



An  
Bord  
Pleanála

## Inspector's Report

### ABP-319682-24

#### Development

Retention permission for the development of a single-storey rear extension and conversion of a garage located to the side of the dwelling into habitable accommodation and all associated works.

#### Location

42 Westbrook Road, Dundrum,  
Dublin 14, D14 K403

#### Planning Authority

Dun Laoghaire Rathdown County  
Council

#### Planning Authority Reg. Ref.

D23B/0446

#### Applicant(s)

Maurice and Christine Kirwan

#### Type of Application

Retention Permission

#### Planning Authority Decision

Grant Retention Permission

#### Type of Appeal

Third Party

#### Appellant(s)

Geraldine Neilan

#### Observer(s)

None

#### Date of Site Inspection

22<sup>nd</sup> July 2024

#### Inspector

Joe Bonner

## **1.0 Site Location and Description**

- 1.1. The site of the proposed development, which extends to 0.025ha is located is located on the eastern side of Westbrook Road, a residential suburb consisting of a mix of single and two storey, detached and semi-detached houses of various designs and material finishes. The site lies c120m east of the Luas line and c140m west of the R117, c1km south of Milltown bridge and c750m north of the Dundrum Luas bridge. It also lies c250m south east of Windy Arbour Luas stop.
- 1.2. The house subject to the application is the right-handed (southern) house of a pair of west facing semi-detached two storey houses with pitched roofs and is also connected to the house to the immediate south at ground floor level.
- 1.3. The house takes up the entire site frontage with the front building line set back c5.9m from the roadside edge. The adjacent houses to the immediate north and south have rear gardens of the same depth as the application site. The rear boundary backs onto the side garden of No 48 Westbrook Road. The Slang or Dundrum River, which is a tributary of the Dodder, runs in a south to north direction c48m from the rear boundary of the site.

## **2.0 Proposed Development**

- 2.1. The proposed development is described in the public notices as:
  - Retention permission for the development of a single storey rear extension and conversion of a garage located to the side of the dwelling into habitable accommodation and all associated works.
- 2.2. The application was accompanied by a site location map, a site layout plan and plans and elevations of the house and garage prior to and post development.
- 2.3. Following a request for further information, the applicant submitted a revised site layout plan and a cross section of the original and as built extension to the rear as it adjoins the appellant's property to the immediate south.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

3.1.1. A decision to grant permission was issued by Dun Laoghaire Rathdown County Council on the 15<sup>th</sup> of April 2024, subject to the attachment of 5 conditions. Relevant conditions include:

- No 2 – The entire dwelling to be used as a single dwelling unit and shall not be subdivided.
- The conditions are followed by three notes which are relevant to the grounds of the appeal and state:
  - 1 - The attention of the applicant is drawn to Section 34(13) of the Planning and Development Act 2000, as amended, which relates as follows – ‘A person shall not be entitled solely by reason of a permission under this section to carry out any development’.
  - 2 – The applicant is advised that in the event of encroachment or oversailing of the adjoining property, the consent of the adjoining property owner is required. If this written agreement is not obtained, the proposed development shall be modified only insofar as is required to do this.
  - 3 – This permission does not imply any consent or approval for the structural stability and/or habitability of the works carried out and does not imply that the structure complies with the building regulations.

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

##### Planning Reports

##### **3.2.1. First Planning Officer's Report**

- Summarised the grounds of the observation and stated that all planning issues raised therein pertaining to the proposed development had been taken into consideration in the assessment.
- The assessment also addressed the principle of the development, which was considered acceptable, residential amenity and visual impact.

- A number of anomalies were identified in respect of dimensions on the submitted drawings and the size of the rear garden and these were addressed in a request for further information, which sought the following:

- 1 ...A fully revised set of architectural drawings that provide an accurate depiction of the works proposed for retention at the subject site... including, inter alia: revised floor plans that accurately reflect the existing and proposed (pre-retention and post-retention) site layouts, and floor plans, sections, and elevations with full dimensions and all constructed elements accurately displayed - and all with due regard to the context provided by neighbouring structures. The floor area proposed for retention should be clearly highlighted by coloured legend on any proposed/post-retention floor plans.
- 2 ...confirm the area of private open space that remains to the rear of the subject dwelling and provide a robust written justification for that area should it be below the standards set out in Section 12.8.3.3(i) of the County Development Plan 2022-2028 that requires 4-bedroom dwellings to have a minimum private open space area of 75 sqm to the rear.

