



An
Bord
Pleanála

Inspector's Report

ABP-316193-23

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| Development | RETENTION: Detached single storey office/gym to rear garden with all ancillary works |
| Location | 33 The Boulevard, Bealing Village, Tyrrelstown, Dublin 15, D15 V9T8 |
| Planning Authority | Fingal County Council |
| Planning Authority Reg. Ref. | FW23A/0012 |
| Applicant(s) | Natalia Emelyanova |
| Type of Application | Retention Permission |
| Planning Authority Decision | Refuse |
| Type of Appeal | First Party |
| Appellant(s) | Natalia Emelyanova |
| Observer(s) | Bronagh McTague Mariusz and Ewa Juckiewicz |
| Date of Site Inspection | 04/06/23 |
| Inspector | Adrian Ormsby |

1.0 Site Location and Description

- 1.1. The site is a mid-terrace three storey dwelling located on The Boulevard in Bealing Village in Tyrellstown, Dublin 15. The terrace is made up of eight similar style houses.
- 1.2. Properties in Tyrellstown are generally designed with parking located to the rear of the houses and in this context access to the rear is provided off two separate points from Bealing Walk to the north and west of the application site.
- 1.3. The structure to be retained is located in the rear garden of number 33. It is a flat roof plaster finished building with south facing doors and windows. The rear of the site is accessed via a pedestrian gate/door in a c. 2m high rear boundary wall.
- 1.4. There are a number of shed like structures in neighbouring gardens of this terrace and other property in the area visible from Bealing Walk and the rear car parking area. These structures are generally of different designs, height, materials roof profiles etc. However the structure subject to this appeal is unquestionably the most visually prominent.
- 1.5. The stated site area is 0.0112 ha.

2.0 Proposed Development

- 2.1. The development is for retention of-
 - A detached single storey office/gym to rear garden
 - 22 sq.m floor area
 - Flat roof at 2.75 m high

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority decided to refuse permission on the 09/03/23, for one reason as follows-

1. *The proposed development by reason of its scale, and location along the boundary with the adjoining property, would represent an overbearing feature, be injurious to the visual and residential amenities of adjoining property and depreciate the value of same. The proposed development would be contrary to the 'RS - Residential' zoning which applies to the site in the Fingal County Development Plan 2017-2023 where the objective is to 'provide for residential development and protect and improve residential amenity', would set an undesirable precedent for other similar development and would therefore be contrary to the proper planning and sustainable development of the area.*

4.0 Planning Authority Reports

4.1. Planning Reports

The Chief Executives' Order/ Planning Report (09/03/23) reflects the decision of the Planning Authority. The following is noted-

- The Planning history section refers to the parent permission of the overall development under F99/A1620 i.e. 2,119 residential units in which condition 30 states-
 - *Having regard to the provision of small rear garden sizes and narrow frontage houses, notwithstanding the exempted development provisions of the Local Government (Planning and Development) Regulations 1994 (or any amendment or replacement of said Regulations), no additional development whatsoever shall take place within the curtilage of each house save with a prior grant of planning permission.*

REASON: To prevent overshadowing and overlooking of neighbouring private space and buildings by exempted development

4.2. Other Technical Reports

- Water Services-

- 23/02/23- No objections subject to conditions.

4.3. Prescribed Bodies

- Uisce Eireann-
 - 22/02/23- No objection

4.4. Third Party Observations

Six observations were received and can generally be summarised as follows-

- The design, size and scale is excessive and out of character with the area
- The structure obscures light into neighbouring gardens
- Impacts upon views
- Visual amenity is impacted.
- Loss of privacy
- Would set an undesirable precedent for the area
- Impact upon boundary treatment

5.0 Planning History

- None recent

6.0 Policy Context

6.1. Fingal County Development Plan 2023-2029

- 6.1.1. The Planning Authority assessed this application under the provisions of the Fingal County Development Plan 2017-2023 (CDP).
- 6.1.2. The Fingal Development Plan 2023 – 2029 was made on 22nd February 2023 and came into effect on 5th April 2023.
- 6.1.3. The site is zoned 'RS Residential' with an objective to *“Provide for residential development and protect and improve residential amenity”*. This zoning is described

in chapter 13 of the CDP with a vision to *“Ensure that any new development in existing areas would have a minimal impact on and enhance existing residential amenity.”*

6.1.4. Section 14 sets out Development Management Standards. Subsection 14.10.4 deals with Garden Rooms and states-

- *“Garden Rooms can provide useful ancillary accommodation such as a playroom, gym, or study/home office for use by occupants of the dwelling house. Such structures should be modest in floor area and scale, relative to the main house and remaining rear garden area. Applicants will be required to demonstrate that neither the design nor the use of the structure would detract from the residential amenities of either the main residence or of adjoining property. External finishes shall be complementary to the main house and any such structure shall not provide residential accommodation and shall not be fitted out in such a manner including by the insertion of a kitchen or toilet facilities. Such structures shall not be let or sold independently from the main dwelling.”*

6.2. **Natural Heritage Designations**

- None relevant

7.0 **The Appeal**

7.1. **Grounds of Appeal**

The grounds of this first party appeal can be summarised as follows-

- The appeal is accompanied by a letter of support from the neighbour at 33 the Boulevard.
- The applicant built the gym/office as a result of being locked down at home during lockdown to create additional living space.

