



An  
Bord  
Pleanála

## Inspector's Report ABP-319562-24

<b>Development</b>	Retention of existing Velux to front elevation and Permission for extension & alterations to existing dwelling and all associated site works.
<b>Location</b>	5 Seabury Orchard, Malahide, Co. Dublin, K36 X859
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F24A/0079
<b>Applicant(s)</b>	Paul & Jennifer O' Grady
<b>Type of Application</b>	Retention & Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Nina Fitzpatrick
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	12 June 2024
<b>Inspector</b>	Paula Hanlon

## **1.0 Site Location and Description**

- 1.1. The subject site (stated area 0.017892ha) is located along the northern side of Seabury Orchard which is a cul-de-sac serving 5 pairs of semi-detached dwellings on both sides of the road, which are of similar architectural style and form in Malahide.
- 1.2. The site is located in an area to the south and west of Estuary Road and is approximately 0.3km south of Malahide Estuary. On site is a two-storey, semi-detached dwelling with a single storey extension to the rear. Car parking is provided in-curtilage to the front and an area of private amenity space which is currently laid in pavements and artificial grass lies within the rear area of this site.
- 1.3. The subject site is attached to a semi-detached dwelling to its east, notably No. 7 Seabury Orchard and adjoins No. 3 Seabury Orchard to its west.

## **2.0 Proposed Development**

- 2.1. In summary, the proposed development seeks the following:

Retention of existing velux to front elevation and

Permission for the development of a 30m<sup>2</sup> extension to rear with alterations to existing dwelling and all associated site works. The overall height of the proposed extension is 7.521m.

The application was accompanied by the following documentation of note –

- Site Layout (Existing and Proposed) (Dwg No. 20-1400-P005 A)
- Existing Elevations & Contiguous Elevations and Existing Sections (Dwg No. 20-1400-P014-A)
- Proposed Elevations & Contiguous Elevations and Proposed Sections (Dwg No. 20-1400-P03-A)

On foot of this appeal, the First Party submitted the following documentation to An Bord Pleanála -

- Appendix A – Similar Developments to subject site (Dwg No. 02-20-1400-AA-01 A)
- Shadow Analysis (Dwg No. 03-20-1400-SA-01 A).

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

By Order dated 25 March 2024, Fingal County Council issued a Notification of decision to grant planning permission subject to 8(no) conditions, including:

Condition 1: Standard Condition

Condition 2: Revisions to design & layout of two-storey extension to rear

Condition 3: Restricts use of premises in its entirety to a single dwelling unit

Condition 4: Clarifies use of attic floorspace in terms of building regulations and habitable standards

Condition 5: External finishes to match existing

Condition 6: Surface Water Drainage

Conditions 7 & 8: Required measures in protecting public roads during the course of construction and permitted hours of construction.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

One Planning Report (typed date 22/03/2024) and attached to the file forms the basis for the decision by Fingal County Council to grant permission, subject to compliance with conditions. The planning officer in their assessment concluded that the proposal is generally in keeping with adopted policy and the recent pattern of development in the area and that outstanding matters in relation to design to be addressed by condition.

#### **3.2.2. Other Technical Reports**

Water Services (13/03/24): No objection.

#### **3.2.3. Conditions**

In recommending that permission be granted, the PA attached a specific condition which required revisions to the design & layout of the proposed two-storey extension to rear. Consideration will be given to the attachment of this condition (notably Condition 2) within my assessment below [Refer Section 7 below].

Furthermore, an attached condition (notably condition 4) in regard to attic floorspace and requirements in terms of compliance with Building Regulations does not fall under the planning code. Therefore, in my view, this point of clarity attached by way of condition is unnecessary and should not be attached to any grant of permission should the Board be minded to grant permission.

### 3.3. Prescribed Bodies

None

### 3.4. Third Party Observations

The PA received two third-party submissions during the course of their determination from concerned residents with both dwellings which adjoin this site. The matters raised by the submitters relate to design issues and concerns that the proposal will impact on residential amenities.