#### 3.2.2. Second Planning Officer's Report

- While the drawings still contained errors, they were deemed sufficient to allow the application to be assessed, and a clarification of further information was not necessary.
- The retained rear open space would be c54sqm and the explanation provided by the applicant was deemed acceptable.
- The planning authority decided to grant permission in accordance with the planning officer's recommendation.

#### 3.2.3. Other Technical Reports

- Drainage Planning – No objections subject to conditions

#### 3.3. **Prescribed Bodies**

None.

### 3.4. Third Party Observations

One third party observation was submitted, by Geraldine Neilan, with an address at No 44, Westbrook Road, Dundrum, Dublin 14, which is the house located immediately to the south of the site. The grounds of the observation form part of the grounds of appeal and I refer the board to Section 6.1 below.

## 4.0 Planning History

- 4.1.1. There is no site specific planning history and while the planning officer's report refers to two enforcement cases ENF24823 and ENF GC54323, they do not elaborate on the cases.

### Adjacent Planning History – No. 44 Westbrook Road

- 4.1.2. The online planning register identified one planning application that relates to the appellant's property to the immediate south of the application site.

- **P.A. Reg. Ref. D06B/0314** - Permission granted on the 29<sup>th</sup> of May 2006 for the conversion of the existing garage into a kitchen, a 1.2 sq.m. ground floor extension to the side incorporating the dining area, a first floor extension to the side incorporating the dining area, and a first floor pitched roof extension over the garage forming a bedroom with ensuite and internal modifications.

### No. 46 Westbrook Road

- **P.A. Reg. Ref. D98B/0636** - Permission granted on the 20<sup>th</sup> of October 1998 for a two storey extension to side.

## 5.0 Policy Context

### 5.1. Dun Laoghaire Rathdown Development Plan 2022-2028

- 5.1.1. The relevant Development Plan is the Dun Laoghaire Rathdown Development Plan 2022-2028, which came into effect on 21<sup>st</sup> April 2022.
- 5.1.2. The site and all surrounding properties are zoned 'Objective A' with a stated objective *'to provide residential development and improve residential amenity while protecting the existing residential amenities.'* 'Residential' which is considered to

include residential extensions, is classified as being 'Permitted in Principle' on lands zoned Objective A.

5.1.3. Policy Objective CAS 6 in Section 3.4.1.2 refers to 'Retrofitting and Reuse of Buildings'.

5.1.4. The following elements of Section 12.3.7.1 'Extensions to Dwellings' are considered relevant to the proposed development: -

(ii) Extensions to the Rear

Ground floor rear extensions will be considered in terms of their length, height, proximity to mutual boundaries and quantum of usable rear private open space remaining. The extension should match or complement the main house.

(iii) Extensions to the Side

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.

...Any planning application submitted in relation to extensions, basements or new first/upper floor level within the envelope of the existing building, shall clearly indicate on all drawings the extent of demolition/wall removal required to facilitate the proposed development and a structural report, prepared by a competent and suitably qualified engineer, may be required to determine the integrity of walls/structures to be retained and outline potential impacts on adjoining properties. This requirement should be ascertained at preplanning stage.

The proposed construction of new building structures directly onto the boundary with the public realm (including footpaths/open space/roads etc), is not acceptable and it will be required that the development is set within the existing boundary on site and shall not form the boundary wall.

5.1.5. Section 12.8.3.3(i) 'Private Open Space for Houses' provides that all houses shall provide an area of good quality useable private open space behind the front building line with 4 bedroom houses requiring a minimum of 75sqm.

