



An  
Coimisiún  
Pleanála

## Inspector's Report

**ACP-323072-25**

<b>Development</b>	Retention of a single storey flat roof extension with canopy and a small flat roofed storage shed, both located to the rear of the property
<b>Location</b>	9 Mount Garrett Park, Mount Garrett, Dublin 16, D15 X0V8
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	FW25A/0199E
<b>Applicant(s)</b>	Ann Seloterio
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant permission for retention
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Frederick Moncado
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	29 <sup>th</sup> September 2025
<b>Inspector</b>	Conor Hughes

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## **1.0 Site Location and Description**

- 1.1.** The site is located in an established residential neighbourhood in Tyrellstown Dublin 15 approximately 3.5 kilometres north of junction 3 of the N3 and the R121.
- 1.2.** Mount Garrett Park is a tree lined residential street with two-storey terraced dwellings on the southern side and ground floor apartments with duplex apartments over on the northern side. Parking is in curtilage on the southern side of the street and communal and assigned opposite.
- 1.3.** The site at No.09 Mount Garrett Park is a two-storey dwelling in the middle of a terrace of six dwellings. There is no gated pedestrian access to the rear of the property and the parking is in the driveway in front of the dwelling.
- 1.4.** The building is of masonry construction with a smooth brick finish, tiled roof and uPVC windows. The rear elevation is finished in a dry dashed chipping.
- 1.5.** The boundary to the street is defined by the driveway and garden of the property. The rear boundary is a close boarded timber fence. The other two boundaries are made up of close boarded timber fencing or have no boundary.

## **2.0 Retention of Development**

- 2.1.** The proposal is for the retention of a single storey rear extension, canopy and flat roofed shed.

## **3.1 Planning Authority Decision**

### **3.1. Decision**

- On 30<sup>th</sup> June 2025 the Planning Authority issued notification of their decision to grant planning permission for the retention of a single storey rear extension, canopy and flat roofed shed subject to three planning conditions.

#### **3.1.1. Conditions**

- The first condition required the development to be retained in its entirety in accordance with the plans, particulars and specification lodged with the application.

- The second condition required to the finishes along the southern elevation beyond the rear extension at No.07 Mount Garrett Park to match the existing dwelling.
- The third condition required the surface water to discharge to a separate system from the foul in accordance with the Greater Dublin Regional Code of Practice for Drainage Works, Version 6.0, FCC, April 2006.

### **3.1.2. Planning Authority Reports**

- The planning report noted that the proposed development is on land zoned as 'Residential' in the Fingal Development Plan 2023-2029 and that the development is 'Permitted in Principle' as a proposed extension to an existing dwelling.
- The single-storey flat roof extension was considered in the report to be in keeping with the design and appearance of the existing dwelling without impacting on the character of the area. It was also accepted that there was sufficient amenity space remaining within the curtilage for the retention of a small flat roofed shed as well.
- It was further considered that the extension would not impact adversely on the residential amenity of neighbouring properties by reason of overlooking or overshadowing.
- Two third parties observed that the extension abutted and encroached into their property. In this respect the Planning Authority report refers to the 2007 Development Management Guidelines highlighting planning permission does not confer title over land and that encroachment is a civil matter for the Courts.
- Two notes were added to the grant of planning permission highlighting the provisions of Section 34(13) of the Planning and Development Act 2000 and the need for consent from the neighbouring landowner if there is encroachment or oversailing.
- Having regard to the relationship between the as built extension and the neighbouring property the Planning Authority also required the applicant by way of condition to make good the finishes on this boundary to match the existing.

### **3.1.3. Other Technical Reports**

- Water Services Department: No objection subject to a condition requiring surface water to be managed in accordance with established codes of practice.

### **3.3. Prescribed Bodies**

- None

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

- Two separate third party observations were submitted from the residents a neighbouring property raising the same concerns about the lack of consultation ahead of the building works; an absence of permission and related concern about the impact that the works might have on the structural integrity of a party wall; the inability to carry out proper maintenance and repair where the properties abut and join one another; and the potential to devalue the property.

## **4.0 Planning History**

### **4.1. Appeal Site**

- Planning Authority Reference F99A/1620 – Residential development comprising 2,119 one, two, three and four bed dwellings and ancillary site works; the construction of approximately 1.8 km of an off-site trunk foul sewer pipeline to the Tolka Valley Sewer; the construction of 0.55 km of an off-site trunk surface water pipeline to the Pinkeen River and use of 4,000 square metres of existing off-site ponds for attenuation purposes; the reservation of a 3.54 ha site for primary school, neighbourhood shopping and sundry support residential community services; and the construction of a 31 metre high water tower.