- The applicant thought the development would be exempted development. She was not aware of a planning condition on the development restricting such exemptions. This was a genuine mistake.
- The development in normal circumstances would be exempt A number of diagrams/drawings are provided to show same.
- 31 sq.m of garden area is retained.
- The elevation from the rear shows the proposal is not dissimilar to the buildings which have been constructed in all the rear gardens from which objections have been received.
- Due to ground levels the structure appears 700mm higher at western end. It is 2.75m high at east end.
- A table is provided showing compliance with the Class 3 exempted development provisions in terms of floor area, amenity space retained and height.
- The proposal does not overbear on the neighbouring property because it is within the reasonable parameters of the exempted development provisions.
- The six objections received have been written by the same hand and coordinated by one individual. This action does not appear to be genuine and is more like a witch hunt.
- The two properties most impacted are No 35 to the north and 31 to the south. As 35 is to the north all shadows generated will fall into his property. There is no objection from No. 35.
- No shadow falls into No. 31 as it is directly to the south. It is also 1.2m from the southern boundary. The windows face into the 1.8m high fence of the application site and not into the garden of No. 31. The windows and doors all have frosted glass.
- The proposal is consistent with similar developments in the immediate, the policies and objectives of the Development Plan and other quantitative and qualitative standards set out in planning and development regulations.
- The third party submissions are vexatious.

7.2. Planning Authority Response

The Planning Authority's response to the grounds of appeal can be summarised as follows-

- Since the determination of the application the new Final County Development Plan 2023-29 has been adopted. Section 14.10.4 relates to garden room development.
- The subject gym/office by reason of its overall scale, height, and location relative to neighbouring property and in particular the property to the north, is considered to impact unduly in a negative manner upon the visual and residential amenities of the area, would represent an overbearing feature and is contrary to 'RS' zoning objective and would not accord with the guidance for garden rooms contained in the Fingal County Development Plan 2023-2029.
- In the event that this appeal is successful, provision should be made in the determination for applying a financial contribution in accordance with the Councils Section 48 Development Contribution Scheme.

7.3. Observations

Two observations have been received from-

- Bronagh McTague of 29 The Boulevard.
- Mariusz and Ewa Juckiewicz of 31 The Boulevard

The observations can be summarised as follows-

- The proposal be by reason of scale and location would represent an overbearing feature, be injurious to the visual and residential amenities of adjoining property and deprecate the value of same.
- Contrary to the RS Zoning.
- Impacts on residential amenity including overshadowing, loss of sunlight to garden, impact on views, visual amenity, privacy.
- Risk of fire
- Photographs are submitted.

- The building would set an undesirable precedent for the area.

8.0 Assessment

8.1. Introduction

- 8.1.1. I have examined the application details and all other documentation on file, including the Appeal and Observations received. I have inspected the site and have had regard to relevant local/regional/national policies and guidance.
- 8.1.2. The following are considered to be the main issues relevant to this assessment-
- Visual Impact,
 - Impact on Residential Amenity,
 - Other Issues,
 - Appropriate Assessment.

8.2. Visual Impact

- 8.2.1. The Planning Authority have considered the scale of the structure and its location along the boundary with the adjoining property to the north to be overbearing and injurious to the visual amenity of adjoining property depreciating the value of same.
- 8.2.2. The main premise of the Applicant's appeal is that the structure to be retained would otherwise meet the general size restrictions of the exempted development provisions of the planning and development regulations for such structures.
- 8.2.3. Normal exempted development provisions have been restricted for houses in this development by virtue of a condition imposed on the parent permission as detailed in section 4.1 above.
- 8.2.4. It is important to highlight, the Tyrellstown development has been designed deliberately to locate residential car parking to the rear of the properties. In this context these rear areas are very much open to the public and accordingly the visual character of such areas holds greater amenity value than what may be expected in more typical housing developments where rear boundaries of properties are not as accessible.

- 8.2.5. The application proposes the retention of a structure located in the rear garden of No. 33 The Boulevard. The structure has a floor area of 22 sq.m and is shown as used for gym and office purposes.
- 8.2.6. The drawings show the structure is c. 6.13m deep, c. 4.1m wide with a height of 2.75m. The drawings also show works to the ground level of the site raising it by as much as 0.7m at the western end meaning the ridge level height of the structure at its western elevation is c. 3.45m high from adjoining ground levels.
- 8.2.7. The site is bounded to the rear by a wall that is shown as 2.214m high and the structure to be retained is located behind this and is shown to protrude c.1.2m above the rear wall.
- 8.2.8. The structure is located within a narrow garden space c. 5.6m wide. It is located almost bounding the northern boundary of the site and a stated 1.288m from the southern boundary. The boundary between these gardens appears to be c. 2m high stepped wood panel fencing likely falling along the line of the original ground levels suggesting the structure to be retained protrudes as much as c. 1.5m above the side boundary at its most western point.
- 8.2.9. I have considered the drawings on file and inspected the site. I have observed the similar type structures located in the rear amenity spaces of other house in the area, none of which I consider comparable from a visual perspective to the subject structure. I share the Planning Authority's view that the scale of the structure represents an overbearing feature to the adjoining property to the north and also the general area west of the site accessible to the public. Furthermore it comprises a visually incongruous and dominant feature in this residential location that significantly detracts from the visual amenity of the area. It should be **refused**.

