



An
Bord
Pleanála

Inspector's Report

ABP-317255-23

Development

Retention permission and permission: retention of alterations to the development approved under reg. ref. D20A/0300 (An Bord Pleanála ref. no. PL06D.308729).

Location

The Flags, Dalkey Avenue, Dalkey, Co. Dublin, A96 DX94

Planning Authority

Dún Laoghaire Rathdown County Council

Planning Authority Reg. Ref.

D23A/0210

Applicant(s)

Timo and Ruth Barry.

Type of Application

Retention.

Planning Authority Decision

Grant.

Type of Appeal

Third Party

Appellants

Brendan and Suzanne Nangle
Dalkey Community Council

Observers

Ann Perry
Edward and Helen O'Neil

Yvonne Lynch

Date of Site Inspection

18th October 2023

Inspector

Terence McLellan

1.0 Site Location and Description

- 1.1. The appeal site refers to a broadly rectangular 0.25 hectare plot located off Dalkey Avenue, Dalkey, Co. Dublin. The site contains a partially constructed three storey dwelling approved under an earlier planning permission, although this is now practically complete. The main access to the site is via The Metals, which sits to the west and connects to Dalkey Avenue to the north. The plot boundaries are marked by 21C Dalkey Avenue to the north, the rear garden ground of the dwellings on Cunningham Drive to the east, and the rear garden ground of the dwellings on Ardbrough Close to the south. To the immediate west, the site adjoins 'The Metals' candidate Architectural Conservation Area (cACA), a historical right of way originally conceived as a railway to transport stone from Dalkey Quarry to the port at Dún Laoghaire. A defining characteristic of the site and wider area is the significant change in levels which increase towards Dalkey Hill to the south. The site therefore occupies an elevated and prominent position within the local area.
- 1.2. The stretch of this route between Dalkey Avenue and Ardbrough Road is known as 'The Flags', which was also the name of the previous dwelling on the appeal site. This part of the route is characterised by a line of granite flagstones that run over most of its length. Although the more southerly extent of 'The Flags' opens into a wider grassed area on the approach to Ardbrough Road, the route is considerably narrower alongside the site boundary. Two Industrial Heritage Sites are in close proximity to the appeal site and are located within The Metals cACA. These include a pumping station (no.979) and water tank (no. 980).

2.0 Proposed Development

- 2.1. Permission is sought to retain alterations to the development approved by the Board in July 2021 for the redevelopment of the site to provide a two storey dwelling with attic accommodation. The alterations include:
 - Increase in ground floor area from 238sqm to 273sqm.
 - Increase in first floor area from 138sqm to 170sqm.
 - Decrease in attic level area from 55sqm to 45sqm.

- Changes to internal layout and elevational amendments, including fenestration.
- Revisions to the access and entrances including the gate, steps and planting terraces.
- Increased roof and chimney height (60mm and 220mm respectively).
- Addition of a canopy roof and a retractable awning on the rear elevation.
- Addition of framed metal louvres on the east and west elevations.
- Retain 196sqm basement void and proposed use as basement.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Notification of the Decision to Grant Permission for Retention was issued by Dún Laoghaire County Council on the 23rd May 2023, subject to 11 conditions. Condition 1 reapplies the conditions imposed on the original permission. Condition 4 secures reconstruction, repair and restoration of the boundary wall. The remainder of the conditions are generally standard.

3.2. Planning Authority Reports

- 3.2.1. The Planner's Report was issued on 23rd May 2023 and states that the alterations would remain compliant with the zoning objectives for the area. The report also states that the proposed alterations would not have an impact on The Metals cACA, nor would there be any significant residential or visual amenity impacts.
- 3.2.2. The Planning Authority consider the basement to be acceptable by virtue of its design, site levels, and the screening provided by the entrance steps/planting and are content that it would not appear as a third storey (although noting that with the attic, four levels of accommodation would be provided).
- 3.2.3. **Other Technical Reports**
- 3.2.4. **Conservation Report (08.05.2023):** No objection, subject to a condition to secure the repair, reconstruction and restoration of the boundary wall adjacent to The Metals.

3.2.5. **Drainage Planning (04.05.2023):** No objection, subject to the conditions applied on the existing permission.

3.2.6. **Transportation Planning (08.05.2023):** No objection, subject to conditions relating to SUDS, keeping public roads clean and clear of debris/repair damage, and measures to be taken to avoid conflict between construction traffic and other road users.