## **5.2. Natural Heritage Designations**

- 5.2.1. The site is located c3.5km southwest of the South Dublin Bay and River Tolka Estuary SPA and South Dublin Bay SAC at Booterstown and c7.5km north of both Wicklow Mountains SAC and Wicklow Mountains SPA.

## **5.3. EIA Screening**

- 5.3.1. See completed Form 1 in Appendix 1.
- 5.3.2. The proposed development includes two elements of retention, being a single storey rear extension and conversion of an integrated garage at the side of the existing house. It is not a type of development specified in Part 2 of Schedule 5 to the Planning and Development Regulations 2001 (as amended), so, the question as to whether or not EIA is required or whether or not the development may be sub-threshold does not arise.
- 5.3.1. I conclude that the need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **6.0 The Appeal**

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

- 6.1.1. One third party appeal has been submitted by Geraldine Neilan, who owns and lives at No 44 Westbrook Road, immediately adjacent to the south of the site.
- 6.1.2. Grounds of appeal – 8<sup>th</sup> of May 2024

The appellant asks the board to consider the following:

- The original submission to the planning authority (see separate section below).
- They were not given an opportunity to inspect the plans.
- They were not consulted on whether construction on the boundary wall was permissible.
- They have concerns about the safety aspects of the wall and the foundations with cracks appearing during construction. Their consulting engineer indicated that the

original foundations would not comply with building regulations and have concerns that the walls may not be capable of holding up the extension.

- The height, length and scale of the development will have a negative impact on the ability to sell her property.
- The ambience of her garden and views from the kitchen/dining room have been diminished by the height, exposed brickwork and overhanging roof materials.

#### 6.1.3. Consultant Engineer's email – 26<sup>th</sup> of June 2023

The appeal includes an emailed report from a consulting engineer that states:

- The works would likely consist of an exempted development due to its size and height, but contact should be made with the planning authority to confirm.
- The new wall is double leaf cavity wall and the top part of the outer leaf is built on the shared boundary wall, which is highly unusual and irregular. The wall is c70 years old and the foundations would not comply with current building regulations. The cracking on the walls is most likely associated with the recent additional loading of the new block work. It needs to be established if the new inner leaf is structurally tied to the boundary and therefore dependent on it for stability.

#### 6.1.4. Letter to Planning Enforcement – 5<sup>th</sup> of July 2024

- The appellant wrote to the planning enforcement section seeking that a visit of the site be carried out to check compliance with planning and building regulations.
- The owner had confirmed that there were no plans of the extension.
- The submission was accompanied by a series of photographs showing the then partially constructed rear extension.

#### 6.1.5. Original Objection submitted to Planning Authority – 27<sup>th</sup> of October 2023

- The submission raised the same issues as in the appeal being 1) building on top of shared boundary wall with no information provided regarding foundations 2) structural integrity and cracking concerns; 3) interference with wall without consent; 4) increase boundary height and diminished natural light; 5) impact on garden usage.
- A series of photographs were included showing the outer leaf of the extension built on top of the boundary wall, cracks on the appellant's side of the wall and a worker installing the felt roof.



## **6.2. Applicant Response**

- None

## **6.3. Planning Authority Response**

- The Planning Authority referred the Board to the previous Planner's Report and stated that in its opinion the grounds of appeal do not raise any new matters which, would justify a change of attitude towards the proposed development.

## **6.4. Observations**

- None

## **6.5. Further Responses**

- None

## **7.0 Assessment**

- 7.1. Having examined the application details and all other documentation on file, including the response to further information and information received in relation to the appeal, having inspected the site and the appellant's property, and having regard to relevant local planning policies, I am satisfied that the main issues in this appeal can be dealt with under the following headings:

- Principle of Development
- Conversion of integrated garage at front/side of house.
- Foundations and structural integrity of wall supporting side/rear extension.
- Consent and Legal Interest
- Impact on Residential Amenity
- Impact on light and garden usage
- Conclusion

- 7.1.1. In the interests of clarity for the Board, I confirm that this assessment is based on the plans and particulars submitted in response to the request for further information as they provided some additional details not on the originally submitted plans.

