



An
Bord
Pleanála

Inspector's Report ABP319056-24

Development

Retention of (i) insertion of a rooflight and conversion of a first-floor garage storage area for use as a family member / granny flat, ancillary to the main house; (ii) ground-floor extension to the side of the garage with a lean-to roof and access onto private access road; (iii) erection of a gate at the north-east of the site and (iv) external alterations to the front elevation of the garage.

Location

Barrington, Saval Park Road, Dalkey, Co. Dublin, A96W292.

Planning Authority

Dun Laoghaire-Rathdown County Council.

Planning Authority Reg. Ref.

A23A/0734.

Applicant(s)

James Delaney.

Type of Application

Retention Permission.

Planning Authority Decision

Split Decision.

Type of Appeal

First Party

Appellant(s)

James Delaney.

Observer(s)

None.

Date of Site Inspection

09/04/24.

Inspector

Anthony Abbott King.

1.0 Site Location and Description

- 1.1. 'Barrington' is located to the north of Saval Park Road and is accessed via a dedicated private access road. The access road is gated onto Saval Park Road. The gate was open on the day of my site visit. The access road serves a number of properties along the access road, which in turn have gated entrances along the length of the access road.
- 1.2. 'Barrington' is located on a large plot within a private residential cul-de-sac at the end of the access road from Saval Park Road. There is a high boundary wall and a prominent vehicular entrance onto the access road. The dwellinghouse is a substantial detached property with a large single-storey dormer garage structure located close to the entrance from the access road.
- 1.3. The pattern of development in the area is characterised by semi-detached houses with front and back gardens and detached houses on large plots.
- 1.4. The dormer garage is located to the east of the main dwellinghouse between the access road and the dwellinghouse. The roof dormer accommodates first floor residential accommodation and has a single-storey lean-to type extension between the east gable of the structure and the high boundary wall to the access road.
- 1.5. The site area is given as 0.1527 hectares.

2.0 Proposed Development

- 2.1. The development to be retained comprises the following:
 - (i) Insertion of a rooflight and conversion of a first-floor garage storage area for use as a family member / granny flat, ancillary to the main house;
 - (ii) Ground-floor extension to the side of the garage with a lean-to roof and access onto private access road;
 - (iii) Erection of a gate at the north-east of the site and;
 - (iv) External alterations to the front elevation of the garage

3.0 Planning Authority Decision

3.1. Decision

Split Decision.

Refuse retention permission for the conversion of the first-floor garage storage area into a family member flat for the following reason:

- (1) The family flat to be retained is not interlinked with the main dwelling and therefore materially contravenes the requirements of Section 12.3.7.3 ('Family Member / Granny' Flat Extension) of the County Development Plan, 2022-2028, which specifically states that family member flats shall be interlinked with the primary dwelling and capable of being readily subsumed back into same'. Therefore, the development to be retained would set an undesirable precedent for further similar development in the area and would be contrary to the proper planning and sustainable development of the area.

Grant retention permission having regard to the objective 'A' zoning of the site, and policies and objectives as set out in the 2022-2028 Dun Laoghaire-Rathdown Development Plan, it is considered that the development to be retained, subject to compliance with conditions, would not significantly detract from the amenities of the area. The development to be retained is consistent with the provisions of the current Development Plan and is therefore considered to be in accordance with the proper planning and sustainable development of the area subject to conditions.

For the following subject to 3 conditions:

1. Single-storey extension to the side of the garage,
2. Erection of a gate to the northeast of the site,
3. Insertion of a rooflight on the western roofline of the garage,
4. Alterations to the front elevation of the garage.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The decision of the CEO of Dun Laoghaire-Rathdown County Council reflects the recommendation of the planning case officer.

3.2.2. Other Technical Reports

No objection subject to condition.

4.0 Planning History

There is no recent relevant planning history.

It is noted that the garage structure the subject of this appeal would appear to have been granted planning permission for retention and completion by An Bord Pleanála under (490/92) ABP/633/92.

