (5m²) is thus not really an issue.
- The presence of the gym/home office does not adversely impact on the character and amenity of 1 Killeen Terrace and the window in the north elevation of the gym/home office contributes to the passive surveillance of this shared space but can be blocked up if required by the Board.
- A retention application will be lodged to address the unauthorised structures such as the plant room and store room to the rear of 1 Killeen Terrace.

6.2. Applicant Response

- Not applicable.

6.3. Planning Authority Response

The Planning Authority response is as follows:

- The application was assessed against relevant Development Plan zoning and development standards and existing government policy and guidelines as well as the potential impact on the Protected Structure and on the character of the Architectural Conservation Area within which the subject site is located.
- The development was not considered to be consistent with the proper planning and sustainable development of the area and was felt that cumulatively the gym/home office and other unauthorised structures compromised the setting of 1 Killeen Terrace which is a Protected Structure and thus contravenes Objective DMS157 and Objective CH20 of the Fingal Development Plan 2017-2023 (equivalent to Policy HCAP14 and Objective DMSO187 of the Fingal Development Plan 2023-2029).
- Should the Board be minded to grant permission it is requested that a Section 48 condition be applied to the Board's Order.

6.4. Observations

None received.

6.5. Further Responses

Not Applicable.

7.0 **Assessment**

Having examined all the application and appeal documentation on file, and having regard to relevant local and national policy and guidance, I consider that the main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise.

The main issues to consider therefore are as follows:

- Principle of development.
- Impact on Protected Structure.
- Visual impact.

- AA Screening.

7.1. Principle of Development

7.1.1. The MC zoning of the site permits developments such as the gym/home office building and therefore the structure for which retention permission is sought is acceptable in principle.

7.2. Impact on Protected Structure

7.2.1. The planning authority cite in the reason for refusal of retention permission of the gym/home office building that this structure breaches the curtilage of a Protected Structure and has an adverse impact on its setting. Loss of amenity area associated with 1 Killeen Terrace is also referenced in the reason for refusal.

7.2.2. I am of the opinion that the setting of Killeen Terrace was fatally compromised when the houses fronting onto St. Margaret's Avenue (including Feenagh), were constructed within the original curtilage of Killeen Terrace. The curtilage of Killeen Terrace in fact also included lands that are now occupied by St. Margaret's Road to the west of the appeal site. The houses on St. Margaret's Avenue and their rear garden areas cover the former curtilage area of Killeen Terrace and the northernmost boundaries of these rear garden areas come within a few metres of the rear elevations of Killeen Terrace and completely compromise the setting of this terrace of Protected Structures.

7.2.3. Given this context, the location of the gym/home office building 1.2m closer to the rear façade of 1 Killeen Terrace and beyond the modern gabion boundary wall, does not, in my opinion, further affect the setting of the Protected Structure to any significant degree. For Killeen Terrace, given the residential development in close proximity to its rear façade, the cultural heritage value is primarily associated with its front elevation and the contribution this façade makes to the streetscape of Malahide Road and to the wider townscape of Malahide.

7.2.4. I do not believe that the removal of the gym/home office building would restore the setting of the rear of Killeen Terrace or that the removal of the projecting element of the gym/home office building from the amenity area of 1 Killeen Terrace would result in any appreciable change or improvement to the setting of this Protected Structure.

It should be noted by the Board that this amenity space is a paved area used for parking cars and so would not qualify as amenity space in qualitative terms.

7.2.5. The issue of the boundary wall between Feenagh and 1 Killeen Terrace is rather a moot point as the current boundary defined by a gabion wall (which the gym/home office building breaches) was not, as discussed above, the original curtilage boundary associated with the Protected Structure. The present boundary is neither historic in its construction or location and given that the setting of the Protected Structure is effectively non-existent, the removal of the projection of the gym/home office into the “setting” of 1 Killeen Terrace covering an area of 5m² will not, in my opinion, bring about any discernable improvement in terms of the setting of this Protected Structure.

7.2.6. I conclude therefore that no purpose, in terms of protecting the setting of a Protected Structure, would be achieved by a refusal of retention permission for the gym/home office building and its subsequent removal on foot of an Enforcement Notice.

7.3. Visual Impact

7.3.1. The context within which the gym/home office has been constructed is of a side road off Malahide Road which is the main approach road from Dublin. The site is not in a visually prominent location and is screened from the main road by Killeen Terrace. In addition, the gym/home office is located on the east boundary of the rear garden of Feenagh and away from St. Margaret’s Road. There is also a brick wall with an approximately 1.5m high timber fence behind on the western boundary of the appeal site which largely screens the gym/home office building from the public realm.

7.3.2. Given the low visual prominence of the site, the set-back from the public road and the boundary screening, I am of the opinion that the visual impact of the gym/home office is of low order and that the retention of this structure would not have an adverse impact on the visual amenity of the area notwithstanding its designation as an Architectural Conservation Area.

7.3.3. I conclude therefore that the development for which retention permission is sought would not seriously injure the visual amenity of the area.

7.4. AA Screening

Having regard to the relatively minor development proposed within an existing housing estate and the distance from the nearest European site being approximately 200m uphill to the east of the appeal site (Howth Head SAC – 000202), 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

I recommend that planning permission and retention permission be granted for the reasons and considerations set out below and subject to the following conditions.

9.0 Reasons and Considerations

Having regard to the provisions of the Fingal County Development Plan 2023-2029, including the zoning objective for the site ('MC – Major Town Centre), which seeks to protect, provide for and/ or improve major town centre facilities; it is considered that, subject to compliance with the conditions set out below, the development for which planning permission and retention permission is sought would not seriously injure the visual or residential amenities of the area or of property in the vicinity of the gym/home office structure nor have an adverse impact on the setting of a Protected Structure or the character of the Architectural Conservation Area within which the development is situated. The development would, therefore, 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 on 24 th October 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 commencement of development and the
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	<p>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 gym/home office shall not be used for human habitation, commercial use, industrial use or for any other purpose other than a purpose incidental to the enjoyment of the dwelling.</p> <p>Reason: In the interests of residential amenity.</p>
3.	<p>Surface water drainage arrangements shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health.</p>
4.	<p>Site development and building works shall be carried out only between the hours of 0800 and 1900 from Mondays to Fridays inclusive, between 0800 and 1400 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 of 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. The application of any indexation required by this condition 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.</p>

	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.
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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.

Bernard Dee
Planning Inspector

10th August 2023