## **7.2. Principle of Development**

- 7.2.1. The subject site is zoned 'Objective A' in the Development Plan with 'residential' being a use that is 'Permitted in Principle'. The Development Plan is generally favourable to extensions, subject to normal planning criteria, and I note section 12.3.7.1 in this regard, which refers to 'extensions to the rear' and 'extensions to the side', which I will address in more detail later in the assessment. I am satisfied that the principle of the development seeking retention in this application is acceptable.
- 7.2.2. There are two separate elements to the development, and while the appellant has raised concerns with only one element, being the extension to the side/rear, I will examine the two aspects of the application separately.

## **7.3. Conversion of integrated garage at front/side of house**

- 7.3.1. The immediate area where the site is located consists of the Westbrook Road area, which together with Highfield forms a single development area that shares a single point of access onto the R117. There is no prevailing style of house design in the area with single and two storey houses, having a mix of pitched, hipped and flat roofs, while some have gabled fronts. The material finishes include nap plaster, dash and brick. The front boundaries of the site are marked by high hedging that restrict views into and out of the site, other than from directly in front of the driveway.
- 7.3.2. The original and revised floor plans, the west elevation and Section A-A all indicate that the converted single storey garage area at the front/side is stepped back from the front building line by 1.1m. This is incorrect as the building line of the converted garage was and is the same as the main building line and the submitted drawings are an inaccurate representation of what was previously in situ and is now in place. The front building line of the converted garage is also consistent with the building line of the appellant's house to the immediate south.
- 7.3.3. In addition, the drawings do not accurately represent the front elevation as the location and sizes of windows are misrepresented.
- 7.3.4. Notwithstanding that all the plans, front and side elevations are inaccurate, I do not consider that this is a significant issue, and I am satisfied that the replacement of the

original garage door with a window to create an additional ground floor bedroom and en-suite, is acceptable, and does not have any impact or effect on the character of the area, which as stated above does not have any prevailing or consistent character. I am further satisfied that the conversion has not affected the amenities of adjoining properties, and would be an acceptable form of development. If the board is minded to grant permission, a condition could be attached requiring an accurate set of as built plans and elevations to be submitted including, accurately representing the footprint of the adjacent houses, which have been inaccurately shown on the submitted drawings.

- 7.3.5. The drawings contain other inaccuracies which I address in the other sections of my assessment.

#### **7.4. Foundations and structural integrity of wall supporting side/rear extension**

- 7.4.1. A key issued in both the original observation to the planning authority and the appeal is that there is a lack of certainty about the nature of or structural capacity of the foundations of the existing boundary wall and of the wall itself, to support the additional wall that has been built on top of it, that forms the outer wall of the rear/side extension, as built.
- 7.4.2. As per Section 12.3.7.1 of the development plan (see section 5.1.4 above), I consider that the extension is both a side and rear extension. Matters to be considered in relation to such extensions include proximity to mutual boundaries while 12.3.7.1 also states, in respect of any planning application submitted in relation to extensions, that a structural report, prepared by a competent and suitably qualified engineer, may be required to determine the integrity of walls/structures to be retained and outline potential impacts on adjoining properties and that this requirement should be ascertained at preplanning stage. I consider that this is one of those circumstances where a structural report should have been provided/required.
- 7.4.3. The request for further information sought revised drawings that would provide an accurate depiction of the works proposed for retention, including revised floor plans that accurately reflect the existing and proposed (pre-retention and post-retention) site layouts, and floor plans, sections, and elevations with full dimensions and all constructed elements accurately displayed, and the applicant did submit revised drawings including a 'Cross-Section 'E'', showing the pre and post development

relationship between the application site and the appellant's property along the shared boundary.

