



An
Bord
Pleanála

Inspector's Report

ABP-318107-23

Development	Retain detached garden shed in garden at rear and timber screening at side.
Location	32 Haddon Road, Clontarf, Dublin 3 D03HH32
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	4107/23
Applicants	Paul Keogh and Rosemary Commons
Type of Application	Retention Permission
Planning Authority Decision	Grant Retention Permission
Type of Appeal	First Party v Condition
Appellant(s)	Paul Keogh and Rosemary Commons
Observer(s)	Roger Cagney
Date of Site Inspection	4 th January 2024
Inspector	John Duffy

1.0 Site Location and Description

- 1.1. The appeal site at No. 32 Haddon Road is broadly rectangular in configuration and has a stated site area of 0.0577 hectares. The appeal site comprises an extended semi-detached house which forms one half of a pair of residential properties (No. 32 and No. 33 Haddon Road) fronting on to the eastern side of Haddon Road, a residential street accessed from the Clontarf Road to the south and Victoria Road to the north. The form and pattern of residential development along Haddon Road comprises of 2-storey terraced and semi-detached residential properties.
- 1.2. Nos. 32 and 33 Haddon Road present as 2 storeys set on a plinth facing Haddon Road to the west; to the rear the houses present as 3 storeys.
- 1.3. A laneway bounds the appeal site to the rear / east and it serves dwellings on both Haddon Road and Castle Avenue, which is situated east of the appeal site.
- 1.4. A small garden shed with a mono-pitched roof is located proximate to the rear boundary of the appeal site and its rear wall comprises part of the rear site boundary.

2.0 Proposed Development

- The proposal as submitted to the planning authority on the 7th of July 2023 comprises retention of detached rear garden shed and timber screening at the northern side boundary.
- The shed structure measuring c 6.8 sqm has a mono-pitched roof with maximum height of c 3.1 metres. There is a rooflight within the shed roof and an access door on the front/western elevation of the structure.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority issued a Notification of Decision to grant retention permission on the 31st of August 2023, subject to 7 no. conditions.

Relevant conditions include:

Condition No. 1:

Insofar as the Planning and Development Act (2000) as amended and the Regulations made thereunder are concerned the development shall be carried out & retained in accordance with the plans, particulars and specifications lodged with the application, save as may be required by the conditions attached hereto. For the avoidance of doubt, this permission and retention permission shall not be construed as approving any development shown on the plans, particulars and specifications, the nature and extent of which has not been adequately stated in the statutory public notices.

Reason: To comply with permission regulations.

Condition 5:

The development proposed for retention shall be modified as follows:

a) The roof of the shed structure shall be set back from the rear laneway to be consistent with the existing property and red line (extent of development) boundaries. All of the development proposed for retention shall be contained within the property boundary.

b) The works required to set the roof back shall be concluded within 6 months of receiving notification of permission.

Reason: In the interest on clarifying the scope of this permission and in the interest of orderly development.

3.2. Planning Authority Reports

3.2.1. Planning Report

The Planning Officer in the report dated 30th August 2023 outlined, inter alia, the nature of the proposal, relevant development plan policy, relevant planning history, and the grounds of the third-party submission received in respect of the proposal. It concluded that the development to be retained should not result in adverse impacts and noted that the shed structure should be confined to the development boundary. The report recommends retention permission be granted subject to 7 conditions, consistent with the Notification of Decision which issued.

3.2.2. Other Technical Reports

Drainage Division

No objection subject to compliance with the Greater Dublin Regional Code of Practice for Drainage Works Version 6.0.

3.3. **Prescribed Bodies**

None received.

3.4. **Third Party Observations**

The Planning Officer's report refers to a submission having been received in relation to the planning application. A summary of the main issues raised in the submission is as follows;

- The drawings submitted (1653-23-01 and 1623-23-02) do not accurately represent the 'as built' situation at no. 32 Haddon Road
- There is no drainage information submitted with the application.
- The roof of the shed structure over sails the property boundary.
- Careful treatment is required for structures adjacent to property boundaries.
- The door to the rear laneway from the rear garden is not indicated for retention.
- There is no Conservation Impact Statement included in this application.
- There are no contiguous elevations, section drawings or photomontages across adjoining properties submitted with the application to indicate the effect of the proposal on the rear laneway.
- There is no roof plane submitted with application which indicates the over-sailing of the property boundary.
- The raising of the boundary fence would be inconsistent with established boundary treatment and is considered 'ad hoc'.
- No pre-planning meeting with Dublin City Council.
- No respect for the principles of an Architectural Conservation Area.

