



An
Bord
Pleanála

Inspector's Report ABP 320130-24

Development	Demolition of single-storey structures to rear of existing dwelling for the construction of new extension; internal and external modifications to the existing dwelling, together with all associated site works.
Location	18, Mellifont Avenue, Dun Laoghaire, Dublin, A96 W732
Planning Authority	Dun Laoghaire-Rathdown County Council
Planning Authority Reg. Ref.	D24A/0259/WEB
Applicant(s)	Robert Hussey and Sonia Getty
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First Party against conditions
Appellant(s)	Robert Hussey and Sonia Getty
Observer(s)	None
Date of Site Inspection	26/09/2024
Inspector	Rosemarie McLaughlin

1.0 Site Location and Description

- 1.1. The appeal site is a mid-terrace, one storey, over semi-basement level dwelling, set back and fronting Mellifont Avenue to the northwest, in Dun Laoghaire, Co. Dublin. The rear of the appeal site has a dog legged section that extends to Stoneville Place which is a cul de sac terminating in part at a rear access to the appeal site. The rear elevation has a two storey return extension located centrally on the rear elevation with a blank façade at the upper floor level.
- 1.2. To the northeast and southwest of the appeal site are attached dwellings, Numbers 17 and 19 Mellifont Avenue. No.17 is a larger two storey over basement house set forward of No.18 at the front with a three storey return accessed by steps from the rear garden on the northern side. The house at No. 19 is the same scale as No.18 and has a two storey and single storey rear extension. It was not possible to gain access to the rear of the site on inspection (26/09/2024).

2.0 Proposed Development

- 2.1. The development is described in the public notices as follows. “Demolition of existing single storey structures to rear of existing dwelling including boiler house. Alterations to the return extension including enlargement of existing openings to the sides and new opening to the rear. Enlargement of existing openings to the rear elevation of the main dwelling. 2 no. of rooflights to the rear roof slope. Construction of single storey extension to the rear of existing dwelling including new stairs and new terrace with associate private screens. All associated alterations, demolitions, site, drainage, landscaping and ancillary works”.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority (PA) granted permission subject to 5 no. conditions. Conditions 1,3,4 and 5 are standard conditions. Condition No.2, the subject of the appeal states as follows.

3.1.2. *“2. Prior to construction, the Applicant shall submit to the Planning Authority for their written approval, revised plans detailing the following modifications to the proposal:*

a) The upper floor balcony shall be reduced in extent to the northeastern part of the roof, off the proposed Den room; it shall be no deeper than the rear wall of the Sitting Area; and its southwestern boundary shall not extend beyond the northeastern facade of the existing upper floor rear extension. Amendments to the stair to the rear garden may be required on foot of this condition

b) On the southwestern and rear façade of the existing upper floor rear extension (Sitting Area as per the submitted plans), the proposed large picture window and the southwestern double doors shall be replaced with a respective window treatments which are more in keeping with the scale of the existing openings on the rear elevation.

c) Proposed doors on the rear facing of the dining/kitchen area shall be omitted and replaced by standard windows.

REASON: In the interest of safeguarding neighbouring residential amenity and architectural heritage”

3.2. Planning Reports

3.2.1. **Planning Report (12/06/2024):** Permission was recommended to be approved subject to the conditions outlined above. The main concerns in the planning report relate to the proposed upper floor balcony. It was considered the balcony should be reduced in its extent and confined to the northeastern corner of the roof area. It was considered that a reduced roof terrace would be sufficient to meet the needs of the residents in the dwelling and would not negatively impact on adjoining amenity. It was considered the addition of double doors onto the roof terrace was not warranted and that same should be more in keeping with the scale of the existing openings on the rear elevation. The proposed large picture window was reviewed by the conservation section, and it was recommended that the window be reduced in size and replaced with a standard sized casement window.

3.3. Other Technical Reports

3.3.1. **Transport Planning Report (21/5/2024):** No objection subject to two standard conditions.

- 3.3.2. **Drainage Planning Report** (22/5/2024): No objection subject to standard condition.
- 3.3.3. **Conservation Report** (20/05/2024): No objection and the conservation officer (CO) does not consider the works to result in any detrimental impact on the Haigh Terrace to Park Road Architectural Conservation Area (ACA). The CO is opposed to the size of the proposed window opening on the rear elevation of the return and requests a condition be attached requesting revised proposals more in keeping with the scale of the existing openings on the rear elevation.

3.4. **Prescribed Bodies**

None.