### **4.2. Adjacent Site – 7 Mount Garrett Park**

- Planning Authority Reference FW25A/0172E – retention of an existing single storey rear extension with pitched roof, comprising of family room and utility room. The retention of single storey metal garden shed at rear of site, and the retention of an outdoor wooden pergola with flat roof at rear of extension.

## 5.0 Policy Context

### 5.1 Development Plan

- The Fingal Development Plan 2023-2029 (the Development Plan) is the relevant plan for the area and the site is in an established residential area at Tyrellstown and zoned as Zoning Objective 'RS -Residential'. It is also located within Airport Noise Zone C.
- Section 3.5.13.1 Residential Extensions of Chapter 3: Sustainable Placemaking and Quality Homes refers to the need for people to extend and renovate their dwellings and that this type of development will be considered favourably where it does not have a negative impact on adjoining properties or on the nature of the surrounding area.
- Policy SPQHP41 – Residential Extensions states:  
*'Support the extension of existing dwellings with extensions of appropriate scale and subject to the protection of residential and visual amenities.'*
- Objective SPQHO45 – Domestic Extensions states:  
*'Encourage sensitively designed extensions to existing dwellings which do not negatively impact on the environment or on adjoining properties or area.'*
- Section 14.10.2 Residential Extensions of Chapter 14: Development Management Standards recognises the need for housing to be adaptable to changing family circumstances and 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. It further states that:  
*'the design and layout of residential extensions must have regard to and protect the amenities of adjoining properties, particularly in relation to sunlight, daylight and privacy. The design of extensions must also have regard to the character and form of the existing building, its architectural expression, remaining usable rear private open space, external finishes and pattern of fenestration. Additionally, careful consideration should be paid to boundary treatments, tree planting and landscaping.'*
- Section 14.10.2.3 Ground Floor Extensions (rear) states:

*'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.'*

## **5.2. Relevant National or Regional Policy / Ministerial Guidelines**

- It is stated in the second paragraph of Section 5.13 of the Development Management Guidelines for Planning Authorities 2007 that:

*The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not be entitled solely by reason of a permission to carry out any development. Where appropriate, an advisory note to this effect should be added at the end of the planning decision.*

*Accordingly, where in making an application, a person asserts that he/she is the owner of the land or structure in question, and there is nothing to cast doubt on the bona fides of that assertion, the planning authority is not required to inquire further into the matter. If, however, the terms of the application itself, or a submission made by a third party, or information which may otherwise reach the authority, raise doubts as to the sufficiency of the legal interest, further information may have to be sought under Article 33 of the Regulations. Only where it is clear from the response that the applicant does not have sufficient legal interest should permission be refused on that basis. If notwithstanding the further information, some doubt still remains, the planning authority may decide to grant permission. However, such a grant of permission is subject to the provisions of section 34(13) of the Act, referred to above. In other words the developer must be certain under civil law that he/she has all rights in the land to execute the grant of permission.*

### **5.3. Natural Heritage Designations**

#### **5.3.1** The site is located approximately:

- Approximately 14 kilometres west of the Malahide Estuary Special Area of Conservation (SAC:000205) and Special Protection Area (SPA:004025)
- Approximately 10 kilometres northeast of the Rye Water Valley/Carton Special Area of Conservation (SAC:001398)

### **6.0 EIA Screening**

- 6.1.** 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 (or Part V of the 1994 Roads Regulations). 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.

### **7.0 The Appeal**

#### **7.1. Grounds of Appeal**

Fredrick Moncado has lodged a third-party appeal against the decision of Fingal County Council to grant retention of planning permission. The grounds of the appeal can be summarised as follows:

- The submitted plans do not provide sufficient evidence that the submitted works are within the legal boundary of the site. No boundary survey is submitted to demonstrate that significant encroachment has not occurred.
- No consent has been given to over sail the neighbouring property for any overhanging structures or gutter foundations. It is alleged there is a breach of property rights that may give rise to civil liability and planning permission does not override these private property rights.
- A remedy is suggested by the appellant that requires the planning applicant to submit a certified land registry boundary survey and revised drawings showing a minimum set back from all shared boundaries and a condition prohibiting the construction of any structure overhanging or oversailing his property.



