



An
Bord
Pleanála

Inspector's Report

ABP-317237-23

Development	RETENTION PERMISSION: for timber cabin art studio, steel storage shed and extended platform with stairs along with ancillary works.
Location	3, 4 & 5 Bull Wall Cottages, North Bull Island, Dollymount, Dublin 3.
Planning Authority	Dublin City Council North
Planning Authority Reg. Ref.	3367/23
Applicants	Nick and Miranda Pheifer.
Type of Application	Retention.
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellants	Nick and Miranda Pheifer.
Observer(s)	None.
Date of Site Inspection	3 rd July 2023.
Inspector	Terence McLellan

1.0 Site Location and Description

1.1. The appeal site refers to Nos. 3, 4 and 5 Bull Wall Cottages in addition to two plots of land adjacent to No. 1 Bull Wall Cottages, North Bull Island, Dollymount, Dublin 3. The subject property and associated plots are located at the eastern end of the Bull Island Causeway (The Wooden Bridge, a Protected Structure) and north of Bull Wall Road at the southern end of Bull Island. Nos. 3, 4 and 5 Bull Wall Cottages appear to be the amalgamation of three dwellings from a terrace of five. The remaining dwellings, Nos. 1 and 2 Bull Wall Cottages, extend the terrace to the south and are in separate ownership. Further dwellings, Nos. 6 and 7, sit perpendicular to the subject terrace. There is also a two storey above podium level structure referred to as the 5th Port of Dublin Sea Scouts Den / Club House which runs along the northern boundary of no. 5 Bull Wall Cottages.

2.0 Proposed Development

2.1. Permission is sought to retain a metal storage shed, timber artists studio, and an extended timber platform with staircase. Rainwater collection butts are proposed for the metal shed and timber studio. The metal storage shed and timber studio are located on two semi enclosed plots of land between No.1 Bull Wall Cottages and Bull Wall. The extended timber platform and staircase project from the existing timber platform on the eastern façade of Nos, 3, 4 and 5 Bull Wall Cottages, within the rear garden ground of the parent dwelling and immediately adjacent to the neighbouring Scout Den.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Notification of the Decision to Refuse Retention Permission was issued by Dublin City Council on the 10th May 2023. The reasons for refusal are given as follows:

1. The metal clad structure and the artist's studio proposed for retention are not listed as 'permissible' or 'open for consideration' uses under the zoning objective Z9 'To preserve, provide and improve recreational

amenity, open space and ecosystems services' and as uses ancillary to the residential use on the adjacent part of the site, would also be neither permissible or open for consideration. Therefore, the development proposed for retention, in itself or by the precedent it would set for the authorisation of the retention of development which contravenes the zoning objective, would result in serious injury to the amenities of the area and would be contrary to the proper planning and sustainable development of the area.

2. The raised platform proposed for retention would be visually incongruous with the established character of the house creating a visually obtrusive element on the front elevation of the house. The platform facilitates activity at above ground floor level which would result in an infringement upon the privacy of neighbouring properties while facilitating activity of a recreational nature which has the potential to create excessive noise in the vicinity, contrary to the protection of the amenity of neighbouring residences. The proposed development would, therefore, be contrary to the Z2 zoning objective 'To protect, and/or improve the amenity of residential conservation areas'. The artist studio and metal clad garage storage structure proposed for retention are of a scale and character inconsistent with the established scale and character of existing residences in the area. Having regard to the sensitive character of its location within an area designated Special Amenity Area Order (SAAO), the shed and artist studio structures proposed for retention are visually obtrusive. The proposed structures are inconsistent with the established character of the area and would result in serious injury to the amenities of the area contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

- 3.2.1. The Planner's Report sets out the reasons and considerations in the assessment and ultimate refusal of the application. The report states that that proposed use of the shed and studio would be contrary to the zoning objectives of the area. Additional concerns are that the scale and character of the shed and studio would be inconsistent with that

established in the area, failing to respect the building line and failing to integrate in terms of finishes and materials.

3.2.2. The raised platform proposed for retention is considered to be visually incongruous, obtrusive and a threat to the privacy and enjoyment of neighbouring properties. The report considers that an Appropriate Assessment Screening Report is required to Stage 2, in addition to landscaping plans.

3.2.3. **Other Technical Reports**

3.2.4. **Drainage Division (27.04.2023):** No objection, subject to standard conditions.