3.5. **Third Party Observations**

- 3.5.1. One third party submission from Stoneville Residents Association to the planning authority related to risk to the rear access area during construction and requested no construction traffic be allowed to use the narrow lane.

4.0 **Planning History**

- 4.1. **Subject Site:** There is no recent relevant planning history on the subject site. PL.06D.096053 (D95A/0132), permission was refused for four houses to rear of 17,18 and 19 Mellifont Avenue (5/10/1995).
- 4.2. **Relevant planning history in vicinity:** 17 Mellifont Avenue: ABP 315385-22 (D22A/0755): On the adjacent site to the northwest, permission was granted for single-storey pitched-roofed extension to the rear including a new rooflight, a new sliding door facing rear garden and a new high-level window facing south, and internal alterations. (07/07/2023).

5.0 **Policy and Context**

5.1. **Development Plan**

- 5.1.1. The Dun Laoghaire Rathdown County Development Plan 2022-2028 (CDP) applies. The zoning objective is 'A' which seeks 'to provide residential development and

improve residential amenity while protecting the existing residential amenities'. Residential development is permitted in principle under this zoning objective.

5.1.2. The site is located within Haigh Terrace to Park Road Architectural Conservation Area (ACA).

5.1.3. Section 12.3.7.1 relates to extensions to dwellings.

5.1.4. Chapter 11: Policy Objective HER13: Architectural Conservation Areas. In summary, it is a Policy Objective to protect the character and special interest of an area which has been designated an ACA; Ensure that all proposals within an ACA are appropriate to the character of the area; Ensure that any new development is appropriate in terms of the proposed design, including scale, height, mass, density, building lines and materials; Seek a high quality, sensitive design and/or sympathetic to their context and scale whilst simultaneously encouraging contemporary design which is in harmony with the area.

5.2. Natural Heritage Designations

5.2.1. The appeal site is not located in or immediately adjacent to a designated European Site, a Natural Heritage Area (NHA) or a proposed NHA.

5.3. EIA Screening

5.3.1. Having regard to the nature and modest scale of the proposed development, its location in a built-up urban area and the likely emissions therefrom it is possible to conclude that the proposed development is not likely to give rise to significant environmental impacts and the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

6.0 The Appeal

6.1. Grounds of Appeal

- The appellant is appealing Condition No.2 parts (a), (b) and (c).
- The appellant has no issue with replacing the proposed double doors on the southwest upper floor return with a window. The purpose of the doors was to provide symmetry in the return. The purpose of a door from the kitchen/dining

area is to allow the appellant's dog access to the rear garden from the upper floor kitchen area, rather than going downstairs to the basement level to access the garden. The appellants are fully amenable to placing barriers at the northeastern and southeastern areas of the return to ensure no human accessibility but request that the condition be reviewed from a practical perspective. The first party appellants have no intention to use the southwestern corner as a balcony or terrace and the same is true for the northeastern corner, as it is simply for garden access.

- The architect's original design placed the kitchen in the northeastern section of the house, but that would require the removal of an original interconnecting door feature which would not be appropriate to the sympathetic renovation of the property.
- The house has two different ceiling levels on the upper floor and the lack of light from the hallway makes the house very dark. Aesthetically, erecting a rectangular window where there is a vaulted roof would be visually and architecturally unsympathetic to the form and substance of the house. The Board is requested to look at precedents at No.16 Mellifont Ave, Sussex St, York Road and Christchurch, where photographs have been provided. While the plans refer to the return as a sitting area, it has been just labelled as such for ease of reference and it is simply the end of the hallway and a view to the garden.
- There were no objections from the neighbours to the proposed development and the application was discussed with them. The Board is requested to remove/modify the conditions to enable the upper floor balconies to extend over the extension on the ground floor, and barriers be placed on the southwestern and northeastern points of the return, limiting access. It is requested that the southwestern balcony shall be available via a door at the end of the dining/ kitchen area to allow access for the dog from this area and it is requested that the installation of the window in the rear wall of the return be allowed as designed.

6.2. Planning Authority Response

- 6.2.1. The Board is referred to the Planner's report. The grounds of appeal do not raise any issue that would warrant a change in the attitude of the authority.

6.3. Observations

- 6.3.1. There are no observations on file to the appeal.

6.4. Further Responses

None.

7.0 Assessment

- 7.1. This appeal is against a condition set by the planning authority, i.e. under S. 139 of the Act as follows:

139.—(1) Where—

(a) an appeal is brought against a decision of a planning authority to grant a permission,

(b) the appeal relates only to a condition or conditions that the decision provides that the permission shall be subject to, and

(c) the Board is satisfied, having regard to the nature of the condition or conditions, that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted, then, subject to compliance by the Board with subsection (2), the Board may, in its absolute discretion, give to the relevant planning authority such directions as it considers appropriate relating to the attachment, amendment or removal by that authority either of the condition or conditions to which the appeal relates or of other conditions.

