



An
Bord
Pleanála

Inspector's Report

ABP-316030-23

Development	Permission for extension to dwelling and garage. Widening of vehicular entrance and all associated site works. Retention permission for conversion of existing garage and removal of chimney.
Location	22 Acorn Road, Dundrum, Dublin 16, D16 Y9C3.
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	D22A/1004
Applicant(s)	Conor and Bre Costello
Type of Application	Retention and Permission
Planning Authority Decision	Split Decision
Type of Appeal	First Party against refusal part of Split Decision
Appellant(s)	Conor and Bre Costello
Observer(s)	None
Date of Site Inspection	23rd August 2023
Inspector	Joe Bonner

1.0 Site Location and Description

- 1.1. The site has a stated area of 0.04ha. The site accommodates a two-storey semi-detached house with an adjoining single storey garage at the side that is in turn connected to the garage of the adjacent house creating a terraced effect at ground floor level. The garage on the adjacent house to the west (no 24) has been converted and a first floor extension has been built on top of it.
- 1.2. The house has off street parking available at the front and a private garden at the rear. The area is predominantly residential in nature with two storey houses stretching from the M50 c1.4km to the south as far as Dundrum Town Centre, which is located c600m north-east of the site.
- 1.3. An area of public open space is located to the north of the site on the opposite side of Acorn Road while Acorn Lane that runs to the rear/south of the site a gated development of eight houses.

2.0 Proposed Development

- 2.1. The proposed development consists of the following:
 - 2.1.1. Retention of: -
 - conversion of existing garage and removal of chimney to side of existing dwelling.
 - 2.1.2. Permission for:
 - construction of a single storey extension to the front of existing dwelling.
 - a first floor extension over existing garage, to side of dwelling, including rooflights to side and rear.
 - widening of existing vehicular entrance to 3.5m
 - 2.1.3. The existing house has a floor area of 157.1sqm that includes 13.6sqm within the converted garage that now includes a utility room, shower and store, while 22.9sqm of new works are proposed.
 - 2.1.4. The application includes a letter from the applicants consulting Civil and Structural Engineers that refers to a previous extension at the rear of the house, which is also referenced in the note at the end of the refusal reason (see section 3.1.2 below). It

states that as part of the previous extension works, a new surface water pipe was laid under the existing garage and diverted away from the kitchen into the side passage. The diverted pipe was then connected to the original surface water line via a new manhole that was built in the rear garden. In order to prevent the garage wall loading the pipe, the wall was removed, and the foundation lowered and then rebuilt to below the level of the pipe to prevent any new extension over the garage loading the pipe.

- 2.1.5. A plan showing the extent of the pipe diversion works was referenced in the Engineers letter, but a drawing of a different reference number was submitted with the planning application. A photograph of the trench is also shown provided but no section drawings were provided detailing the depth to which the replacement pipe was laid.
- 2.1.6. The diverted pipe runs under what are now a utility room, shower and store, the latter of which is proposed to be extended and converted into an office.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On the 17th of February 2023, Dun Laoghaire Rathdown County Council issued a split decision and decided to grant permission for 'widening of the existing vehicular access to 3.5m' and 'retention of conversion of existing garage and removal of chimney to side of existing dwelling'.
- 3.1.2. The planning authority also decided to refuse permission for 'construction of a single storey extension to the front' and 'a first floor extension over existing garage, to side of the dwelling' for a single reason, which stated:

- 1. Council records and a memo included by the applicant indicate the presence of a 225mm diameter public surface water sewer traversing the site underneath the existing dwelling house.

In accordance with Section 7.1.1 of Appendix 7: Sustainable Drainage System Measures of the 2022-2028 County Development Plan, Council policy requires a minimum wayleave of 6.0m for public sewers (3.0 m either side from the external face of a public sewer to any building or

development structure). It is prohibited to build over or within the required wayleave extent as building over or near a public sewer would seriously impede the Council's ability to access and maintain the sewer and would therefore be prejudicial to Public Health. The proposed works will introduce new development within the required wayleave extent of an existing surface water sewer, which would reduce and impede the future access and maintenance ability of the Council and therefore this application should be refused.

