



An
Coimisiún
Pleanála

Inspector's Report

PL-501128-DF-26

Development	Construction of extension and alterations to FW23A/0293
Location	32 Rusheeney Way, Rusheeney Village, Dublin 15, D15 T6X8
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	FW26A/0018E
Applicant	Neculai Dobos
Type of Application	Retention permission
Planning Authority Decision	To grant retention permission with conditions
Type of Appeal	Third Party
Appellant	Caroline O'Neill
Observers	None
Date of Site Inspection	18 th June 2026
Inspector	Trevor Rue

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1.0 Site Location and Description

- 1.1. The application site is on the eastern side of a residential street in a suburban area about 2 kilometres to the west of the centre of Blanchardstown. The site has a stated area of 0.002 hectares and comprises the curtilage of a two-storey semi-detached dwelling. The width of the site narrows progressively from about 14 metres on the street frontage to about 3.2 metres on the rear boundary.
- 1.2. The dwelling has a total floor space of about 163 square metres and includes a family flat located at the northern side of the structure. The dwelling is sited 6.536 metres back from the street and occupies the full width of the site. Its rear garden is over 9 metres long. The main structure is covered by a hipped roof. The ground floor projects forward by about 750 millimetres under a separate hipped roof. There is also a ground-floor rear lean-to extension 2.91 metres in depth under a pitched roof. The upper front, side and back walls of the dwelling have a smooth render finish. There is red brick on the ground-floor front elevation.
- 1.3. The site is bounded to the front by a low wall which is interrupted by a centrally placed vehicular access. The front garden is bisected by a driveway that provides one parking space. There is also a wall along the northern boundary of the site which adjoins the side and back gardens of the neighbouring property, 33 Rusheeney Crescent. The back garden of No. 33 is enclosed by a wooden fence and gate. There is a single-storey shed in that back garden, situated close to the boundary wall.

2.0 Proposed Development

- 2.1. It is proposed to retain and/or complete the following works:
 - a ground-floor single-storey extension for use as a utility room and store, encompassing the triangular wedge between the pre-existing rear extension and the side boundary of No. 33 – it has a floor area of 4.1 square metres, a lean-to roof and finishes similar to those of the existing dwelling;
 - an internal flight of stairs from the family flat to the first floor;
 - a gable window 400 millimetres wide by 1 metre high at first-floor level, fitted with opaque glass, to serve a shower room; and

- a 550-millimetre by 600-millimetre roof light in the rear elevation to facilitate the use of the attic; and
- removal of the link at first-floor level between the original dwelling and previously approved additional accommodation.

2.2. A cover letter submitted with the application stated that the family flat was built for use by the applicant's mother-in-law. Due to her advanced age, it was decided during the construction process to make alterations to the ground-floor plan, the first-floor plan, the rear elevation and the side (northern) elevation. The specific reasons for these changes were explained as follows:

- Extended Ground Floor. The triangular shape of the site left a very small wedge at the rear door that would have been too small for external storage or even as a patio area. The applicant felt that maximising the ground-floor area of the extension would make better use of this wedge.
- Internal Stairs. It became apparent that the ground floor bedroom (in the awkward triangular space at the back of the extension) was too small for the applicant's mother-in-law. The applicant's intention was therefore to keep the downstairs space for living and to provide sleeping accommodation on the first floor. The separate stairs are intended to provide access to the first-floor bedroom but also to provide for a future chair lift. The main dwelling stairs cannot accommodate this. The stairs would not prevent the extension being subsumed into the main dwelling. When the extension is no longer needed for the applicant's mother-in-law, the stairs can be removed and the link to the first floor inserted without material structural work to the house.
- Window in the Northern Gable. As a first-floor shower room was included at construction stage, the applicant felt that a window was prudent for ventilation and would not materially impact on the amenity of his neighbours.
- Roof Window. An attic truss was utilised for constructing the roof to make use of the space for storage. A roof window was introduced to the rear of the attic to bring in some natural day light.
- First Floor Link. As the applicant had constructed a stairs to the first floor, he felt that the link to the existing house was no longer necessary.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On 12th March 2026, Fingal County Council granted permission for retention, subject to nine conditions:

Condition 1 required accordance with the plans, particulars and specifications lodged with the application.

Condition 2 required that, save for amendments authorised by this permission, the development shall otherwise be carried out in strict accordance with the terms and conditions of the previous permission FW23A/0293.