(2) In exercising the power conferred on it by subsection (1), apart from considering the condition or conditions to which the relevant appeal relates, the Board shall be restricted to considering—

(a) the matters set out in section 34(2)(a), and

(b) the terms of any previous permission considered by the Board to be relevant.

- 7.2. I am satisfied that the determination by the Board of this application as if it had been made to it in the first instance would not be warranted. I will therefore confine myself to the issues raised by the appellant with regard to Condition no. 2 parts (a),(b) and (c).
- 7.3. The proposed development provides for a c.42 sqm rear terrace (referred as a balcony by the PA), on the roof of a proposed ground floor extension on a terraced house. Condition 2(a), (b) and (c) are interrelated. Condition 2(a) reduces the proposed northeastern terrace space to an area aligned to the existing extension return. Condition 2(b) and (c) remove the southwest terrace area by replacing the proposed doors accessing the southwestern terrace (Condition 2(b)) and the proposed dining/kitchen door (Condition 2(c)) with windows. Condition 2(b) also provides that the proposed large picture window on the return shall be replaced with a window treatment. The reason for the condition is in the interest of safeguarding neighbouring residential amenity and architectural heritage. Details are to be agreed in writing with the PA.
- 7.4. **Condition 2 (a): The upper floor balcony shall be reduced in extent to the northeastern part of the roof, off the proposed Den room; it shall be no deeper than the rear wall of the Sitting Area; and its southwestern boundary shall not extend beyond the northeastern facade of the existing upper floor rear extension. Amendments to the stair to the rear garden may be required on foot of this condition.**
- 7.4.1. The proposed new garden/basement level extension is 5.3m deep and extends 1.1m beyond the existing return. At the upper floor, at the northeast and southwest of the return, it is proposed to have two sets of double doors onto the flat roof and 1.8m privacy screens along the boundaries with the two attached neighbouring properties. The existing two windows on the upper floor are proposed to be replaced with doors into a den and into a kitchen/dining room, providing a total of four accesses onto the terrace. While the first party contends that the terraces are only for access to the garden, with no intention for balcony/terrace use, it is reasonable to infer that the terraces could be used as future amenity spaces owing to the proposed number of

doors accessing these areas, the general arrangement and proposed privacy screens.

7.4.2. The property on the appeal site benefits from a south easterly oriented garden c. 16.2m by 9.2m in the heart of Dun Laoghaire. I consider that a reduced terrace/balcony area, aligned with the existing two storey return and connected to an external staircase on the northern side is a reasonable compromise. The house to the northeast (No.17) is a larger property with a three storey return on the northern end and I consider the reduced terrace with privacy screen as acceptable. The condition allows external access from the proposed rearranged first floor living areas into the garden and allows the occupants and their pet access from both the first floor return and the den/living room.

7.4.3. I consider condition 2 (a) should be retained.

7.5. **Condition 2 (b): On the southwestern and rear façade of the existing upper floor rear extension (Sitting Area as per the submitted plans), the proposed large picture window and the southwestern double doors shall be replaced with a respective window treatments which are more in keeping with the scale of the existing openings on the rear elevation.**

7.5.1. As the extension is 1.1 m deeper than the return, access is proposed on the submitted drawings from the southwest terrace area, along the rear elevation of the return into the northeast patio area and the external stairs to the garden. The first party requests a condition restricting access around the southwestern terrace and return (with a barrier) for just their dog and states this area is required to allow the dog travel from the kitchen/dining area in the southwest of the house. The first party is willing for the proposed double doors on the southwest elevation of the return to be replaced with a window but strongly supports the retention of the door to the kitchen for the reasons outlined in the appeal.

7.5.2. I concur with PA that the double doors from the return should be replaced with a window and the proposed kitchen/dining room door should be replaced with a window, which results in this area and the section along the return owing to condition 2 (a) being inaccessible as a terrace for any occupants and any pets. While the first party states they will not use this area, and it shall only be for dog access. I consider that a south-westerly terrace at this level with access to the living areas would be an

attractive amenity space for future occupants, which could lead to noise or nuisance in this area, would overlook the neighbouring garden, and would set an undesirable precedent. The use of the flat roofed area as a balcony in this area would be an ancillary space to the future enjoyment of the dwelling, and conditions that the Board may consider attaching with regard to barriers, and limiting noise, would, in my opinion, be difficult to enforce in the long term. Given the site specific circumstances, and that there is ample outdoor amenity space available, I would recommend that Condition 2(b) be retained in this instance.