- No consensus with adjoining property owners with regard to over sailing upon laneway.

4.0 Planning History

Appeal site

ABP Ref. ABP-305559-19 / PA Reg. Ref. 3507/19 – Permission granted in 2020 for demolition of a rear annex, reinstatement of dwelling as a single residential unit from 5 apartments, construction of extension to the rear and side of the house with associated rooflights.

Condition No. 8 of the planning authority's decision stated the following:

8. Notwithstanding the provisions of Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended) no porches, no extensions, no garages, stores offices or similar structures shall be erected without a prior grant of planning permission.

Reason: In the interest on clarifying the scope of this permission and in the interest of orderly development.

The first part appeal sought to remove Condition no. 4 of the planning authority's decision to grant permission which stated that 'the proposed vehicle entrance and off-street car parking space to the front of the structure shall be omitted from this permission,' in the interests of visual and residential amenity, and public safety.

In its decision the Board amended Condition No. 4 and noted that the proposed reduced width entrance of 2.6m would be acceptable subject to the retention of the remainder of the front garden and the protection of the street tree.

PA Reg. Ref. 5851/05 – Permission refused in 2006 to demolish existing single storey outhouse to rear, and to build new 3 storey extension to rear, comprising 3 no. 1 bedroom apartments 59.5sqm each. Refusal reasons related to injury to the residential amenities of adjoining properties, injury to the visual amenities of the area, negative impact on Nos. 32 and 33 which were protected structures at that time, overdevelopment of the site and creation of an undesirable precedent.

Adjoining property to the south – No. 33 Haddon Road

PA Reg. Ref. 2817/14 – Permission granted in 2014 for new vehicular entrance off Haddon Road, internal alterations to existing dwelling, installation of new roof lights to existing rear utility room, new bi-fold glazed doors to ground floor of rear return, repairs to existing garage and demolition of existing shed. Condition No. 3 required the entrance width to be 2.6 m.

Adjoining property to the north – No. 31 Haddon Road

ABP-317739-23 / PA Reg. Ref. 3769/23 – Current appeal following refusal of permission by planning authority for (A) the removal of the existing grass area and planting to the front of the existing dwelling and its replacement with a proposed select finish surface and the provision of 1 no. car parking space, and (B) all associated landscaping, ancillary site and boundary works.

PA Reg. Ref. 2535/16 – Permission granted in 2016 for single storey dwelling to rear with a vehicular entrance.

5.0 Policy Context

5.1. Development Plan

5.1.1. The development to be retained was considered by the planning authority under the Dublin City Development Plan 2022-2028.

5.1.2. While the planning authority indicated in its assessment that the site is zoned Z2 – Residential Conservation Areas, according to the zoning map (Map F of the Development Plan) the site is in fact zoned Z1 – Sustainable Residential Neighbourhoods, with the objective ‘To protect, provide and improve residential amenities.’

I note that the immediate area, including the appeal site, is within the Haddon Road and Victoria Road Architectural Conservation Area (ACA).

5.1.3. No. 32 Haddon Road, along with other houses on this street, was previously listed as a protected structure (Record of Protected Structures (RPS) No. 3497 referred). Following the adoption of the Haddon Road and Victoria Road ACA by Dublin City Council on 12th of June 2017 by way of variation (No. 1) to the Dublin City Development

Plan 2016-2022, the Council deleted 55 no. structures from the RPS including the appeal property.

5.1.4 Appendix 18 titled 'Ancillary Residential Accommodation' of the Dublin City Development Plan 2022 - 2028 is relevant to the proposal.

5.2. **Natural Heritage Designations**

The development to be retained is not located within or immediately adjacent to any European site. The nearest European sites are South Dublin Bay and River Tolka Estuary located c 0.2 km south, and North Dublin Bay SAC and North Bull Island SPA located c 1.9 km to the east.

