



An
Bord
Pleanála

Inspector's Report

ABP-321835-25

Development	Retention of detached structures including covered BBQ area with all associated site works
Location	40 Castleknock Close, Laurel Lodge, Dublin 15, D15 CYK0
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	FW24A/0483E
Applicant(s)	Maria Mihutescu.
Type of Application	Retention.
Planning Authority Decision	Grant Retention
Type of Appeal	Third Party
Appellant(s)	Niamh Walsh and John Coleman.
Observer(s)	None.
Date of Site Inspection	2 nd April 2025.
Inspector	Lucy Roche

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1.0 Site Location and Description

- 1.1. The proposed development site is on Castleknock Close, a residential cul-de-sac located off Castleknock Downs in Castleknock, Dublin 16, c1km southwest of M50 Junction 6.
- 1.2. No. 40 Castleknock Close comprises a two-storey, semi-detached dwelling with a stated gross floor area of 104sqm. The dwelling is set back c. 8.45m from the public footpath and benefits from in-curtilage parking to the front and private amenity space to the rear. The rear amenity space accommodates a wooden pergola attached to the rear elevation of the dwelling and a detached garden store with covered bar-b-que / dining area.
- 1.3. The surrounding area is primarily residential in nature with dwellings of similar design, form and appearance to No. 40 Castleknock Close. Neighbouring dwellings to the north and south have both been extended by way of single storey additions to the rear.
- 1.4. The site has a stated site area of 0.021ha.

2.0 Proposed Development

- 2.1. The application is for the retention of:
 1. A detached structure at rear of site, that incorporates:
 - a. A flat roofed garden store with a stated GFA of 8.49sqm and a ground to finished roof height of 2.664m. The submitted floorplans indicate that the structure could be used as a garden store, playroom or gym. The structure is positioned to the northeast corner of the site, abutting the northern and eastern site boundaries (boundaries with the neighbouring properties of 42 Castleknock close (north) and the appellants property, No.41 Castleknock Rise to the east.
 - b. A covered barbeque dining area with a stated GFA of 13.99sqm, that is open on all sides, except on north-east facing elevation which aligns with the side of the garden store.

2. The erection of pergola attached to the rear of existing dwelling house with concrete base.

3.0 Planning Authority Decision

3.1. Decision

Fingal County Council did by order dated the 20th of January 2025 decide to grant retention permission for the proposed development subject to five conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The report of the Local Authority Case Planner forms the basis of the planning authority decision.
- The case planner is satisfied that the development does not adversely impact on the residential amenity of adjacent properties by reason of overshadowing, overlooking or overbearing impacts. The development does not detract from the character of the surrounding area and is in accordance with relevant policy and the provisions of the Fingal Development Plan 2023-2029.
- The report concludes with a recommendation to grant permission subject to 9 no. conditions which was amended to 5no. condition in the decision (financial and security conditions omitted).

3.2.2. Other Technical Reports

- Water Services:

Flood risk: No objection

Surface water drainage: No objection subject to the following conditions:

1. All areas associated with this application and contributing to rainwater runoff shall be discharged to commensurate and appropriate SuDS (sustainable drainage systems) devices, in accordance with the principles of the GDSDS (Greater Dublin Strategic Drainage Study, 2005) and best practice SuDS design as per the CIRIA SuDS Manual C753.

2. No surface water / rainwater is to discharge into the foul water system under any circumstances.

3. The surface water drainage must be in compliance with the Greater Dublin Regional Code of Practice for Drainage Works, Version 6.0, FCC, April 2006

3.3. Prescribed Bodies

None

3.4. Third Party Observations

The planning authority received one third party submission, from the appellants in this case. The issues raised are similar to those set out in the grounds of appeal and summarised in section 6 of this report.