3.3. **Prescribed Bodies**

3.3.1. I note that An Taisce, the Arts Council, Department of Housing, Local Government and Heritage, Fáilte Ireland, and the Heritage Council were consulted on the application, but no response was received.

3.4. **Third Party Observations**

3.4.1. A total of 11 third party observations were received to the planning application from the following:

- David and Maria Bourke of 1 Ardbrough Close, Dalkey, Co Dublin.
- Mary and Conor O'Brien of 2 Ardbrough Close, Dalkey, Co Dublin.
- Dr Brendan J. Nangle and Suzanne Nangle of 5 Ardbrough Close, Dalkey, Co Dublin, (appellants).
- Yvonne Lynch of 6 Ardbrough Close, Dalkey, Co Dublin, (multiple signatories).
- Ann Perry of 37 Barnhill Avenue, Dalkey, Co Dublin.
- John Perry of 37 Barnhill Avenue, Dalkey, Co Dublin.
- Sean Clarke of Chacalna, The Metals, Dalkey, Co Dublin.
- Patricia and Ger Glendon of 14 Cunningham Drive, Dalkey, Co Dublin.
- Dalkey Community Council
- Councillor Mary Hanafin.
- Shirley Bewley.

3.4.2. The observations made at planning stage largely reflect the grounds of appeal which are set out in detail at section 6.1 below.

4.0 Planning History

Parent Permission

- 4.1.1. **ABP 308729-20/Planning Authority Ref D20A/3033:** Planning permission was approved by the Board in July 2021 for the demolition of the existing dwelling and replacement with a proposed two storey dwelling with attic space, to accommodate 4 bedrooms and associated living spaces; the proposed modification of existing vehicular entrance with the addition of a proposed pedestrian gate; proposed new boundary fencing and associated landscape works.

Subject Site

- 4.1.2. **Planning Authority Ref D22A/0373:** Permission was refused by DLRCC in September 2022 for alterations to the development previously approved under Reg Ref. D20A/0300 (An Bord Pleanála Ref 308729) comprising: (i) The demolition of existing dwelling and replacement with a proposed 2-storey dwelling; (ii) The revised layout and footprint of the proposed dwelling to provide a 4 bedroom, two-storey dwelling with attic level and basement and terraces at 1st floor and attic levels; (iii) The relocation of the pedestrian gate and (iv) all ancillary works necessary to facilitate the development. Permission was refused for the following reason:

1. The proposed development, by reason of its overall scale, massing, design, and siting, fails to enhance and would adversely impact on the visual amenities of the receiving environment including The Metals and would thus not accord with policy objective HER28: The Metals. In addition, it is considered that the dwelling as proposed, by reason of its profile, scale and massing, fails to have due regard to the amenities of adjacent properties and would thus not accord with the provisions of policy objective HER28: The Metals, PHP19: Existing Housing Stock, and Section 12.3.7.7: Infill of the Dún Laoghaire Rathdown County Development Plan 2022-2028. The proposed development would therefore not comply with the Dún Laoghaire Rathdown County Development Plan 2022-2028. Furthermore, the proposed development would, if permitted, set an undesirable precedent for similar development in the area. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

- 4.1.3. This proposal differs from the approved permission and the proposed retention development significantly in terms of roof form which would increase the massing of the roof immediately adjacent to The Metals and the western boundary.

Adjacent Sites

- 4.1.4. There is an extensive planning history in the area relating to domestic works which I have taken into consideration, and which are outlined in the Planner's Report. Applications for new dwellings which are of immediate relevance to the proposal are set out in detail below.

21 Dalkey Avenue (to the north of the appeal site)

- 4.1.5. I would advise the Board that there is an extensive and detailed planning history relating to the development of this site, including several applications for modifications to the approved house designs approved on the main permission detailed below and outlined in the Planner's Report. I do not propose to comment further on these applications other than to confirm that I have given due regard to them in my assessment.

- 4.1.6. **Planning Authority Ref D11A/0193:** Permission was granted by DLRCC in July 2011 for the demolition of a two-storey house and the construction of 3 no. two-storey detached dwellings including modifications to the access at Dalkey Avenue, landscaping, and ancillary site development works.