- 7.5.3. The proposed room on the first floor return is proposed to be connected to the kitchen/dining area by a new door. In this regard, I consider that it is a short journey from the proposed kitchen via the new door into the first floor return and onto the proposed northeastern terrace and external stairs to the garden and a terrace/balcony to the southwest is unwarranted.
- 7.5.4. The single storey extension incorporates removal of the partitions in the first floor return into a new “sitting area” c 13.5 sqm, with a large pentagon window, reflecting the shape of the pitched roof on the return extension. The first party states that the sitting area is just a space at the end of the stairs and is not a seating area and provides several examples of similar type windows. The first party also highlights that this area is very dark. I note the application included two new roof lights including one over the stairs.
- 7.5.5. The Conservation Officer (CO) considers the window as inappropriate in the ACA. I concur with the CO that the window is oversized and I consider that the stated sitting area can be used as a living area located off the kitchen/dining area overlooking the garden and adjacent gardens. While overlooking would also occur from a window reduced in size, this would result in reducing the perception of overlooking from neighbouring property. Appropriately sized and designed windows can be achieved on the return and rear elevation and condition No. 2 includes that details shall be submitted to the PA for their written approval. The examples of other windows offered by the first party are not persuasive as the contexts differ substantially from the current arrangement.
- 7.5.6. I consider Condition 2 (b) should be retained.

7.6. **Condition 2 (c): Proposed doors on the rear facing of the dining/kitchen area shall be omitted and replaced by standard windows.**

7.6.1. This overlaps with the Condition 2 (a) and (b) and results in the omission of access to a terrace at the southwest. The submitted drawings illustrate that the dog can access the rear external stairs from the newly arranged upper floor return “sitting area” off the kitchen/dining area and/or from the den area which is an interconnecting room with the living room to the front. The principle of the southwest terrace has been assessed above.

7.6.2. I consider Condition 2 (c) should be retained.

7.7. **Appropriate Assessment Screening**

7.7.1. Having regard to the nature and scale of the proposed development, the nature of the foreseeable emissions therefrom/to the absence of emissions therefrom, the nature of receiving environment as a built up urban area and the distance from any European site/the absence of a pathway between the application site and any European site it is possible to screen out the requirement for the submission of an NIS and carrying out of an EIA at an initial stage.

8.0 **Recommendation**

8.1. Having regard to the nature of the condition the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and, based on the reasons and considerations set out below, directs the said Council under subsection (1) of section 139 of the Planning and Development Act, 2000, as amended to **RETAIN** Condition No. 2(a)(b) and (c).

9.0 **Reasons and Considerations**

The proposed development is located in an area where the applicable zoning objective in the Dun Laoghaire Rathdown County Development Plan 2022-2028 is ‘A’ which seeks ‘to provide residential development and improve residential amenity while protecting the existing residential amenities’, and within the Haigh Terrace to Park Road Architectural Conservation Area (ACA).

Having regard to the nature, scale and extent of the proposed development, the pattern of development in the Architectural Conservation Area, including the terraced character of the streetscape, it is considered that the modifications to the proposed development, as required by the planning authority in its imposition of Condition No. 2 (a) (b) and (c), is reasonable. The proposed development, in the absence of this condition, would give rise to a development that would injure the existing residential amenities of neighbouring property, would set an undesirable precedent for other similar developments and would not be consistent with the protection of the character and special interest of an area which has been designated an Architectural Conservation Area.

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

Rosemarie McLaughlin
Planning Inspector

29th September 2024

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

An Bord Pleanála Case Reference	ABP 320130-24			
Proposed Development Summary	Demolition of single-storey structures to rear of existing dwelling for the construction of new extension; internal and external modifications to the existing dwelling, together with all associated site works			
Development Address	18, Mellifont Avenue, Dun Laoghaire, Dublin, A96W732			
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	X	
		No	No further action required	
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?				
Yes		Class.....	EIA Mandatory EIAR required	
No	X		Proceed to Q.3	
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]?				
		Threshold	Comment (if relevant)	Conclusion
No	x			No EIAR or Preliminary Examination required
Yes		Class/Threshold.....		Proceed to Q.4

4. Has Schedule 7A information been submitted?		
No		Preliminary Examination required
Yes		Screening Determination required

Inspector: _____

Date: