



An
Bord
Pleanála

Inspector's Report

ABP-317693-23

Development	Retention of amendments to previously approved dwelling.
Location	Site 6B, Rathmichael Haven, Ferndale Road, Rathmichael, Dublin 18
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	D23A/0314
Applicant(s)	Ali Barker
Type of Application	Retention Permission
Planning Authority Decision	Grant retention permission
Type of Appeal	Third Party
Appellant(s)	1. Liz and Ritchie Callaghan 2. Justin McCarthy
Observer(s)	None
Date of Site Inspection	18 th September 2023

Inspector

Ronan O'Connor

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1.0 Site Location and Description

1.1. The site is located on Rathmichael Haven within a cul-de-sac development of approximately 11 no. detached dwellings of various scales/designs.

2.0 Proposed Development

2.1. Retention of amendments to previously approved and now under construction 5-bedroom detached dwelling house (D19A/0919, 26/10/19) at Site 6B. These amendments include:

a) Reduction in the size of the overall floor area of the house from a 5 bed to a 4 bed dwelling and reducing the floor area from 665sqm to 390 sqm by eliminating the lower ground floor single storey basement wing located to the front of the main elevation of the building on the south eastern end of the site and reducing the size of the basement under the two-storey main part of the house. Also reducing the widths of the remaining two-storey wing running from North East/South West in the rear courtyard from 11.3m to 8.2m and from 9.8m to 6.7m on the single storey section and from 7.5m to 6.7m on the single storey return wing running North West/South East at right angles in the rear courtyard.

b) Changes to the internal layout to facilitate the above floor area reductions and all associated changes to the external fenestration and replacing the previously approved plaster render/cut stone/rubble external wall finishes with a plaster render and eliminating the metal clad roof canopies around the parapets.

c) Retaining the original timber and post and rail fencing along the north eastern boundary and supplementing with laurel hedgerow and providing a 1.8m high post and screen with laurel hedgerow to the top of the retaining walls on the north eastern side of the courtyard to the rear and the terrace to the front.

d) any associated changes to site layout and site services..

3.0 Planning Authority Decision

3.1. Decision

Grant retention permission. Condition No. 3 restricts the use of the flat roof areas for maintenance purposes only.

Decision Date: 5th July 2023

3.2. Planning Authority Reports

3.2.1. Planning Report (dated 5th July 2023)

Principle

- Notes site is zoned A1 'To provide for new residential communities and Sustainable Communities Infrastructure in accordance with approved local area plans'.
- Residential development permitted in principle.
- Note the subject site is located within the Rathmichael Local Area Plan boundary for which an LAP will be prepared.
- Section 2.6.13 '...noted that within the A1 zoned lands at both Old Connaught and Rathmichael there are a number of existing properties. With respect to existing properties Minor Modifications and extensions to these properties can be considered in advance of the relevant Local Area Plans.
- Noted that the application is an amendment application to the extant permission Ref. Ref. D19A/0919/not a standalone application for a new dwelling.
- Considered the amendments constitute minor modifications in line with Section 2.6.13/therefore in accordance with the A1 zoning

Amendments

- Overall reduction in size from GFA of 665 sq. m to 390 sq. m/omission of basement/reduction in width of house
- Subject dwelling occupies the original position to that previously permitted under D19A/0919

- Fenestration has been altered
- Notes some discrepancies between the elevations with regard to external finishes
- Main amendments noted in the report
- Recommended that a condition is imposed to prevent the use of the flat roof area to the rear as a roof garden
- Existing boundary treatment to be retained
- Overall amendments were considered acceptable
- Considered visual impact and impact on the wider streetscape to be acceptable.

