



An
Bord
Pleanála

Inspector's Report ABP319440-24

Development	Construction of a single-storey flat roof link extension between main house and existing outbuilding in rear garden and retention permission of single pitched roof outbuilding as a Livingroom, WC & bedroom extension to main house.
Location	31 Dunsoghly Avenue, Finglas, Dublin 11.
Planning Authority	Fingal County Council.
Planning Authority Reg. Ref.	FW24A/0019.
Applicant(s)	Paul Sweeney.
Type of Application	Retention & permission.
Planning Authority Decision	Fingal County Council.
Type of Appeal	First Party
Appellant(s)	Paul Sweeney.
Observer(s)	One Observation. (1) Adrienne Kelly & Rodney Duggan

Date of Site Inspection

02/07/2024

Inspector

Anthony Abbott King.

1.0 Site Location and Description

- 1.1. No.31 Dunsoghly Avenue is two-storey semi-detached house located on the west side of Dunsoghly Avenue. The front façade comprises a two-storey single bay elevation.
- 1.2. Dunsoghly Avenue is a residential housing estate of suburban cul-de-sacs comprising predominantly terraced two-storey houses accessed from Ratoath Road via an impressive pillared entrance to the estate.
- 1.3. Dunsoghly Avenue is located immediate to the entrance gate to the Dunsoghly estate extending to the north west into the interior of the estate. Dunsoghly Avenue takes a right-angle turn to the north east at the end of the cul-de-sac.
- 1.4. No.31 and the adjoining semi-detached house at no.29 Dunsoghly Avenue to the south-east are located on a corner site at the end of the cul-de-sac.
- 1.5. The front facades of the nos.31 & 29 Dunsoghly Avenue are configured to address the streetscape. Thus the front façade of No.31 Dunsoghly Avenue and the adjoining house at no.29 Dunsoghly Avenue are positioned at a right angle to each other and share a porch canopy above their entrance doors.
- 1.6. There is a single-storey garage to the side of no.31 Dunsoghly Avenue between the single-bay elevation of the dwelling house and the boundary with no.33 Dunsoghly Avenue to the north-east.
- 1.7. A large pitched roof structure with rooflights is located in the rear garden of no. 31 Dunsoghly Avenue and is visible from the streetscape behind the garage elevation.
- 1.8. The site area is given as 0.0584 hectares.

2.0 Proposed Development

- 2.1. Construction of a single-storey flat roof link extension between the main house and existing outbuilding in the rear garden and;
- 2.2. Retention permission of a single-storey pitched roof outbuilding as a Livingroom, WC & bedroom extension to main house.

3.0 Planning Authority Decision

3.1. Decision

Refuse permission for the following reasons:

- (1) The subject development given its overbearing roof height and design would contravene materially a condition attached to an existing permission for development i.e. Condition no 1, F18B/0121. The development would be contrary to the proper planning and sustainable development of the area.*
- (2) The provision of residential accommodation at this location is considered to be haphazard, back-land development, which would impact unduly upon surrounding residential amenity and set an undesirable precedent for similar type development in the area, and as such would be contrary to the proper planning and sustainable development of the area.*

3.2. Planning Authority Reports

3.2.1. Planning Reports

The decision of the CEO of Fingal County Council reflects the recommendation of the planning case officer.

3.2.2. Other Technical Reports

Water Services requests additional information *inter alia* in the matter of soakway design.

4.0 Planning History

The recent planning history is outlined below:

Under register reference FW18B/0121 planning permission was granted subject to condition, in April 2019, for the extension of the existing dwelling house at no. 31 Dunsoghly Avenue, comprising a two-storey gable ended pitched roof extension to the side, and a single-storey pitched roof study, utility and storage building in the rear garden of the house. Condition 2 is relevant and states:

The proposed development shall be used solely for use incidental to the enjoyment of the dwelling house and shall not be sold, rented or leased independently of the house and shall not be used for the carrying on of any trade or business, except where otherwise permitted by way of a separate grant of planning permission.

Reason: in the interest of residential amenity.

5.0 Policy and Context

5.1. Development Plan

The Fingal Development Plan 2023-2029 policy framework is the relevant local planning policy document.

Zoning

The relevant land-use zoning objective is 'RS': *Provide for residential development and protect and improve residential amenity.*

- Chapter 13 (Land use Zoning) states the vision for the objective is to ensure that any new development in existing areas would have a minimal impact on and enhance existing residential amenities.

The proposed development is a permitted in principle use.