8.3. **Impact on Residential Amenity**

- 8.3.1. The Planning Authority also consider the development to be retained would be overbearing and injurious to the residential amenity of adjoining property.
- 8.3.2. The Applicants argue that the property most impacted by the development is No. 35 and the owner of this property has not objected to the development. I note a letter of support from the neighbour living at No. 35 accompanies the appeal.

- 8.3.3. Observers to the Appeal highlight their own residential amenity concerns including overshadowing, loss of sunlight to gardens, impact on views and impacts on privacy.
- 8.3.4. Having considered the orientation of the site and the location of the structure, the development to be retained will not overshadow or cause loss of sunlight to private amenity space of any property other than No. 35 which is located directly north of the structure. In this regard the changes in site levels, the height and depth of the structure and the narrow nature of rear garden spaces would suggest an overshadowing impact is quite likely to the private amenity space of No. 35.
- 8.3.5. While I acknowledge the letter of support to the appeal from a resident of No. 35, it would be contrary to proper planning and development to permit retention of the structure without an assessment of overshadowing and loss of sunlight from the structure to be retained. The Applicant has not submitted such an assessment and in the absence of same¹ and noting the scale of the structure and changes to site levels on site, I cannot be satisfied the structure to be retained does not have a negative impact in terms of overshadowing and loss of sunlight to the rear amenity space of No. 35.
- 8.3.6. Observers raise concerns of overlooking and loss of privacy. These concerns are considered to include overlooking from windows in the structure and the changes to site levels meaning the benefit of original boundary treatment has been lost. The Board are referred to photographs submitted by the observer at No. 31 the adjoining property to the south and those I have taken from outside of the site.
- 8.3.7. The structure to be retained is single storey and located c. 1.2m from the southern boundary. Two windows and glazed doors are located on the southern elevation and the western most window cill appears at a level similar to the top of the rear door accessing the site. Groundworks to the site have raised the levels at the rear of the site by 0.7m significantly reducing the privacy benefit of typical rear boundary treatment. I note the point of entrance from the rear boundary appears to remain at original ground level, however steps 2.5m from the rear boundary within the site would appear to allow for views into the rear garden of No. 31. Such views would significantly detract from the privacy of No.31.

¹ It is recommended such an assessment should be in accordance with the provisions of Section 3.3 of BRE209 - Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice' 2022 edition.

- 8.3.8. The Applicant details in their Appeal that a 1.80m timber fence exists between the structure and No. 31 and that the windows in the structure have frosted glass. I note the drawings to not detail the windows and doors as frosted glass, they do not appear as such in the photo submitted by the observer nor did they appear obscure during my inspection. The windows and doors also protrude significantly above the boundary fencing likely to contribute to overlooking and/or perceived overlooking.
- 8.3.9. In conclusion the scale and design of the structure, its proximity to site boundaries and the changes to existing ground levels relative to adjoining properties are such that the development as constructed has a significant negative impact on residential amenity by virtue of visual prominence, visual intrusion, overlooking, loss of privacy and likely loss of sunlight to adjoining private amenity spaces.
- 8.3.10. These impacts are in my opinion such that the development is contrary to the 'RS Residential' zoning objective for the site which has a stated objective *'to provide for residential development and protect and improve residential amenity'*. It is recommended that permission for retention should be refused.

8.4. **Other Issues**

- 8.4.1. Matters such as the location of cabling and risk of fire from same along the shared boundary are likely civil matters and not ones for the planning system to address.

8.5. **Appropriate Assessment**

- 8.5.1. Having regard to the nature and scale of the proposed development and its location relative to Natura 2000 sites, no Appropriate Assessment issues arise, and it is not considered that the proposal would be likely to have a significant effect, individually, or in combination with other plans or projects, on a European site.

9.0 **Recommendation**

- 9.1. It is recommended that retention permission be refused based on the following reasons and considerations.

10.0 Reasons and Considerations

1. Having regard to the scale and design of the structure as constructed, including its height, fenestration, proximity to site boundaries and changes to site levels relative to ground levels of adjoining properties, it is considered that the structure for which retention is sought comprises a visually incongruous and dominant feature in this residential location and has a significant negative impact on the existing residential amenity of surrounding properties by virtue of visual prominence, visual intrusion, overlooking, perception of overlooking and loss of sunlight to adjoining private amenity space to the north. The retention of the structure would therefore seriously injure the amenities and depreciate the value of surrounding properties, would be contrary to the residential zoning objective of the site and contrary 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.

Adrian Ormsby
Planning Inspector

04th of June 2023