4.0 Planning History

N/A

5.0 Policy Context

5.1. Fingal Development Plan 2023-2029

Zoning: The site is zoned 'RS' with the objective 'to provide for residential development and protect and improve residential amenity'. The vision for this area is to ensure that any new development in existing areas would have a minimal impact on and enhance existing residential amenity

Section 14.10.4 Garden Rooms

Garden Rooms can provide useful ancillary accommodation such as a playroom, gym, or study/home office for use by occupants of the dwelling house. Such structures should be modest in floor area and scale, relative to the main house and remaining rear garden area. Applicants will be required to demonstrate that neither the design nor the use of the structure would detract from the residential amenities of

either the main residence or of adjoining property. External finishes shall be complementary to the main house and any such structure shall not provide residential accommodation and shall not be fitted out in such a manner including Development Management Standards by the insertion of a kitchen or toilet facilities. Such structures shall not be let or sold independently from the main dwelling.

5.2. Natural Heritage Designations

- 5.2.1. The site is not within or directly adjacent to any designated site. The Rye Water Valley/Carton SAC/NHA (Site code:001398) is located c. 7.5 km to the southwest while the Grand Canal NHA is located c. 40 meters to the north.

6.0 The Appeal

6.1. Grounds of Appeal

This is a third-party appeal lodged by Niamh Walsh and John Coleman against the decision of the planning authority to grant permission for the retention of development at 40 Castleknock Close, Laurel Lodge, Dublin 15. The appellants are the owners / occupiers of the neighbouring property to the east of the appeal site, the issues raised in the grounds of appeal can be summarised as follows:

- The proposed structure for retention, due to its height above the boundary wall, has impacted in the use and enjoyment of the appellants property as it blocks / restricts sunlight to their rear garden. The appellants have included photographs to demonstrate the impact of shading on their garden.
- The development has taken place in direct contravention of the legislative requirements of the Local Government Planning and Development Act 2000. The appellants object to the principle of 'build first and seek permission later' on the grounds that it is contrary to the statutory planning process and does not provide neighbours the opportunity to comment prior to works taking place.
- The appellants query the applicant's legal status in the property and their right to apply for retention permission stating that the application has not been

accompanied by the required letter of permission / authorisation of the owner. They consider that the application should have been deemed invalid for this reason.

- It is contended that the description of the development is intentionally misleading on the grounds that the description of the development in the application form and newspaper notice refers to the retention of a 'garden store' contrary to the description as indicated on the submitted drawings which refers to a garden store, playroom / gym.
- The rear elevation drawings submitted with the application indicate a proposed 'smooth plaster finish' to the rear elevation of the garden store. Conditions 1 and 4 of the planning authority's decision to grant permission require that the development be '*retained in its entirety in accordance with the plans, particulars and specifications lodged with the application*' and that '*external finishes of the development shall be in accordance with the details submitted with the application*'. *The appellants consider that FCC have mis-directed itself with these conditions as in practice it is not possible that the rear elevations can ever be finished as conditioned without access to the appellants property.*

6.2. Applicant Response

- None

6.3. Planning Authority Response

The planning authority's response to the grounds of appeal can be summarised as follows:

- The application was assessed against the policies and objectives of the FDP etc. The planning authority considered that the development would generally comply with the Development Plan policy and guidance for development in residential areas.
- While the appellant has submitted additional comments, no additional points have been raised which were not outlined at planning assessment stage.

- The Board are requested to uphold the decision of the planning authority.

6.4. **Observations**

None

7.0 **Assessment**

7.1. **Introduction**

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 reports of the planning authority, having regard to relevant local/regional/national policies and guidance and having inspected the site, I consider that the main issue in this appeal relates to the impact of the detached structure to the rear of the site on the amenities of the appellants property, by way of overshadowing / loss of sunlight. The appeal also raises various legal and procedural Issues relating to the application

7.1.2. I proposed to address these issues on the following headings:

- Legal and Procedural
- Overshadowing / Loss of light
- External Finishes

7.2. **Legal and Procedural**

7.2.1. The third-party grounds of appeal highlight various perceived legal and procedural issues associated with the application; these issues are addressed below.