- 7.4.4. I examined this section and inspected both sides of the wall on the occasion of my site visit, and I am satisfied that the extension has been built on top of the party/boundary wall and the 'Proposed as-built section E' in drawing A101 dated the 7<sup>th</sup> of March 2024, that was submitted by the applicant as further information, is inaccurate as 'Section E' incorrectly indicates that the new extension has been built entirely inside of the applicant's sided and independent of the shared boundary wall.
- 7.4.5. While the applicant was not specifically asked to provide foundation details, I consider that it would have been a reasonable request, consistent with the provisions of section 12.3.7.1 of the development plan, particularly considering that the issue was raised by the appellant in the third party submission, and the absence of details could have been addressed by way of a clarification of further information. The only information provided regarding foundations is to indicate a slab lies below both properties. I am satisfied that in the particular circumstances of this appeal, and the grounds of concern raised by the appellant, that their concern have not been adequately addressed by the applicant in the applicant, by way of further information or in response to the grounds of appeal.
- 7.4.6. I noted a number of hairline cracks in the boundary wall on the appellant's side of the wall, however, it is not possible to determine how long they have been in place or the cause of the cracks. No cracks were evident on the appellant's side of the wall, which appears to be recently plastered.
- 7.4.7. If this application was for permission rather than retention then it would be possible to seek further information regarding the nature of the foundations below the boundary wall and the applicant could also be required to step the building back from the boundary to ensure that the proposed extension and its foundations would be entirely with the applicant's property so that the foundations or the boundary wall would not be impacted as a result of the development. However, as the building is constructed, and substantially complete, though not entirely completed, the board must rely on the information provided by the applicant. This includes inaccurate drawings that are lacking any relevant details including regarding foundations.
- 7.4.8. The absence of foundation details in a planning application was addressed in (2020) IEHC 586 'Balscadden Road Saa Residents Association Limited v An Bord Pleanála'

where it was stated that it seems highly desirable if not essential that the dimensions of foundations would be shown on application drawings so that the planning decision-maker could be satisfied that they were adequate with regards to stability and that drawings submitted without foundation details did not comply with the requirement of the Planning and Development Regulations.

- 7.4.9. It is the duty of the applicant to provide sufficient information to ensure that the decision maker can make an informed decision, which would also enable the appellant to understand the extent of the possible impacts of the development on her property. This was highlighted in both the original observation and the appeal. Where deficiencies exist in the application, it is not the role of the board to fix them.
- 7.4.10. Having assessed this application, I am satisfied that the applicant has failed to provide details regarding the structural integrity of the foundations and the southern boundary wall, upon which part of the rear/side extension has been built. For that reason, it is not possible to confirm that the wall is structurally capable of accommodating the building as-constructed, which I am satisfied is contrary to Section 12.3.7.1 of the development plan, which does not make any allowances to disregard structural stability, simply because the development is already in place and is seeking retention, rather than permission in the first instance.
- 7.4.11. In addition, 'Section E' submitted as further information inaccurately depicts the building as being constructed entirely inside of the applicant's side of the shared boundary wall when it has actually been constructed partly on top of the shared boundary wall. This is immediately obvious on visiting the site.
- 7.4.12. In light of the particular circumstances of this appeal, and the lack of a structural report prepared by a competent and suitably qualified engineer, as referenced in Section 12.3.7.1 of the development plan, regarding the structural make up and integrity of walls that the applicant is seeking to be retained, I am not satisfied that sufficient information has been provided to satisfy the board that the side/rear extension as build, would not endanger the structural integrity of the shared boundary wall and I am also satisfied that if it is permitted to be retained as built, it could endanger the health and safety of both the occupants of the existing house and the occupant/s of the adjacent house to the south. Therefore, on the basis of the information submitted, I am satisfied that a grant of retention permission should not be issued in respect of the side rear extension.