## **7.2. Applicant Response**

- The applicant describes the proposal as a modest 8 square metre room built entirely within the boundaries of her property without encroachment. She advises that no part of the extended buildings touch a party wall. A piece of felt was stretched across a gap to reduce the risk of water ingress between the two properties.
- The applicant accepts a grant of planning permission does not confer title and the consent of the landowner is required where there is encroachment onto third party land. The applicant indicates she has reached out the appellant but there is no agreement on how the requirements of condition 2 of the grant of planning can be met.

## **7.3. Planning Authority Response**

- In response the Planning Authority make no further comment as the issues are dealt with in the planning report. It requests that the appeal is upheld.
- The Council further request should the appeal be successful that provision is made for applying a financial contribution for any shortfall in open space, any special contribution in accordance with the Council's Section 48 Contributions Scheme, a bond/cash security for two or more residential units and conditions for a tree bond or any shortfall in play provision.

## **7.4. Observations**

- None

## **7.5. Further Responses**

- None

## **8.0 Assessment**

- 8.1.** Having examined the application details and all the other documentation on file, including the submissions received to appeal, the reports of the local authority, and having inspected the site, and having regards to the relevant local/regional/national

policies and guidance, I consider that the substantive issues in this appeal to be considered as follows:

- The principle of development
- The protection of residential and visual amenities
- Encroachment and private property rights
- Other considerations

#### The principle of development

- 8.2.** The site is zoned as RS - Residential in the Development Plan and Section 3.5.13.1 residential extensions refers to the need for people to extend their home and that this type of development will be considered favourably where it does not have a negative impact on adjoining properties or on the nature of the surrounding area.
- 8.3.** I concur with the assessment of the planning officer that the retention of a small single storey extension and an ancillary outbuilding is acceptable in principle subject to being in accordance with the requirements of the policies and objectives of the zoning and consistent with the proper planning and sustainable development of the area.

#### The protection of residential and visual amenities

- 8.4.** I observed at the site visit that the closest neighbouring property to the extended dwelling is No.07 Mount Garrett Park. There are no windows in the proposed extension that overlook this property.
- 8.5.** There is also an extension of a similar depth at No.07 and whilst this proposal is located on a disputed boundary, I observed that it does not result in a loss of daylight or sunlight and that it is not dominant or overbearing.
- 8.6.** There is a window in the rear elevation of the extension but it is at ground floor level and there is a close boarded timber fence on the rear boundary to prevent overlooking into the property behind.

- 8.7.** I further note that the appellant does not raise any objection on the grounds of loss of residential amenity and no objections are received from any of the adjacent properties.
- 8.8.** I am satisfied that the building as extended will not impact adversely on the residential amenity of the adjoining property at No.07 or the properties to the rear for the reasons outlined above.
- 8.9.** It is stated at Section 14.10.2 of the development management standards that the design of extensions must have regard to the character and form of the existing building, its architectural expression, external finishes and pattern of fenestration.
- 8.10.** I am satisfied based on my observations that the small single storey extension is of a scale and form appropriate to the character of the building. A dry dash render finish is applied and the window and rain water goods match the existing.
- 8.11.** The flat roof is not typical of the roof form on the host building but minimises the height and reduces the visual bulk of the extension so it appears subservient to the main dwelling. I also observed that there is sufficient space remaining within the curtilage of the property for the use of the household.
- 8.12.** I agree with the finding of the Planning Officer and accept that the requirements of Section 14:10.2.3 of the Development Plan are met.
- 8.13.** Objective SPQHO45 encourages sensitively designed extensions which do not negatively impact on the environment or the adjoining properties. I agree with the planning authority that this objective is met and the design is suitable to the environment in which it is constructed.
- 8.14.** I note that policy SPQHP41 supports extensions to existing dwellings of appropriate scale and that protect residential and visual amenities.
- 8.15.** As I have already dealt with the issue of impact of the development on the residential amenity of neighbouring properties, I do not propose to revisit this issue other than to say that I consider the requirements of this part of the policy to be met for the reasons specified above.
- 8.16.** This is a mid-terrace dwelling and the single storey extension to the rear does not project above the ridge line. It cannot be seen from the street in front of the property. There are buildings to the east at Mount Garrett Avenue and to the south

at Mount Garrett Rise that provide enclosure and screen views to the rear of the property. There is an oblique view of the site from the west but other properties in the intervening view have similar small extensions and the development as built is consistent with the established character of the area.

- 8.17.** The building as extended is visually integrated into the streetscape and will not impact adversely on the visual amenity of the area. I agree with the Planning Authority that the requirements of policy SPQHP41 are met in full and the proposal is consistent with the proper planning and sustainable development of the area.

Encroachment and private property rights

- 8.18.** The grounds of appeal set out that the applicant has not supplied a full boundary survey to demonstrate there is no encroachment into the neighbouring property.
- 8.19.** The planning officer deals with this objection with reference to the 2007 Development Management Guidelines for Planning Authorities and attaches advisory notes to the decision confirming that ‘a person is not entitled solely by reason of a permission to carry out any development’.
- 8.20.** I cannot find any evidence in the application file that the officer inquires further regarding the doubt cast by the third party about the sufficiency of the legal interest asserted by the planning applicant.
- 8.21.** Having examined the plans submitted by the applicant and compared then with the plans for the extension to No.07 submitted under application reference FW25A/0172E I note that the new wall is an extension of an existing boundary wall which serves a WC in No.09.
- 8.22.** The appellant provides photographs of the building under construction. One of the photographs is of a block wall and I observe that it is built on the inside of a fence panel on the common boundary between the two properties.
- 8.23.** I note from the ‘existing rear elevation’ drawing submitted with the planning application shows the flat roof of the extended building marginally oversailing the common boundary. This is not my observation having visited the site and examined the two photographs submitted by the appellant looking down on the extension from a first-floor window and back towards the extension from the rear

boundary. In both these photographs I observe the flat roof to be at or on the centre line of the fence on the common boundary between the two dwellings.

- 8.24.** Based on a review of the submitted documents I consider there is insufficient evidence of encroachment and that further inquiries in the form of seeking a measured boundary survey and title documents from the planning applicant are unnecessary.
- 8.25.** The appellant had the opportunity to submit plans and title documents in support of the appeal. No contrary evidence is provided to substantiate his claim that would prompt me to inquire further as indicated by the guidelines.
- 8.26.** I am satisfied that the Planning Authority took the correct action by adding advisory notes to the decision. Where a boundary dispute exists then ultimately this is a matter for resolution in the Courts.

Other considerations

- 8.27.** The Planning Authority attach to the grant of planning permission a condition requiring the finish on the boundary wall with No.07 Mount Garrett Park to match the existing premises. The reason offered for the condition is in the protection of visual amenity.
- 8.28.** The planning applicant confirms in her response to the appeal that she is willing to meet the requirements of the condition but has not been able to engage with or get agreement from the appellant.
- 8.29.** It is my observation from the site visit that the visual impact of the unfinished wall is limited to the immediate context of the site and can only really be seen from the garden of No.07. If the appellant will not consent to access to carry out the works, I fail to see how the condition would be enforced. If the Commission is minded to agree with the Inspector's recommendation it should not be subject to a condition requiring the finish on the boundary with No.07 to match the existing premises.
- 8.30.** Conditions are recommended by the Water Services Division of Fingal County Council. If the Commission is minded to agree with the Inspector's recommendation, then the condition set out in this report should be attached to any grant of planning permission.

- 8.31.** In response the grounds of appeal the Planning Authority indicates that provision is made for applying a financial contribution for any shortfall in open space, any special contribution in accordance with the Council's Section 48 Contributions Scheme, a bond/cash security for two or more residential units and conditions for a tree bond or any shortfall in play provision.
- 8.32.** I understand a proposed domestic extension, with a floor area of approximately 10 square metres (measured internally), is not exempt from the requirement to pay development contributions under the Council's Section 48 Contribution Scheme. However, this a small development and the planning authority has not explained why a special development contribution to meet a shortfall in open space or play provision facilities or a tree bond is required in this instance.
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## **9.0 AA Screening**

- 9.1.** I have considered the proposed development in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended.

The subject site is located approximately 14 kilometres west of the Malahide Estuary Special Area of Conservation (SAC:000205) and Special Protection Area (SPA:004025) and approximately 10 kilometres northeast of the Rye Water Valley/Cartron Special Area of Conservation (SAC:001398)

The proposal is for the retention of a single storey rear extension, canopy and flat roofed shed.

No nature conservation concerns were raised in the planning appeal.

Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because it could not have any appreciable effect on a European Site. The reason for this conclusion is as follows:

- The site in an established residential area and the scale of the proposed development which is a domestic extension to a dwelling and ancillary outbuilding is small.
- The distance to the identified European sites and the lack of connection.

- Taking into account the screening determination by the Planning Authority.

I conclude, on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.

Likely significant effects are excluded and therefore Appropriate Assessment (Stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

## **10.0 Water Frame Directive**

**10.1.** The subject site is located approximately 250 metres southeast of the River Pinkeen.

The proposed development is for the retention of a single storey rear extension, canopy and flat roofed shed.

No water deterioration concerns were raised in the planning appeal.

I have assessed the proposed development and have considered the objectives as set out in Article 4 of the Water Framework Directive which seek to protect and, where necessary, restore surface and ground water waterbodies in order to reach good status (meaning both good chemical and good ecological status), and to prevent deterioration. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any surface and/or groundwater water bodies wither qualitatively or quantitatively.

The reason for this conclusion is as follows:

- The location of the site in an established residential area, the scale of the proposed development which is an extension to a domestic dwelling and an ancillary outbuilding is small. Sustainable Urban Drainage can be used as mitigation and reduce the impact of surface/storm water entering the drainage network but is unlikely to be required in this case.
- The distance to the nearest water bodies and the lack of hydrological connection.

I conclude that on the basis of objective information, that the proposed development will not result in a risk of deterioration on any water body (rivers, lakes, groundwaters, transitional and coastal) either qualitatively or quantitatively or on a temporary or permanent basis or otherwise jeopardise any water body in reaching its WFD objectives and consequently can be excluded from further assessment.

## **11.0 Recommendation**

- 11.1.** I recommend that planning should be approved for the reasons and considerations as set out below.

## **12.0 Reasons and Considerations**

- 12.1.** The building as extended is visually integrated into the streetscape and will not impact adversely on the visual amenity of the area. The proposal to retain the single storey rear extension and ancillary outbuilding is in accordance with Policy SPQHP41, Objective SPQHO45, Section 14.10.2 and Section and Section 14.10.2.3 of the Fingal Development Plan 2023-2029. The development is therefore consistent to the proper planning and sustainable development of the area.
- 12.2.** The Commission was satisfied that there was sufficient interest to grant planning permission as the extension does not encroach into the neighbouring property at No.07 Mount Garrett Park. Such a grant of permission remains subject to the provisions of section 34(13) of the Planning Act as amended where, a person is not entitled solely by reason of a grant of permission to carry out any development. Where a dispute exists about rights over land these are ultimately matters for resolution in the Courts.



## 13.0 Conditions

1. The development shall be retained in its entirety in accordance with the plans, particulars and specifications lodged with the application save as may be required by the other conditions attached hereto.

Reason: To ensure the development shall be in accordance with the permission and that effective control is maintained

2. The development shall comply with the following requirements:
  - a. No surface water/rainwater shall discharge to the foul water system under any circumstances
  - b. Th surface water drainage shall be in compliance wit the 'Greater Dublin Regional Code of Practice for Drainage Works Veriosn 6.0 FCC, April 2006.

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.

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Conor Hughes  
Planning Inspector

12<sup>th</sup> October 2025

## Appendix A: Form 1 EIA Pre-Screening

<b>Case Reference</b>	<b>ACP-323072-25</b>
<b>Proposed Development Summary</b>	The retention of a single storey rear extension, canopy and flat roofed shed
<b>Development Address</b>	9 Mount Garrett Park, Tyrellstown, Dublin 15
<b>IN ALL CASES CHECK BOX /OR LEAVE BLANK</b>	
<b>1. Does the proposed development come within the definition of a 'Project' for the purposes of EIA?</b>  <hr/> <p>(For the purposes of the Directive, "Project" means:</p> <ul style="list-style-type: none"> <li>- The execution of construction works or of other installations or schemes,</li> <li>- Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)</li> </ul>	<div style="border: 1px solid black; padding: 2px; display: inline-block;"><b>X</b></div> Yes, it is a 'Project'. Proceed to Q2.
<b>2. Is the proposed development of a CLASS specified in <u>Part 1</u>, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?</b>	
<input type="checkbox"/> Yes, it is a Class specified in <b>Part 1</b> .  <b>EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.</b>	<b>State the Class here</b>          
<div style="border: 1px solid black; padding: 2px; display: inline-block;"><b>X</b></div> No, it is not a Class specified in Part 1. Proceed to Q3	
<b>3. Is the proposed development of a CLASS specified in <u>Part 2</u>, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of</b>	

<b>proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?</b>	
<input checked="" type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road development under Article 8 of the Roads Regulations, 1994.  <b>No Screening required.</b>	
<input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.  <b>EIA is Mandatory. No Screening Required</b>	<b>State the Class and state the relevant threshold</b>
<input type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.  <b>Preliminary examination required. (Form 2)</b>  <b>OR</b>  <b>If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</b>	<b>State the Class and state the relevant threshold</b>
<b>4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?</b>	

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

Date: 12<sup>th</sup> October 2025