Residential Amenity

- Would not compromise residential amenity having regard to overlooking, overshadowing or visual impact (overbearing)

Access/Parking/Transport

- Wayleave shown on the drawings/shows access to both No. 6 and 6A Rathmichael Haven
- Driveway layout has been amended/how runs through centre of the site as opposed to running along the northern and north-eastern boundary of the site
- Rearrangement is acceptable

Other Issues

- Conditions in relation to the previous condition shall apply (i.e. those relating to wastewater treatment, surface water and impact of construction works)

3.2.2. Recommendation was to **Grant** permission for retention.

Other Technical Reports

3.2.3. E.H.O. – Proposal acceptable subject to conditions.

3.3. **Prescribed Bodies**

3.3.1. None.

3.4. Third Party Observations

- 3.4.1. Three no. third party submissions were received during the application stage. The issues raised are similar to those raised in the 2 no. appeals (see summary of same below).

4.0 Planning History

- 4.1.1. D22A/0302 – **Refuse** Permission for: 1). Construction of a new Two-Storey, 4 bedroom detached family dwelling 2). Relocation of existing site entrance 3). Waste treatment installation and all associated site works. [Decision date 24th June 2022]
One Reason for refusal:

1. Under the Dún Laoghaire-Rathdown County Development Plan 2022-2028, the site is subject to zoning objective A1, which seeks 'To provide for new residential communities and Sustainable Neighbourhood Infrastructure in accordance with approved local area plans'. The site is located within the Rathmichael Local Area Plan boundary, for which a Local Area Plan will be prepared. Section 2.6.1.3 Local Area Plan Plan-Making Programme of the Dun Laoghaire-Rathdown County Development Plan 2022-2028 notes that within the A1 zoned lands at Rathmichael there are a number of existing properties and 'minor modifications and extensions to these properties can be considered in advance of the relevant Local Area Plans. The proposed development which comprises of the construction of a new dwelling, having regard to its nature and scale, would not constitute 'minor modification and extensions to existing property. As such, the proposed development would be contrary to the provisions of Section 2.6.1.3, would set an undesirable precedent for other similar developments and would be contrary to the A1 zoning objective of the area, which seeks to provide for new residential communities and Sustainable Neighbourhood Infrastructure in accordance with approved local area plans". Therefore, the proposed development would be contrary to the proper planning and sustainable development of the area.

D19A/0919 **Grant** permission for 1). Construction of New 5-bedroom detached dwelling house consisting of two storeys over basement/lower ground level on a

sloping site; & 2). All ancillary and site development works and services.[Decision date 27/07/2020].

5.0 Policy Context

5.1. Development Plan

Dun Laoghaire-Rathdown County Development Plan 2022-2028

The applicable plan for the determination of this application is the Dun Laoghaire Rathdown County Development Plan, 2022-2028.

Site is zoned A1 'To provide for new residential communities and Sustainable Communities Infrastructure in accordance with approved local area plans'.

Chapter 12 – Development Management

5.2. Natural Heritage Designations

c.3km to the north-east of Ballyman Glen SAC

c. 4km to the south-west of Rockabill to Dalkey Island SAC

5.3. EIA Screening

- 5.3.1. Having regard to the limited nature and scale of development and the absence of any significant environmental sensitivity in the vicinity of the site, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

5.4. AA Screening

- 5.4.1. Having regard to the modest nature and scale of development, location in an urban area, connection to existing services and absence of connectivity to European sites, 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.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. 2 no. Third Party Appeals have been received. These are summarised as follows:

Justin McCarthy, 6A Rathmichael Haven

- Applicant has no intention of using the approved materials
- DLRCC have not considered the quality of the design and finish
- If this was not an application for retention, it would not have been granted
- Does not sit comfortably with any of the adjoining dwellings including No. 6
- Garden level has been raised up to the top of the garden wall
- Drawing under D23A/0314 differs significantly to that approved under D19A/0919
- Information provided is incorrect/no reference to raising the garden levels
- Wall is not a structural retaining wall/is at risk of collapse
- Privacy has been compromised by raising of garden levels
- No safety barrier has been provided to prevent fall from raised garden level
- Septic tank has been installed/must be instructed to pull back the soil levels locally
- Request that ABP either (a) reject this application or (b) issue approval with conditions requiring the design to reflect the design intent of D19A/0919/external finishes as per previous approval/removal of soil