3.2.5. **Parks, Biodiversity, and Landscape Services (05.05.2023):** The site is located in an area of high ecological importance and a water frontage of high amenity value. No landscape plan or Appropriate Assessment has been submitted. The sheds are considered to present a visually discordant edge to the wooden bridge, and they would benefit from a uniform stone wall boundary. Overall, however, the structures are not in keeping with the architectural character and visual quality of this coastal landscape. It is considered that Appropriate Assessment to Stage 2 and a landscape plan with boundary treatment is required.

3.3. **Prescribed Bodies**

3.3.1. None.

3.4. **Third Party Observations**

3.4.1. An observation was received from the 5th Port of Dublin Sea Scout Group, Cows Nest, Bull Island, Dollymount, Dublin 3. The main points are summarised below:

- Wish to object to the extended platform and stairs on the basis that the structure was fixed to the Scout Den without any consultation or permission.

3.4.2. An observation was received from Patricia Doyle of 1 Bull Cottages, Bull Island, Dollymount, Dublin 3. The main observations are set out below:

- Previously approved development had to comply with strict conditions regarding appropriate materials.
- The wood built studio is not in keeping with the historic buildings surrounding it.

- The drainage system is non-existent and could cause issues/damp at the adjacent dwelling.
- The metal structures create a lot of noise in wet and windy weather.
- The shed is used to store goods that guests of the AirBnB at No. 3 use and as such change the use from residential to a commercial.
- Issues identified regarding the submission documents and photos.
- A flood wall was built at the front of the houses and the applicant has breached this.
- The wooden platform area wasn't problematic when used as a playhouse but it is now being used as a bar. This is causing disturbance and attracting anti-social behaviour.
- The raised platform affects the privacy of adjacent gardens.
- Residents right of way to gain access to their properties has been blocked.

4.0 Planning History

Subject Site

- 4.1.1. **ABP Ref. PL29/5/87783** – Planning permission was granted by the Board in 1991 for the construction of two garages. This permission was not carried out and has since expired.
- 4.1.2. **Planning Authority Ref. 1547/97** – Permission was granted by Dublin City Council in August 1997 for a single storey domestic extension to the front of no. 4 Bull Wall Cottages.

Adjacent Sites

- 4.1.3. **Planning Authority Ref. 5194/07** - Permission was granted by Dublin City Council in March 2008 for the retention of various works to the Scout Den adjacent to the appeal site. In addition to the retention works, permission was also granted for the completion of the rear boat ramp to the north of the existing podium area.
- 4.1.4. The Board should note Condition 4 of this permission, which required the steel access stairway located at the southern end of the rear podium to be completely removed

within six months of the date of the Final Grant of Planning Permission in order to protect the amenities of the adjoining residential properties at Bull Wall Cottages.

5.0 Policy Context

5.1. Development Plan

Dublin City Development Plan 2022-2028

- 5.1.1. The appeal site is located within the North Bull Island National Special Amenity Area (SAA), the objective of which is primarily to protect outstanding landscapes, nature, and amenities.
- 5.1.2. In terms of zoning, the appeal site has two designations. The parent dwelling at 3,4,5 Bull Wall Cottages, is designated as Zone Z2: Residential Neighbourhoods (Conservation Areas) with the stated objective to protect and improve the amenities of residential conservation areas. The general objective for such areas is to protect them from unsuitable new developments or works that would have a negative impact on the amenity or architectural quality of the area.
- 5.1.3. The location of the shed and artists studio, which sits outside of the curtilage of the application dwelling on land between the Bull Wall carriageway and the gable elevation of 1 Bull Wall Cottages, is zoned Z9: Amenity, Open Space Lands/Green Network. The raised platform and stairs are located within the curtilage of the parent dwelling, within the rear garden ground and this land is also zoned Z9. The stated objective of Z9 lands is to preserve, provide and improve recreational amenity, open space and ecosystem services. Z9 lands are multi-functional and central to healthy place-making, providing for amenity open space together with a range of ecosystem services. They include all amenity, open space and park lands, which can be divided into three broad categories of green infrastructure as follows: public open space; private open space; and sports facilities. Generally, the only new development allowed in these areas, other than the amenity/recreational uses, are those associated with the open space use.
- 5.1.4. Chapter 10: Green Infrastructure and Recreation, notes that Dublin's natural assets are an essential resource for conserving biodiversity and for creating a healthy, low carbon, resilient and connected city. They include Dublin's parks, open spaces,

landscapes, watercourses, coastline and urban tree canopy, some of which have international importance for biodiversity and provide crucial ecosystem services, including flood defences and carbon sequestration. The relevant sections of this chapter are:

- GI9: European Union Natura 2000 Sites
- GI11: Proposed Natural Heritage Areas
- GI19: Protect and enhance Landscapes
- GI20: Views and Prospects
- GI35: General Protection of Coastal Zone
- GIO19: North Bull Island National Special Amenity Area

5.1.5. Chapter 14 provides more information on Zoning. Section 14.4 provides further guidance on permissible and non-permissible uses and states that there will be a presumption against uses not listed as permissible or open for consideration.

5.1.6. Chapter 11: Built Heritage and Archaeology, recognises that the city's heritage contributes significantly to the collective memory of its communities and to the richness and diversity of its urban fabric. It is key to the city's character, identity and authenticity and is a vital social, cultural, and economic asset for the development of the city. The relevant policies of this section include:

- BHA9: Conservation Areas

5.1.7. Chapter 15: Development Standards, contains the Council's Development Management policies and criteria to be considered in the development management process so that development proposals can be assessed both in terms of how they contribute to the achievement of the core strategy and related policies and objectives. Relevant sections of Chapter 15 include (but are not limited to):

- 15.15.2.2: Conservation Areas

5.1.8. Appendix 18 provides guidance on ancillary residential accommodation and the relevant sections are:

5.1.9. Section 1: Residential Extensions

5.1.10. Section 2: Detached Habitable Room, the purpose of these rooms is to provide for additional space within the rear garden of an existing dwelling for study/home office use or additional living/ children's playroom. These rooms shall only be used as ancillary residential accommodation.

5.2. Natural Heritage Designations

5.2.1. The appeal site is located within the North Bull Island SPA (004006) and adjacent to the North Dublin Bay SAC (000206) and the South Dublin Bay and River Tolka Estuary SPA (004024). The site is also located within the North Bull Island Special Amenity Area and the proposed North Dublin Bay Natural Heritage Area.

5.3. EIA Screening

5.3.1. The development does not constitute a class of development for EIA purposes. See pre-screening form at Appendix 1.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. An appeal has been lodged by Nick and Miranda Pheifer of 3,4,5 Bull Wall Cottages, North Bull Island, Dollymount, Dublin 3, against the decision of Dublin City Council to refuse permission for the retention of the subject buildings and raised platform/staircase. The grounds of appeal are as follows:

- The timber artists studio would fall under 'craft' or 'cultural/recreational use' and as such should be open to consideration in zoning terms. Likewise, the shed would fall under 'recreational' and should also be open to consideration.
- There is precedent for this type of development in the form of a previously granted building (ABP PL29/5/87783).
- There were no objections to the visual aspect of the art studio, it is in keeping with the character of the area and people are complimentary about it.
- The studio is the size of a domestic extension, built of natural materials and is more environmentally friendly than a masonry building.

- If required, the studio could be moved to align with the building line and a stone boundary wall could be added.
- The shed was constructed on existing foundations of a previous structure and is similar to an existing garage/shed with a corrugated steel roof (collapsed). The cladding material could be amended if necessary.
- The extended platform was constructed in place of an existing pergola and has essentially been an infilling of the pergola and realignment of the stairs.
- The materials of the extended platform are in keeping with the property/area and planting provides appropriate screening to prevent overlooking of the neighbours.
- The planner mistakenly interpreted the back garden as the front garden.

6.2. **Planning Authority Response**

6.2.1. No response.

6.3. **Observations**

6.3.1. None.

7.0 **Assessment**

7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, and inspected the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Zoning
- Design and Amenity
- Appropriate Assessment

7.2. **Zoning**

7.2.1. The core issue in reason for refusal 1 relates to zoning and the Planning Authority's conclusion that the timber artist studio and metal shed would not be appropriate

development on Z9 lands, where residential use is neither classed as 'Permissible' nor 'Open for Consideration'. I note from the Planner's Report that the Planning Authority consider the raised timber platform and stairs to be within the Z2 lands alongside the parent dwelling. However, the rear garden ground of the parent dwelling is clearly designated as Z9 on the CDP zoning maps. As such, all of the development sought for retention is within land zoned Z9.