22 Dalkey Avenue (north-west of application site)

- 4.1.7. **Planning Authority Ref D08A/0542:** Permission was granted by DLRCC in January 2009 for the demolition of an existing house and the construction of a new two-storey-over-basement house with associated site works, including new boundary walls, widened entrance gates, and rear pedestrian entrance.

Nirvana, The Flags, Dalkey, Co. Dublin (to the south-west of the site)

- 4.1.8. **Planning Authority Ref D02A/0047:** Permission was granted by DLRCC in September 2002 for the demolition of an existing two-storey house and the erection of a new two-storey-over-part-basement house, single-storey garage, and remedial work to boundary walls.

4.1.9. **ABP-212871/Planning Authority Ref D04B/0890:** Permission was granted by the Board in December 2005 for part retention, part amendments and completion to the detached dwelling previously approved under PA Ref. No. D02A/0047.

4.2. Development Plan

Dún Laoghaire-Rathdown County Development Plan 2022-2028

4.2.1. The Dún Laoghaire-Rathdown County Development Plan 2022–2028 (CDP) categorises the site as zoning objective ‘A’, which seeks to provide residential development and improve residential amenity while protecting the existing residential amenities.

4.2.2. Chapter 4: Neighbourhood – People, Homes and Place, sets out the policy objectives for residential development, community development and placemaking, to deliver sustainable and liveable communities and neighbourhoods. The relevant policy objectives from this chapter are:

- PHP20: Protection of Existing Residential Amenity
- PHP25: Housing for All
- PHP35: Healthy Placemaking

4.2.3. Chapter 5: Transport and Mobility, seeks the creation of a compact and connected County, promoting compact growth and ensuring that people can easily access their homes, employment, education and the services they require by means of sustainable transport. The relevant policy objectives from this chapter are:

- T19: Car Parking Standards
- T23: Roads and Streets

4.2.4. Chapter 11: Heritage and Conservation includes specific objectives and guidance relating to the protection of the County’s heritage including architectural heritage. The relevant policies from this chapter include:

- HER28: The Metals

4.2.5. Chapter 12: Development Management, contains the detailed development management objectives and standards that are to be applied to proposed developments. The relevant sections of this chapter are:

- 12.3.3.1: Residential Size and Mix
- 12.3.3.2: Residential Density
- 12.3.7.7: Infill
- 12.3.8: Housing for All
- 12.3.9: Demolition and Replacement Dwellings
- 12.4.5.1: Car Parking Standards
- 12.4.6: Cycle Parking
- 12.4.8: Vehicular Entrances and Hardstanding Areas
- 12.8.3.3 (i): Private Open Space for Houses
- 12.8.7.1: Separation Distances
- 12.8.7.2: Boundaries

4.3. **Regional Policy**

Regional Spatial and Economic Strategy for the Eastern and Midland Region 2019-2031

- 4.3.1. This strategy provides a framework for development at regional level. The RSES promotes the regeneration of our cities, towns, and villages by making better use of under-used land and buildings within the existing built-up urban footprint.

4.4. **National Policy**

The National Planning Framework - Project Ireland 2040

- 4.4.1. The government published the National Planning Framework (NPF) in February 2018. Objective 3a is to deliver 40% of all new homes nationally, within the built-up footprint of existing settlements. Objective 11 is to prioritise development that can encourage more people to live or work in existing settlements. Objective 35 is to increase residential density in settlements and makes specific reference to infill development.

4.5. **Natural Heritage Designations**

- 4.5.1. None relevant.

4.6. EIA Screening

- 4.6.1. See completed Form 2 on file. Having regard to the nature, size and location of the proposed development and to the criteria set out in Schedule 7 of the Regulations I have concluded at preliminary examination that there is no real likelihood of significant effects on the environment arising from the proposed development. EIA, therefore, is not required.

5.0 The Appeal

5.1. Grounds of Appeal

- 5.1.1. Two Third Party appeals have been received. The first appeal has been submitted by Dalkey Community Council, c/o Mount Salus House, Mount Salus, Dalkey, Co Dublin. The second appeal has been submitted by Hendrik W. van der Kamp, Town planner, of 1 Woodstown Court, Knocklyon, Dublin 16, for and on behalf of Dr Brendan J. Nangle and Suzanne Nangle of 5 Ardbrough Close, Dalkey, Co Dublin. The grounds of appeal can be summarised as follows:

Appeal 1 - Dalkey Community Council

- The proposed development has no regard for that originally approved under D20A/0300.
- A basement and enlarged attic space were constructed, raising the height of the roof contrary to the permission. Attempts to regularise this were refused or invalid but building work continued.
- The house has always appeared as four storeys despite there being no grant of permission for this.
- The proposal is for a four storey dwelling on the hillside adjacent to the historic 'Metals' and it dominates the area.
- The proposal bears no resemblance to the planning permission in scale, height or mass. Building work has continued unabated for two years, despite no permission and enforcement notices being issued.