Condition 3 required the submission of amended floor plans omitting the ground-floor 1.0-metre-wide window on the front elevation, in the interest of clarity.

Condition 4 required the house and the proposed extension to be jointly used as a single dwelling unit, in order to prevent unauthorised development.

Condition 5 stated that the permission relates solely to that detailed in the statutory public notices and not to any other aspects of the development that may be shown in the lodged plans.

Condition 6 required all external finishes to harmonise with the existing premises.

Condition 7 required all bathroom/*en-suite* windows to be fitted with obscure glass.

Condition 8 concerned surface water drainage.

Condition 9 required payment of a development contribution.

- 3.1.2. The following notes were included on the decision notice:

Note 1. The applicant is advised that under the provisions of Section 34(13) of the Planning and Development Act 2000, as amended, a person shall not be entitled solely by reason of a permission to carry out any development.

Note 2. The issue of encroachment or oversailing is a civil matter. The applicant is advised that in the event of encroachment or oversailing of adjoining property, the consent of the adjoining property owner is required.

3.2. Planning Authority Reports

- 3.2.1. A **planning officer's report** typed on 9th March 2026 provided the reasoning for the authority's decision. The main points were as follows:

- The development is associated with an existing dwelling and is acceptable in principle subject to site-specific considerations.
- The submitted as-built ground-floor plan erroneously illustrates a window about 1.01 metres in width next to the existing front door of the dwelling. Upon inspection, it was evident that a separate front door, providing own-door access to the family flat, had previously been constructed and was recently blocked up. In the place where a window is shown, there is now a section of brick wall on the outside and plaster finish on the inside. An accurate ground-floor plan is therefore required illustrating the blocked-up section along the front elevation and omitting the window.
- At the time of the inspection, entry to the family flat was via the front door of No. 32 and an internal link at the bottom of the pre-existing staircase. The flat had not been fully finished and furnished but the submitted drawings illustrate an open-plan kitchen/living/dining room on the ground floor with a toilet/ shower room under the proposed additional staircase.
- Whereas the previous permission provided for family-flat accommodation at ground-floor level, the development for which retention permission is sought involves a family flat on two levels, with living accommodation on the ground floor and two bedrooms on the first floor accessed by a new flight of stairs. The family flat is in accordance with the Development Plan in that it measures about 60.8 square metres, entrance is via the main dwelling and no subdivision of the garden has been carried out or is proposed.
- A letter from the applicant's family doctor was submitted confirming the need for a stair lift. The existing staircase would not be compatible with a chairlift due to its split direction. The additional staircase is acceptable.
- The first-floor opaque window would not detract from the character of the surrounding area or cause overlooking or loss of residential amenity to neighbouring dwellings.
- The rear roof window to the existing access space is acceptable. At the time of inspection, no staircase had been provided to second-floor level but access was afforded through a standard attic trap door.

- While built development is located along the party boundary, most of it was approved under the previous permission FW23A/0293, the exception being a single-storey rear extension. The changes for which retention permission is sought would not have a significant detrimental effect on adjoining dwellings.
- The development would not give rise to an intensification of access or parking requirements and is acceptable in those respects.

3.2.2. The Council's **Water Services Department** had no objection subject to standard conditions.

3.3. **Third Party Submission**

3.3.1. The Council received a submission from Caroline O'Neill, the substance of which was, for the most part, repeated in her grounds of appeal. The submission also included the following points:

- The introduction of an independent internal staircase serving substantial first-floor accommodation within the extension, combined with the omission of the originally proposed first-floor link, materially alters the functional relationship between the extension and the principal dwelling. It appears to indicate that the extension is an independent residential unit and not a family flat. The Development Plan supports ancillary accommodation only where it remains subordinate and integrated within the principal dwelling.
- The attic configuration increases the usable accommodation and contributes to cumulative scale and intensity of the development.
- Contravening the previous approval, a separate entrance to the extension was constructed on the front elevation. This opening has since been covered using what appears to be superficial infill rather than permanent reinstatement with matching specified brickwork. The remedial work does not appear to be clearly identified within the retention submission. The visual impact on the front elevation within a semi-detached streetscape requires assessment.