7.2.2. Section 14.7.9 of the CDP considers Z9 lands to be multi-functional and central to healthy place-making, providing for amenity open space together with a range of ecosystem services. The CDP states that generally, the only new development allowed in these areas, other than the amenity/recreational uses, are those associated with the open space use. It is noted that residential or ancillary residential use is not listed as permissible or open to consideration.

7.2.3. The applicant argues that the timber studio should fall under 'craft' or 'cultural/recreational use' and that the shed would fall under 'recreational' use and on this basis, they should be open to consideration. The applicant further considers that there is precedent for this type of development in the form of a previously granted building (ABP PL29/5/87783). The previous permission referred to by the applicant for two garages dates back to 1991 and has since lapsed. As such, I do not consider this previous permission to be of any relevance to the current appeal. Whilst I note the applicant's view that the studio should be considered as a craft or cultural/recreational use and that the shed should be classed as 'recreational', I am of the opinion that the timber studio and shed are clearly ancillary to the residential use, being used by the applicant for their sole benefit. On this basis I am satisfied that the timber studio and metal shed are contrary to the Z9 zoning objectives of the site as they are ancillary residential and not listed as permissible or open to consideration for Z9 land. As such their retention would be contrary to the Z9 zoning objective and would represent a material contravention of the development plan.

7.2.4. Despite falling within land that clearly reads as being the rear garden ground of the parent dwelling, the Z9 zoning issues would also apply to the extended timber platform and stairs whereby they are also contrary to the Z9 zoning objective of the land. However, section 14.5 of the CDP relates to non-conforming uses and I note that the timber platform and stairs are an extension to a pre-existing timber platform that has been in existence for longer than seven years. I am satisfied that this particular aspect

of the development should be considered on its own merits and that this element would not necessarily result in a contravention of the zoning objective, given the existing timber platform, its long term use, and the provisions of the non-conforming uses policy.

7.3. Design and Amenity

- 7.3.1. The Planning Authority consider the extended timber platform and stairs to be a visually incongruous and obtrusive development. There are concerns that this would facilitate recreational activity that could lead to noise, disturbance, and a loss of privacy that would affect the residential amenity of adjoining occupiers. The applicant claims that the extended platform was constructed in place of an existing pergola and has essentially been an infilling of the pergola and realignment of the stairs. The applicant also considers the materials of the extended platform to be in keeping with the property/area and that planting provides appropriate screening to prevent overlooking of the neighbours.
- 7.3.2. In my opinion, the views afforded from the extended platform would not result in any new viewpoints being created nor would it result in a significant intensification of overlooking compared to the pre-existing platform. The separation distance from the extended platform to the nearest garden and windows is such that there would not be a detrimental loss of privacy. I do not consider the extended platform to be of a size that would result in a marked difference in recreational use/potential for disturbance over and above the existing raised platform.
- 7.3.3. The parent dwelling is located within a residential conservation area, as are all of the Bull Wall Cottages. The overall quality of the area in design and layout terms is such that it requires special care in dealing with development proposals which affect structures in such areas, both protected and non-protected. The general objective for such areas is to protect them from unsuitable new developments or works that would have a negative impact on the amenity or architectural quality of the area. The extended raised platform runs the full length of the side boundary of the garden as well as for approximately four metres of the rear plot boundary. In my opinion, the extent and visual prominence of the timber platform/stairs is such that it is not subordinate to the parent dwelling, and I would agree with the Planning Authority that it is a visually

obtrusive and incongruous development that fails to protect the residential conservation area.

7.3.4. I note that the metal shed and timber artist studio are located on separate plots to the parent dwelling. However, the shed and studio are very much viewed within the context of the Bull Wall Cottages and consideration must be given to their impact on the conservation area, in addition to their location within the designated National Special Amenity Area. Buildings in the area are predominantly masonry, constructed from stone and in some cases finished in render in order to contextualise with the overriding architectural character. This generally also extends to boundary treatments which are mostly of stone wall construction. The metal clad shed and the timber studio fail to integrate and contextualise with the surrounding built form and character. They appear as incongruous and obtrusive features, particularly on the approaches along Bull Wall. The timber studio is particularly prominent, and I am satisfied that they would be inconsistent with the character of the area and that they would have an adverse visual impact.

