



An
Bord
Pleanála

Inspector's Report ABP 317970-23

Development

Retention permission for 1. Rear 2 storey extension built in 1995, 2 front alterations incl. new openings with windows and door, internal modifications, upgrading insulation to roof and walls.

Location

11 Distillery Lane, Dundalk, Co. Louth.

Planning Authority

Louth County Council.

Planning Authority Reg. Ref.

23 305.

Applicant(s)

William Arrowsmith.

Type of Application

Retention.

Planning Authority Decision

Refuse.

Type of Appeal

First Party

Appellant(s)

William Arrowsmith.

Observer(s)

None

Date of Site Inspection

10th November 2023.

Inspector

Aisling Dineen.

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1.0 Site Location and Description

- 1.1. The appeal site is situated within the northern environs of Dundalk town adjunct to a street named Distillery Lane. Distillery Lane is positioned between the parallel roads of Rampart Road and Jocelyn Street. The site comprises a mid-terraced dwelling, which is set within a terrace of c. 12 similarly designed properties. On street parking is established in the area. The site itself is restricted and private open space to the rear is not plentiful, which is akin to the pattern of established adjacent dwellings in the terrace.

2.0 Proposed Development

- 2.1. It is proposed to retain a rear two storey extension, which is stated to measure 45 sq. m. It is also proposed to retain alterations to front elevations, which comprise a new door way and two windows at ground floor level in addition to a roof light. Internal modification and alterations are also proposed.

3.0 Planning Authority Decision

3.1. Decision

- 3.2. The planning authority refused planning permission on the 11 August 2023 for the following reason(s):

The accommodation provided by the two-storey rear extension for which retention permission is sought comprises of 3 no bedrooms at first floor level and additional habitable accommodation at ground level. By reason of its substandard ceiling heights throughout, this accommodation fails to meet the minimum standard as per Building Regulations (2019) *Technical Guidance Document F* to provide a floor to ceiling height of 2.4 metres (minimum) across 50% (minimum) of the floor area. As such to permit such a development would result in a substandard level of accommodation for occupants, set an undesirable precedent for other similar inappropriate development in the vicinity and thus would be contrary to the proper planning and sustainable development of the area.

The Chief Executive's decision reflects the planner's report.

3.3. Planning Authority Reports

3.3.1. Planning Reports

The planners report discusses planning policy for the area being zoned C1 Mixed Use. It discusses the external features subject of retention permission, the front roof light and the rear box dormer and in doing so the planning history of the area is referred to. It is stated that there is planning precedent for both elements:

Planning register 23/279 granted for a box dormer and a front dormer.

Planning register 17/599 granted permission for a front dormer.

The report states that a *'rooflight window would have less visual impacts than a conventional dormer. Visually these do not detract from their urban context'*.

The planners report refers to the first-floor ceiling height is 2.32 metres, which it states falls below the Building Regulations (2019) Guidance Document F, which requires a ceiling height of 2.4 metres, and it states that the front bedroom is particularly severely restricted in height due to the slanting roof.

The report concludes that the living space to be substandard and to permit it would be contrary to the proper planning and sustainable development of the area.

3.3.2. Other Technical Reports

None.

4.0 Planning History

None stated relating to the appeal site.

5.0 Policy and Context

5.1. Development Plan

Louth County Development Plan 2021-2027

The site is located on lands designated as 'C1 Mixed Use', where the zoning aims 'To provide for commercial, business and supporting residential uses'.

HOU 34 aims 'To encourage sensitively designed extensions to existing dwellings which do not negatively impact on the environment, residential amenities, surrounding properties, or the local streetscape and are climate resilient'

SS 25 aims 'To manage the growth of Dundalk in a manner that will achieve the creation of a compact settlement with attractive and inclusive neighbourhoods where there is a choice of affordable homes for all'.

5.2. Natural Heritage Designations

The appeal site is located approximately 6.7km to the south west of Special Area of Conservation: Carlingford Mountain SAC (Site Code: 000453).

The appeal site is located approximately 0.5 km to the south west of Special Area of Conservation: Dundalk Bay SAC (Site Code: 000455) and the Special Protection Area: Dundalk Bay SPA (Site Code: 004026).

5.3. EIA Screening

Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, 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.

6.0 The Appeal

6.1. Grounds of Appeal

- The refusal could have been dealt with by a further information request.
- Part F of the building Regulations gives a minimum suggested ceiling height of 2.4 metres and the reason that this is a suggested ceiling height is that there are other ways of providing adequate ventilation to rooms in addition to ceiling height.

- The reason for the retention application is explained; the applicant started renovation and modification works internally in late 2022 early 2023 in order to improve the energy efficiency of the house. While carrying out works it was decided to amend the front elevation to a more traditional style as he had done to No 7 Distillery Lane some years ago, and to introduce a roof light at the front elevation. When the engineer called to the house the applicant was advised that planning permission was required to alter the front elevations.
- When the applicant bought the property, he was advised that the rear extension did not have planning permission but that it was in existence for 28 years as it was built in 1995. Therefore, the applicant was advised to also retain the rear extension.
- The front first floor bedroom does not form part of the application as it was in existence since pre - 1963.
- When the applicant bought the house, the ceiling heights weren't measured as they were existing and they looked normal to the applicant and he had no intention of altering the first-floor height or the roof. It would not be possible to alter the ceiling heights without removing the entire ground floor ceiling and the entire roof. This would be substantial works in order to raise roof heights by 8 – 9 cm and would not be viable.
- Regarding the refusal reason it is not considered that Building Regulations form part of planning applications, however it is acknowledged that good design is within the remit of planning.
- The ceiling heights are 2.31 m. on ground level and 2.32 m. at first floor level and as such they are over 96% of the suggested minimum ceiling height and a secondary form of ventilation would suffice for the small loss in ceiling height. The ceilings are only fractionally shy of 2.4 metres and were built 28 years ago.
- The TGD – (Technical Guidance Document) 2019 is demonstrated by way of diagram and it is stated that this is a 'suggested' height. Section 1.2.1.7 of the said document states that *'building height is one of a number of factors, which affects ventilation of habitable rooms'*.

- The applicant bought the house with the building heights shy of the regulation. All he can do now is comply with Part F and provide ventilation requirements i.e., purge ventilation and background ventilation.
- The house has been in use as a residential dwelling since 1995 – 28 years.
- Dimensions and volumes of air are set out. Mechanical ventilation systems are proposed in the first-floor bedrooms and the ground floor kitchen/living room. Also, extractor fans to comply with current regulations.
- The previous owner built a rear two storey extension in 1995 and this was at the same time as extensions were built on adjoining properties at number 6,9 and 10. Planning permission was applied for numbers 6,9 and 10 but for some unknown reason permission was not applied for in respect of No 11.

6.2. Applicant Response

- None

6.3. Planning Authority Response

- The planning authority reiterates its concerns regarding the building.
- Floor to ceiling height affects the internal amenities of any dwelling, in terms of sunlight/daylight, storage space and ventilation. This is most significant at ground level where the potential for overshadowing is greatest.
- The proposed mechanical ventilation system may be beneficial but the planning authority has concerns in relation to the low height from the perspective that this is a substandard restrictively low living space and from a fire safety perspective.
- This is a small property with minimal outside amenity space and it is critical that minimum internal standards are provided.
- To grant this proposal would set a precedent for other similar units within Dundalk and would be contrary to the goals of orderly and sustainable development.
- The Board is requested to uphold the decision.

6.4. **Observations**

None.

6.5. **Further Responses**

None.

7.0 **Assessment**

7.1. Having examined all the application and appeal documentation on file and having regard to the relevant local and national policy and guidance, I consider that the main issues in this appeal are those raised in the grounds of appeal and the planning authorities' reason for refusal and I am satisfied that no other substantive issues arise. AA also needs to be considered. The main issues, therefore, are as follows:

- Principle of Development
- Visual Amenity
- Residential Amenity
- Planning History
- Other Issues
- Appropriate Assessment

7.2. Principle of Development

7.3. The dwelling house, part of which is subject of retention, is located within an established residential terrace on lands zoned for mixed use, under which residential development is acceptable. The rear two storey extension, which is subject of retention, is stated to have been built in 1995. This fact is accepted by both parties to the appeal and is not in dispute. The overall original house is stated by the applicant's agent to be of pre-1963 construct. Given that the site is situated within an established residential development within a residential terrace on lands zoned mixed use wherein supporting residential use is acceptable and given the lengthy time period, in which a habitable dwelling has been established at this location, I am satisfied with the principle of development.

- 7.4. It is acknowledged that this is an application for retention permission which entails the entire development on the site. It is noted that the development would otherwise fall within '*the 7-year rule*', which essentially means that under Section 157(4) of the Planning and Development Act 2000, that local authorities may not serve enforcement notices for an unauthorised development after seven years since the commencement of the development.
- 7.5. Visual Amenity
- 7.6. The rear two storey extension is acceptable from the perspective of visual amenity. It is noted that adjacent dwellings have also been extended under a similar design profile, to that proposed under the current retention application. The rear extensions appear to follow the height of the uniform ridgeline of the terrace and as such they are not visible from the street along Distillery Lane.
- 7.7. The modification to the front façade of the dwelling comprises the replacement of one large window with two new traditional style windows and the replacement of a door opening with side attached window, with a single traditional style door opening. The roof profile also includes a roof light, which clearly has reduced visual impacts than the dormer window on the adjacent dwelling to the south. It is noted that the majority of dwellings along the subject terrace have either roof lights or dormer windows on their front elevations.
- 7.8. It is considered that the overall design in terms of visual amenity to be acceptable and I would concur with the agent for the applicant in that the front elevation is of traditional style and in fact adds to the streetscape.
- 7.9. It is noted that the planning authority has raised no issue in terms of design and visual amenity.
- 7.10. Residential Amenity
- 7.11. The main reason for the planning authority's decision to refuse retention permission is based on the floor to ceiling height being shy of the suggested minimum floor to ceiling height, as per *Building Regulations (2019) Technical Document F*. The planning authority consider that the proposal would result in a substandard level of accommodation for future occupants and set an undesirable precedent for other similar development in the vicinity.

- 7.12. In the planning authority's response to the appeal the point is made that floor to ceiling height affects the internal amenities of any dwelling and the point is also made, inter alia, that the subject property has minimal outside space and it is considered that it is critical that minimal internal standards are provided.
- 7.13. The agent for the applicant makes the case that the issue of Building Regulations is not an issue for the planning authority but accepts that good design is within its remit. The agent submits that the Building Regulation is a 'suggested' minimum height only and makes the case that floor to ceiling height is interlinked with providing ventilation. Accordingly, the case is made that additional mechanical ventilation methods are to be introduced. The agent makes the case that the ceiling heights are only fractionally below the suggested minimum height and this issue could have been addressed with a further information request.
- 7.14. The planning authority in its appeal response accepts that a mechanical ventilation system may be beneficial from a ventilation perspective, but it still has concerns relating to the low ceiling heights, regarding amenity for future occupants.
- 7.15. *Building Regulations (2019) Technical Document F (TGD)*, which has been quoted in the refusal reason relates to 'Ventilation' specifically. Therefore, I consider that it is reasonable for the applicants' agent to assume that the substantive issue under the refusal reason related to ventilation. I note the planning authority's general concern regarding the general amenity of the dwelling and for future occupants, which is also considered to be reasonable. However, having considered the contents of the file in great detail, I am of the viewpoint that given that the extension and the existing building heights within the subject dwelling, have been in situ and established for many years and given the relatively short disparity between the existing building heights and the 'suggested minimum building heights' under Diagram 3, page 14 of the TGD, that it would be acceptable to permit retention as proposed.
- 7.16. I consider that this particular site and the issues arising within this appeal to be unique to the site-specific context together with the site-specific planning history and I do not consider that building heights in any new or proposed development would be impacted by this potential decision going forward, with regard to precedence.

7.17. Planning History

7.18. There is no planning history presented for the subject site however the rear extension is stated to have been constructed in 1995. The planning authority appear to accept this fact. It is stated that the original house is of pre-193 construct.

7.19. In the instant appeal an adjacent site at No 13 Distillery Lane, two houses away from the subject site, is of interest. There is a grant of planning permission on the site at No 13, for planning permission for a new dormer window to the front elevation, refurbishment and internal alterations to existing dwelling house and all associated site works. A decision to grant planning permission for this development was issued on the 28th July 2023.

7.20. The substance of this application is broadly similar to the current application/appeal with the exception that the subject appeal relates to retention and the adjacent site at number 13 related to a permission application. The adjacent application at No 13 also clearly stated on plans and documents lodged that the floor to ceiling height would be 2.4 metres.

7.21. This item is of interest regarding the issue of consistency in decision making. The Board may consider that the marginal difference in floor to ceiling height to be material enough to warrant a refusal regarding residential amenity, in this instance, or the Board may be mindful to grant planning permission with regard to the assessment presented above under para's 7.10 to 7.16 with regard to residential amenity.

7.22. Other Issues

7.23. The planning authority under its response to the appeal raise the issue of residential amenity along with the issue of 'fire safety'. I can find no other reference to fire safety in the original planner's report, nor do I have sight of any local authority engineers report on file, which raises the issue of fire safety.

7.24. I consider that based on the assessment above, that the substantive issues within the remit of planning have been addressed.

7.25. It is also noted that under OPR Practice Note PN03, regarding conditions relating to other codes, it is stated that *'It is the responsibility of the developer or operator to*

obtain any necessary certificate or licence required under any other relevant legal code'.

7.26. Appropriate Assessment

Having regard to the limited nature of the proposed development and the nature of the receiving environment and the proximity to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

8.0 **Recommendation**

8.1. I recommend that retention permission be granted.

9.0 **Reasons and Considerations**

9.1. Having regard to the scale, form and design of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual amenities of the area or the residential amenities of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 **Conditions**

1.	The development shall be carried out and completed in accordance with the plans and particulars lodged with the application except as may 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 out in accordance with the agreed particulars.
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	Reason: In the interest of clarity.
2.	<p>Surface water drainage arrangement shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health.</p>
3.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays or public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</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.'

Aisling Dineen
Planning Inspector
14th November 2023.