



An  
Bord  
Pleanála

## Inspector's Report ABP-319745-24

<b>Development</b>	Construction of extensions, modifications and alterations to the existing dwelling.
<b>Location</b>	45 Nutgrove Park, Dublin 14 D14Y285
<b>Planning Authority</b>	Dun Laoghaire Rathdown County Council
<b>Planning Authority Reg. Ref.</b>	D24A/0112
<b>Applicant</b>	Teresa LeGear Keane
<b>Appellant</b>	Aoife Berrigan and Others
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant permission
<b>Type of Appeal</b>	Third Party
<b>Observers</b>	None
<b>Date of Site Inspection</b>	9 <sup>th</sup> August 2024
<b>Inspector</b>	John Duffy

## **1.0 Site Location and Description**

- 1.1. The site has a stated area of 0.0292 hectares and accommodates a two-storey semi-detached house (gross floor space of 171 sqm) with off-street car parking and a rear garden. The appeal property is located on the western side of Nutgrove Park within an established and mature suburban housing estate where the predominant house type comprises traditional two storey dwellings with front gardens, driveways, and rear gardens.
- 1.2. Many of the properties in the immediate vicinity including the adjoining house to the south have been upgraded and extended.

## **2.0 Proposed Development**

- 2.1. The proposed development comprises the extension of and alterations to the house as follows:
  - (i) Extension to the side of the house at first floor level above the converted garage.
  - (ii) Extension to the rear of the house at first floor level above the existing single storey extension.
  - (iii) Modification and extension of the roof space to facilitate a studio space at attic level to be served by a dormer structure measuring approximately 4.5 m in width

The gross floor space of proposed works is stated as 64 sqm.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The Planning Authority granted permission on the 22<sup>nd</sup> April 2024 subject to 4 conditions. Noteworthy conditions include the following, in summary:

Condition 2: Proposed rear dormer at attic level to be reduced in width to 3 m when measured externally.

Condition 3: Existing dwelling and proposed extension to be jointly occupied as a single residential unit.

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

#### **3.2.1. Planning Report**

The report of the area planner notes the site's planning history, the policy context and third party submissions made in respect of the planning application. The principle of the proposed development is considered acceptable given the residential zoning of the site. The report considers the bulk and massing of the dormer structure along with its fenestration are excessive and would contribute to undue impact of visual prominence and overbearing impacts, noting the width of the structure, and that this issue can be addressed by a condition requiring a reduction in dormer width. The report notes that the house appears occupied as a single dwelling by students.

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

None.

### **3.3. Prescribed Bodies**

No reports received.

### **3.4. Third Party Observations**

Nine third-party submissions were received by the Planning Authority in respect of the proposed development. The main issues raised are summarised as follows:

- The appeal property is run as a commercial multi-unit student and non-student hostel and has a detrimental impact on the adjoining area
- Concerns raised in relation to increases in anti-social behaviour, fire safety issues, the potential number of occupants if permission is granted and increased noise and disturbance
- Fire Safety Certificate is required
- Parking issues and associated concerns
- Overcrowding of house and overdevelopment

- Proposed attic, study / office should not be occupied as bedroom accommodation
- Site notice relating to previous application was not removed as required
- Proposed extension is excessive and is not in keeping with similar extensions in the area
- No material difference between previous and current applications
- Front rooflights depicted on floor plan but not included on the elevation drawings.

## 4.0 Planning History

### Appeal Site

**Planning Authority Reference D23B/0309** refers to an August 2023 decision to refuse permission to construct first floor side and rear extensions, modifications and extensions to the roof including dormer windows to the front and rear. Permission was refused for two reasons, as summarised below:

1. The proposed rear first-floor extension comprising excessive bulk results in a visually dominant and overbearing structure; the proposed bulk also results in the associated fenestration presenting undue risk of overlooking due to its massing and scale within the rear elevation of the subject extension. The subject development would therefore result in undue risk of injury to the adjoining residential amenity.
2. The proposal would not accord with the Development Plan by virtue of the damage to visual amenity of the streetscape posed by the front-facing dormer at attic-level. Insufficient precedent for such development is noted, resulting in the proposed dormer to present as a visually dominant structure of high contrast within the receiving residential area.