7.3.5. I note the applicant's submission that the cladding material of the shed could be changed, and that the timber studio could be moved in order to align with the established building line, however these amendments would be significant and are outside the scope of the appeal. Additionally, they would not overcome the wider concerns regarding zoning.

7.4. Appropriate Assessment

7.4.1. Article 6(3) of the Habitats Directive requires that any plan or project not directly connected with or necessary to the management of a European site, but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to Appropriate Assessment of its implications for the sites in view of the sites' Conservation Objectives. The Board is the competent authority in this regard and must be satisfied that the development in question would not adversely affect the integrity of the European sites having regard to their conservation objectives.

7.4.2. The development site is located within the North Bull Island SPA (004006) and immediately adjacent to the North Dublin Bay SAC (000206) and the South Dublin Bay and River Tolka Estuary SPA (004024). The project is not directly connected with or

necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site.

- 7.4.3. A Screening Report for Appropriate Assessment has not been provided by any of the parties and the Planning Authority has not indicated that it has carried out an AA screening of the development before issuing its declaration, although they have stated that they are not satisfied that significant effects are not likely to arise and consider that Appropriate Assessment to at least Stage 2 is required.
- 7.4.4. The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects.
- 7.4.5. The proposal is for the retention of a metal shed, a timber artist studio and an extended timber platform and stairs. No details of construction have been provided, however the metal shed is constructed on the foundations of a previous structure and the extended platform/stairs and timber studio appear to be of simple timber post construction with no concrete plinth visible.
- 7.4.6. There are no existing watercourses on the site, although I note the proximity to the shoreline and the waters of the North Dublin Bay SAC and the South Dublin Bay and River Tolka Estuary SPA. The development does not result in the creation of any new water supply or any new effluent. The only potential hydrological impact of the development would be rainwater run-off from the roof of the shed and timber studio. Whilst there is no proposed surface water drainage system, rainwater run-off is unpolluted water and would otherwise continue to percolate at ground level, as would be the case in the absence of the development.
- 7.4.7. Having regard to the conservation objectives of the North Bull Island SPA and the adjacent SPA and SAC, and given the nature and scale of the development and the minimal disruption, disturbance and fragmentation that would result, the existing foundations/hardstanding with regards to the metal shed, the lack of any new effluent, and the sole hydrological generation as unpolluted rainwater from the roofs, I consider that the development would not give rise to any significant effect on the North Bull Island SPA or the adjacent SPA and SAC. I am therefore satisfied that Appropriate Assessment can be screened out and that progression to Stage 2 is not required. No

measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon in this screening exercise.

- 7.4.8. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually or in combination with other plans or projects would not be likely to give rise to significant effects on the North Bull Island SPA (004006) or any other European site, in view of the site's Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is not therefore required.

8.0 Recommendation

- 8.1.1. I recommend that the Board uphold the decision of Dublin City Council and that permission be refused for the development for the following reason.

9.0 Reasons and Considerations

1. The metal shed and timber artist studio are located in areas zoned objective Z9 - Amenity/Open Space Lands/Green Network in the Dublin City Development Plan 2022-2028. The stated objective of these lands is to preserve, provide and improve recreational amenity, open space and ecosystem services. The retention of the development for ancillary residential use, which is not listed as 'Permissible' or 'Open for Consideration' would materially contravene the zoning objective, as set out in this plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to the adjoining residential conservation area and the open nature of the site and wider area, the metal shed, timber studio and raised timber platform/staircase, due to their scale, location, and materials, represent visually incongruous, obtrusive, and prominent forms of development that are inconsistent with the surrounding context and built form. The development would therefore have an adverse visual impact, would be injurious to amenity and would be 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.

Terence McLellan
Senior Planning Inspector

10th October 2023

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-317237-23		
Proposed Development Summary	RETENTION PERMISSION: for timber cabin art studio, steel storage shed and extended platform with stairs along with ancillary works.		
Development Address	3, 4 & 5 Bull Wall Cottages, North Bull Island, Dollymount, Dublin 3.		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	X
		No	No further action required
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) or does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes		Class.....	EIA Mandatory EIAR required
No	X		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
			Conclusion
No	X	N/A	No EIAR or Preliminary Examination required
Yes			Proceed to Q.4

4. Has Schedule 7A information been submitted?

No		Preliminary Examination required
Yes		Screening Determination required

Inspector: _____ **Date:** _____