Residential Extensions

- Chapter 14 (Development Standards) Section 14.10. (Additional Residential Accommodation in Built-up Areas) in particular Section 14.10.2 (Residential Extensions) and Section 14.10.14 (Garden Rooms) is relevant. It states that the need for housing to be adaptable to changing family circumstances is recognised and acknowledged. The planning authority will support applications to amend existing dwelling units to reconfigure and extend as the needs of the household change, subject to specific safeguards, in particular the protection of adjoining properties.

5.2. EIA Screening

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

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are summarised below:

- The appellant built a utility room / study / social area in their garden having received planning permission. This development was motivated by the large extended family resident in the appellant's house.
- The family circumstances of the appellant changed and the daughter of the appellant, her children and partner required accommodation. The appellant decided to make the extension into a living space for her daughter and her two children.
- The extension is constructed at the rear of the house and has independent access via a side entrance.
- The finish of the extension match the main dwelling house and the appellant still has a very large residual garden.
- In April 2023, the appellant received a letter from Fingal County Council in the matter of the residential use of the outbuilding following a third party complaint. The planning authority directed that the appellant (family) vacate the outbuilding and that the building revert to the authorised use following engagement subsequent to receiving the letter.
- The appellant continued to engage with the planning authority. However, a motion to appear in Court was received in November 2023. The appellant requested the Court for additional time to lodge a planning application for a link structure to the extension; a planning application that had been delayed

because of adverse family circumstances. The Court granted a timeframe until January, 2024.

- The appellant applied for planning permission the subject of this appeal for the retention of the existing building on site and for permission for the new link. However, a neighbour across the road objected to the application. The appellant claims that the residents of the adjoining houses do not hold similar opinions.
- The appellant's adult children are living with their children and in the case of her son his partner on site. The appellant's daughter cannot move out of her existing accommodation on site given the housing situation and the cost of rent;
- The appellant understands that the planning authority has an issue with the existing extension being used as a living space. However, the appellant thought that joining the outbuilding to the house solve the problem. The appellant appeals to An Bord Pleanála for the construction of the link and the retention of the building.
- On a separate matter the appellant has received a letter from Fingal County Council, dated 26th March 2024 (warning letter), in relation to the unauthorised dwelling stating that there is an unauthorised business premises on site (letter from Fingal County Council addressed to Catherine Carruthers, dated 26/03/2024 attached with the appeal statement).

6.2. Applicant Response

N/A first party appeal.

6.3. Planning Authority Response

The planning authority state that the development was assessed having regard to the development plan zoning objective as well as the impact on adjoining neighbours and the character of the area.

The planning authority note that the building on site was not constructed according to permission and is unacceptable.

The planning authority requests An Bord Pleanála to uphold their decision to refuse planning permission. In the event that the appeal is successful provision should be made in the determination for the application of a Section 48 contribution.

6.4. **Observations**

There is one observation from the residents of no. 38 Dunsoghly Avenue, Adrienne Kelly & Rodney Duggan. The observer objects to the appeal on the basis of the following matters summarised below:

- The observer claims that the appellant built a three-bedroom house in the rear back garden of no. 31 Dunsoghly Avenue without planning permission. The illegal house was to be a storage area. However, since 2019 following construction people moved into the building and it has been used for residential purposes subsequently.
- There are 2 adults and 5 children living in this 3-bedroom property.
- A second family lives in an extension to the rear of the dwelling house comprising 2 adults and 1 child. In total 10 people live in the back garden of the dwelling house.
- All of the people living in the back garden use a side entrance to gain access to their accommodation via the garage door to the front of the property.
- It is claimed the present rear accommodation and access arrangements constitute a fire hazard and a health and safety breach to the occupants and neighbouring properties. A fire in the back garden could be fatal to 3 adjoining properties.
- The home of the observer is obstructed by the traffic generated and parking required to accommodate the motor vehicles of the occupants of the accommodation in the back garden of the subject dwelling house.
- The appellant has had accommodation in the back garden rented to tenants for the last 4 years. The enforcement proceedings to date have been ignored and should be enforced.

- The observer claims that a business is operating from the rear of no. 31 Dunsoghly Avenue. Traffic is generated by customers collecting cakes from the premises.
- This matter has continued for 2 years and 3 months. The enforcement department of the planning authority needs to take action. The building in the back garden needs to be demolished as it will always house tenants and on anti-social grounds and danger to surrounding houses. The existing unauthorised use results in congestion and unacceptable levels of noise. The overall impact is the depreciation of property in the vicinity.