**Planning Authority Reference D06B/0745** refers to an October 2006 decision to grant retention permission for a single storey flat roofed extension to the rear.

Relevant condition:

Condition 3: That the entire premises be used as a single dwelling unit.

**Planning Authority Reference D03B/0628** refers to a 2003 decision to grant permission for conversion of the garage to living accommodation.

### **Adjoining sites**

**Planning Authority Reference D21A/0361** refers to a June 2021 decision to grant permission for modifications and extensions to existing semi-detached house at No. 46 Nutgrove Park.

**Planning Authority Reference D09A/0276** refers to a June 2009 decision to grant permission for, inter alia, a first floor extension to the side/front and an extension to the existing attic conversion to include a new rear dormer window at No. 44 Nutgrove Park.

### **In the immediate area**

**Planning Authority Reference D22A/0665** refers to an October 2022 decision to grant permission for, inter alia, single and two storey extensions to the existing house at No.11 Nutgrove Park.

**Planning Authority Reference D22A/0234** refers to a May 2022 decision to grant permission for, inter alia, a first floor extension to the front and side of the dwelling, rear single storey extension and all ancillary site works at 30 Nutgrove Park.

**Planning Authority Reference D21A/1104** refers to a March 2022 decision to grant permission for, inter alia, construction of a part single and part two storey extension, conversion of garage and first floor extension above at 32 Nutgrove Park.

**An Bord Pleanála Ref. ABP-310000-21 / Planning Authority Ref. D20B/0398** refers to a June 2021 decision to grant permission for a two-storey extension, dormer windows to the rear, internal reconfigurations and site development works at 26 Nutgrove Park.

## **5.0 Policy Context**

### **5.1. Development Plan**

5.1.1 The operative Development Plan is the Dun Laoghaire Rathdown County Development Plan 2022-2028 according to which the site is within an area subject to zoning objective 'A' – 'To provide residential development and improve residential amenity while protecting the existing residential amenities.'

5.1.2 Development management standards and guidance is contained in Chapter 12. Additional accommodation in existing built-up areas is included at section 12.3.7 while section 12.3.7.1 provides guidance in relation to front, side, rear extensions, attic conversions and dormer extensions.

### **5.2. EIA Screening**

5.2.1 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.

### **5.3 Natural Heritage Designations**

5.3.1 The appeal site is not located within or in the vicinity of any European site. The South Dublin Bay SAC and the South Dublin Bay and River Tolka Estuary SPA are the closest Natura 2000 sites located approximately 2.5 kms north-east of the proposed development.

## **6.0 The Appeal**

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

This is a third-party appeal from Aoife Berrigan, Ronan Donovan and Others, all of whom have addresses in Nutgrove Park. The grounds of appeal are summarised as follows;

- The subject property is run as a commercial multi-unit student and non-student hostel which has detrimental impacts on the community in Nutgrove

Park in terms of anti-social behaviour and noise and disturbance. Such instances will increase given the proposed development comprises two additional bedrooms and attic accommodation, with the potential to increase the number of occupants from 10 to 16.

- Other adverse impacts include traffic congestion and parking problems due to the large number of occupants of the property. Tenants' vehicles block traffic including emergency vehicles and bin trucks and give rise to safety concerns for pedestrians and wheelchair users. There is insufficient off-street car parking to cater for the tenants.
- The house is overcrowded and overdeveloped. Rooms are used mostly by students during the academic year and as short-term lets for the summer months. In this regard letting the property on a short-term basis should entail a separate planning application for change of use.
- Fire safety concerns are raised in terms of the subject property and adjoining houses. The planning application does not detail how fire safety regulations are to be met. If the proposed development is granted permission, conditions should be included requiring the local authority to inspect the premises, that fire regulations are complied with and that the proposed attic study / office is not used as bedroom accommodation.
- The current use of the property constitutes an unauthorised material change of use which will be intensified if permission is granted. The level of lettings carried out per year along with the high turnover of tenants is not proportionate to the intended use of the property as a home. The use of a premises for the purpose of short-term lettings has been put on a statutory footing by way of section 3A of the Planning and Development Act 2000, as amended.
- The changes proposed in the current application compared to the previous application refused under Planning Authority Reference D23A//0309 are considered insufficient to warrant a grant of permission.
- It is understood it was a condition of the planning permission that the subject property be used as a single dwelling unit however its present use is not

considered to be an authorised use. (In this context and as the original permission for the subject dwelling is unavailable, a copy of a permission relating to a house in the immediate area under Planning Authority Reference 91A/1189 is appended to the appeal; condition 3 of the permission states that it be used as a single dwelling unit).