The principle of seeking Retention Permission:

7.2.2. The appellants contend that the development, the subject of this application, has taken place in direct contravention of the legislative requirements of the Local Government Planning and Development Act 2000. They object to the principle of 'build first and seek permission later' on the grounds that it is contrary to the statutory planning process and does not provide neighbours the opportunity to comment prior

to works taking place. In response, I note that the Planning and Development Act 2000 (as amended) and its associated regulations do make provision for the seeking of retention permission. In this regard I refer the Board to section 32 (1) of the Act which sets out the general obligation to obtain planning permission and which states, under part (b), that permission shall be required in the case of development, which is unauthorised, for the retention of that unauthorised development. Furthermore, I note that third parties have been given the opportunity to make submissions in relation to the retention application and to make an appeal.

Land Ownership:

- 7.2.3. The appellants query the applicant's legal status in the property and their right to apply for planning permission stating that the application has not been accompanied by the required letter of permission / authorisation of the owner. They consider that the application should have been deemed invalid for this reason. In response, I note that the application includes a letter from the Dublin Simon Community, the stated owners of the property, which gives consent to the applicant to apply for retention planning permission. This is I consider this sufficient to permit, at least, the making of a valid planning application. Regard is had to section 34(13) of the *Planning and Development Act 2000 (as amended)* which states: "*A person shall not be entitled solely by reason of a permission under this section to carry out any development.*" As such, in the event of a grant of permission, it would be applicant's responsibility to ensure sufficient legal interest exists to implement the permission. Any further consents that may have to be obtained are essentially a subsequent matter and are outside the scope of the planning appeal.

Development Description

- 7.2.4. It is the contention of the third-party appellants that the description of the development as set out in the application form and in the public notices, as a 'garden store' is misleading as it does not match the description on the submitted drawings, as a 'garden store / playroom/ gym'. The structure concerned comprises a detached flat roofed building with a stated GFA of 8.49sqm and a ground to finished roof height of 2.664m. In my opinion, the description of the subject proposal, as set out in

the notices, provides for a sufficient and reasonable explanation of the nature of the structure concerned for the benefit / notification of third parties and I note that the planning authority, who have the responsibility in determining the adequacy (or otherwise) of the public notices and the subsequent validation (or not) of a planning application, were satisfied that the submitted documentation met the regulatory requirements.

- 7.2.5. Further to the above, I note that the Board has the authority to place a restriction on the use of the structure, should it see fit to do so. In this regard, I refer the Board to condition 3 of the planning authority's decision which restricts the use of the structure to uses that are 'incidental to the enjoyment of the house' and which prohibits its use for human habitation or for the carrying on of any trade. The restrictions placed on the development by condition 3 are standard for a development of the nature proposed and, are I consider reasonable in the interests of residential amenity. I would recommend that the Board attached a similar condition in the event of a grant of permission.

7.3. Overshadowing / Loss of Light:

- 7.3.1. The proposed development site is zoned 'RS- Residential' in the Fingal Development Plan 2023-2029 (FDP), the objective for this zone is 'To provide for residential development and protect and improve residential amenity'.
- 7.3.2. The proposal includes for the retention of a detached structure to the rear of the site, comprising a flat roofed garden room/ store and covered barbeque / dining area. The structure covers an area of c. 22.5 sq. m and has a ground to ridge height of 2.644m, it abuts the rear site boundary (the shared boundary with No. 41 Castleknock Rise) and extends the full width of the garden, exceeding the height of the boundary wall. The third-party appellants as owners / occupiers of No. 41 Castleknock Rise, contend that the structure due to its height above the boundary wall, has impacted on the use and enjoyment of their property as it blocks / restricts sunlight to their rear garden.