Liz & Ritchie Callaghan, 5 Rathmichael Haven

- Constructed housing is not been carried out in accordance with permission D19A/0919
- Front of the building in no way resembles the permitted plans
- Two glass doors which open allowing access onto the flat roof area/will overlook appellant's property
- Poor architectural design/substandard nature for the area

- Bland white render/poorly detailed fenestration /no detailed architectural elements on the façade
- No use of cut/random stone
- Request that ABP impose a condition in relation the originally permitted external finishes
- Already experienced overlooking from the roof element/there is not a sedium grass roof here
- How will condition restricting the use of the flat roof be enforced?
- There is no need for the two windows/doors facing in terms of building regulations as there are window openings elsewhere in this room
- Request that ABP impose a condition in relation to removing these windows and requiring the sedium grass roof to be laid
- State that the boundary wall should be located within the applicant's site/not directly onto the common boundary/would result in the felling of newly planted screening trees along the boundary

6.2. Applicant's Response

6.2.1. A First Party Response to the appeals was received on 25th August 2023. This is summarised as follows:

- No adverse impacts on neighbours as a result of the changes.
- Design has been rationalised due to budget constraints
- Applicant's priority has been to make the house watertight/now living in the house
- House follows the same overall design and configuration as originally approved/reductions in floor area
- Metal roof canopies at roof level have not been completed/can be retrofitted
- Sedium roof has still to be completed
- Reduction in floor area has meant internal layout changes/has little to no impact externally

- Shade screens can be easily retrofitted
- Planning permission did show a render finish/also a cut stone and random rubble on certain surfaces/would like to retain the render finish/looks well and ties in with the vast majority of dwellings in Rathmichael Haven
- Proposed to keep the existing timber post and rail fencing/already heavily screened with mature hedgerow and trees/additional planting is proposed
- Refers to Planning Officer's report
- Drawings submitted clearly show any changes to the permitted dwelling
- Applicant is seeking approval for amendments, including the amendments to the proposed materials
- Alterations to the garden level are consistent with what was approved/ground level near to the wall has always been like this/reduction in ground level was to accommodate the basement, this is now not being constructed
- Screen hedgerow will be completed/permission granted still has 15 months to run
- The two glass doors are in fact windows/have raised cills internally/located in a similar position to what has been approved
- Cannot be used as a terrace as there are no railings.

6.3. **Planning Authority Response**

6.3.1. A response from the Planning Authority was received on 25th August 2023. This is summarised as follows:

- Refer the Board to Planner's Report
- No new issues raised which would justify a change of attitude towards the proposed development

6.4. **Observations**

6.4.1. None

6.5. Further Responses

6.5.1. None.

7.0 Assessment

7.1. The planning issues raised in this appeal are as follows:

- Impact on Residential Amenity/Visual Amenity
- Design Issues
- Boundary Treatment

Design Issues

7.1.1. The main design concerns of the 2 no. appellants relate to the architectural detailing and the materials proposed for retention, and it is stated that they are a poorer quality than the originally permitted detailing. The applicant refutes this and states that that the render as proposed is in keeping with the other houses in the area, and with the policies of the Dun Laoghaire-Rathdown Development Plan, although the detailing can be retrofitted if needed. I note the Planning Authority did not consider the revised materials and detailing to be unacceptable.

7.1.2. In relation to the materials now proposed to be retained, I am not of the view that revised materials as proposed for retention here fundamentally undermine the overall appearance of the dwelling, with the overall proportions, and the modernist approach, still apparent and generally as per the approved dwelling (as approved under Planning Reg Ref D19A/0919), notwithstanding the reduction in scale, and I am not of the view that the revised architectural detailing would result in a dwelling that is fundamentally at odds with what was approved, or would render it incongruous with the neighbouring dwellings. Indeed, one could argue that the simplification of the materials is more in keeping with the minimal modernist architecture and clean lines of the dwelling. As such, I am of the view that the proposals for retention are generally acceptable in terms of design.