## 4.0 Planning History

- Subject Site

None shown on register of the subject site.

- Adjacent Site(s)

F04B/0076: Permission was granted for extension and alteration works to an adjoining dwelling (No. 3 Seabury Orchard) to the west, in 2004, subject to conditions.

## 5.0 Policy Context

### 5.1. Fingal Development Plan 2023-2029 (FDP)

- 5.1.1. The FDP which came into effect 5 April 2023 is the operative Development Plan.
- 5.1.2. These lands are within an area zoned 'RS' - Residential, with its objective 'to provide for residential development and protect and improve residential amenity'.
- 5.1.3. There are no designations with respect to ecology or archaeology attached to the site.
- 5.1.4. Council's policy and objectives that are relevant to the consideration of this appeal include:

Policy SPQHP41 – Support the extension of existing dwellings with extensions of appropriate scale and subject to the protection of residential and visual amenities.

Objective SPQHO45 – Encourage sensitively designed extensions to existing dwellings which do not negatively impact on the environment or on adjoining properties or area.

Development Management Standards contained within the plan include:

#### First Floor Extensions (Section 14.10.2.4)

First floor rear extensions will be considered on their merits, noting that they can have potential for negative impacts on the amenities of adjacent properties, and will only be permitted where the Planning Authority is satisfied that there will be no significant negative impacts on surrounding residential or visual amenities. In determining applications for first floor extensions the following factors will be considered:

- Overshadowing, overbearing, and overlooking – along with proximity, height, and length along mutual boundaries.
- Remaining rear private open space, its orientation and usability.
- Degree of set-back from mutual side boundaries.
- External finishes and design, which shall generally be in harmony with existing.

#### Roof Alterations including Attic Conversions... (Section 14.10.2.5)

Roof alterations/expansions to main roof profiles, for example, changing the hip-end roof of a semi-detached house to a gable/'A' frame end or 'half-hip', will be assessed against a number of criteria including:

- Consideration and 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.

#### Residential Amenity

Daylight and Sunlight (Section 14.6.6.1); Separation Distances (Section 14.6.6.3); and Overlooking and Overbearance (Section 14.6.6.4).

## **5.2. Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities' (2024)**

### SPPR 1 - Separation Distances

...Separation distances below 16 metres may be considered acceptable in circumstances where there are no opposing windows serving habitable rooms and where suitable privacy measures have been designed into the scheme to prevent undue overlooking of habitable rooms and private amenity spaces... In all cases, the obligation will be on the project proposer to demonstrate to the satisfaction of the planning authority or An Bord Pleanála that residents will enjoy a high standard of amenity and that the proposed development will not have a significant negative impact on the amenity of occupiers of existing residential properties.

## **5.3. Natural Heritage Designations**

The appeal site is not located on or within proximity to any designated Natura 2000 sites, with the nearest designated sites being the Malahide Estuary SAC (000205) and the Malahide Estuary SPA (004025), located c. 0.3km to the north and east of the site. Malahide Estuary pNHA (000205), is also located c. 0.3 km to the site's north and east.

## **5.4. EIA Screening**

Having regard to the nature and type of development proposed, it is not considered that it falls 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 (Third-Party)**

### **6.1. Grounds of Appeal**

A Third-Party Appeal has been received from Ms. Nina Fitzpatrick (adjoining resident) to the Planning Authority's decision to grant permission. The grounds of appeal

reiterate the matters raised in the Appellant's original observation made to the Planning Authority.

The matters of concern raised pertain to the two-storey extension sought to rear of the First Party's dwelling and the impacts in which it will have the residential amenities of the third-party in terms of loss of light and overlooking to their bedroom and living area. The Third-Party further considers that the proposed extension constitutes overdevelopment and that it is not in keeping with the environs of the street and adjoining properties. In the event that permission is to be granted, the third-party requests that the setback from the boundary wall (as conditioned by the PA in its decision to grant permission) be increased from 1 metre to 2 metres and refers to the content of the planner's report and to other guidelines provided on the Council's website.