5.3. **EIA Screening**

Having regard to the nature and type of development to be retained, it is considered that it does not fall within the classes listed in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations 2001 as amended, and as such preliminary examination or an environmental impact assessment is not required.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

This is a first-party appeal against Condition No. 5 of the Planning Authority's Notification of Decision to Grant Permission. Condition No. 5 requires (a) the roof of the shed structure to be set back from the rear laneway to be consistent with the existing property and red line boundaries and (b) that the works required to set the roof back to be concluded within 6 months of receiving notification of permission. The grounds for appeal can be summarised as follows;

- The Planning Officer's report incorrectly states that the roof of the shed structure projects approximately 300-400 mm past the flank walls of the structure, when in fact the actual extent of the roof projection is 130 mm, materially less than the distance stated in the report. Photographic evidence of the extent of the overhang is provided in the appeal (Photo 1 refers).

- There are 3 other garage / shed structures oversailing the laneway (Photo 2 refers).
- The oversailing shed roof has no consequential impact given that its extent is very marginal, that the laneway is in public ownership and infrequently used, that the site is located at the very end of the laneway and that there is no impact on any other person's property.
- The rear wall of the shed acts as the boundary to the property and the oversailing is a consequence of weatherproofing the shed.

6.2. Planning Authority Response

None.

6.3. Observation

An observation was received from a resident at No. 6 Castle Avenue, Clontarf in connection with the proposal and the submitted appeal. The submission can be summarised as follows:

- The roof of the shed projects over the rear boundary of the subject property and as such it is outside the curtilage of the property. The extent of the oversailing is a moot point.
- The existing structures (2 or 3 in number) which over sail onto the lane are either 'historic structures' or buildings for which planning permission was in place prior to their construction. They set little if any precedent.
- The laneway is in fact a private laneway which is in daily / regular use by those whose properties retain access to it.
- The comments under item 3 of the appeal which contends there is no impact arising from the oversailing shed are subjective.
- There is no agreement in place from relevant property owners in terms of the oversailing of the shed onto the laneway.

- There are a number of ways to ensure satisfactory weatherproofing to a shed structure, for instance, by way of a parapet wall detail. This would be relatively straightforward and facilitate compliance with Condition 5.

7.0 **Assessment**

7.1. Having examined the application details and all other documentation on file, including the appeal, and having inspected the site, and having regard to the relevant local policy and guidance, I consider the main issues in relation to this appeal are as follows:

- Scope of appeal
- Land use and Nature of development
- Condition No. 5
- Appropriate Assessment

7.2. **Scope of Appeal**

7.2.1. During the site inspection I observed that part of the roof structure of the garden shed to be retained is overhanging the adjoining laneway by c 130mm, which is not in accordance with the submitted drawings. Therefore, the shed to be retained lies beyond the development boundary of the site and outside of its red line boundary as denoted on the site plan submitted with the application. As such, I consider that a de novo assessment of the proposal is warranted in this instance, rather than confining the assessment of the development to be retained to Condition No.5 of the planning authority's decision.

7.3. **Land Use and Nature of development**

7.3.1. The proposal comprising retention of a detached garden shed proximate to the rear (eastern) boundary of the site and timber screening at the northern (side) boundary is acceptable in principle having regard to the Z1 – 'Sustainable Residential Neighbourhoods' zoning of the site and its associated objective set out at section 5.1.2 of this report.

7.3.2. Garden Shed

While I consider that the scale and design of the shed to be retained is acceptable in principle, I noted during the site inspection that there is a level of encroachment from the roof of the shed structure onto the adjoining laneway, which runs beyond the rear boundary of the appeal site.

7.3.3. Section 3(1) of the Planning and Development Act 2000 as amended defines 'development' as follows:

'development' means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.'

7.3.4. The development encroaching on to lands outside the control of the applicants is not demonstrated on the submitted application drawings. The site plan indicates that all the development to be retained is located within the red line boundary of the site, however as described above, this is clearly not the case as the roof of the shed structure has breached the red line boundary of the site. In this regard I note that the applicants have not provided any written consents from the laneway owner(s) agreeing to development on their lands nor have the applicants demonstrated sufficient legal interest to facilitate development on the laneway.

7.3.5. Having regard to the above, I consider that retention permission for the shed structure should be refused on the grounds that it has not been constructed in accordance with the submitted application drawings, breaching the red line boundary of the site and that part of the structure over sails the rear boundary of the site, on to third party lands.