5.0 Policy and Context

5.1. Development Plan

The Dun Laoghaire-Rathdown County Development Plan 2022-2028 is the local planning policy document. The following policy objectives are relevant:

The area zoning objective is "A"(Map 7): *To provide residential development and improve residential amenity while protecting the existing residential amenities.*

- Chapter 12 (Development Management) Section 12.3.7.1 (Extensions to Dwellings) provides guidance with respect to porches, front extensions, side extensions, rear extensions, roof alterations, attic conversions and dormer extension.
- Section 12.3.7.1 (iii) (Extensions to the Side) is relevant and *inter alia* states:

Ground floor side extensions will be evaluated against proximity to boundaries, size, and visual harmony with existing (especially front elevation) and impacts on adjoining residential amenity.
- Section 12.3.7.1 (iv) (Alterations at Roof / attic Level) is relevant and *inter alia* states:

Roof alterations/expansions to main roof profiles - changing the hip-end roof of a semi-detached house to a gable/ 'A' frame end or 'half-hip' for example

– will be assessed against a number of criteria including:

- Careful consideration and special regard to the character and size of the structure, its position on the streetscape and proximity to adjacent structures.
- Existing roof variations on the streetscape.
- Distance/contrast/visibility of proposed roof end.
- Harmony with the rest of the structure, adjacent structures, and prominence.

- Section 12.3.7.3 (Family Member / Granny Flat Extension) *inter alia* states:

A 'family' or 'granny' flat refers to a temporary subdivision of a single dwelling - often by adding an extension to the dwelling or converting an attached garage which is linked to the main dwelling - for a subsidiary element, for use by a member of the immediate family (e.g. elderly parent), but not as a fully independent dwelling. These will be assessed against the criteria applied to 'normal' domestic extensions. The Planning Authority will generally consider such sub-division and/or extension favourably subject to ensuring no negative impacts on the integrity of the primary dwelling.

The criteria for assessing Family member / Granny Flat extensions include the following:

Proposals should be:

- *Interlinked with the primary dwelling and capable of being readily subsumed back into same.*
- *Any such extension to the main dwelling shall be subsidiary in scale relative to the main dwelling.*
- *Such that the Planning Authority is satisfied that there is a valid justification for the proposal in use terms.*

Permission will normally be on condition that:

- *The flat can be subsumed back into the main dwelling when it is no longer required.*
- *It shall not be let or sold, other than as an intrinsic part of the overall property.*
- *Where the owner wishes it to remain subdivided on a permanent basis, an application shall be made for sub-division which will be assessed on the more demanding criteria as would be applied to a separate dwelling house.*

5.2. EIA Screening

5.3. The proposed development is not in a class where EIA would apply.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal, prepared by Armstrong Planning, on behalf of the appellant are summarised below:

- The planning application sought to regularise through retention permission the existing arrangement whereby for the past 8 years the daughter of the appellant has utilised the converted first-floor of the detached garage structure as accommodation ancillary to the main dwellinghouse;
- The appellant claims that the refusal of the retention of the conversion of the first-floor of the garage to ancillary residential accommodation results from a misinterpretation of Section 12.3.7.3 (Family Member / Granny Flat Extension) of the development plan as incorrectly cited in the reason for refusal;
- The appellant claims that Section 12.3.7.3 concerns extensions specifically and is not wholly applicable to the proposed conversion of an existing detached ancillary structure. The subject family flat is not intended to form an independent dwelling. It is for the exclusive use of members of the family comprising additional private residential accommodation. It will not be separated or operationally divided from the main house. The appellant welcomes a condition to regulate for the above commitments;

- The existing two storey garage is detached from the main house. It is an ancillary structure that forms part of a single family dwelling. It forms part of a single planning unit. It is incorrect to claim that the proposal materially contravenes the requirements of Section 12.3.7.3 (Family Member / Granny Flat Extension), as it is not an extension of the main dwellinghouse per se;
- There is no specific policy in the development plan governing the conversion of existing detached ancillary structures to family flats. Furthermore, nowhere in the development plan does it state that family flats must be physically connected to the main house or that existing detached structures are not to be used as or converted to ancillary family accommodation;
- The planning authority have misquoted Section 12.3.7.3, which provides for family member flats to be interlinked with the primary dwelling house and to be capable of being readily subsumed back into same, as a mandatory requirement (shall be) where the wording of the section actually states "should be". It is claimed that the reason for refusal is inaccurate. The planning authority were wrong to conclude that the proposal materially contravenes the requirements of Section 12.3.7.3 of the development plan given the actual wording of the subject Section;
- Section 12.3.7.3 addresses the main issues to be considered when assessing family member flats and sets out the guiding principles governing family flats in general. It is claimed the development to be retained satisfies the other provisions of Section 12.3.7.3 including the requirement that the scale of accommodation would be subsidiary relative to the main house. Furthermore, the development to be retained can satisfy the conditions normally attached to regulate family member flats including reversion of the flat to a storage area.
- The proposal is consistent with the residential zoning objective and should not be considered to be contrary to the proper planning of the area. The design and layout do not present any potential overbearing, overlooking, overshadowing impacts on neighbours or have adverse visual impacts.

