



An  
Bord  
Pleanála

## Inspector's Report

### ABP-321372-24

<b>Development</b>	Refurbishment of and extension to existing house and all associated site works.
<b>Location</b>	35 Oaktree Road, Stillorgan, Co. Dublin, A94 E738
<b>Planning Authority</b>	Dun Laoghaire Rathdown County Council
<b>Planning Authority Reg. Ref.</b>	D24B/0343/WEB
<b>Applicant(s)</b>	Sam and Lucy Hamill
<b>Type of Application</b>	Permission and Retention
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Dorothy & David Bergin
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	14 February 2025
<b>Inspector</b>	Natalie de Róiste

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## **1.0 Site Location and Description**

- 1.1. The site comprises a bungalow with front and rear gardens, which has an attached flat-roofed garage set back from the front elevation, and a single-storey rear extension. It is located on the west side of Oaktree Road, a mature residential street in Stillorgan. The house is attached to 37 Oaktree Road to the south, and the site borders 33 Oaktree Road to the north. Both neighbouring houses have existing rear extensions, that to 33 Oaktree Road being an L-shaped extension with a courtyard. There is a level difference of c. 400 mm between the appeal site and 33 Oaktree Road. The appeal site has an existing side passage of c. 2.3 metres (the width of the garage), while 33 Oaktree Road has been partly extended to the side and has a side passage of c. 1.3 metres.
- 1.2. Three garden structures (wooden shed c. 8 sqm, garden room c. 12 sqm, and greenhouse c. 7 sqm) are located in the rear of the rear garden, which measures c. 240 sqm.

## **2.0 Proposed Development**

- 2.1. It is proposed to demolish the existing garage (c. 13 sqm, including a WC) and rear extension (c. 16 sqm), and build a flat-roofed side and rear extension (c. 50 sqm), enlarging the bedrooms to the side and providing an ensuite, and creating a new near-full-width kitchen extension to the rear. There is no increase in bedspaces. It is proposed to raise a stretch of the side boundary wall and insert a pedestrian gate, to secure the side passage. The proposed extension is c. 3.2 metres above internal ground level, which is c. 500 mm above external ground level, and is located 1 metre from the shared boundary to the north. Retention of a garden room (c. 12 sqm, 3.7 metres high) is also proposed.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Grant permission and retention permission.

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

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

- Initial planner's report noted all material on file, compliance with Development Plan policy on side and rear extensions, planning precedent and enforcement; sought further information on existing extension (re: development contributions) and 3 existing garden structures (allegedly unauthorised).
- Planner's report following submission of further information noted application was readvertised; noted third party submissions; noted satisfaction with the retention of the 3 garden structures, and recommended a grant subject to conditions.

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

- Drainage – no objection subject to conditions.

#### **3.2.3. Conditions**

- Ten conditions, including conditions on development contributions, use of garden room, and drainage.

### **3.3. Prescribed Bodies**

None

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

Two received initially, from neighbours on either side; one received following submission of further information, from appellant. Submissions addressed issues subsequently raised in appeal as well as the following:

- Risk of overlooking and boundary collapse due to retention of garden room.

## **4.0 Planning History**

None on site.

Enforcement on site – ENF 23624: alleged unauthorised development in relation to a shed type structure in the rear garden of the property, without a valid planning permission and which may not constitute exempted development.

## 5.0 Policy Context

### 5.1. Dún Laoghaire-Rathdown County Development Plan 2022-28

- 5.1.1. The zoning objective for the subject development site is “A”: To provide residential development and improve residential amenity while protecting the existing residential amenities.
- 5.1.2. Chapters of particular relevance include *Chapter 4 – Neighbourhood – People, Homes, and Place* and *Chapter 12 – Development Management*
- 5.1.3. *4.3.1.2 Policy Objective PHP19: Existing Housing Stock - Adaptation*

*It is a Policy Objective to:*

*Conserve and improve existing housing stock through supporting improvements and adaption of homes consistent with NPO 34 of the NPF.*

*Densify existing built-up areas the County through small scale infill development having due regard to the amenities of existing established residential neighbourhoods.*

*Section 12.3.7.1 Extensions to Dwellings* provides guidance on various types of extensions (front, rear, side, and at roof level).

*The following Section provides guidance with respect to porches, front extensions, side extensions, rear extensions, roof alterations, attic conversions and dormer extension.*

*(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. First floor rear extensions will be considered on their merits, noting that they can have potential for negative impacts on the amenities of adjacent properties, and will*

*only be permitted where the Planning Authority is satisfied that there will be no significant negative impacts on surrounding residential or visual amenities. In determining applications for first floor extensions the following factors will be considered:*

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

*(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.*

*First floor side extensions built over existing structures and matching existing dwelling design and height will generally be acceptable. However, in certain cases a set-back of an extension's front façade and its roof profile and ridge may be sought to protect amenities, integrate into the streetscape, and avoid a 'terracing' effect. External finishes shall normally be in harmony with existing.*

*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 pre-planning stage.*

*Side gable, protruding parapet walls at eaves/gutter level of hip-roofs are not encouraged.*

*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. The provision of windows (particularly at first floor level) within the side elevation of extensions adjacent to public open space will be encouraged in order to promote passive surveillance, and to break up the bulk/extent of the side gable as viewed from the public realm.*

## **5.2. Natural Heritage Designations**

Proposed Natural Heritage Area pNHA: 001753 Fitzsimon's Wood – c. 3 km southwest

SPA 004024 South Dublin Bay and River Tolka Estuary – c. 3 km northeast

pNHA South Dublin Bay c. 3 km northeast

SAC 00210 South Dublin Bay – c. 3 km northeast

## **5.3. EIA Screening**

- 5.3.1. The proposed development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended. No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination. Refer to Form 1 in Appendix 1 of report.

## **6.0 The Appeal**

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

One third party appeal was received, from the neighbour to the north. Issues raised are summarised below.

- The design of the extension is inappropriate due to:
  - overdevelopment, with the extension, relocated foul sewer, and requirement for a new boundary wall in the side passage
  - proximity to the boundary of 1 metre, and 2.3 metres to the south elevation of no 33

- overbearing impacts due to the height (4.1 metres relative to no 33's ground level)
  - , overlooking from the new large bedroom windows,
  - overshadowing of the appellants' amenity courtyard area, which functions as a suntrap outdoor room (diagram provided showing 45 degree angle)
  - lack of visual integration, discordant with established aesthetic of Oaktree Road.
- No legal right to interfere with the foul sewer, which serves four dwellings (35-41).
  - Alternative design solutions were not requested or tested. Alternative designs are submitted with this appeal, with bedroom windows facing front and rear, reduced kitchen extension, and hipped roof.
  - No details have been submitted regarding boundary treatments between 33 and 35, contrary to Section 12.8.7.2 of the Development Plan. No information was submitted on how the garage wall is to be supported when it is retained. A condition regarding a permanent boundary should have been attached.
  - The application should have been invalidated, having insufficiently detailed or dimensioned drawings, inaccurate heights, which disguises the level of overdevelopment
  - Granting retention permission for the garden room following the submission of further information is an abuse of the planning system, given the shortened public consultation period.
  - The council planner relied on inaccurate and irrelevant precedent cases in their report.
  - The development would create an undesirable precedent, establishing a 'first-past-the-post' rule, with the development of windows on no 35 precluding the development of windows in a similar location on 33.

## 6.2. **Applicant Response**

6.3. The first party responded as follows.



- The proposed design with a significant setback from the front building line and modestly sized windows is appropriate to the street, in accordance with the Development Plan, and will protect neighbouring residential amenities.
- The proposed development is a modest increase in floor area (from 118 sqm to 138 sqm) on a large site (550 sqm), and does not constitute overdevelopment.
- The separation distance (1.0 metre) is similar to the 1.3 metre distance of the neighbour's property from the shared boundary, and the appellant has not clarified their objection to the proposed location.
- The side extension is 0.95 metres above the eaves height of the existing house, and 2.4 metres lower than the roof ridge, with no overbearing impacts.
- Notwithstanding the above, revised drawings are submitted with the full-height extension set back from the north boundary, for the consideration of the Board.
- The proposed windows do not overlook any private amenity area or windows in the neighbouring property, facing the side passage of the neighbour's house, a blind wall, and an obscured bathroom window. Nonetheless, the applicant is prepared to erect a fence on top of the existing boundary wall to raise it to a height of 1.8 metres in front of the proposed windows.
- The extension replaces an existing garage building built on the boundary, as well as a mature tree, and will not increase overshadowing. Nonetheless, the applicants are happy to accept a condition to reduce the full-height extension close to the courtyard, as per the revised drawings.
- The proposed extension is set back from the building line, and the impact on the streetscape will be minimal. The houses on the road have been modified over time, and the proposal fits in with the established aesthetic.
- The relocation of the shared sewer is necessary, and has been agreed with the relevant parties. The drainage department had no objection to the submitted engineer's report.

- There is no change proposed to the existing c. 1 metre high boundary wall, but the applicants are prepared to raise this to 1.8 metres in front of the proposed windows.
- Drawings were correctly dimensioned, with the parapet height shown on front and side elevation drawings, and ground levels and neighbouring buildings accurately shown.
- The applicants were invited to apply for retention for structures in the rear garden, although they had intended to apply in a separate application. The application was readvertised following the submission of Further Information.
- The application was assessed on its merits and the planner did not rely on planning precedents in the area.
- The proposed extension is designed to remove steps, improve bathroom facilities, provide an in-house utility room (currently the garage serves this purpose), and facilitate family visits.

#### **6.4. Planning Authority Response**

The planning authority considered that the grounds of appeal do not raise any matter which would justify a change in their attitude.

#### **6.5. Observations**

None received.

#### **6.6. Further Responses**

- 6.6.1. The applicant's response was recirculated to the third party and to the Planning Authority. The Planning Authority again referred the Board to the planner's report.

The third party appellant response reiterated the points previously made, and noted the following:

- The height of the entire side extension should be reduced to match the proposal for reducing the height of the rear portion, to reduce overshadowing and overbearing.

- A rendered wall of 1.8 metres height (measured from no 33 side, to limit overshadowing) should be built in the side passage of no 33. The existing wall is single leaf, and lacks the structural integrity to bear the weight of a tall fence.
- Fully specified and dimensioned compliance drawings relating to these conditions should be forwarded to no 33 for approval, prior to commencement.

## **7.0 Assessment**

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

- Overshadowing and Overbearing Impacts
- Overlooking and Privacy
- Boundary Treatment
- Visual impacts

## **7.2. Overshadowing and Overbearing Impacts**

7.2.1. Regarding overshadowing to neighbouring properties, the appellant is more vulnerable than other neighbours, due to the location of their property to the north, and the level difference between the two sites, and they are particularly concerned about their courtyard. I have examined the drawings of the development as permitted, and undertaken a site visit, and I am satisfied that there will be no undue overshadowing impacts from the development for the following reason.

7.2.2. The existing garage forms a party wall, and creates the south boundary of the courtyard. This wall (c. 2.4 metres tall on the applicant's site, and c. 2.8 metres tall on the appellant's side) already casts a shadow over the courtyard. The effective height of this boundary is increased slightly by a timber trellis on the appellant's side (as shown in the appellants' submitted photograph, and confirmed on the site visit). The proposed extension is c. 1.2 metres taller than the garage, and as such will cast

a longer shadow. However, it is located one metre further from the boundary than the garage, and as such, the shadow will fall partly on the applicant's own property, and the shadow will largely fall on the same area that is already overshadowed by the garage wall (which it is proposed to retain). The increase in overshadowing to the courtyard will be minimal.

7.2.3. Similarly, regarding overbearing impacts, the one-metre setback from the boundary is sufficient to address overbearing impacts on the appellant's private amenity space.

7.2.4. The first party has submitted revised plans, for review by the Board, with a lower height extension adjacent to the courtyard. This is created by dropping the floor level and reducing the floor to ceiling height over a store and WC, accessed externally. This is a change to the layout as shown on the submitted application, which had no external WC or store. This would have no material benefit in terms of overshadowing or overbearing, and I do not recommend an amending condition to implement this revised design in the interests of neighbouring residential amenity.

7.2.5. Regarding the garden room to be retained, it is taller than the boundary hedge, but much lower than the deciduous tree beside it. Any additional overshadowing during the year will be minimal, and will not have significant impacts on any neighbouring garden.

7.2.6. Similarly, the proposed increase to the boundary wall in front of the bedroom windows will increase overshadowing by a small amount, to the neighbour's side passage and side wall. The appellant has not set out their specific concerns regarding overshadowing of these areas, which are not amenity areas. Any additional overshadowing will have no undue impacts on amenity.

### **7.3. Overlooking and Privacy**

7.3.1. The extension is single-storey, with two bedroom windows and one ensuite bathroom window facing the side boundary shared with the appellant at a distance of 1 metre. These are ground floor windows, facing the largely blank side elevation (there is a full-height obscured window serving a bathroom) and the side passage of the appellant's property. This area is not a private amenity area, and the new windows would have no view into the courtyard, the rear garden, or any

neighbouring window, notwithstanding any boundary treatment (discussed further below). As such, the impacts of increased overlooking are not significant.

- 7.3.2. The appellant has concerns that the presence of windows at 1 metre from the boundary will preclude the possibility of any future insertion of similar windows on their side. Any future planning application would be assessed on its merits.

#### 7.4. **Boundary Treatments**

- 7.4.1. The application drawings show a stretch of the party wall measuring some 2.7 metres long in front of the garage as 'raised wall', with a pedestrian gate located in front of it (in front of the bedroom window). The elevation drawings show the gate as 1.8 metres in height. The wall is not shown in the side elevation drawing, and as such, no height is indicated for it.
- 7.4.2. It is the appellant's position that the applicant should provide a taller boundary wall within the side passage, to ensure privacy both to their property, and to the new bedroom windows. The appellant has not set out the rationale for their preference for this solution, rather than amendments to the party wall. The applicant has now proposed a fence on top of the existing shared party wall, to a height of 1.8 metres (although without clarifying which side it is measured from). An increase to the boundary height would be appropriate in the interests of security to the rear garden, following demolition of the rear garage.
- 7.4.3. A condition could be attached in the interests of clarity, given the lack of clarity in the submitted drawings regarding the height of the proposed wall. The appellant notes they do not consent to any works to the party wall. Issues regarding works to party walls are a civil matter between the parties involved. I note the provisions of S. 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.*' I further note the provisions for exempted development set out in the Planning and Development Regulations 2001 (as amended) regarding boundaries to the side of a house as set out in *A Guide to Doing Work around the House* available from the Office of the Planning Regulator website.

## **7.5. Visual Impacts**

- 7.5.1. The street has paired bungalows with either hipped or gabled roofs over a projecting bedroom block on the west side, with two-storey houses on the east side. A shared palette of materials is evident, with painted render, red brick, and tiled roofs predominant.
- 7.5.2. A large number of houses have undergone alterations over the year, and the houses are not identical, each providing variations on a theme. A number of the bungalows have flat-roofed rendered dormer extensions, while there are a mix of styles to front extensions to the two-storey houses, including flat-roofed rendered extensions.
- 7.5.3. The proposed extension would not be out of place in this context. It will be visible from the road, but not obtrusively so, located to the side of the house and set back from the main building line. Visual impacts would be acceptable.

## **7.6. Other matters**

- 7.6.1. Regarding the relocation of the foul sewer on the appeal site, this is a relatively minor endeavour, often undertaken in the construction of domestic extensions. Any legal dispute regarding the shared (private) sewer is considered a civil matter, and is outside the scope of the planning appeal. In any case, no evidence has been provided that the relevant neighbours at no 37, 39, and 41 have not been consulted, or are not in agreement, and no objection to the relocation of the sewer has been submitted by them.
- 7.6.2. There is no obligation for applicants to propose or consider alternative design solutions.
- 7.6.3. The appellant has concerns regarding alleged irregularities in procedural matters. In terms of alleged irregularities in terms of the description of development, the dimensions on drawings submitted, and the readvertisement following receipt of further information regarding retention of the garden room, I note that these matters were considered acceptable by the planning authority, which is responsible for validation of planning applications. I am satisfied that these issues did not prevent the concerned party from engaging with the planning process or making representations.

- 7.6.4. Regarding the planning history cited in the planner's report, each application is considered on its merits.

## **8.0 Appropriate Assessment**

Having regard to the nature and small scale of the proposed development and the distance from the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect, individually, or in combination with other plans or projects, on any European site.

## **9.0 Recommendation**

I recommend permission be granted, for the reasons and considerations below.

## **10.0 Reasons and Considerations**

Having regard to the provisions of the Dun Laoghaire Rathdown Development Plan 2022-28, the character of the street, the scale and nature of the domestic development, and the suburban context, it is considered that the proposed development, subject to compliance with the conditions set out below, would not seriously injure the residential or visual amenities of the area.

## **11.0 Conditions**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by the planning authority on the 2<sup>nd</sup> day of October 2024, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The proposed development shall be amended as follows:

A boundary treatment of 1.8 metres in height, matching the height of the proposed new pedestrian gate, shall be provided between the new pedestrian gate and the retained wall of the garage.

Reason: To provide a secure enclosure to the rear garden, following the demolition of the garage.

3. 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.

Reason: 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.

4. The glazing to any bathroom or en-suite windows shall be manufactured opaque or frosted glass and shall be permanently maintained. The application of film to the surface of clear glass is not acceptable.

Reason: In the interest of residential amenity.

5. All external finishes shall harmonise in material, colour and texture with the existing dwelling on site unless otherwise indicated on the plans submitted.

Reason: in the interest of visual amenity.

6. Site development and building works shall be carried out between the hours of 7 a.m to 7 p.m. Mondays to Fridays inclusive, between 8 a.m. and 2 p.m. on Saturdays



and not at all on Sundays and public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written agreement has been received from the planning authority.

Reason: To safeguard the amenity of property in the vicinity.

7. The disposal of surface water shall comply with the requirements of the planning authority for such works and services. Prior to the commencement of development, the developer shall submit details for the disposal of surface water from the site for the written agreement of the planning authority.

Reason: To prevent flooding and in the interests of sustainable drainage.

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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Natalie de Róiste  
Planning Inspector

25 February 2025

# Form 1

## EIA Pre-Screening

<b>An Bord Pleanála</b>	ABP-321372-24		
<b>Case Reference</b>			
<b>Proposed Development</b>	Refurbishment and extension to existing house		
<b>Summary</b>			
<b>Development Address</b>	35 Oaktree Road, Stillorgan, Co. Dublin, A94 E738		
<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>	<input checked="" type="checkbox"/>
		<b>No</b>	<input type="checkbox"/>
<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)?</b>			
<b>Yes</b>	<input type="checkbox"/>		Proceed to Q3.
<b>No</b>	<input checked="" type="checkbox"/>		Tick if relevant. No further action required
<b>3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?</b>			
<b>Yes</b>	<input type="checkbox"/>		EIA Mandatory EIAR required
<b>No</b>	<input type="checkbox"/>		Proceed to Q4
<b>4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?</b>			
<b>Yes</b>	<input type="checkbox"/>		Preliminary examination required (Form 2)
<b>5. Has Schedule 7A information been submitted?</b>			
<b>No</b>	<input checked="" type="checkbox"/>	Pre-screening determination conclusion remains as above (Q1 to Q4)	
<b>Yes</b>	<input type="checkbox"/>	Screening Determination required	

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

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