## **7.5. Consent and Legal Interest**

- 7.5.1. The applicant indicated at question 7 of the planning application form that they are the owner of the land and/or structure. However, the appellant has stated in both the original submission to the planning authority and in the grounds of appeal, that they did not give consent to the applicant to build on the boundary wall and indicated that they were seeking legal advice in respect thereof.
- 7.5.2. Issues regarding ownership and encroachment are civil issues and a grant of planning permission or in this case retention would not relieve the applicant of their responsibility of complying with any requirements under other codes or legislation. In addition, a grant of retention permission would not entitle the applicant to retain the as constructed wall on the shared boundary if it physically impinges upon an adjoining property without the consent of the adjoining property owner.
- 7.5.3. Notwithstanding the information provided by both parties, neither the applicant nor the appellant has provided any legal evidence as to whether the boundary wall separating their properties is owned exclusively by either party or is in shared ownership by both properties, while neither property is registered in the land registry.
- 7.5.4. The applicant had an opportunity to address the matter of ownership of the wall in a response to the grounds of appeal and confirm whether they were entitled to build a new wall on top of the existing boundary wall. They did not respond to the appeal.
- 7.5.5. The planning officer's report did not address consent or ownership of the boundary wall and the planning authority did not address the matter by way of further information. On the basis of the information on the appeal file, I am satisfied that neither party has demonstrated that they actually own the wall in its entirety, or that it is owned mutually by each party.
- 7.5.6. The red line on the site location map and site layout plan submitted with the application are inconclusive as to the extent of the site, while the dimensions and hatched lines shown on the floor plans would indicate that the extent of ownership is the middle of the shared boundary wall with the appellant's property. If that is correct the, the outer wall of the extension would be built outside of the applicant's property boundary. The absence of definitive evidence means that it is not possible to reach a definitive conclusion on this matter.

7.5.7. The requirement to provide written consent under article 22(2)(g) of the Planning and Development Regulations 2001 (as amended) relates only to the making of a planning application on the date of the submission of the application and not to the subsequent carrying out of a development. The role of the board in considering this appeal, is limited and the determination of title is not a matter for the Board. The Board can grant planning permission, subject to the provisions of Section 34(13) of the Planning and Development Act 2000 (as amended), which states that 'A person shall not be entitled solely by reason of a permission under this section to carry out any development'. In this case, the development has already been substantially completed and works were continuing on the occasion of the site visit, although that part of the wall that faces south into the rear garden of the appellants property was in an unfinished state, with four rows of exposed blockwork sitting atop of a stringcourse of blocks on top of the boundary wall. Without the consent of the appellant, which has not been provided, the applicant cannot render the wall and make it weather proof thereby meaning it would remain exposed, affecting its long term structural stability.

7.5.8. Based on the information provided in the application, the issues raised by the appellant and the unfinished condition of the new block wall on the appellant's side of the shared boundary wall, which cannot be made weather tight without the consent of the appellant, as access is required from the appellants side the wall, and to the dimensions provided in the application plans that indicate that the extent of their property ownership extends to the middle of the original boundary wall, on top of which the new wall has been built, I am not satisfied that the applicant can complete the structure to a satisfactory standard. For those reasons I am not satisfied that the applicant has demonstrated that they have sufficient legal interest to make the application.

**7.5.9. Impact on Residential Amenity**

7.5.10. The plans and elevations submitted with the application and in response to the request for further information do not accurately reflect the extent of the works carried out on the southern boundary wall that is shared with the appellants property. They indicated that the pre-development ground floor was in line with the rear building line of the appellant's home and despite being requested to provide accurate drawings in response to the request for further information, none were provided. The drawing also indicate that the new side/rear extension extends 1.8m behind the

original building line. That is incorrect. The wall of the extension seeking retention, which has been built on top of the boundary wall extends c 4.75m behind the building line of the appellant's property while it extends c0.96m above the height of the existing boundary wall.

7.5.11. The block wall that has been built on top of the party wall has not been rendered on the appellant's side of the boundary, which is less than ideal from the perspective of ensuring the extension is weather tight for the applicant or visually from the perspective of the appellant. The wall is full of mortar joints that will draw in water over time as will the pores in the blocks, affecting the integrity of the structure, while the edge of the timber roof on the appellants side of the wall is also unfinished and will draw in water, causing damage to the roof over time.

7.5.12. I also note that the 'Proposed as-built section E', does not indicate if a cavity wall has been constructed, and if the wall is a solid one, which would be left in an unfinished state, on the appellants side of the shared boundary, there is a significant risk of moisture ingress to the property. While the planning officer referred to the personal circumstances of the applicant, permission enures to the benefit of land not to the particular applicant. Therefore to permit retention of the structure that cannot be made weathertight would set a dangerous precedent for other some other forms of development, and in my opinion is unacceptable in terms of the impact on the amenity of the occupants of the application site.