Note: It is noted that the applicant appears to have undertaken exempted development works to the rear of the property and diverted the existing public surface water sewer as part of those works without seeking the necessary permissions. If the applicant had applied for planning permission for the exempted development, that application would have been refused on the same grounds as the current application.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. The Planning Officer's report is the basis for the Planning Authority decision.

- They stated that the principle of the development was acceptable in terms of residential and visual amenity but recommended a refusal consistent with the Drainage Planning report.

3.2.3. Other Technical Reports

- The Drainage Planning Report of 13th February 2023 stated that the extension elements fail to meet the required wayleave distance as outlined in Section 7.1.1 of Appendix 7: Sustainable Drainage System Measures of the 2022-2028 County Development Plan and recommended a refusal of permission.
- The Transportation Planning report of 1st February 2023 had no objection subject to conditions.

3.3. Prescribed Bodies

None

3.4. Third Party Observations

None

4.0 Planning History

4.1.1. No site specific planning history.

4.1.2. **P.A. Ref D20A/0209 (ABP-307668-20)** refers to the immediately adjacent house at No 24 Acorn Road.

DLRCC decided to refuse permission on 25th June 2020 for an extension and alteration works, including conversion of the attached side garage to home study; extension to first floor over existing garage and utility; a rear single storey family room extension; for the following reason:

The proposal to build over or near the 225mm surface water sewer would be contrary to the Public Health Act of 1878 and subsequent Acts, would seriously impede the County Council's ability to access and maintain the pipeline and would therefore be prejudicial to Public Health. In addition, it is considered that the proposed development fails to comply with sections Section 5.1.1 Water Supply and Wastewater of the Dún Laoghaire-Rathdown County Development Plan 2016-2022. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Following an appeal, the Board granted permission including for the following Reasons and Considerations:

Having regard to the separation distance between the new extension and the surface water sewer and the scale of the proposed development it is considered that, subject to compliance with the conditions set out below, the proposed development would not be likely to negatively impact on the surface water network in the area or be prejudicial to public health.

5.0 Policy Context

5.1. Dun Laoghaire Rathdown Development Plan 2022-2028

- 5.1.1. The relevant Development Plan is the Dun Laoghaire Rathdown Development Plan 2022-2028, which came into effect on 21st April 2022.
- 5.1.2. The site is zoned 'Objective A' with a stated objective *'to provide residential development and improve residential amenity while protecting the existing residential amenities.'* 'Residential' which is considered to include residential extensions, is classified as being 'Permitted in Principle' on lands zoned Objective A.
- 5.1.3. Section 12.3.7.1 of the CDP applies to extensions to dwellings. Subsection (i) refers to extensions to the front and subsection (iii) refers to extensions to the side.
- 5.1.4. Appendix 7 to the Development Plan 2022-2028 'Sustainable Drainage System Measures' provides that: -

7.1 Stormwater Management Policy - Including Stormwater Audit Procedure
Wayleaves (Building over/near public sewers) A minimum wayleave of 6 metres (3 metres either side) is required for public sewers. This wayleave can increase with depth and size of the sewer. Developments must not encroach on the required wayleave. Where this is not possible, the applicant should contact dlr via the pre-planning process to discuss the feasibility of a diversion.

Building over or near a public sewer would seriously impede the Council's ability to access and maintain the sewer and would therefore be prejudicial to Public Health. Failure to comply with Council requirements may result in a recommendation of refusal.

- 5.1.5. Flood Zone Map 5 which forms part of the Development Plan indicates that the site is located within Flood Zone B.

5.2. Natural Heritage Designations

- None relevant

6.0 The Appeal

6.1. Grounds of Appeal

- The applicants are satisfied with the decision to grant permission and the appeal relates only to the refusal element of the decision.
- A precedent for an almost identical development at No. 24 Acorn Road, which is a neighbouring property to the west, was refused by the planning authority for the same reason as this application but was overturned on appeal by the Board. (ABP-307668-20 / P.A. Ref. D20A/0209 refers). This was not addressed in the planning officer's assessment.
- The existing converted garage and the house itself, which were constructed in the 1950s are located within the wayleave. The proposed development will not increase the area of surface water pipe being built over or impact on access for maintenance to the existing surface water pipes.
- The existing surface water sewer is located deep beneath the surface along the western party wall which serves as the wall to the applicants converted garage and will not be impacted in any way by the proposed development.
- Way leaves do not apply to above ground development. Therefore, the refusal of the first-floor extension is unreasonable.
- The proposed ground floor extension to the front, while located within the wayleave area, will not impede access to the main sewer, as access is available from a manhole in Acorn Road and a second manhole on the application site.
- The planning authority assessment is flawed as no assessment was made of the particular circumstances of the application.
- It is illogical that retention for the conversion of the ground floor garage was subject to a grant of permission but the extension above it was deemed prejudicial to public health.