## **6.2. Applicant Response**

- 6.2.1 The proposed extension is of a fairly common configuration and extent, examples of which are evident in the area and a list of similar such extensions is provided. Reference is made to the design and scale of the Third-Party's extension which adjoins the subject site and it is outlined that personal circumstances should not apply, and that only planning controls apply.
- 6.2.2 In regard to loss of light, the applicant argues that the extension will not result in any overshadowing or loss of light due to the orientation of both houses being north-facing and existing impacts from established development. Photographic evidence and shadow study analysis are provided which demonstrate the extent of overshadowing which already exists, arising from the footprint of existing, established development. The right to light will not be infringed by the proposed extension and it is submitted that no measurements, calculations or other data was submitted by the Third-Party to support their assertion on loss of light.
- 6.2.3 There will be no overlooking arising from the proposal, due to design and siting of the extension and it is outlined that the porthole window is to be omitted as per conditions attached to the PA's decision to grant permission.



6.2.4 In terms of overdevelopment and impacts on the character of the area, the applicant refers to precedent cases in the area and also to the scale of the extension carried out within the appellant's own rear garden relative to the subject site. Photographic documentation is provided by the applicant which demonstrates the site's context relative to the appellant's property.

6.2.5 In addressing the matter raised regarding setback distance to the appellant's boundary, the first party outlines that the extract provided by the Third-Party is irrelevant in this case as it relates to exempted development.

### **6.3. Planning Authority Response**

A response was received from the PA dated 06/06/2024. The PA considers that no further relevant issues are raised in this appeal from those which were considered at application stage and therefore has no further comment.

### **6.4. Further Responses**

On 14/06/2024, the Third-Party submitted a further written response to the First Party submission made to An Bord Pleanála (dated 20/05/2024). The appellant refutes the claim that this is a vexatious appeal and details their upset in regard to the content within the written response which was made on behalf of the applicant. The appellant clarifies their circumstances and particular needs of a family member in terms of special accommodation, provides a synopsis on the planning status of a recently constructed extension which was built to the rear of their dwelling and details that no prior consultation was made in regard to the proposed rear extension element of this case. Concerns regarding loss of light, overlooking and visual impact associated with the extension sought are re-iterated.

The appellant requests that in the event that the Board is disposed to a grant of permission, that Condition 2 requiring revisions and setbacks, attached in the Planning Authority's decision to grant permission is retained.

## 7.0 Assessment

Having examined the application details and all other documentation on file, including the third-party submissions received in relation to the appeal, site inspection and having regard to the relevant policies and guidance, I am satisfied that the main issues to be considered are those raised in the Third-Party grounds of appeal, and I am satisfied that no other substantive issues arise.

The main issues in determining this appeal are as follows:

- Impact on Residential Amenity
- Other Design Matters
- Visual Impact

### 7.1. Impact on Residential Amenity

The principal concern raised by the Third-Party is grounded on perceived impacts which the extension proposed above ground floor level will have on their residential amenities. I have examined the expressed concerns in the context of the siting and design of the development proposed.

#### 7.1.1 Overlooking

The appellant expressed concerns that the first floor extension and porthole window at attic level will overlook their windows which serve habitable rooms (living area/bedroom). The plans and particulars submitted show that no window opens are proposed on the eastern elevation of the extension and the footprint of the extension sought adjoins the footprint of the appellant's dwelling. In light of this, and in noting that there are no directly opposing windows at first floor level between this site and the appellant, I am satisfied that no overlooking issues arise due to the design of the extension proposed. Furthermore, I am of the view that the resulting relationship between the 2(no) windows at first floor level on the northern elevation of the extension and existing first floor windows at 3 Seabury Vale which adjoins the northern (rear) boundary of this site accords with SPPR1 of the Compact Guidelines (2024) with a separation distance in excess of 16 metres provided between these directly opposing windows.