The appeal submission includes detailed summaries of case law relating to material change of use and intensification of use having regard to factors such as noise, traffic and parking.

## **6.2. Response from applicant**

The applicant has submitted a response to the appeal which is summarised as follows:

- The subject property was purchased by the applicant in 1985 and it has been a private residence since then and will continue as such.
- The applicant is a private landlord and is registered with the Residential Tenancies Board.
- Misleading allegations contained in the appeal, including parking issues raised, are refuted.
- All of the appellants have applied for comparable extensions which have been granted permission.
- The house was constructed in the 1940's and requires upgrading. The planning application is for a domestic extension with modifications and alterations. The precedent for this development type has been repeated numerous times in Nutgrove Park.

## **6.3. Planning Authority Response**

- 6.3.1. The planning authority considers that the appeal grounds do not raise any new matter which would justify a change of attitude to the proposed development.

## **6.4. Observations**

None.



## **7.0 Assessment**

7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, the reports of the local authority, and having inspected the site, and having regard to the relevant local and national policies and guidance, I consider that the substantive issues in this appeal to be considered are as follows:

- Scope of appeal
- Land-use and nature of the proposed development
- Impact on the visual and residential amenities of the area
- Other issues
- Appropriate Assessment

## **7.2. Scope of Appeal**

7.2.1. The main thrust of the third party appeal is that the subject property has undergone a material and unauthorised change of use to a multi-unit commercial premises rented by students during the academic year and used for short-term letting purposes during the summer months, and that adverse impacts arising from such use would be intensified should planning permission for the proposed development be granted.

7.2.2. I note that the proposed development as applied for and as reflected in the public notices relates to the construction of extensions to a house. Therefore, this report shall provide an assessment of the proposed development for the Board giving due consideration to the grounds of the appeal.

## **7.3. Land-use and nature of the proposed development**

7.3.1. The proposed development comprises domestic extensions to an existing house. This development type is acceptable in principle at this suburban location which is zoned Objective 'A.' Section 12.3.7.1 of the Dun Laoghaire County Development Plan 2022-2028 supports the development of well-designed residential extensions providing that

proposals do not have significant impacts on surrounding residential or visual amenities. These matters are examined below.

#### **7.4. Impact on the visual and residential amenities of the area**

- 7.4.1. I am of the view that the nature, design and scale of the proposed development is acceptable, given that it would be entirely consistent with other similar development in the immediate locality. In this regard I note that several dwellings in the immediate area, including the neighbouring property to the south (No. 44 Nutgrove Park), have been extended in a similar manner to that proposed in the subject application.
- 7.4.2. The proposal comprising additional bedroom accommodation at first floor level and conversion of the attic to studio space would not negatively impact on the amenities currently enjoyed by occupants of this residential area. External finishes / materials will accord with the existing house and those in the immediate area and I am satisfied that the proposed development would not seriously injure the visual amenity of the adjoining area.
- 7.4.3. As referred to above there is precedent in the immediate area for the development type proposed. The single storey extension to the side at first floor level above the converted garage is acceptable. Modifications to the roof profile of the house are required, with the hipped roof extending southwards to facilitate both the side extension and the conversion of the attic space which is to be served by a rear dormer structure measuring approximately 4.5 m in width, according to the floor plans. In this regard there appears to be a discrepancy in terms of the width of the dormer structure on the rear elevation drawing, which measures 3 m. I concur with the planning authority's assessment that the width of the rear dormer at attic level should be reduced to 3 m when measured externally in the interests of visual and residential amenity. If the Board is minded to grant permission, I recommend that a condition in this regard is attached. Separately, it is noted from the plans provided that the attic room would be non-habitable.
- 7.4.4. The proposed rear first floor extension with flat roof has a depth of approximately 3 m from the rear wall plate and is set back approximately 3.4 m from the boundary with No. 46 which ensures there are no undue overbearing or overshadowing impacts on that property. Having regard to the design of the proposed development

and the separation distance to the rear site boundary I consider that no undue overlooking impacts leading to a loss of privacy would arise.

