



An  
Bord  
Pleanála

## Inspector's Report ABP-318057-23

<b>Development</b>	Retention of clear glazing to high level window to side/east elevation of single storey extension.
<b>Location</b>	41A Kincora Road, Clontarf
<b>Planning Authority</b>	Dublin City Council
<b>Planning Authority Reg. Ref.</b>	WEB1548/23
<b>Applicant(s)</b>	Gerard & Audrey Headon
<b>Type of Application</b>	Retention permission
<b>Planning Authority Decision</b>	Grant retention
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Grahame & Susan Walsh
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	28 <sup>th</sup> May 2024
<b>Inspector</b>	D. Aspell

## 1.0 Site Location and Description

- 1.1. The site is No. 41A Kincora Road. It comprises a dormer bungalow built to the of No. 41 Kincora Road. There is a flat-roof extension to the south of the bungalow. The appeal concerns a window in the extension side / eastern elevation.
- 1.2. The rear garden of No. 43 is to the east. The boundary between the properties comprises a hedge which varies in height from c.1.5m to c.1.8m.
- 1.3. The rear garden of No. 43 is relatively large, measuring c.30m by c.17m. There is a garden room at the end, c.14m away from No. 41A and on the opposite side of the garden. This room appears to be used for general ancillary residential purposes including storage. The rear elevation of No. 43 is c.18m to the south-east. There are mature trees in the rear garden of No. 43, between the house and No. 41A.
- 1.4. There is a school to the north. The rear garden of No. 41 is to the south. The rear garden of No. 39 is to the west.

## 2.0 Proposed Development

- 2.1. The description of development is: *"Retention of clear glazing to a high-level window to the side / east elevation of single storey extension to front"*.
- 2.2. The window is orientated east toward the rear garden of No. 43. It is elevated such that from the rear garden of No. 43 it is fully visible above the boundary hedge.
- 2.3. The submitted drawings show that:
  - The windowsill is c.1.9m above the extension internal finished floor level;
  - The window measures c.0.6m in height by c.3.5m in width;
  - The window is c.1m from the party boundary with No. 43;
  - The window is to a living/dining room, with the dining area adjacent the window.
- 2.4. For clarity the development does not relate to any other windows in No. 41A.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. The Planning Authority issued a notification of decision to grant retention permission (23<sup>rd</sup> August 2023) subject to 4 no. conditions.

### 3.2. Planning Authority Reports

#### Planning report

- 3.2.1. The Planning Authority planning report is summarised as follows:

- The bungalow was subject of application Ref. WEB1224/21 which was for an extension. The planning authority was concerned that development had the potential to overlook neighbouring property, and attached Condition 4 (*ie. for the proposed high level window on the extension east elevation to be omitted*);
- The Board in omitted Condition 4 and modified Condition 2 (*ie. high-level window in extension eastern elevation be opaque rather than removed*);
- The current application is for retention of the 3 no. clear glazing panels;
- The developer commenced development without the required agreement of the planning authority as required by Condition No. 2;
- Planning authority report acknowledges that the applicant has not complied with the permission approved under Reg. Ref. WEB1224/21;
- The Act allows for retention of works which are contrary to a planning permission and conditions. This application for alteration of the previous permission shall be assessed on its merits;
- By its omission of Condition no. 4 and inclusion of a modified Condition no. 2, the Board (ABP ref. ABP-310237-21 / WEB1224/21) approved the high-level window in the extension eastern elevation;
- The glazing would be used to light a 'garden room' and not a bedroom. The windows would be c.1.1m from the side garden boundary wall of c.2.6m. There is substantial vegetation screening the site from No. 43;

- The principal objection to retention of the clear glass is the view from the rear of No. 43 Kincora Road to the subject site;
- Views into the structure from this distance would not be uncommon and would in any event be limited by the high-level nature of the windows;
- Due to the window height above eye level; the set-back from the boundary; the substantial boundary height; and that it faces the rear garden, the development would not have a significant adverse impact on neighbour residential amenity.

#### Other technical reports

3.2.2. Drainage: No objection subject to condition.

### 3.3. **Prescribed Bodies**

3.3.1. None received.

### 3.4. **Third Party Observations**

3.4.1. One third-party observation was received by the planning authority. It was from the occupants of No. 43 (Grahame & Susan Walsh) and is summarised as follows:

- The application comes after numerous unsuccessful attempts by the observers and planning authority at resolution. Having completed the extension without complying with the permission, two enforcement proceedings were commenced. This ignores the planning process;
- Works commenced without compliance with the Board decision on Ref. ABP-310237-21. Details were to be agreed for a reduction of the eastern projection by 1m. No details relating to Condition 2 were provided to the authority. The high-level windows on the eastern wall were to be glazed in opaque glass. There is non-compliance with Conditions 1 and 3;
- The observers drew this to the applicant's attention. Enforcement proceedings were initiated. A planning authority compliance report stated the development was not in compliance with Condition 2 (b);
- Installation of opaque windows was a key element in the Board decision. It should not now be considered in isolation of other aspects;

- As noted by the planning authority and Board Inspector there is an issue of actual or perceived overlooking of the garden. The planning authority noted the windows almost directly adjoining the site may prohibit development on our site;
- On appeal in that case, the Board Inspector considered the condition omitting the high-level windows to be acceptable and for it to be included in any grant of permission. The Inspector stated the windows would result in little benefit and may give rise to potential negative impacts on the neighbouring site through perceived overlooking. Rather than omitting the windows, the Board required the windows be opaque;
- The windows facing our garden has a deleterious effect on garden amenity. From the garden we can see ceiling lights, extension roof, overhead window, and through the south facing windows, which is disconcerting. The windows are adjacent the boundary and appear above the hedge. This exacerbates a sense of overlooking. After dark, light from the extension is off-putting;
- A patio and garden room at the end of our garden look directly at this view and are deleteriously impacted;
- The windows open and it is possible to hear voices inside;
- The applicant's south facing aspect is virtually entirely glass. The loss of amenity and future development potential to the observers weighed against the minimal if any benefit to the applicant warrants rejection of the application.

The observation references communications between the parties and the above enforcement proceedings.

## 4.0 Planning History

### Subject site:

4.1.1. A number of applications are recorded on the available public record, as follows:

- Ref. WEB1224/21 (ABP-310237-21): Planning permission granted by the Board in 2021 at No. 41A Kincora Road for construction of a single storey extension (20sqm) to front of existing dormer bungalow. I note Conditions 1 and 2 in particular.

- Ref. 3535/99: Planning permission granted by the City Council in 2000 at 41 Kincora Road for erection of a dormer bungalow in the rear garden of existing house using existing entrance with new entrance for existing house. I note Condition 1 in particular.
- Ref. 1383/99: Outline permission granted by the City Council in 1999 for dormer bungalow in rear garden of No. 41 Kincora Road.

#### Enforcement:

- Ref. E0363/23: There is no record of this case on the available public record. The planning authority planner report stated that this case relates to a warning letter against the subject site regarding non-compliance with Condition 2 of Reg. Ref. WEB1224/21 (ie. that windows should be opaque).
- Ref. E0279/22: There is no record of this case on the available public record. The planning authority planner report states that this case relates to a warning letter against the subject site regarding alleged breach of Conditions 1 and 2 of Reg. Ref. WEB1224/21.

## 5.0 Policy Context

### 5.1. Development Plan

#### Land use zoning

5.1.1. The site is in an area zoned 'Z1 Sustainable Residential Neighbourhoods' where the land-use zoning objective is *"To protect, provide and improve residential amenities"*. I note the following provisions of the development plan in particular:

- Policies SC5 Urban Design and Architecture Principles, SC11 Compact Growth, and QHSN6 Urban Consolidation;
- Objective QHSNO4 Densification of Suburbs;
- Chapter 15 'Development Standards', including Sections 15.11 House Developments, 15.13.4 Backland Housing, 15.8 Residential Development, and 15.9.18 Overlooking and Overbearance;

- Appendix 18 Ancillary Residential Accommodation Section 1 Residential Extensions (incl. Section 1.4 Privacy & Amenity) which states: *“Extensions should not result in any significant loss of privacy to the residents of adjoining properties. Generally, windows overlooking adjoining properties (such as in a side wall) should be avoided. Where essential, the size of such windows should be kept as small as possible and consideration should be given to the use of high-level windows and/ or the use of obscure glazing where the window serves a bathroom or landing ... It is important to make sure that any extension does not unacceptably affect the amenities of neighbouring properties. This includes privacy, outlook, daylight and sunlight”.*

## 5.2. **National Guidelines**

- 5.3. Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities - SPPR 1 Separation Distance.

## 5.4. **Natural Heritage Designations**

- 5.4.1. None relevant.

## 5.5. **Environmental Impact Assessment**

- 5.5.1. The development does not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations, 2001, (as amended), and therefore is not subject to EIA requirements (See Form 1 Appendix 1).

# 6.0 **The Appeal**

## 6.1. **Grounds of Appeal**

- 6.1.1. The appeal, prepared by the occupants of No. 43 Kincora Road, is summarised as follows:

- The applicant engaged in a statutory process, which the Board decided. Condition 2 was for the high-level windows on the extension eastern elevation to be opaque. The development directly contravenes the Board condition;

- The condition was an integral part of that permission. The planning authority has effectively reversed the Board's condition and should be overturned on this basis alone. It is not reasonable, rational, or equitable and is contrary to the planning code. This in effect sets the appeal process at naught. The Board should protect the integrity of its appellate jurisdiction;
- A requirement for opaque glass is common and not onerous. Remedying the situation would not be prohibitively expensive;
- We object to the lack of prior to commencement agreement with the planning authority, and the developer being in breach of Conditions 1 & 2;
- The planning authority improperly state the reason for retention was lighting. This was not stated by the applicant. The planning authority do not explain how opaque glazing would impact light;
- The windows have been in place for a year and adversely impact residential amenity. Our photographs demonstrate the windows impacts the view and residential amenity. This is exacerbated by three other ground level windows;
- Our photographs show there is no substantial vegetation screening the site. The windows appear above the hedge. There is an overbearing sense of being overlook while enjoying the garden;
- The Board already decided the windows ought to be opaque;
- The extension is a multipurpose area with dining, recreation and TV facilities. The interior lights reflect into our garden after dark;
- The view directly through the high-level windows and beyond No. 43A's fully glazed southerly aspect is unwelcome;
- The windows open out toward the party boundary.

The appeal includes photographs of the window and reiterates details of communications between as per the appellant's observation.

## **6.2. Planning Authority Response**

### **6.2.1. None received.**

### 6.3. Observations

6.3.1. None received.

## 7.0 Assessment

7.1. Having regard to the foregoing; having examined the application and appeal details; having visited the site; and having regard to relevant policies, guidance and legislation, I consider the main issues in this appeal are:

- Impact on residential amenity of No. 43 in terms of privacy and overlooking;
- Related matters raised in the appeal.

### Residential amenity

7.2. The site is in an area zoned Z1. I consider the transparent rather than opaque glazing would improve the residential amenity of No. 41A as a result of improved outlook and natural lighting, and such is acceptable in principle.

7.3. In relation to impacts on neighbouring residential amenities, the extension to No. 41A was permitted by ABP-310237-21 (Ref. WEB1224/21). As part of that decision the Board attached Condition 2 which required the high-level windows in the eastern elevation wall of the extension be glazed in opaque glass. On my site visit it was evident the window glazing is transparent rather than opaque. Otherwise, the elevation wall and window appear to be positioned, sized and orientated generally as per the above permission including Condition 2. The subject application is only for retention of the clear glazing in this window. I consider the key issue arising is the impact of the transparent glazing on No. 43 on grounds of overlooking and privacy.

7.4. I note the submitted drawings show the window is elevated such that the sill is approximately 1.9m (ie. c.6 feet 2 inches) above the internal finished floor level of the extension to No. 41A. I also note that:

- The window faces the rear garden of No. 43, however is not orientated directly toward the rear elevation of No. 43 or the garden room in No. 43;
- The window is c.20m from the rear elevation of No. 43 and c.16m from the garden room in No. 43;
- The rear elevation of No. 43 is screened by trees in that rear garden;

- Whilst elevated, the window is a ground-level window;
- The window is set back by c.1m from the party boundary which is comprised of a hedge;
- The window serves a habitable room where the dining space is immediately adjacent the window. Whilst the internal layout is changeable, the space is likely to remain primarily used for seating rather than standing.

- 7.5. The appellant states that the transparent window has adverse and deleterious impacts on their view and residential amenity. They state that they can see the ceiling lights, an internal overhead window, the roof of the extension, and onward through other windows of the property. They also state that after dark they can see the internal extension lights. The appellant further states there is an overbearing 'sense of being overlooked' while enjoying the amenity of the rear garden.
- 7.6. I note the relevant provisions of the development plan, in particular Section 1.4 of Appendix 18 as set out above.
- 7.7. Having regard to the foregoing, I do not consider the transparent nature of the glazing has an unacceptable detrimental impact on the residential amenity of No. 43 in terms of overlooking or privacy. This is due primarily to the window being elevated such that it is well above the height of a typical habitable room window and above what I would consider is the eye-height of the large majority of potential occupants. Therefore no material degree of overlooking or significant loss of privacy arises.
- 7.8. In relation to other impacts raised by the appellant, including noise and light spill, I do not consider these to be significant and are typical of a residential area such as this.
- 7.9. In relation to the appellant's commentary regarding prior decisions relating to the window, the Board is required to assess each appeal as presented to it and based on its individual planning merits. The previous appeal was made prior to construction of the window. In that case the inspector stated the window may give rise to potential negative impacts on the neighbouring site through perceived overlooking. I note that the appellant similarly refers to the window giving rise to a "sense" of overlooking. Noting the precautionary approach previously taken, and having surveyed the development and relevant sites today as constructed, and having reviewed the subject application and appeal documents, I do not consider any material

overlooking arises from the subject window glazing, or that refusal of retention permission is warranted in this case.

- 7.10. In relation to any future development potential of the rear garden of No. 43, no such planning applications have been made and it is not the purpose of this report to pre-empt assessment of proposals that may come forward. I note the Board did not address this matter in the previous appeal on this site. For the purposes of fully considering the appropriateness of the subject development, having regard to the layout of No. 43 and the dimensions of the site, and to the design and layout of neighbouring development including No. 41A, I do not consider the window glazing would inhibit future development in the rear garden of No. 43 to any major degree.

#### Related matters

- 7.11. In relation to boundaries, the appeal references that the window opens toward the party boundary. The window measures c.0.6m vertically and is approximately 1m from the boundary. No part of the window overhangs the boundary when opened. The proposal is acceptable in this regard.
- 7.12. In relation to the development description, for clarity I note the appellant, planning authority and Condition 2 of ABP-310237-21 refer to windows, whereas the subject application refers to window. I consider that there is one high level window in the extension eastern elevation, as referenced in the development description, which is comprised of three glazed elements. I am satisfied the appellant, planning authority and Condition 2 refer to this window. I highlight this as there are two other windows and a door in the eastern elevation of the original house of No. 41A. Each is finished in transparent glass and is partly visible from the rear garden of No. 43. I note variation in the shape, placement and glazing finish of the windows from what was shown in Ref. ABP-310237-21. Details of Ref. 3535/99 are not available on the public record. These windows are within the red line area of the subject case, but I am satisfied they do not form part of the development to be considered by the Board.

#### Conclusion

- 7.13. Whilst I acknowledge the issues highlighted in the appeal, on account primarily of the high-level nature of the window, I do not consider any unacceptable impact on residential amenity arises from the existing window. I do not consider the transparent glazing results in any material degree of overlooking or significant loss of privacy for

No. 43 Kincora Road. I do not consider the impacts on residential amenities arising are beyond what would be normally expected in a residential area. I am satisfied that permitting retention is consistent with the relevant provisions of the development plan including the land use zoning objective for the area.

## 8.0 **Appropriate Assessment Screening**

- 8.1. I have considered the proposed development in light of the requirements of Section 177U of the Planning & Development Act 2000 as amended. The subject site is not located within or adjacent any European Site designated SAC or SPA. The proposed development is located within an urban area and comprises retention of glazing to a dwelling. No nature conservation concerns were raised as part of the planning appeal or during consideration of the application. Having considered the nature, scale and location of the development I am satisfied that it can be eliminated from further assessment as there is no conceivable risk to any European Site. The reason for this conclusion is the nature and location of the development in a serviced urban area, the distance to any European Sites and the urban nature of intervening habitats. I conclude on the basis of objective information the development would not have a likely significant effect on any European Site(s) either alone or in combination with other plans or projects. Likely significant effects are excluded and therefore Appropriate Assessment Stage 2 under Section 177V of the Planning & Development Act 2000 as amended is not required.

## 9.0 **Recommendation**

- 9.1. I recommend that permission for retention be **Granted**, subject to conditions, for the reasons and considerations below.

## 10.0 **Reasons and Considerations**

Having regard to the provisions of the Dublin City Development Plan 2022-2028, including the 'Z1' zoning objective for the area, and Policy SC5 Urban Design and Architectural Principles, Section 15.11 House Developments, and Appendix 18 Ancillary Residential Accommodation of the Dublin City Development Plan 2022-2028, and having regard to the siting and high level nature of the window to be

retained, it is considered that the development would not unacceptably affect the residential amenities of dwellings in the area, including No. 43 Kincora Road, and would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 11.0 Conditions

1.	<p>The development shall be completed and retained in accordance with the plans and particulars lodged with the application on the 29<sup>th</sup> day of June 2023, except as may otherwise be required in order to comply with the following conditions. In all other respects the development hereby approved for retention shall adhere to the decision of An Bord Pleanala ABP Ref. No. 310237-21 and its attached conditions. For the avoidance of doubt, this permission does not approve any other development, including development shown on the plans, particulars and specifications, the nature and extent of which has not been adequately stated in the statutory public notices.</p> <p>Reason: In the interest of clarity.</p>
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*- 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.-*

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D. Aspell  
Inspector

13<sup>th</sup> June 2024

# APPENDIX 1

## Form 1

### EIA Pre-Screening [EIAR not submitted]

<b>An Bord Pleanála Case Reference</b>		318057-23	
<b>Proposed Development Summary</b>		Retention of clear glazing to high level window	
<b>Development Address</b>		No. 41A Kincora Road.	
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	X
		<b>No</b>	No further action required
<b>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?</b>			
<b>Yes</b>		Class.....	EIA Mandatory EIAR required
<b>No</b>	X		Proceed to Q.3
<b>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]?</b>			
		<b>Threshold</b>	<b>Comment (if relevant)</b>
<b>No</b>	X	N/A	No EIAR or Preliminary Examination required
<b>Yes</b>		Class/Threshold.....	Proceed to Q.4
<b>4. Has Schedule 7A information been submitted?</b>			
<b>No</b>	X		Preliminary Examination required
<b>Yes</b>			Screening Determination required

Inspector: \_\_\_\_\_

Date: \_\_30<sup>th</sup> May 2024\_\_