6.2. Planning Authority Response

- In a letter dated 5th April 2023, the planning authority responded to the grounds of appeal and included that:
- The works carried out to divert the public surface water sewer is part of the previous extension at the rear of the house was done to a council asset without prior consultation or permission of the council. It is unknown as to what standard or what codes these works were undertaken, as the council were not given the opportunity to attend site or inspect the works.
- The appellants have failed to consider that future maintenance works may require the entire sewer to be replaced and the proposed roofline over the side passage and extension at the front would negatively impact future access for maintenance.
- The works already carried out by the applicant to divert the sewer may increase the likelihood that future maintenance works will be required.
- The municipal services section strongly opposed the adjacent appeal for a similar development (ABP-307668-20), but their objections were never received by the Board due to internal miscommunications in the local authority.
- While the existing surface water sewer situation is not ideal, making a bad situation worse would create a damaging precedent and impeded access for maintenance of the sewer.
- The entire house and most of the site of the proposed works are located within flood zone B from fluvial flooding originating from the water course located directly South of the property. The flood risk present on site is a contributing factor as to why future maintenance works are of such concern to the council.

6.3. Observations

- None

6.4. Further Responses

6.4.1. In a letter dated 28th April 2023, the applicant responded to the planning authority submission and included an Engineering Report from POGA Consulting Engineers. The applicant's response stated that:

- Neither the Planning Authority planner or engineer visited the site, and it is incorrect to state that the proposed second story extension will include a new roof line protruding over the existing sewer as the extension will be built entirely above existing development. Therefore, the decision to refuse permission for the first-floor extension should be overturned.
- With respect to the proposed ground floor front extension, it is not much greater in size at 4.35sqm than a front porch which could be built under the provisions of exempted development. It would not impact negatively on the surface water network in the area and the Board took a similar view in respect of the immediately adjacent appeal ABP-307668-20. However, if this element is considered unacceptable to the Board, the applicants will reluctantly accept a decision to grant permission for the remainder of the proposal and a condition omitting the ground floor front extension.

6.4.2. The Engineering Report from POGA Consulting Engineers states that:

- The surface water sewer was uncovered as part of the exempted development works in 2021. It ran under the garage and part of the original kitchen extension.
- The original foundations were above the level of the sewer and thus would have been loading the pipe.
- The foundations of the garage and recently built rear extension were built below the level of the surface water sewer, which was diverted away from the new build and replaced under the garage. This represents an improvement on the previous situation and removed the potential for loads from the existing buildings damaging the sewer.
- The works were carried out in accordance with the building regulations and the Greater Dublin Regional Code of Practice for Drainage Works, while the pipe is surrounded in concrete.

- It is not in the applicants interest to have a substandard, defective or leaking surface water sewer traversing their property.
- The works already carried out and proposed, will improve the councils ability to access the surface water sewer compared to the original pipe location underneath the house. The lowering of the foundations and use of modern construction methods should greatly reduce the risk that the pipe will need to be maintained or replaced.
- Access to the pipe remains available for maintenance or cleaning from the manholes each side of the diverted pipe and there has been a slight improvement in terms of access.
- The oversight to not contact the council before diverting the original pipe is acknowledged, but this did not disadvantage the council in terms of access to the pipe.
- While the site is located in Flood Zone B, neither the diversion works, nor the proposed development will have any adverse impact on the flooding status of the area.
- A photograph is included of what is stated to be the original inspection chamber silted up and it is suggested that little maintenance had been carried out on the original surface water sewer, as was suggested by the council, and it remained partially silted up until the applicant, at their own expense, had it jetted and vacuumed before the pipe diversion works were carried out.