- Permission was granted for a 420sqm house and a building of 690sqm is now being sought, the effect of the building on neighbours and the historic environmental has not been considered.
- The development would have a negative impact on Ardrugh Close and Cunningham Drive, dwarfing houses, removing views, and would be overbearing and excessive.
- The building would dominate the area and irreparably suburbanises the historic setting of The Flags/The Metals.
- The building exemplifies what can go wrong in planning when an unapproved building is allowed to remain in situ unchallenged.
- Action should be taken to reduce the scale of the building and comply with the permission.

Appeal 2 – Dr Brendan Nangle and Suzanne Nangle

- The planning report refers to the replacement of an existing dwelling. The dwelling is no longer in existence and has been replaced by the house permitted under D20A/0300.
- The proposed replacement house is excessive in floor area and height and would seriously injure the amenity of the adjoining house to the south.
- The increase in floor area can be accommodated in a flat roof design which would be more compatible with the sensitive environment of a seaside town.
- The original permission was for a dwelling of 420sqm, not 431sqm as stated in the planning documents. Given these discrepancies, there is doubt regarding the dimensions on the drawings.
- Planning permission for a similar development was refused and not appealed. This therefore forms a precedent regarding the merits of the development and should form a material consideration.
- The current proposal is almost twice the size of the demolished house.
- There is no justification for the increase in floor area. The previous refusal was for a house of 734sqm and was refused on scale. The issue on the reason for refusal was therefore not addressed.

- The building would have an impact on the visual amenity of the receiving environment, including the Metals and the adjacent properties.
- The dwelling is higher than approved and there is no justification for this increased height.
- Heights on the plans and the photomontages are different.
- The building would impact on the amenity space of 5 Ardburgh Close (first floor balcony and garden), affecting views, residential amenity and property values. The increased height would reduce views even further.
- The Board should consider whether a flat roof should be chosen for the dwelling. The attic room is not necessary as adequate accommodation is included in the remainder of the house.
- Flat roofs are visually less intrusive and would have less of an impact. Eliminating the attic would bring the roof line more in compliance with the hillside and in harmony with existing properties on the hill. This would reduce concerns.
- The asymmetrical design of the roof is out of place and presents a visually discordant element in the design of the house.
- The basement is not accessible from the outside, has no natural light or ventilation, and is not justified as the permitted dwelling is already big enough.
- If the applicant wants to add the basement floor area to the dwelling, then it is appropriate that this should reduce the attic accommodation.
- The replacement dwelling is directly adjacent to a candidate Architectural Conservation Area.

5.2. Applicant Response

- The Council have adequately addressed the issues raised in the appeal.
- The proposal provides a high level of residential amenity without negatively impacting on the residential amenity of adjacent sites.

- The proposal represents an intensification of residential land use on an already serviced site, in an area well served by public transport and existing services and amenities.

5.3. **Planning Authority Response**

- 5.3.1. The Planning Authority direct the Board to the previous Planner's Report and do not consider that the appeal raises any new issues.

5.4. **Observations**

- 5.4.1. Observations have been received from:

- Edward and Helen O'Neil of 2 Ardbrough Road, Dalkey, Co Dublin.
- Ann Perry of 37 Barnhill Avenue, Dalkey, Co Dublin.
- Yvonne Lynch of 6 Ardbrough Close, Dalkey, Co Dublin, (multiple signatories).

- 5.4.2. The observations largely reflect the issues raised in the appeal. Additional issues raised include:

- The way the house was built without planning permission needs to be addressed.
- The rights of residents in adjacent properties have been violated.
- The description is misleading as the development is four storeys, not two storeys with attic accommodation.
- The height is not in harmony with the hill.
- Height has been increased and the dwelling is closer to adjacent properties, and this will impact on the amenity of adjacent properties.
- Property values will be decreased.
- Work on the unauthorised structure continued uninterrupted despite warnings from DLRCC Compliance and Enforcement.
- The fact that the development is effectively complete should be disregarded.

- The development would impact on the candidate Architectural Conservation Area of The Metals and would not comply with the heritage policies of the CDP.

5.5. Further Responses

5.5.1. A further response on the appeal has been received from Dr Brendan J. Nangle and Suzanne Nangle of 5 Ardbrough Close, Dalkey, County Dublin, (appellants). This response does not raise any new issues that are not already covered in the appeals or observations and can be summarised as follows:

- The grounds of appeal as stated by Dalkey Community Council confirm and reinforce the appellants grounds of appeal.
- The Board is urged to either refuse the appeal or seek a revised design incorporating a flat roof.
- The grant of permission for such a revised design would leave open the option for the applicant to modify the existing development in line with the permission already granted.

6.0 Assessment

6.1. At the outset I would advise the Board that there are inaccuracies on the site plan and the photomontages in terms of presenting the outline of the approved dwelling as being positioned closer to the eastern site boundary with The Metals than actually approved. These inconsistencies appear to be limited to the photomontages and the comparison site plan. Whilst this could be rectified by way of a request for Further Information, I would note that the proposed (retention) drawings appear to be accurate, as is the outline of the approved scheme shown on the elevations and sections.

6.2. At the time of my site inspection, the proposed dwelling was largely complete, and I consider that there is sufficient information on the appeal file and in the history file to allow an accurate and comprehensive comparison and assessment of the approved and proposed/retention schemes. On that basis, I am satisfied that the appeal can proceed and that the photomontages and outline of the approved dwelling on the

proposed site plan should be disregarded. As both appeals raise similar issues, I intend to deal with them collectively.

6.3. 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:

- Design and Height
- Quantum of Development
- Amenity
- Heritage
- Appropriate Assessment

6.4. **Design and Height**

6.4.1. The appeal raises concerns that the development is excessive in terms of its height and beyond that previously approved. It is stated that the dwelling appears as a four storey dwelling which is excessive in terms of its height and floorspace, dominating the area and the historic 'The Metals'. The appellants state that there is no justification for this height, that the asymmetrical roof is out of place, presenting a visually discordant feature, and that a flat roof would be more appropriate.

6.4.2. The proposal seeks to retain the additional height, which equates to 225mm additional height on the chimney and approximately 110mm at ridge level. In the context of the approved development and the receiving environment I consider this increase to be fairly minimal and acceptable in design terms. I am satisfied that that the additional bulk on the east elevation and to the front and rear are acceptable in terms of design, scale and massing.

6.4.3. With regard to the roof form, I would note that an asymmetrical roof was part of the permitted design of the roof and, in my opinion, it has been employed as an effective tool in reducing impacts on The Metals and the western boundary. The principle of an asymmetrical roof has previously been accepted and I do not consider that there has been a material change in circumstances that would warrant a significant redesign of the roof form. I note the appellants view that a flat roof would be more appropriate,

however, this negates the design accepted as part of the permitted scheme and the main issue on this point is the acceptability of the additional height which, as outlined above, I consider to be minimal in the context of the approved development and acceptable in planning and design terms.

- 6.4.4. The changes to the fenestration are neutral in design terms, although I note that the ratio of glazing has slightly reduced slightly which I consider to be acceptable.
- 6.4.5. I acknowledge the concerns regarding the difference in heights between the plans and the photomontages which I have previously addressed and draw the Boards attention to section 6.1 and 6.2 above.

6.5. Quantum of Development

- 6.5.1. The grounds of appeal state that permission was granted for a house measuring 420sqm and now a dwelling of 690sqm is being proposed which is excessive. The view is taken that basement is not justified as the dwelling is already large enough and that if the basement is to be allowed then the attic should be reduced.
- 6.5.2. The grounds of appeal state that the approved dwelling is 420sqm whilst the application details the approved dwelling as being 431sqm. The retention scheme notes the proposed dwelling as being 684sqm, of which 196sqm would be made up of the basement. This would result in additional above ground floorspace of 57sqm (or 67 sqm when using the figure provided by the appellants). Given that the scale, massing and positioning of the proposed retention dwelling is considered acceptable I am satisfied that the increase in above ground development would not be harmful to either the visual or residential amenity of the area.
- 6.5.3. In terms of the basement, a 196sqm basement void has been constructed that the applicant wishes to retain, and it is proposed to use this as basement floorspace providing ancillary residential accommodation. Whilst I note that this is a substantial space, its location under the dwelling with no concurrent impact on the bulk of the dwelling is such that I am satisfied that, despite its size, it would have no measureable impact on amenity or on the design of the dwelling. The basement is well concealed behind the entrance steps and is located centrally within the body of the dwelling, with no impact on the site boundaries. In the absence of any impacts on design or amenity, I am satisfied that the basement void can be retained and that the proposed use of the space as ancillary residential floorspace would be acceptable.

6.6. Amenity

- 6.6.1. The appeal raises concerns that the development would have a negative impact on Ardburgh Close and Cunningham Drive as a result of being overbearing and removing views. Particular concerns are raised that the building would impact on the amenity space of 5 Ardburgh Close (first floor balcony and garden), affecting views, residential amenity, and property values.
- 6.6.2. I note that the relative position of the dwelling remains generally as approved. Whilst there is some additional height at the chimney and ridge level, as well as some additional bulk to the east and at both the front and rear elevations, in my opinion, the amendments to the approved scheme do not materially change the amenity impacts of the development. Separation distances to the dwellings on Ardburgh Close remain acceptable due to the significant depth of the plot, with distances from the rear wall of the subject dwelling to the plot boundary being in excess of 28m. I do not consider that the amendments to the permitted scheme would result in any intensified impacts on neighbouring dwellings or garden ground in terms of overlooking, loss of privacy, or overbearance, particularly when accounting of the separation distances and the change in levels.
- 6.6.3. In terms of proximity to the rear gardens of the dwellings on Cunningham Drive, the dwelling would be 1.85m from the boundary at its closest point to nos. 13 and 14 Cunningham Drive and would be 4.1m high. However, due to the offset nature of the boundary, this separation distance would increase northwards to a distance of 4.4m where the dwelling would have a height of 8.4m to eaves level. Whilst the eaves height would be comparable to the approved dwelling, the dwelling would be approximately 1.5m closer to the boundary. Nevertheless, due to the offset nature of the boundary, the form of the adjacent gardens on Cunningham Drive, and the positioning of the dwellings within these gardens, I am satisfied that there would be no overbearing impacts or overlooking significantly beyond that established by the permitted scheme.
- 6.6.4. I accept that additional height and bulk has the ability to impinge on views further to that previously approved, however, when comparing the approved development and the proposed retention scheme, I do not consider that this would have any significant demonstrable impact, as the height increases are generally minor in the context of the

approved development, and the additional bulk to the east would not intrude significantly on views or adjacent garden ground beyond that of the permitted scheme.

6.6.5. The first floor terraces on the front of the dwelling have been increased in depth and width, however, given the separation distances to adjacent properties as well as the incorporation of screening to prevent overlooking, I am satisfied that there would be no additional overlooking or loss of privacy as a result of this change to the permitted scheme.

6.6.6. I note the concerns raised in the grounds of appeal in respect of the devaluation of neighbouring property. However, having regard to the assessment and conclusion set out above, I am satisfied that the proposed development would not seriously injure the amenities of the area to such an extent that it would adversely affect the value of property in the vicinity.

6.7. **Heritage**

6.7.1. The Metals forms the western boundary, and it is noted that this is a candidate Architectural Conservation Area. Concerns raised in the appeal are that the dwelling as proposed/built would dominate the area and would irreparably suburbanise the historic setting of The Flags/The Metals.

6.7.2. I consider the amendments on the western boundary adjacent to The Flags/The Metals to be acceptable in scale, mass, design and positioning. When compared to the approved scheme, I do not consider the retention proposal to be measurably more impactful nor would it have any additional/intensified impact on the heritage setting than the approved scheme.

6.8. **Other Matters**

6.8.1. The appeal raises several matters related to enforcement, including the fact that building work continued despite no permission being in place and in the context of Enforcement Notices having been issued, and that action should be taken to reduce the scale of the building and comply with the permission. I would note that the applicant is seeking to regularise the planning permission by way of the current retention permission application/appeal and that the matter of enforcement falls under the jurisdiction of the Planning Authority. The Boards consideration is therefore limited to the proposed retention scheme and its acceptability in planning terms.