Impact on Residential Amenity/Visual Amenity

7.1.3. The main concerns of the appellants, in relation to residential amenity, relate to the flat roof elements, where it is proposed to put a sedium roof, and it is stated that

these areas could be utilised as a roof terraces. The applicant has stated that the sedium roof will be installed, and the 'doors' referred to by the appellants, are in fact, windows, with high cills internally. It is further stated that there no railing surrounding the flat roof areas and therefore could not be safely used as a terrace. The Planning Authority have imposed a condition restricting the use of these flat roof areas.

- 7.1.4. In terms of the drawings submitted for approval (currently under construction drawings) I note that the windows and doors are cross-referenced incorrectly (in terms of what materials are proposed). However, it is clear that this is a typo and the doors and window are 'aluclad'. In terms of the windows that lead onto the flat roof areas, as shown on the 'Currently Under Construction' rear/south-east elevation (Dwg No. WD07) and as shown on the 'Currently Under Construction' side/north east elevation (Dwg No. PP08), these are elongated windows with a cill internally. They do allow for maintenance access however. However, I consider that an appropriate condition, as imposed by the Planning Authority, is sufficient to restrict this use. I also concur that the high cilled windows would limit access to this area, as would the lack of a railing. The sedium roof as proposed would also prevent it being used as roof terrace or sitting out amenity area. In terms of enforcement of this condition, this is a matter for the Planning Authority, although I note that such a condition is not unusual for proposals, such as this one, where a flat roof area is proposed.

Boundary Treatment

- 7.1.5. The applicant is now proposed adjacent to No. 5 Rathmichael Haven is to retain the current boundary treatment, and to plant additional screen planting on this boundary. I see no issue with same, and not that there is substantial mature planting on this boundary. In relation to the boundary wall adjacent to No. 6A Rathmichael Haven, I note the appeal submission from No. 6A has stated that the level of the garden has been raised, and there is structural implications for the wall as existing. The applicant has stated the garden level has not been raised, and it is as per existing when the site was purchased (prior to the construction of the house). It is further stated that it was proposed to lower the garden level under the originally approved plans, but this is now no longer the case.

7.1.6. In relation to same, I do not have any visual or residential amenity concerns in relation to the garden level. In relation to the structural stability of the wall, this is beyond the remit of this application, and the applicants would need to ensure they are compliant with other relevant areas of legislation in this regards, including Building Regulations. The garden level as existing, would appear to correspond to that shown in the 'Currently Under Construction' Contiguous South West Elevation (Dwg No. PP 10).

8.0 Recommendation

8.1. I recommend that retention permission be **Granted**, subject to the conditions below.

9.0 Reasons and Considerations

9.1. Having regard to the scale, form and design of the development proposed for retention, it is considered that, subject to compliance with the conditions set out below, the proposed development would not adversely impact the residential amenity of neighbouring property or the character and visual amenity of the existing building and surrounding streetscape. The proposal would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	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. Reason: In the interest of clarity.
2.	Save for amendments granted on the foot of this permission, the development shall otherwise be retained and completed in strict accordance with the terms and conditions of Planning Permission Reg. Ref.

	<p>D19A/0919, save as may be required by the other conditions attached hereto.</p> <p>Reason: In the interests of the proper planning and sustainable development of the area.</p>
3.	<p>The flat roof areas/sedum roofs located at first floor level to the rear (south-east elevation) and to the side (north-east elevation) shall not be used as roof gardens/roof terraces and shall be accessed for maintenance purposes only.</p> <p>Reason: In the interests of surrounding residential amenity.</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.

Ronan O'Connor
Senior Planning Inspector

19th September 2023