7.3.6. Timber screening

I consider that the timber screening located at the northern side boundary of the appeal site is acceptable, given its limited extent at 4 metres in length and its setback from both the appeal property and the adjoining house at No. 31 Haddon Road. The screening is not overtly visible from the public road, and I note that the residents of No. 31 Haddon Road are supportive of the boundary treatment which mitigates overlooking impacts.

7.4. Condition No. 5

- 7.4.1. Condition No. 5 of the Notification of Decision to grant retention permission made by Dublin City Council is designed to address the encroachment of the shed structure on to the adjoining laneway, which is not in the control of the applicants and is outside of both their site boundary and the red line boundary as denoted on the drawings submitted with the retention application.
- 7.4.2. The issue of development encroaching on or over sailing third party lands is a civil matter. The planning system is not designed as a mechanism for resolving disputes about title to land or rights over land. These are civil matters for resolution by the courts.
- 7.4.3. Chapter 7 of the Development Management Guidelines for Planning Authorities (2007) relates, inter alia, to planning conditions. Section 7.8 of the Guidelines titled 'Conditions relating to other codes' notes that it is inappropriate in development management to deal with other matters which are the subject of other controls unless there are good reasons for doing so, e.g., there is good reason to believe the matter cannot effectively dealt with by other means.
- 7.4.4. In my view, having regard to the foregoing, inclusion of Condition 5 in the Notification of Decision is inappropriate, given that it seeks to remedy a situation (i.e. encroachment on to third party lands) which is a civil matter and therefore outside of the scope of planning.
- 7.4.5. I note the applicants' comments that there are other nearby structures also encroaching on the lane. While this is the case, these structures are not the subject of this appeal.
- 7.4.6. In conclusion, I note that if Condition 5 was removed as requested by the applicants, this omission would not free them from their responsibilities under other codes. As such there would still be a requirement under common law for the applicants to ensure that the development is confined to their property and does not over sail onto third

party lands. Therefore, it would be moot if the condition, the subject of this appeal, was removed.

7.5. Appropriate Assessment

- 7.5.1. Having regard to the nature and limited scale of the development to be retained, the developed nature of the landscape between the site and European sites and the lack of a hydrological or other pathway between the site and European sites, it is considered that no Appropriate Assessment issues arise and that the proposed development would not be likely to have a significant effect either individually or in combination with other plans or projects on any European site.

8.0 Recommendation

8.1 I recommend that a split decision should be made, as follows:

- (1) Grant retention permission for the timber screening at the northern site boundary based on the reasons and considerations marked (1) under and subject to the conditions set out below (section 9.1), and,
- (2) Refuse retention permission for the detached rear garden shed based on the reasons and considerations marked (2) under (section 11.0).

9.0 Reasons and Considerations (1)

- 9.1. Having regard to the residential land use zoning of the site, the prevailing pattern and character of existing development in the vicinity and to the nature and scale of the timber screening to be retained, it is considered that, subject to compliance with the condition set out below, the development would not seriously injure the residential or visual amenities of the area or of property in the vicinity. The proposal would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development to be retained comprising the timber screening at the northern site boundary shall accord with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions.</p> <p>Reason: In the interest of clarity.</p>
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11.0 Reason and Considerations (2)

1. The roof of the garden shed to be retained encroaches onto the rear laneway, notwithstanding that the applicants have not demonstrated sufficient legal interest to facilitate development on the laneway. As such this development to be retained which breaches the development boundary of the site resulting in encroachment onto the laneway is not constructed in accordance with the submitted application drawings, which indicate that all the development to be retained is located within the development boundary of the site. It is therefore considered that the proposal would be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgment and opinion on the matter assigned to me and that no person has influenced or tried to influence, directly or indirectly, the exercise of my professional judgment in an improper or inappropriate way.

John Duffy
Planning Inspector

11th January 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-318107-23		
Proposed Development Summary	Retention of detached rear garden shed and timber screening.		
Development Address	32 Haddon Road, Clontarf, Dublin 3		
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	
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) or does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes			
No	X		
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
			Conclusion
No	X	N/A	
Yes			Proceed to Q.4

4. Has Schedule 7A information been submitted?

No		Preliminary Examination required
Yes		Screening Determination required