6.9. Appropriate Assessment

- 6.9.1. Having regard to the nature of the development, its location in a serviced urban area, and the separation distance to any European site, it is concluded that no appropriate assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

7.0 Recommendation

- 7.1. From my assessment above, I recommend that the Board should uphold the decision of the Planning Authority and grant retention permission for the proposed development, based on the reasons and considerations set out below.

8.0 Reasons and Considerations

- 8.1. Having regard to the zoning objective relating to the site and the nature and extent of the development proposed for retention, it is considered that the proposal, subject to the conditions set out below, would not seriously injure the amenities of the area or property in the vicinity, would not be prejudicial to public health or the environment and would generally be acceptable in terms of design, traffic safety and amenity.

9.0 Conditions

1.	<p>The development shall be retained and completed in accordance with the plans and particulars lodged with the application 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 development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
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2.	<p>All relevant conditions attached to previous grant of permission for development at the site, Planning Authority reference D20A/0300 (ABP Ref 308729-20) shall be strictly adhered to.</p> <p>Reason: In the interests of clarity and the proper planning and sustainable development of the area.</p>
3.	<p>The entire dwelling shall be used as a single dwelling unit and shall not be sub-divided in any manner or used as two or more separate habitable units.</p> <p>Reason: To prevent unauthorised development.</p>
4.	<p>The roof of the playroom, utility, and pantry area shall not be used as a balcony, roof terrace, or similar.</p> <p>Reason: In the interests of residential amenity.</p>
5.	<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> <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.</p>

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

7th February 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-317255-23		
Proposed Development Summary	Retention permission and permission: retention of alterations to the development approved under reg. ref. D20A/0300 (An Bord Pleanala ref. no. PL06D.308729).		
Development Address	The Flags, Dalkey Avenue, Dalkey, Co. Dublin, A96 DX94		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? <small>(that is involving construction works, demolition, or interventions in the natural surroundings)</small>	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) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes			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)
		N/A	Conclusion
No			No EIAR or Preliminary Examination required
Yes	X	Class 10 (b) (i), threshold >500 dwellings.	Proceed to Q.4

4. Has Schedule 7A information been submitted?

No	X	Preliminary Examination required
Yes		Screening Determination required

Inspector: _____ **Date:** _____

Appendix 2

Form 2

EIA Preliminary Examination

An Bord Pleanála Case Reference	ABP-317255-23	
Proposed Development Summary	Retention permission and permission: retention of alterations to the development approved under reg. ref. D20A/0300 (An Bord Pleanála ref. no. PL06D.308729).	
Development Address	The Flags, Dalkey Avenue, Dalkey, Co. Dublin, A96 DX94	
<p>The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.</p>		
	Examination	Yes/No/ Uncertain
<p>Nature of the Development</p> <p>Is the nature of the proposed development exceptional in the context of the existing environment?</p> <p>Will the development result in the production of any significant waste, emissions or pollutants?</p>	<p>The proposed development is for residential, in an area that is largely characterised by residential use. The proposed development would therefore not be exceptional in the context of the existing environment in terms of its nature.</p> <p>The development would not result in the production of any significant waste, emissions or pollutants.</p>	No.
<p>Size of the Development</p> <p>Is the size of the proposed development exceptional in the</p>	<p>The size of the development would not be exceptional in the context of the existing environment.</p>	No.

<p>context of the existing environment?</p> <p>Are there significant cumulative considerations having regard to other existing and/or permitted projects?</p>	<p>There would be no significant cumulative considerations with regards to existing and permitted projects/developments.</p>	
<p>Location of the Development</p> <p>Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location?</p> <p>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?</p>	<p>The development would be located in a serviced residential area and would not have the potential to significantly impact on an ecologically sensitive site or location. There is no hydrological connection present such as would give rise to significant impact on nearby water courses (whether linked to any European site or other sensitive receptors). The proposed development would not give rise to waste, pollution or nuisances that differ significantly from that arising from other urban developments.</p> <p>Given the nature of the development and the site/surroundings, it would not have the potential to significantly affect other significant environmental sensitivities in the area. It is noted that the site is not designated for the protection of the landscape or natural heritage and is not within an Architectural Conservation Area.</p>	<p>No.</p>
<p>Conclusion</p>		
<p>There is no real likelihood of significant effects on the environment.</p> <p>EIA not required.</p>		

Inspector: _____

Date: _____