7.5.13. I also consider that the wall as built, which in the absence of consent, would remain in an unfinished state, is not acceptable, and would be detrimental to the residential amenity of the adjacent property to the south.

## **7.6. Impact on light and garden usage**

7.7. The appellant raised concerns that the development as constructed would impact on natural light and their usage of their rear garden.

7.8. With regard to light, the c4.75m long wall that has been built on top of the boundary wall has been built due north of the appellant's rear garden and the applicant has a deciduous tree growing immediate outside of their rear patio widows adjacent to the extension. While the extension as built, immediately on the boundary wall is c0.96m higher than the original wall, and will result in a loss of outlook from the interior of the appellants home, I am satisfied that the development as constructed has not resulted in a development that would have significant negative impact on the amount of light



reaching the rear interior of the appellant's home, due to its location to the north of the appellant's open space.

7.9. With respect to usage of the garden, the applicant's patio area is located along the northern boundary of the site, immediately below where the new 4.75m long and 0.96m high wall has been built on top of the existing boundary wall. In light of the lack of confirmation about the structural make up or integrity of the existing wall on top of which the extension has been built, I consider, having visited the site, that the amenities of the appellant have been negatively affected. I am also satisfied, particularly by reason of the unfinished nature of the wall. that the rear/side extension appears overbearing from the appellant's garden.

#### 7.10. **Conclusion**

7.10.1. Extensions to the side and rear of the house are acceptable in principle and in normal circumstances would not raise any concerns.

7.10.2. With respect to the converted garage at the front/side, I acknowledge that the plans are not reflective of the building as it is constructed. It is not the role of the board to correct less than satisfactory applications, however, in respect of this element of the development, I consider that the attachment of conditions can address the inaccurate drawings.

7.10.3. Regarding the side/rear extension, the application is for retention permission and there is no reason why full and accurate plans, elevations and sections could not be submitted. The structural integrity of the foundations shared boundary wall on which part of the extension has been built has not been confirmed in a manner consistent with section 12.3.7.1 of the development plan, while the ownership of wall has not been confirmed, while there are inconsistencies and inaccuracies in the application drawings. Unlike the converted area to the front/side in my opinion, the above anomalies cannot be addressed by way of a condition. Additionally, the applicant has not confirmed or demonstrated that they have the consent of the appellant to finish the house to an acceptable standard to make it weathertight.

7.10.4. Notwithstanding that the principle of both extensions is acceptable, the issues raised by the third party at both application stage and on appeal in respect of the side/rear extension, have merit, and have not been adequately addressed in the application or the appeal, despite opportunities being provided to the applicant to do so. I am not satisfied that the board has before it sufficient information from which it can make a

fully informed decision on the side/rear extension application, and I would consider the board is precluded from granting permission for this development.

## **8.0 AA Screening**

- 8.1.1. I have considered the proposed works consisting of retention of a single storey rear extension and conversion of an integrated garage at the side of the existing house, in light of the requirements S177U of the Planning and Development Act 2000 as amended.
- 8.1.2. The subject site is located c3.5km southwest of the South Dublin Bay and River Tolka Estuary SPA and South Dublin Bay SAC at Booterstown and c7.5km north of both Wicklow Mountains SAC and Wicklow Mountains SPA.
- 8.1.3. The proposed development has already been carried out and comprises conversion of an existing integrated garage (12.42sqm) at the side of the existing house and the construction of a single storey extension (18sqm) at the rear of the house.
- 8.1.4. No nature conservation concerns were raised in the planning appeal, while the planning authority considered that a Stage 2 AA would not be required.
- 8.1.5. 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 small scale and nature of the proposed works, resulting in a net increase in floor area of 18sqm at the rear of the house.
  - The distance from the nearest European site and lack of connections, as the site connects to the existing public surface water drainage network and public sewer.
  - The comments in the planning officer's report regarding Appropriate Assessment.
- 8.1.6. 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.
- 8.1.7. 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

Having regard to the above assessment, I recommend a SPLIT DECISION.