6.2. Planning Authority Response

The planning authority have provided a comprehensive response, which is documented below:

- The proposed development to be retained relates to the conversion of a first-floor garage storage area into a residential flat. In the interests of clarity, it should be noted that the applicant sought permission for a family member / granny flat and therefore a new use is proposed on site. Accordingly, the proposed use of the existing structure is considered to be new and the provisions of Section 12.3.7.3 Family member / Granny flat apply.
- The County Development Plan (CDP) does not explicitly detail policy for the use of detached structures to serve as separate accommodation units in urban areas. It is considered reasonable, therefore, to assess the proposed family flat relative to the provisions of Section 12.3.7.3, which makes provision for 'Family Member / Granny Flat extension'. There are no other similar policies within the CDP which could provide for the assessment of a 'family flat' in an urban area.
- The difference between the meaning of should / shall are noted. However, it is considered that the wording of the CDP establishes the criteria against which the application is assessed. In this instance, the proposed family flat is not interlinked with the main dwelling. Therefore, it would generally not comply with the criteria of the CPD. In the interests of orderly development, it is considered that the planning authority must exercise due control to the extent of family flats / granny flats permitted on existing residential sites in built urban areas. In this instance, it was considered appropriate that retention permission for the development was refused. The proposed development is also contrary to the provisions of Section 12.3.7.4 (Detached Habitable Room).
- It is considered that the use of the permitted garage as unauthorised accommodation for a period in excess of 8 years is unacceptable. The planning authority would be able to objectively assess the development under a different policy should the applicant wish to submit an application for infill development / house in side garden. It is considered that the proposed development, if permitted/retained, would establish a poor precedent for

similar multiple living units within sites, which may result in adverse impact on the residential amenities of the existing urban area. The planning authority are cognisant of the exempted development rights which currently exist, and which could also adversely impact on the amenities of the host environment if a precedent such as this were to be established.

6.3. Observations

None to date.

7.0 Assessment

7.1. The following assessment covers the points made in the appeal submission, the response of the planning authority, the reason for refusal and is a consideration of the overall development to be retained. It is noted there are no new substantive matters for consideration.

7.2. The appeal relates to a detached single-storey and dormer garage structure located within the curtilage of a detached dwellinghouse. The planning authority recorded a split decision refusing the conversion of the first-floor garage storage area into a family member flat. The appellant is appealing the refusal of the family member flat.

7.3. The development to be retained comprises a total floor area of 63 sqm, which includes the retention of a side domestic extension of 8.24 sqm. The substantive matter is the retention of the family member flat comprising the first floor of the detached garage located within the dormer roof of the garage building. The flat is accessed via an internal staircase and a dedicated side door located in the east elevation of the detached garage. The flat comprises a bedroom, kitchen / living room, bathroom and measures approximately 54 sqm.

Family Member / Granny Flat Extension (ancillary family accommodation on site)

7.4. The appellant claims that the main dwelling house and the subject flat form the same single planning unit known as 'Barrington'. The appellant clarifies that the subject family flat is not intended to form an independent dwelling. It is for the exclusive use of members of the family comprising additional private residential accommodation. It will not be separated or operationally divided from the main house. The appellant

recognises that the residential use is temporary in nature and that at a time in the future the flat will revert to garage storage when the family member no-longer requires the use of the accommodation. The appellant welcomes condition(s) to regulate for the above.