7.0 **Assessment**

7.1. **Introduction**

7.1.1. I note that the appeal focuses entirely on the refusal element of the Planning Authorities split decision, that refers to the proposed 1) ground floor front extension and 2) first floor extension over the existing converted garage. No issues arise in relation to the other elements of the proposed development, that were subject to the decision to grant permission. Therefore, I am satisfied that the main issues in the appeal relate to the refusal element of the Planning Authority's split decision which can be dealt with under the following headings: -

- Proximity to and impact on underground surface water sewer

- Appropriate Assessment

7.2. Proximity to and impact on underground surface water sewer

- 7.2.1. In principle the planning authority had no objection to the development apart from being restricted from gaining access to the surface water sewer in the case of an emergency or for maintenance purposes. I am satisfied that the principle of the proposed development is acceptable.
- 7.2.2. Council Policy as set out in Appendix 7.1 of the Development Plan requires a minimum wayleave of 6m for public sewers, being 3m either side of the external face of the surface water pipe which has a stated diameter of 225mm. This requirement is incompatible with the fact that both the existing house at No. 22 Acorn Road (the current application site) and the adjacent house at No. 24, that are physically connected at ground floor level, are both built within and over the wayleave area and the theoretical application of a 6m wide wayleave would be impossible to adhere to without interfering with the integrity of both houses. For that very reason, acknowledging existing developments, Appendix 7.1 states that where it is not possible for developments to not encroach on a required wayleave, the applicant should contact the Council via the pre-planning process to discuss the feasibility of a diversion.
- 7.2.3. In the case of a separate extension built to the rear of the applicants house, the applicant did not consult with the planning authority prior to diverting the original surface water pipe that previously ran directly under part of the kitchen area. The diverted pipe now runs along the side of the house and beneath non-habitable rooms; the utility room, shower and store, the latter of which is proposed to be extended to the front of the house to create a home office. I am satisfied, that the diversion of the surface water pipe has not reduced the ability of the local authority to access the pipe for maintenance purposes.
- 7.2.4. The Irish Water Drainage network plan indicates that the invert level of the pipe in the footpath in front of the house is 0.89m below cover level and that the fall in the pipe through the site is 1:80. The foundations shown on cross-section drawing (DWG No. 20014-PP-09) appear to be generic foundations drawings and would not be deep enough to run below the Irish Water pipe level. The cross-section is not site specific and does not provide details of the depth of the surface water pipe or

accurate and dimensioned foundation details, but this can be addressed by way of a condition.

- 7.2.5. A manhole indicated on the ground floor plan to be located in the applicants driveway was not evident on the occasion the site visit.
- 7.2.6. I agree with the applicant's Engineers that it would not be in the applicants interest to carry out works to a surface water sewer running under their house that were substandard, defective or leaking, while the applicant has also stated that should the sewer need to be replaced that the equipment needed would be limited to the width of the external side passage. That is not correct as it may also be necessary to excavate through the utility room, shower and store/proposed office, although modern trenchless technology should be capable of being used to reduce or eliminated the need to excavate within the house.

First Floor Extension

- 7.2.7. In deciding to grant retention permission for the change of use of the ground floor garage, the planning authority was aware that recent works to the property included the diversion of the public surface water pipe beneath the garage and the rebuilding of the foundations of the side wall of the garage, close to but stated to be at a depth below the level of the diverted surface water pipe.
- 7.2.8. The applicant stated that the works carried out would ensure that any new extension over the garage would not load the pipe and would support a first floor extension. The proposed first floor plan indicates that only insulation will be added to the shared party wall with No. 24, which was built on foot of D20A/0209 (ABP-307668-20), while the front and rear walls will be built on top of the existing ground floor structure.
- 7.2.9. Taking these factors into account, I am satisfied that access to the surface water pipe for maintenance or replacement in the future will not be impeded by the proposed first floor extension, as the extension would be constructed entirely above the existing ground floor structure beneath which the pipe is laid. In addition, I am satisfied that no new roof areas will be constructed over the side passage behind the converted garage that would restrict access to the sub surface pipe for maintenance or replacement.