- 7.4.5. To conclude, in my opinion the proposed development would not seriously injure the residential or visual amenities of the area.

## **7.5. Other issues**

### **7.5.1. Planning history**

- 7.5.2. The appellants consider the changes made to the planning application (the subject of this appeal) when compared to the previous application (Reg. Ref. D23B/0309 refers) are insufficient to warrant a grant of permission. Having examined both applications, I consider that there are fundamental differences between them. For instance, a front dormer window was proposed in the previous application and omitted in the current proposal. Furthermore, a larger, deeper and wider rear first floor extension which almost spanned the width of the dwelling was proposed in the earlier application. In my view such differences are material and significant.

### **7.5.3. Fire safety**

- 7.5.4. I note the matters raised in relation to fire safety in the context of the proposed development. All landlords must ensure their properties are fully compliant with fire safety and minimum standards regulations for rental properties as set out in the Housing (Standards for rented houses) Regulations 2019. Enforcement of these standards is dealt with by local authorities. As such this matter need not concern the Board for the purposes of this appeal.

### **7.5.5. Parking**

- 7.5.6. The appellants suggest that parked vehicles from the subject property cause traffic problems in the area and that this situation would be exacerbated if permission for the proposed extensions is granted. Such issues, including traffic management and illegal parking are dealt with under road traffic legislation and are not matters for consideration in this appeal.

### **7.5.7. Enforcement matters**

- 7.5.8. Having regard to the concerns of the appellants as set out in the appeal I note that any issues relating to unauthorised development are matters for the planning authority to

address through the enforcement process. Such matters are outside the remit of the Board.

## **7.6. Appropriate Assessment**

7.6.1. I have considered the proposed development in light of the requirements S177U of the Planning and Development Act 2000 as amended.

The subject site is located in an urban area in Clonskeagh.

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:

- Small scale and nature of the development
- Location-distance from nearest European site and lack of connections
- Taking into account the determination by the Planning Authority

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.

## **8.0 Recommendation**

8.1. I recommend that planning permission be granted for the proposed development subject to the conditions set out below.

## **9.0 Reasons and Considerations**

9.1 Having regard to the location of the site in an area zoned 'A' in the Dun Laoghaire Rathdown County Development Plan 2022 – 2028 for which the zoning objective is 'To provide residential development and improve residential amenity while protecting the existing residential amenities,' it is considered that, subject to compliance with the

conditions set out below, the proposed development would not be injurious to the residential and visual amenities in the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	<p>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.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>The house and the extension shall be occupied as a single dwelling unit and shall not be subdivided or used for commercial purposes. The extension shall not be let, leased or otherwise transferred save as part of the single dwelling unit.</p> <p><b>Reason:</b> In the interest of residential amenity.</p>
3.	<p>Drainage arrangements, including the attenuation and disposal of surface water shall comply with the requirements of the planning authority for such works and services.</p> <p><b>Reason:</b> In the interest of public health.</p>
4.	<p>The proposed rear dormer structure shall be reduced in width to 3 m when measured externally.</p> <p><b>Reason:</b> In the interest of visual and residential amenity.</p>
5.	<p>Details of the materials, colours and textures of all the external finishes to the proposed extensions shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p>

	<p><b>Reason:</b> In the interest of the visual amenities of the area.</p>
6.	<p>Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between the hours of 0700 to 1400 hours 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.</p> <p><b>Reason:</b> In order to safeguard the amenities of property in the vicinity.</p>
7.	<p>That all necessary measures be taken by the contractor to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.</p> <p><b>Reason:</b> To protect the amenities of the area.</p>
8.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p><b>Reason:</b> It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>

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

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John Duffy

Planning Inspector

27<sup>th</sup> August 2024