I recommend a GRANT of retention permission for the conversion of a garage located to the side of the dwelling into habitable accommodation based on the reasons and considerations marked (1) under and subject to the conditions set out below.

I recommend a REFUSAL of retention permission for the development of a single-storey rear extension based on the reason and considerations marked (2) below.

## 10.0 Reasons and Considerations (1)

Having regard to the nature, scale and design of the converted area proposed to be retained, to the 'Objective A' zoning of the site, as set out in the Dun Laoghaire Rathdown County Development Plan 2022-2028, and to the specific characteristics of the site and surrounding residential area, it is considered that, subject to compliance with the conditions set out below, the development proposed to be retained would not seriously injure the residential or visual amenities of the area and would, therefore, be in accordance with the proper planning and sustainable development of the area.

### Conditions

- 1 Within a period of 3 months of the grant of permission, the applicant shall submit to the planning authority for its records, revised and fully dimensioned floor plans, elevations and sections accurately representing the converted garage at the front of the dwelling, as it has been built.

**Reason:** In order that an accurate record of the as built development is provided to the planning authority and in the interest of clarity.

- 2 The converted garage shall form part of the existing dwelling, which shall not be sub-divided or used as two or more separate habitable dwellings.

**Reason:** To prevent unauthorised development

## 11.0 Reasons and Considerations (2)

- 1 On the basis of the information submitted with the application and appeal, with particular regard to:
  - 1) inaccuracies in the plans, elevations and sections in respect of the position where the external wall of the rear/side extension has been constructed along the southern site boundary, which has been built on top of the shared boundary wall, rather than within the application site as indicated in the 'Proposed As built Section E';
  - 2) the absence of a structural report from a suitably qualified engineer in accordance with Section 12.3.7.1 of the Dun Laoghaire Rathdown Development Plan 2022-2028, to determine that the integrity of the boundary wall and foundations and confirm that they are capable of supporting the extension as built, or of the potential impacts of the extension on the amenities of the occupants of the house and the adjacent property to the south, as the extension as constructed is incapable of being finished and made weathertight;
  - 3) the absence of adequate information confirming that the applicant has sufficient legal interest to carry out the development in that they own the southern boundary wall or have consent of the neighbouring landowner;

the Board cannot be satisfied that the structural integrity of the rear/side extension would not pose a risk to the health, safety and residential amenities of the occupants of both the application site and the adjacent property to the south, while the board cannot be satisfied that the applicant had the legal consent to carry out and complete the development as built, a concern that is supported by the unfinished nature of the roof and southern external boundary wall built on top of the shared boundary wall. In such circumstances, it is considered that it would be inappropriate for the board to consider a grant of permission for the rear/side extension proposed to be retained in such circumstances.

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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Joe Bonner  
Senior Planning Inspector

31<sup>st</sup> July 2024

**Appendix 1 - Form 1**  
**EIA Pre-Screening**  
**[EIAR not submitted]**

<b>An Bord Pleanála Case Reference</b>	ABP-319682-24			
<b>Proposed Development Summary</b>	Retention permission for the development of a single-storey rear extension and conversion of a garage located to the side of the dwelling into habitable accommodation and all associated works.			
<b>Development Address</b>	42 Westbrook Road, Dundrum, Dublin 14, D14 K403			
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	X	
		<b>No</b>	No further action required	
<b>2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>				
<b>Yes</b>			EIA Mandatory EIAR required	
<b>No</b>	X		Proceed to Q.3	
<b>3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?</b>				
		<b>Threshold</b>	<b>Comment (if relevant)</b>	<b>Conclusion</b>
<b>No</b>	X	N/A		No EIAR or Preliminary Examination required
<b>Yes</b>				Proceed to Q.4
<b>4. Has Schedule 7A information been submitted?</b>				
<b>No</b>	N/A		Preliminary Examination required	
<b>Yes</b>			Screening Determination required	

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