### 7.1.2 Loss of Light and Overshadowing

The Third-Party in their appeal submission contends that the proposal will negatively impact on light, notably to their adjoining bedroom window and ground floor velux windows to living area, however I note that no supporting analysis has been provided to demonstrate same, in accordance with BRE Guidelines. I note that Section 14.6.6.1 of the FDP details requirements on Daylight and Sunlight analysis and that there is no specific policy, objective or standard in relation to the undertaking of a detailed technical assessment on daylight performance for a development of this scale. Furthermore, the recently adopted Compact Guidelines are implicit in stating that such an assessment is not required in all cases and that a level of discretion may apply in this regard. In this context, in my opinion, given the overall scale, height (7.521m) and form of the upper ground floor extension sought, its north-facing orientation with similar such orientation associated with the appellant's property and site context relative to established development at No. 7 Seabury Orchard and in acknowledging its proximity to the upper floor bedroom window, west of the appellants property, coupled with the increased setback of 1m from party boundary as conditioned by the PA (and discussed in Section 7.2m below) and separation distance from rooflights associated with the Third-Party's dwelling, I am satisfied that the proposed development will not unduly compromise the residential amenity of No. 7 by reason of loss of light and that the adjoining residence will continue to receive adequate levels of sunlight.

In regard to overshadowing, I note that the applicant in its response to this appeal provides photographic evidence and shadow study analysis which demonstrate the extent of overshadowing that currently exists, arising from the existing built form associated with No. 5 & 7 Seabury Orchard and I also note that the matter of overshadowing is specifically referenced in the third-party appeal. Given the siting and scale of the development proposed and in noting the content of the First-Party's response which shows the extent of overshadowing currently, I am satisfied that the proposal will not unduly overshadow No. 7 Seabury Orchard.

## 7.2. Other Design Matters

There is not issue raised by any party in regard to retention of existing velux to front of applicant's dwelling and I concur with same. The appellant expressed concerns regarding the scale of the extension proposed, being overdevelopment and the Planning Authority raises two matters on design, notably that the gable roof profile and works sought at attic level be revised such that a hipped roof profile, set down from the main ridge be provided which will result in a less visually dominant extension and that a degree of setback be provided on the eastern party boundary wall.

In examining the proposal in accordance with criteria set out within Section 14.10.2.4 of the Development Plan, I wish to firstly note that the proposed upper floor extension extends approximately 2.7m deep x 5.8m and therefore is of modest scale. As previously discussed, I consider that the proposal will not give rise to detrimental impacts on the residential amenities of the appellant's property due to overlooking or loss of light and that it will not reduce or result in the re-configuration of existing private open space provision. However, I consider that a degree of setback from the party boundary is reasonable in this case so as to lessen any overbearance and accommodate development works. I note that the appellant in their submission refers to the 2m setback required for exempted development works, which therefore is not applicable in this case. On balance, I suggest that a similar condition be attached which requires that a setback of 1 metre be provided between the proposed above ground floor extension and the eastern boundary should the Board be minded to grant permission. Furthermore, given the site's context, I am satisfied that an amendment sought by the Planning Authority in regard to roof profile and attic level will further assist in the effective assimilation of this extension into the subject site and its surroundings and in my view, I suggest that a similar such condition should be attached in the event that the Board is minded to grant permission.

