



An  
Bord  
Pleanála

## Inspector's Report

### ABP 320655-24

<b>Development</b>	Demolishing existing extension and shed to rear of the existing house to make way from a new ground and first floor extension and all ancillary works
<b>Location</b>	24 Craoibhin Park, Balbriggan, Co. Dublin, K32 V522
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F24A/0529
<b>Applicants</b>	Dylan Cunningham and Caitlin Reilly
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	To refuse
<b>Type of Appeal</b>	First Party
<b>Appellant</b>	Dylan Cunningham
<b>Observers</b>	None
<b>Date of Site Inspection</b>	23 <sup>rd</sup> October 2024
<b>Inspector</b>	Trevor Rue

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## 1.0 Site Location and Description

- 1.1. The application site is located in an established residential area to the south east of Balbriggan Town Centre. It has a stated area of 0.0316 hectares. It comprises the curtilage of a mid-terrace two-storey dwelling on the western side of an estate road.
- 1.2. The dwelling has a small rear extension with a mono-pitch roof. A single-storey shed is situated in the back garden of the dwelling and that of its neighbour to the south, No. 25, and straddles the common boundary. There is a substantial two-storey extension to the rear of No. 25.
- 1.3. A Lidl retail store lies to the west of the group of houses that includes the application site. It is separated from the houses by a pedestrian path.

## 2.0 Proposed Development

- 2.1. It is proposed to demolish that part of the shed which lies within the application site and to erect a large two-storey rear extension. The ground floor of the extension would extend back by 7 metres and be 7.482 metres wide, nearly the full width of the site, and would contain a kitchen/dining/seating area. The first floor of the extension would measure 4 metres back by 6.232 metres wide and accommodate a bedroom. The first-floor extension would have a pitched roof with a ridge height of 6.405 metres. Those parts of the ground-floor extension which would project beyond the first-floor extension would have a flat roof in which three roof lights would be inserted.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.3.1. On 6<sup>th</sup> August 2024, Fingal County Council decided to refuse permission. The Chief Executive's Order gave the following reason:

*The proposal to build over an existing 225mm ND foul sewer traversing the rear garden immediately within the area of the proposed development, would be prejudicial to public health, would be contrary to Objective IUO5 – Protection of Water and Drainage Infrastructure of the Fingal Development Plan 2023-2029, would set an inappropriate*

*precedent for other similar development, and would, therefore, be contrary to the proper planning and sustainable development of the area.*

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

#### Planning Reports

3.2.1. A planning officer's report dated 6<sup>th</sup> August 2024 provided the reasoning for the authority's decision. The main points were as follows:

- In this area, development associated with an existing dwelling is generally acceptable.
- Adequate open space would be maintained following construction of the rear extension and it would facilitate the internal reconfiguration of the dwelling.
- It was not anticipated that the development would result in undue overlooking but further detail would be required to establish its overlooking impact.
- The rear gardens of houses in this terrace are generously proportioned, which would assist in reducing the perception of overbearance. The first-floor element would be set back from the northern and southern site boundaries. There are concerns that the development would appear overbearing and dominant when viewed from neighbouring rear gardens and result in significant overshadowing of adjoining dwellings. A shadow assessment would be required.
- Building over an existing foul sewer would be prejudicial to public health and contrary to the Development Plan. Refusal is therefore recommended.

#### Other Technical Reports

3.2.2. The Council's Water Services Department stated that additional information on surface water drainage was required. The proposal must incorporate appropriate SuDS (sustainable drainage systems) measures.

### **3.3. Prescribed Body**

3.3.1. Uisce Éireann noted the existence of a foul sewer with a nominal dimension of 225 millimetres traversing the rear garden immediately within the area of the proposed works. In accordance with its Code of Practice, a minimum clear distance of 3 metres

was required between this sewer and any part of the proposed structure. In order to ensure appropriate protection and access during and post construction, the applicant was required to engage with Irish Water Diversions in respect of the infrastructure and/or to enter into a diversion agreement with Uisce Éireann and submit the outcome of this engagement as evidence to the planning authority.

- 3.3.2. The Uisce Éireann response listed several standard conditions, including requirement to enter into a connection agreement. It stated that Uisce Éireann does not permit build over of its assets. Where it is proposed to build over or divert existing wastewater services, the applicant must have received written confirmation of feasibility of diversions from Uisce Éireann prior to any works commencing.

## 4.0 Planning History

- 4.1. The planning officer stated that there were no recent, relevant, valid applications on the application site.
- 4.2. **F06A/0361:** On 18<sup>th</sup> April 2007, in a split decision, the Council granted permission for a porch and a vehicular access to the front elevation of 25 Craoibhin Park; and refused permission for a two-storey and single-storey extension to the rear of the property because the applicant was proposing to build over a sewer. The Council's Water Services Department initially stated that the applicant must submit details indicating how they intend to maintain a minimum clear distance of 3 metres between the proposed development and the existing foul sewer located at the rear of the development. It later commented that the response to the request for additional information had demonstrated that there was a 225-millimetre public foul sewer traversing the site and under the proposed extension. Construction of a building over the line of a public sewer was not permitted under the Regional Code of Practice for Drainage Works Version 6.0 (April 2006) and the Public Health Act of 1878.
- 4.3. **F19A/0335, F19A/0434, F20B/0219 and F21A/0484:** Since September 2019, the Council has granted permission for developments involving rear extensions at 64, 8, 78 and 58 Craoibhin Park.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1 Map Sheet 4 of the Fingal Development Plan 2023 – 2029 shows the application site in an “RS” residential zone. The zoning objective is to provide for residential development and protect and improve residential amenity.
- 5.1.2 Policy SPOHP41 of the Plan is to support the extension of existing dwellings with extensions of appropriate scale and subject to the protection of residential and visual amenities. Likewise, Objective SPQHO45 is to encourage sensitively designed extensions to existing dwellings which do not negatively impact on the environment or on adjoining properties or area.
- 5.1.3. Section 14.10.2 of the Plan states that the Council will support applications to amend existing dwelling units to reconfigure and extend as the needs of the household change, subject to specific safeguards.
- 5.1.4. Section 14.10.2.3 states that 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 to serve the dwelling house. The proposed extension should match or complement the existing dwelling house.
- 5.1.5. Section 14.10.2.4 states that first-floor rear extensions will be permitted only where the planning authority is satisfied that there will be no significant negative impacts on surrounding residential or visual amenities. 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.
- 5.1.6. Objective IUO5 of the Plan is to work in conjunction with Uisce Éireann to protect existing water and drainage infrastructure by protecting existing wayleaves and buffer zones around public water service infrastructure.

## **5.2. Greater Dublin Regional Code of Practice for Drainage Works, Version Draft 6.0**

5.2.1. Sections 6 and 7 of the Code of Practice include the following points, which I have updated to take account of administrative changes since the document was written:

- No building may be constructed over the line of a public sewer as per the Public Health Act 1878. A minimum clear distance of 3 metres is required to be maintained between sewers and all structures on site, including foundations. This distance will be increased if the sewer is greater than 3 metres deep.
- Foundation layout shall be submitted for the written approval of (Uisce Éireann) to show that no extra building load will be placed on the sewer.
- A sewer condition survey (closed-circuit television) shall be carried out at the developer's expense both before and after construction, to the requirements of (Uisce Éireann). Any damage to the sewer shall be notified to (Uisce Éireann) and rectified at the developer's expense.
- No sewer shall be diverted, re-laid or altered without the express written permission of (Uisce Éireann). Proposal(s) for sewer diversions including all necessary future wayleaves should be submitted to (Uisce Éireann) for written approval. Any diversion shall not adversely affect the hydraulic capacity or maintenance of the sewer.
- Any connections live or currently unused must be accommodated within the development and then re-connected to the active diverted sewer.
- Abandoned sewers must be grubbed up or filled with concrete and disused connections properly sealed to the approval of (Uisce Éireann).
- Ownership of newly diverted sewers and associated wayleaves must be transferred to (Uisce Éireann) upon satisfactory completion of construction.

## **5.3. Natural Heritage Designations**

5.3.1. The application site is not within any Natura 2000 European site of nature conservation importance. The Natura 2000 sites within 15 kilometres of the site are:

- Boyne Coast and Estuary Special Area of Conservation (SAC)
- Rockabill to Dalkey Island SAC
- Rogerstown Estuary SAC
- Boyne Estuary Special Protection Area (SPA)

- River Nanny Estuary and Shore SPA
- North West Irish Sea SPA
- Skerries Islands SPA
- Rockabill SPA
- Rogerstown Estuary SPA

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- 6.1.1. The appellant said he didn't understand why permission was refused as plenty of similar applications in Fingal have been approved. A 225-millimetre pipe is very common in the rear gardens of houses. His next-door neighbour at No. 25 has a double-storey rear extension.
- 6.1.2. The appellant attached a drainage map from Dublin City Council, printed by Uisce Éireann on 9<sup>th</sup> August 2024 and labelled "SR495-2024 24 Craoibhin Park". It shows sewerage on the eastern side of Craoibhin Park but not on the western side where his house is. He was not sure where the sewer is as there are no manholes in his next garden. His builder said he could protect it and build over it.
- 6.1.3. The drainage map contains the following annotation:

*Whilst every care has been taken in its compilation, Uisce Éireann gives this information as to the position of its underground network as a general guide only on the strict understanding that it is based on the best available information provided by each Local Authority in Ireland to Uisce Éireann. Uisce Éireann can assume no responsibility for and give no guarantees, undertakings or warranties concerning the accuracy, completeness or up to date nature of the information provided and does not accept any liability whatsoever arising from any errors or omissions. This information should not be relied upon in the event of excavations or any other works being carried out in the vicinity of the Uisce Éireann underground network. The onus is on the parties carrying out excavations or any other works to ensure the exact location of the Uisce Éireann underground network is identified prior to excavations or any other works being carried out. Service connection pipes are not generally shown but their presence should be anticipated.*



## **6.2. Planning Authority Response**

- 6.2.1. The planning authority advised that the Chief Executive's Order addresses the issue raised in the appeal. It stated that in the event that the appeal is successful, provision should be made for applying a financial contribution and/or bond in accordance with the Council's development contribution scheme.

## **7.0 Environmental Screening**

### **7.1. Environmental Impact Assessment**

- 7.1.1. The proposed development is not one to which Schedule 5 of the Planning and Development Regulations 2001, as amended, applies and therefore, the requirement for submission of an EIA assessment report and carrying out of an EIA assessment may be set aside at a pre-screening stage.

### **7.2. Appropriate Assessment**

- 7.2.1. Having regard to the nature and scale of the proposed development, the absence of foul effluent arising therefrom, the nature of the receiving environment as a built-up urban area and 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 a Natura impact statement and the carrying out of an AA at an initial stage.

## **8.0 Planning Assessment**

### **8.1. Issues**

- 8.1.1. Having visited the site and considered in detail the documentation on file for this First Party appeal, it seems to me that the main planning issues are:
- the acceptability in principle of the proposed development;
  - its design, layout and impact on the residential amenity of neighbouring dwellings; and
  - its effect on sewerage infrastructure.

## **8.2. Acceptability in Principle**

- 8.2.1. I am satisfied that the proposal for a ground- and first-floor extension to a dwelling is generally compatible with the RS residential zoning and with Policy SPOHP41, Objective SPQHO45 and Section 14.10.2 of the Fingal Development Plan 2023 – 2029. It would provide additional accommodation to meet the changing needs of the household. However, all these provisions of the Plan are caveated by constraints relating to sensitive design, retention of private open space and no significant negative impacts on surrounding residential amenities. These matters are considered below.

## **8.3. Design, Layout and Impact on Residential Amenity**

- 8.3.1. The external finishes of the proposed extension are not shown on the submitted drawings but a condition could be attached to any grant of planning permission requiring details to be submitted to and approved by the planning authority prior to the commencement of development.
- 8.3.2. I agree with the planning authority that adequate private amenity space would remain within the curtilage of the applicants' dwelling following construction of the extension.
- 8.3.3. There are currently three first-floor windows in the rear elevation of the dwelling. The proposed rear elevation drawing shows four first-floor windows, only one of which would serve a habitable room. No windows are proposed in the side elevations of the extension. A certain amount of overlooking is inevitable in an urban area and in my opinion there would be no undue increase in overlooking of neighbouring property. I see no need for this matter to be investigated further.
- 8.3.4. Having regard to the generous sizes of the rear gardens of houses in this terrace and the setting back of the proposed first-floor element, I am satisfied that the proposed extension would not appear unduly overbearing or dominant when viewed from neighbouring rear gardens or result in significant overshadowing of either adjoining dwelling. I see no need for a shadow assessment to confirm this.
- 8.3.5. I conclude that the proposed development would not have an unacceptable impact on the residential amenity of neighbouring dwellings. It is noteworthy that, despite the somewhat equivocal nature of the planning officer's assessment, the planning authority did not cite residential amenity as a reason for refusal.

#### **8.4. Effect on Sewerage Infrastructure**

- 8.4.1. Section 29(1) of the Public Health (Ireland) Act 1878, which penalised building over any sewer of an urban authority without its consent, was repealed by the Water Services Act 2007. The Water Services Act 2013 provided for the establishment of Irish Water (now Uisce Éireann), which took over responsibility for provision of water and wastewater services from local authorities. The Code of Practice for Drainage Works makes clear that building over sewers continues to be generally unacceptable but that a developer may be able to enter a diversion agreement with Uisce Éireann.
- 8.4.2. Objective IUO5 of the Fingal Development Plan envisages the planning authority and Uisce Éireann working in conjunction with each other to protect existing drainage infrastructure. In its consultation response to the planning authority, Uisce Éireann did not request that the planning application be refused outright. It expected the applicants to be given an opportunity to engage with it about the sewerage infrastructure and to submit the outcome to the planning authority. Instead, the planning authority moved straight to a refusal of planning permission.
- 8.4.3. The planning authority's approach was at variance with that which it adopted when faced with a similar proposal for a rear extension to the adjoining dwelling at No. 25 in 2006. From the limited information available on its website, it is apparent that in that instance it made a request for additional information which demonstrated that there was a 225-millimetre public foul sewer traversing the site, below the ground where the extension was proposed. A rear extension similar in position and size to that which the appellant is currently proposing was later erected at No. 25, but it is unclear whether planning permission was ever granted for that extension.
- 8.4.4. It seems that Uisce Éireann did not provide the planning authority with a map showing the position of the 225-millimetre foul sewer which, according to its consultation response, traverses the appellant's rear garden immediately within the area of the proposed works. It is possible that Fingal County Council did not update its records to incorporate the information it received about the position of the sewer at No. 25 in 2006 or did not pass on that information to Uisce Éireann.
- 8.4.5. It is difficult to accept that the submitted drainage map is complete. It is inconceivable that there are no sewers serving the group of houses on the western side of Craoibhin Park, including Nos. 24 and 25. The absence of manholes at a particular place is not

definitive proof of the absence of sewers. Under the Code of Practice, responsibility for ascertaining the position and condition of any public sewer within the area affected by proposed building works (including foundations), and where necessary for putting forward proposals for protecting or diverting any such sewer, rests on the developer.

- 8.4.6. The appellant has not conclusively rebutted the evidence provided by the statutory service provider that there is a 225-millimetre sewer in his rear garden immediately within the area of the proposed works. In these circumstances, it would not be responsible to grant planning permission.

## **9.0 Recommendation**

- 9.1. I recommend that planning permission be refused.

## **10.0 Reasons and Considerations**

Uisce Éireann has advised that a foul sewer with a nominal dimension of 225 millimetres traverses the rear garden of the application site immediately within the area of the proposed development works, and this has not been conclusively rebutted by the appellant. Building over an existing sewer would be prejudicial to public health; would be contrary to Objective IUO5 – Protection of Water and Drainage Infrastructure of the Fingal Development Plan 2023-2029; would set an inappropriate precedent for other similar development; and would, therefore, be contrary to the proper planning and sustainable development of the area.

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

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**TREVOR A RUE**

Planning Inspector

5<sup>th</sup> November 2024