7.0 Assessment

- 7.1. Having reviewed the application, the appeal and conducted a site visit, the following assessment covers the points made in the appeal submission, the third party observation, the reasons for refusal and encapsulates my overall consideration of the application. It is noted there are no new substantive matters for consideration.
- 7.2. The applicant proposes to construct a link between the main dwelling house and a stand-alone structure in the rear garden the subject of retention. The standalone rear garden building was permitted as ancillary accommodation (study etc, for use incidental to the to the enjoyment of the dwelling house (FW18B/0121). Condition 2 of the permission regulates the standalone building to use incidental to the dwelling house that cannot be sold, rented or leased independently and cannot be used for the carrying out of a trade or business in the interest of residential amenity.
- 7.3. The appellant acknowledges that the use of the stand-alone garden building has accommodated a family member and her children. Enforcement proceedings have been initiated by the planning authority requiring vacation of the garden building and reversion to the authorised use. I consider the development to be assessed is as follows.
- The retention of the unauthorised residential accommodation on site;
 - A link structure between the existing garden building to the rear of the dwelling house and the dwelling house.

Proposed development

- 7.4. The floor area of the existing buildings on site is given as 212 sqm. The floor area of the development to be retained is given as 59 sqm. comprising the subject stand-alone building located in the rear garden previously permitted (an accessible attic shown on the submitted drawings with a floor area of 23 sqm. is not included in that calculation). The dwelling house measures 153 sqm. The applicant has in addition to the existing floor area applied for permission for a 1.9 sqm link structure.
- 7.5. I consider that the cumulative development to date on site is significant given the pattern of development in the area, which is predominantly characterised by modest terrace houses with front and back gardens.
- 7.6. The appellant was granted permission for a standalone garden room building with a floor area of approximately 59 sqm. The submitted floor plans of the garden room building permitted show a linear configuration of internal spaces comprising utility (11.55 sqm), Storage (30.24 sqm accommodating a shower room) and study (22.05 sqm). The garden building is located on the shared property boundary with residential properties in Dunsoghly Close to the west at the end of the back gardens of nos. 16, 18 & 20 Dunsoghly Close.
- 7.7. The fenestration shown on the submitted permitted drawings is located in the east elevation facing the rear of the subject dwelling house. The distance between the main dwelling and the standalone building is approximately 1.5m. Access to the garden building on the permitted drawings is through the storage room proximate to the side passage of the main dwelling house giving access to the front of the property via a garage.
- 7.8. The appellant proposes to retain an existing internal arrangement comprising entrance lobby and corridor (approximately 8 sqm), bedroom 1 (11.34 sqm), Bedroom 2 (approximately 7 sqm), second entrance lobby (via link), stairs & shower room (11.76 sqm) and living room (21 sqm). The planning authority permitted a standalone garden room building with a flat roof (see below).
- 7.9. The garden building to be retained would have a pitched roof internally lit by roof lights accessible from the ground floor by a stairway and would comprise an additional floor area of approximately 23 sqm. I note that the garden building on the submitted planning pack map (site location) has an independent address and is shown as 31A Dunsoghly Avenue.

7.10. The fenestration of the building to be retained would not be identical to the fenestration permitted. A doorway would be substituted for a window opening to provide access to the proposed link with the main dwelling house. The permitted study patio door would be moved to the south elevation and two window openings would be substituted for the permitted patio door in the east elevation.

Reasons for refusal

7.11. The planning authority refused planning permission and retention permission for two reasons. The first reason for refusal relates to the overbearing roof height and design, which would contravene materially a condition attached to an existing permission for development i.e. Condition no 1, F18B/0121. The second reason for refusal relates to the provision of residential accommodation, which is considered to be haphazard, back-land development, which would impact unduly upon surrounding residential amenity and set an undesirable precedent for similar type development in the area.

7.12. The appellant claims that the residential accommodation in the back garden is required to house her daughter and children. The appellant understands that the planning authority has an issue with the existing outbuilding being used as a living space. The appellant proposes to solve the problem by joining the garden building to the main dwelling house. The appellant appeals to An Bord Pleanála for the construction of a link to the main dwelling house from the garden building and the retention of the existing layout of the garden building.

Observer

7.13. One observation is recorded on file. The observer claims that the appellant built a three-bedroom house in the back garden of no. 31 Dunsoghly Avenue without planning permission. The observer claims there are two family's accommodated in the back garden of the dwelling house comprising 10 people. The resultant intensification of use has depreciated the residential amenity of neighbouring properties including the observers house at no. 38 Dunsoghly Avenue. The enjoyment of the observers home has been adversely impacted, as his house is obstructed by the traffic generated and parking required by the occupants of the accommodation to the rear of no. 31 Dunsoghly Avenue.

7.14. Furthermore, the form of development located in the back garden with sole access through to the side of the main dwelling house through a garage door constitutes a fire hazard to both to the occupants and to adjoining residential properties.

Retention of unauthorised residential accommodation on site

7.15. The Fingal County Development Plan 2023-2029 provides for Garden rooms to be located within the curtilage of dwellings to accommodate ancillary accommodation. Section 14.10.4 (Garden Rooms) of the Fingal County Development Plan 2023-2029 includes criteria guiding permitted garden room development. The section *inter alia* details that garden rooms should be modest in scale relative to the main house and the main garden area. Furthermore, applicants are required to demonstrate that neither the design nor the use of the structure would detract from the residential amenities of either the main residence or of adjoining property. There is a requirement for the structure not to be used for residential accommodation.

7.16. The building to be retained in the back garden is in residential use, which is prohibited. The original dwelling house measures 153 sqm. The building in the rear garden would have a combined ground and first floor area of 80 sqm. I do not consider that the scale of the rear garden building is compatible with the development plan definition of a garden room.

7.17. Furthermore, I note the observations of the residents of no. 38 Dunsoghly Avenue, which *inter alia* document the impact on existing residential amenity of the provision of residential accommodation in the rear garden of no. 31 Dunsoghly Avenue over a prolonged period. I also note the independent address of the building in the rear garden as 31A Dunsoghly Avenue.

7.18. I considered that the retention of the existing garden structure in terms of its scale, floor area and unauthorised residential use would inconsistent with Section 14.10.4 (Garden Rooms) of the Fingal County Development Plan 2023-2029 and with the proper planning and sustainable development of the area.

Condition 1 of F18B/0121 / overbearing impacts on neighbouring properties

7.19. The planning case officer in assessing the application states that the building to be retained was assessed under register reference F18B/0121 and the circumstances have not altered. The opinion of the planning authority remains the same, the design, height (4.64m) and length of the constructed building in the rear garden of no. 31

Dunsoghly Avenue has a negative and overbearing impact on the residential amenity of the 3 houses on Dunsoghly Drive immediately adjacent sharing a mutual rear boundary. I will consider these matters in my assessment below.

- 7.20. The planning case officer report notes that the single-storey building, the subject of the appeal, located in the rear garden of no. 31 Dunsoghly Avenue granted permission under register reference FW18B/0121 in April 2019 was the subject of an additional request, which significantly modified the single-storey structure. Item 3 of the additional information response is relevant and states:

The proposed stand-alone structure is considered to have potential to be overbearing on the house and on neighbouring properties to the west arising from the proposed scale, bulk, massing and positioning. The applicant shall submit details to demonstrate how the proposed design addresses these concerns.

- 7.21. The applicant response to Item 3 of the additional information request substituted a flat-roof design, substituting it instead of the originally proposed pitched roof structure (Drawing no. 5, Revision B), which was acceptable to the planning case officer: *The change from pitched to flat roof addresses concerns regarding the impact of the proposal on property in the vicinity*. The planning case officer (FW18B/012) *inter alia* concluded subject to the submitted modifications that the proposed development would be keeping with the existing pattern of development.
- 7.22. I note that the height to the ridge of the pitched roof shown in the submitted drawings (before modification by additional information response 31/01/19) under register reference FW18B/012 is given as 4260mm (Elevations & Section, Drawing 07 Rev A, dated November 2028). The height of the rear garden building to be retained is given as 4640mm (existing section E) on the drawings submitted with the current application the subject of appeal.
- 7.23. I consider that the ridge height, scale and massing of the unauthorised rear garden building located on the shared property boundary with nos.16, 18 & 20 Dunsoghly Close introduces a third building line between the established building lines on Dunsoghly Avenue and Dunsoghly Close.
- 7.24. It is considered that the development to be retained represents haphazard back land development inconsistent with the established pattern of development in the area

and, as such, would have overbearing impacts on neighbouring residential properties on Dunsoghly Close and on the main dwelling house itself located 1.5m (rear elevation) from the east elevation of the rear garden building. Thus the development to be retained would represent a congested form of development in a backland location without independent road frontage.

- 7.25. Finally, I note the internal height of the accessible attic is given as 1750mm, which extends for approximately two thirds of the footprint of the rear garden building to be retained (the south facing living room is shown as a double height space). The attic floor area accommodated is approximately 23 sqm. I note that there is a discrepancy in the existing 'Elevation C' (east fenestrated elevation), which shows a clean roof plane without fenestration, and the existing roof plan & first floor plan, which show roof lights. I note on the day of my site visit that roof lights are located in the east roof plane of the existing rear garden building.
- 7.26. The planning case officer in assessing the development the subject of appeal *inter alia* concluded that the development in its current form is unacceptable, fails to comply with a previous planning condition, is overbearing and is contrary to the proper planning and sustainable development of the area. I would concur with the planning case officer.

The link structure between the dwelling house and the rear garden building

- 7.27. The appellant has applied for permission to provide a link from the dwelling house to the subject rear garden building. The motivation of the appellant is to use the link to regularise the rear garden building as an extension of the main dwelling house. The gross floor area of the proposed works is given as 1.9 sqm. The link would comprise a lobby type space between the kitchen / living room of the main dwelling house and a new doorway located in the east elevation of the rear garden building.
- 7.28. The Fingal County Development Plan 2023-2029 provides guidance in the construction of domestic extensions, including extensions to the rear of existing dwelling houses. The development plan recognises the need for housing to be adaptable to changing family circumstances. The planning authority will support applications to amend existing dwelling units to reconfigure and extend as the needs of the household change, subject to specific safeguards, in particular the protection of the amenities of adjoining properties.

- 7.29. It is considered that the link would nominally create a single structure. However, the garden building would remain a separate residential unit, as presently annotation on the site location map denoted as 31A Dunsoghly Avenue. The garden building would have two entrances. The previously permitted entrance located proximate to the side passage of the dwelling house would remain in situ in tandem with the new entrance into the link with access to the main dwelling house kitchen / living room.
- 7.30. I consider that in practical terms the building to be retained would function as an independent living unit given the floor plan layout submitted and the legacy residential use of the garden room building as a residence as evidenced by enforcement proceedings to date and the appeal statement.

Conclusion

- 7.31. In conclusion, the development to be retained, comprising a two-bedroom residential unit with accessible attic, represents a congested form of development in a backland location without independent road frontage, that introduces a third building line between the established building lines on Dunsoghly Avenue and Dunsoghly Close, resulting in overbearing impacts on adjoining residential properties located at nos. 16, 18 & 20 Dunsoghly Close, given the ridge height, scale and massing of the garden building on the shared property boundary with these properties, and on the main dwelling house itself, which is located 1.5m from the subject garden building.
- 7.32. I consider that the development proposed the provision of a link between the rear garden room building and the main house would nominally create a single structure. However, I conclude that the garden building the subject of retention in terms of function would remain a separate residential unit, as presently annotation on the site location map denoted as 31A Dunsoghly Avenue.

7.33. **Appropriate Assessment Screening**

The proposed development comprises modifications to an existing dwelling house within an established suburban 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. I recommend a refusal of planning permission for the reasons and considerations set out below.

9.0 Reasons and Considerations

Having regard to the grounds of appeal, the observations of third parties, the reasons for refusal, the residential zoning objective, which seeks to provide for residential development and protect and improve residential amenity, and the policy framework provided by the Fingal County Development Plan 2023-2029, including Section 14.10. (Additional Residential Accommodation in Built-up Areas), it is considered that the proposed development and the development to be retained would be inconsistent with Section 14.10.4 (Garden Rooms) Fingal County Development Plan 2023-2029, providing for ancillary accommodation incidental to the main dwelling house, introduces a third building line between the established building lines on Dunsoghly Avenue and Dunsoghly Close, resulting in overbearing impacts on the adjoining properties at nos.16, 18 & 20 Dunsoghly and on the main dwelling house itself, representing a congested form of development in a backland location without independent road frontage, would have a significant adverse impact on neighbouring residential properties and, as such, would be inconsistent with the proper planning and sustainable development of the area.

10.0 Refusal

1.	The subject development given its overbearing roof height and design would contravene materially a condition attached to an existing permission for development i.e. Condition no 1, F18B/0121. The development would be contrary to the proper planning and sustainable development of the area.
2.	The provision of residential accommodation at this location is considered to be haphazard, back-land development, which would impact unduly upon surrounding residential amenity and set an undesirable precedent for

	similar type development in the area, and as such would be contrary to the proper planning and sustainable development of the area.
--	---

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.

Anthony Abbott King
Planning Inspector

05 July 2024