- 7.3.3. I have reviewed the plans and particulars submitted with the application and the appeal, including the photographs submitted in support of the appeal and I have inspected the site. While I note the concerns raised in the appeal, in my view, the structure for retention is modest in both height and scale and is not beyond what would normally be deemed acceptable in residential areas. Furthermore, while the height of the structure does exceed the height of the boundary fence, its height above ground level, on either side of the fence is not excessive or dominant. Given the modest height of the structure and its location to the west of 41 Castleknock Rise, I consider that any impacts of overshadowing / loss of sunlight on 41 Castleknock Rise would be limited in extent and duration and would not be so significant as to warrant a refusal of permission.
- 7.3.4. **External finish:**
- 7.3.5. It is noted by the third-party appellants that the elevation drawings submitted with the application detail a proposed 'smooth plaster finish' to the rear elevation of the garden store and that conditions 1 and 4 of the planning authority's require compliance with same. The appellants contend that Fingal County Council 'mis-directed' itself when it applied these conditions as in practice it is not possible to carried out the works without access to the appellants property.
- 7.3.6. In the interests of visual amenity, I would support the applicant's proposal to apply smooth plaster finish to the rear elevation of the garden store. In response to the issue raised by the third -party appellant, I refer the Board to the wording Condition 4 which states that 'external finishes shall be in accordance with the details submitted **unless otherwise agreed in writing with the planning authority**' [emphasis added]. In my opinion, this condition allows for a degree of flexibility in the event that the applicants are unable to apply the proposed finish. Therefore, in my opinion the condition is reasonable, and I would recommend a similar condition in the event of a grant of permission.

8.0 AA Screening

- 8.1. I have considered the proposed development in light of the requirements of S177U the Planning and Development Act 2000 as amended.
- 8.2. The subject site is not located within or adjacent to any European Site. The closest European Site, part of the Natura 2000 Network, is the Rye Water Valley/Cartron SAC, c. 7.5 kms from the proposed development.
- 8.3. The proposed development is located within a residential area and comprises the retention of a detached structure to the rear of the site incorporating a garden store and covered barbeque dining area and the retention of a pergola attached to the rear of existing dwelling house with concrete base and all associated site works.
- 8.4. Having considered the nature, scale and location of the proposed development I am satisfied that it can be eliminated from further assessment because it could not have any appreciable effect on a European Site.

The reason for this conclusion is as follows:

- Small scale and domestic nature of the development
 - The location of the development in a serviced urban area, distance from European Sites and urban nature of intervening habitats, absence of ecological pathways to any European Site.
- 8.5. I consider that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on a European Site and appropriate assessment is therefore not required.

9.0 EIA Screening

- 9.1. 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.

10.0 Recommendation

I recommend that retention permission be granted subject to conditions

11.0 Reasons and Considerations

Having regard to the 'RS' – 'Residential' zoning provisions for the site, to the nature and scale of the proposed development and to the existing pattern of development in the vicinity, it is considered that, subject to compliance with the conditions set out below, the proposed development for retention would be compatible with the established residential use of the site would not seriously injure the residential or visual amenities of the area or of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area

12.0 Conditions

1. 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.

Reason: In the interest of clarity.

2. The garden store hereby permitted shall be used for private domestic purposes only and shall remain ancillary to the dwelling. It shall not be used for human habitation or for any commercial use. It shall not be sold, let or otherwise transferred or conveyed, save as part of the overall dwelling plot.

Reason: In the interests of clarity and to regulate the use of the development in the interests of the proper planning and sustainable development of the area

3. External finishes of the development shall be in accordance with the details submitted with the application unless otherwise agreed in writing with the Planning Authority.

Reason: In the interest of visual amenity.

4. Drainage arrangements, including the disposal and attenuation of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health

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.

Lucy Roche
Planning Inspector

24th April 2025

Form 1

EIA Pre-Screening

An Bord Pleanála Case Reference	ABP-321835		
Proposed Development Summary	Retention of detached structures including covered BBQ area with all associated site works		
Development Address	40 Castleknock Close, Laurel Lodge, Dublin 15, D15 CYK0		
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	
2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?			
Yes			
No	X		No further action required
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes	Tick/or leave blank	State the relevant threshold here for the Class of development.	EIA Mandatory EIAR required
No	Tick/or leave blank		Proceed to Q4
4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			

Yes	Tick/or leave blank	State the relevant threshold here for the Class of development and indicate the size of the development relative to the threshold.	Preliminary examination required (Form 2)
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5. Has Schedule 7A information been submitted?		
No	X	Pre-screening determination conclusion remains as above (Q1 to Q4)
Yes	Tick/or leave blank	Screening Determination required

Inspector: _____ **Date:** _____