## 7.3. Visual Impact

The third party considers that the proposal is not in keeping with the environs of the street and adjoining properties and states that there is no precedent for a first floor extension of the volume proposed along the cul-de-sac (Seabury Orchard) and that

reference cases provided by the First party are located a distance away from this cul-de-sac. In addressing this concern, I submit that the proposed extension will be sited to the rear of an established two-storey semi-detached dwelling and will not be visible from the adjoining street, with the exception of roof profile proposed, the matter of which is addressed separately in terms of its appropriateness in design (Refer Section 7.2 above). Furthermore, in terms of the site's context, I wish to highlight that the subject site is surrounded by established residential development which are similar in architectural design and form and that the proposed rear extension faces onto the rear garden of established residential development in linear form to the north of this site, with a single storey extension of substantial scale immediately adjoining the eastern boundary and a private rear garden adjoining the site's western boundary. In light of this and in noting that the site is not within an ACA, I consider that the proposal will not negatively impact on the visual amenities or character the area and that the extension proposed is compatible with the established residential use on the site and surrounding area.

## **8.0 AA Screening**

I have considered the proposed development which includes the development of a 30m<sup>2</sup> two storey extension to rear with alterations to existing dwelling and all associated works in light of the requirements S177U of the Planning and Development Act 2000 as amended.

The appeal site is not located within any designated Natura 2000 site(s). The subject site is located a distance of 0.3km from Malahide Estuary SAC (000205) and the Malahide Estuary SPA (004025), to the north and east, being the nearest designated European site(s). No nature conservation concerns were raised in the planning appeal.

Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion is as follows:

- The nature of the works and development (incl. two-storey extension are small scale.

- The site is located within an established dwelling site in a built-up area, a distance of approximately 0.3km from the nearest European site and there are no hydrological or other ecological connections to any European site.
- I have taken into account the AA screening determination by the PA which determined that the proposed development (individually or in-combination) along with other plans or projects will not have a significant effect on any European sites.

I conclude that on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site 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 and Development Act 2000) is not required.

## **9.0 Recommendation**

It is recommended that permission be granted for the development proposed subject to conditions set out below.

## **10.0 Reasons and Considerations**

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

## **11.0 Conditions**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed

particulars.

**Reason:** In the interest of clarity.

2. Prior to the commencement of the development the developer shall submit for the written agreement of the Planning Authority revised plans and particulars at an appropriate scale which provide for the following

(a) A one-metre setback between the above ground floor level extension to rear of dwelling and the eastern boundary.

(b) The roof profile of the extension shall be amended to a hipped roof with the eaves level consistent with that of the existing dwelling and an appropriate set down from the main ridge of the dwelling.

The development thereafter shall be carried out strictly in accordance with the approved plans and particulars.

**Reason:** In the interest of residential amenity and the proper planning and sustainable development of the area.

3. The existing dwelling and the proposed extension shall be jointly occupied as a single residential unit and the extension shall not be used, sold, let or otherwise transferred or conveyed, save as part of the dwelling.

**Reason:** To restrict the use of the extension in the interest of residential amenity.

4. The external finishes of the proposed extension (including roof tiles/slates) shall be the same as those of the existing dwelling in respect of colour and texture.

**Reason:** In the interest of visual amenity.

5. Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, 0800 to 1400 on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

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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Paula Hanlon  
Planning Inspector

10 July 2024



## Appendix 1 - Form 1

### EIA Pre-Screening

**[EIAR not submitted]**

<b>An Bord Pleanála Case Reference</b>	ABP-319562-24		
<b>Proposed Development Summary</b>	Retention of existing velux to front elevation and Permission for an extension and alterations to the existing dwelling and all associated site works.		
<b>Development Address</b>	5 Seabury Orchard, Malahide, Co. Dublin, K36 X859		
<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>	
<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>			
<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>Conclusion</b>
<b>No</b>		X	No EIAR or Preliminary Examination required
<b>Yes</b>			

**4. Has Schedule 7A information been submitted?**

<b>No</b>	N/A	<b>Preliminary Examination required</b>
<b>Yes</b>	N/A	<b>Screening Determination required</b>

**Inspector:** \_\_\_\_\_ **Date:** \_\_\_\_\_