- 7.5. The planning authority consider that the use of the permitted garage as unauthorised accommodation for a period in excess of 8 years is unacceptable. The appellant clarifies that the accommodation is used by a family member. This is evidenced in the occupation of the flat by a daughter of the appellant for the last eight years. The appellant claims the exiting-two storey garage is detached from the main house but forms part of a single planning unit.
- 7.6. I concur with the planning authority in their appeal response that the assessment of the proposed family flat under the provisions of Section 12.3.7.3 (Family Member / Granny Flat Extension) is appropriate. The planning authority highlight that the family flat is not interlinked with the main dwelling, which is a requirement of Section 12.3.7.3 of the development plan. I consider this to be a significant matter.
- 7.7. The planning authority consider that the development would therefore generally not comply with the criteria of the development plan. The appellant claims that the planning authority have misquoted Section 12.3.7.3 of the development plan, which provides for family member flats to be interlinked with the primary dwelling house and capable of being readily subsumed back into same, as a mandatory requirement (shall be) where the wording of the section actually states "should be".
- 7.8. Section 12.3.7.3 of the development plan regulates ancillary independent family accommodation (e.g. granny flat extension) and provides criteria that should be achieved in the planning assessment. The section states *inter alia* that the proposed family member / granny flat extension should be Interlinked with the primary dwelling and capable of being readily subsumed back into same. I consider that the wording of this section of the plan provides a discretion in the assessment criteria for the authorisation of ancillary family accommodation *inter alia* where there is no direct linkage with the main dwellinghouse. I consider that the subject flat represents ancillary residential family accommodation.
- 7.9. Furthermore, I consider that the other criteria that should be satisfied, including the subsidiary scale of the family member accommodation relative to the main

dwellinghouse and the requirement that the planning authority can be satisfied that there is a valid justification for the proposal in use terms can be demonstrated in the instance of the development to be retained.

7.10. Finally the planning authority states that the appropriate planning policy framework for the assessment of the subject development is under the provisions regulating infill development houses in side garden. It is acknowledged that 'Barrington' is located on a large plot within a private residential cul-de-sac. The house is located at the end of the private access road from Saval Park Road, which *inter alia* provides independent road frontage to the subject garage structure accommodating the first floor family member flat. However, I do not consider that the subject flat is an independent residential unit given the location of the flat above a purpose built detached garage, the modest scale of the flat (54 sqm.) and, the evidence that there is no subdivision of the plot at 'Barrington'.

7.11. The characterises of the residential accommodation as ancillary to the main dwellinghouse, rather than by definition an independent housing unit separate from the main dwellinghouse, can be formalised by the attachment of a condition (s) regulating the family flat as ancillary to the use of the main dwellinghouse.

Permission will normally be conditioned to regulate family member flats

7.12. The planning authority claims it must exercise due control in regulating the extent of family flats / granny flats permitted on existing residential sites in built urban areas. Section 12.3.7.3 (Family Member / Granny Flat Extension) also lists criteria, which should normally be used to regulate the permission for ancillary family accommodation on site. The criteria include the requirement that the family member flat will be subsumed back into the main dwelling when no longer in use and that it shall not be rented or sold.

7.13. Furthermore, a planning application shall be made for the sub-division of the property if the owner wishes to retain the division on a permanent basis, which will be assessed on the more demanding criteria as they would be applied to a separate dwelling house. In the instance of the development to be retained, it is considered that the permission can be conditioned in order to regulate the family flat, as provided for under the provisions of Section 12.3.7.3 of the development plan.

7.14. Finally, the planning authority consider that the proposed development, if permitted / retained, would establish a poor precedent for similar multiple living units within sites, which may result in adverse impacts on the residential amenities of the existing urban areas. I do not consider that the development to be retained would have an adverse negative impact on existing adjoining residential amenities subject to conditions regulating its long-term use. I consider that planning applications are assessed on their merits and that in the instance of the development to be retained the site location and site configuration are atypical with reference to access arrangements (via a private dedicated access road) and curtilage configuration in the wider urban area.

Other matters the subject of the retention application

7.15. The planning authority granted permission for the following elements of the development to be retained:

- the single-storey extension to the side of the garage,
- erection of a gate to the northeast of the site,
- insertion of a rooflight on the western roofline of the garage,
- alterations to the front elevation of the garage.