Ground Floor Extension

- 7.2.10. The proposed ground floor extension would be built directly over the existing surface water sewerage pipe, which has been diverted and upgraded by the applicant. The extension is small and would equate to an additional floor area of 2.49sqm and would extend c1.5m forward of the existing front building line where the garage door is currently located.
- 7.2.11. The surface water pipe is already located within the 6m wayleave area, and the planning authority has decided to grant permission for the retention of the change of use of the garage beneath which the diverted pipe runs. The decision reflects the fact that the surface water pipe is installed beneath an existing house and the circumstances are materially different to a case where the site would be greenfield in nature and a 6m wayleave would be achievable.
- 7.2.12. Any future maintenance or replacement of the surface water sewer pipe could require works to be carried beneath the footprint of the existing house and proposed extension, including through its foundations. The surface water line already passes beneath the applicant's house, the adjacent property at No. 24 Acorn Road, a structure in the applicant's rear garden and beneath two houses located at Acorn Lane to the north and for that reason access to the line is already significantly affected.
- 7.2.13. I am satisfied that the additional works that would be required for maintenance or replacement of the surface water pipe beneath the proposed extension would be minimal and that the proposed extension would not seriously impede access to the surface water sewer line to the extent that a refusal of permission for the proposed extension would be warranted.
- 7.2.14. The excavation of the ground at the front of the house to facilitate the installation of foundations to a depth below the invert level of the recently diverted surface water pipe could cause damage to the surface water pipe if not professionally managed. However, the structural integrity of the works already done in diverting the pipe can be safeguarded, while it also presents an opportunity to confirm the alignment of the existing pipe and nature of the works previously carried out by the applicants when they diverted the original surface water pipe. I am satisfied that the proposed ground floor extension is acceptable subject to the attachment of conditions.

7.2.15. It is noted that the applicant has proposed to divert water from the roof to a dedicated onsite surface water soak-way, while the front driveway, which is currently covered in concrete, is to be replaced by permeable paving. While the site is located in an area designated as Flood Zone B in the Dun Laoghaire Rathdown Development Plan. I am satisfied that the proposed ground floor extension with an internal floor area of 2.49sqm will not give rise to flooding.

7.3. **Appropriate Assessment**

7.3.1. Having regard to the nature and scale of the proposed development within a serviced urban area and separation distance to the nearest European site, 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 the conservation objectives of any European site.

8.0 **Recommendation**

8.1. I recommend retention permission and permission be GRANTED for the following reasons and considerations and subject to the following conditions.

9.0 **Reasons and Considerations**

Having regard to the limited scale of works proposed at ground floor level and to recent works carried out to renew the pipe beneath the proposed extension, it is considered that, subject to compliance with the conditions set out below, the proposed development would not be likely to negatively impact on the surface water network in the area or be prejudicial to public health, would not give rise to a risk of flooding, and would, otherwise, accord with the zoning objective for the area as set out in the County Development Plan and 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, except as may
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	<p>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 development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Prior to the commencement of development in respect of the ground floor extension, the applicant shall submit to the planning authority for written agreement:</p> <ul style="list-style-type: none"> a) A Construction Management Plan specifically addressing how i) the existing surface water pipe will be protected during the excavation and construction phases and ii) access to the pipe for the purposes of future inspection or maintenance will be provided. b) Plans and sections of the proposed foundations, to include the alignment, depth and size of the existing surface water pipe that will run through the proposed foundations. <p>Reason: In the interest of public health and to protect the integrity of the existing surface water sewerage network.</p>
3.	<p>A photographic record shall be prepared of:</p> <ul style="list-style-type: none"> a) The location and depth of the existing surface water pipe including measurements, following the excavation of the ground for the construction of the foundations for the ground floor extension; b) The constructed foundations prior to being back filled to include details of the point where the surface water pipe runs through the foundations. <p>The photographic record and an Engineer's report describing the sub-surface works carried out, shall be submitted to the planning authority for its records.</p>

	<p>Reason: In the interest of public health and safety and to ensure a record exists of works carried out adjacent to and above the surface water pipe.</p>
4.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0900 to 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 amenities of property in the vicinity.</p>
5.	<p>Water supply and drainage arrangements including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health and surface water management.</p>
6.	<p>That all necessary measures be taken by the contractor to prevent the spillage or deposit of clay, rubble, or other debris on adjoining roads during the course of the works.</p> <p>Reason: To protect the amenities of the area.</p>
7.	<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, 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.</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.

Joe Bonner
Senior Planning Inspector

25th August 2023