I would concur with the conclusion assessment of the planning case officer that having regard to the Objective "A" zoning objective (residential), the scale of the extension to be retained and to the external gate and rooflight to be retained that these elements would not adversely impact the residential amenities of adjoining properties or detract from the character of the surrounding area. These elements of the development subject to condition would be in accordance with the proper planning and sustainable development of the area.

Conclusion

7.16. In conclusion, the family member flat to be retained is modest in scale and is positioned above a detached purpose-built garage located within the curtilage of the main dwelling house at 'Barrington' on a site where no sub-division of the plot is proposed by the applicant. I acknowledge the reservation of the planning authority in the matter of granting a retention permission for the residential use of the first floor of the garage building given that the planning authority must exercise control over the

extent of family flats / granny flats permitted on existing residential sites and must regulate unauthorised residential development generally.

- 7.17. The appellant has stated and reiterated that the development to be retained is a family member flat and that it is not intended to form an independent dwelling. The lack of interconnection between the main house and the family member flat is a significant matter given the desired development plan policy requirement for interconnectivity between the main dwellinghouse and ancillary family accommodation. However, on balance I consider that the development to be retained would generally satisfy Section 12.3.7.3 (Family Member / Granny Flat Extension) of the Dun Laoghaire-Rathdown County Development Plan 2022-2028 given the ancillary residential characteristics of the family member flat on site and the legacy use of the flat by the daughter of the appellant.
- 7.18. I conclude that the family member flat is not an independent residential unit. A change in the planning status of the detached garage through the sub-division of the plot and the provision of independent road frontage would require a separate grant of planning permission. In the instance of the current application, the subject first-floor of the garage is for the exclusive use of a family member, as ancillary residential accommodation to the main dwelling house.
- 7.19. The appellant states that the flat will not be separated or operationally divided from the main house. Furthermore, the appellant acknowledges that the residential use of the first-floor of the garage is temporary in nature and that at a time in the future the family member flat will revert to garage storage when the family member no-longer requires the use of the accommodation. The appellant welcomes a condition to regulate same.
- 7.20. I conclude that the regulation of the development to be retained can be achieved by the attachment of a condition that would clarify the status and use of the subject flat as a family member flat ancillary to the main dwelling house and as such an integral part of the residential property known as 'Barrington'.
- 7.21. **Appropriate Assessment Screening**

The proposed development comprises the retention of a modest extension and the change of use of an existing storage area to residential use ancillary to the main dwellinghouse in an established urban area.

Having regard to the nature and scale of the proposed development it is possible to screen out the requirement for the submission of an NIS.

8.0 Recommendation

- 8.1. The grant of retention permission subject to condition having regard to the reasons and considerations set out below.

9.0 Reasons and Considerations

Having regard to the grounds of appeal, the reason for refusal, the residential zoning objective and the policy framework provided by the Dun Laoghaire-Rathdown Development Plan 2022-2028, it is considered that the development to be retained, subject to condition, by reason of its ancillary use to the main dwellinghouse known as 'Barrington' for the purposes of the temporary accommodation of a family member, would not adversely impact the residential and visual amenities of the main dwellinghouse or the residential and visual amenities of adjoining properties, would provide for modest additional ancillary residential accommodation on site generally in accordance with the provisions of Section 12.3.7.3 (Family Member / Granny Flat Extension) of the Dun Laoghaire-Rathdown Development Plan 2022-2028 and, as such, would be consistent with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development to be retained 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 in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
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2.	<p>The developer shall enter into water and wastewater connection agreements with Irish Water.</p> <p>Reason: In the interest of public health.</p>
3.	<p>Surface water drainage arrangements shall comply with the requirements of the planning authority for such services and works.</p> <p>Reason: In the interest of public health.</p>
4.	<p>The family member flat to be retained shall be used solely for that purpose ancillary to the use of the main dwellinghouse, and shall revert to use as a garage storage area to the main dwelling house known as 'Barrington' on the cessation of such use.</p> <p>Reason: To protect the amenities of property in the vicinity and in order to comply with Section 12.3.7.3 (Family Member / Granny Flat Extension) of the Dun Laoghaire-Rathdown Development Plan 2022-2028.</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. The contribution shall be paid prior to the 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 the Board 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 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.

A handwritten signature in black ink, appearing to read 'A. Abbott King', written over a horizontal line.

Anthony Abbott King
Planning Inspector

12 April 2024