4.0 Planning History

- 4.1. **F06B/0512:** On 26th October 2006, Fingal County Council granted permission for a two-storey extension of 63.71 square metres to the side of the dwelling. On 30th November 2011, the duration of this permission was extended until 25th October 2014.
- 4.2. **FW23A/0293:** On 18th January 2024, the Council granted permission for a two-storey extension to the side of the existing dwelling to create family ancillary accommodation with internal modifications. The following condition was attached:
- 3. The family flat element of the extension shall be used for this purpose only, and shall not be used independently of the main dwelling, let, leased, or otherwise used for any other purpose. The family flat shall be reintegrated into the main dwelling when no longer required for use as a family flat.*
- REASON: In the interest of residential amenity and to comply with the provisions of the Fingal Development Plan 2023-2029.*
- 4.3. **25/142** is an active planning enforcement file.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. Sheet 12 of the Fingal Development Plan 2023-2029 indicates that the application site is subject to a RS – Residential zoning, whose objective is to provide for residential development and protect and improve residential amenity. The vision for this zoning, set out in Section 13.5 of the Plan, is to ensure that any new development in existing areas would have a minimal impact on and enhance existing residential amenity.
- 5.1.2. Policy SPQHP41 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 3.5.13.2 of the Development Plan states that family flats are a means of providing additional accommodation with a level of independence for an undefined temporary period of time. Family flats allow for semi-independent accommodation for

an immediate family member (dependent on the main occupants of the dwelling). Policy SPQHP42 is to support the provision of family flats on suitable sites within established residential areas subject to specific design criteria. Objective SPQHO46 is to ensure family flats are for a member of the family with a demonstrated need; when no longer required for the identified family member, are incorporated as part of the main unit on site; do not exceed 75 square metres in floor area; and comply with the design criteria for extensions.

- 5.1.4. It is stated in Section 14.6.6.1 of the Plan that a daylight and sunlight assessment may be necessary to assess the impacts of the proposed development on surrounding properties and amenity areas outside the site boundaries of an application and in order to assess the likely daylight and sunlight reaching proposed units and associated private, communal and public open spaces. Development shall be guided by the principles of *Site Layout Planning for Daylight and Sunlight, A Guide to Good Practice – (Building Research Establishment Report) 2011* and/or any updated guidance.
- 5.1.5. Section 14.10.2 of the Plan states that the need for housing to be adaptable to changing family circumstances is recognised and acknowledged and 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. In particular, 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.
- 5.1.6. Section 14.10.2.2 of the Plan states that side extensions will be evaluated against proximity to boundaries, size, visual harmony and impacts on residential amenity. External finishes shall generally match the existing. 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.

5.1.7. Section 14.10.3 of the Plan states that family-flat development may involve the subdivision of a single dwelling, provision of an extension or conversion of a garage attached to the main dwelling, where the use is for a member of the immediate family (for example, an elderly parent). Applications will be assessed in terms of the impact on the integrity of the existing dwelling and neighbouring properties and compliance with the following criteria must be demonstrated:

- A requirement for the family flat must be demonstrated including details of the relationship between the occupant of the main dwelling and the occupant of the family flat.
- When no longer requested for use as a family flat, the accommodation must be capable of being subsumed into the main property.
- Any such extension to the main dwelling shall be subsidiary in scale relative to the main dwelling and shall not exceed an internal floor area of 75 square metres.
- The family flat should not impact adversely on either the residential amenities of the existing property or the residential amenities of the area.
- The entrance to the family flat must be via the main dwelling. Where own-door access is unavoidable, own-door access shall be located to the side or rear.
- No sub-division of the garden is permitted.

5.2. Guidance on Site Layout Planning for Daylight and Sunlight

5.2.1. The Third Edition of the Building Research Establishment good practice guide “Site Layout Planning for Daylight and Sunlight” (BRE 209) was published in 2022. Chapter 2 considers light from the sky (daylighting), while Chapter 3 considers sunlight.

5.2.2. Section 2.2.1 of BRE 209 explains that the quantity and quality of daylight inside a room will be impaired if obstructing buildings are large in relation to their distance away. However, Section 2.2.4 states that loss of light to existing windows need not be analysed if the distance of each part of the new development from the existing window is three or more times its height above the centre of the existing window.

5.2.3. Section 3.2.3 of BRE 209 says that to assess loss of sunlight to an existing building, it is suggested that all main living rooms of dwellings, and conservatories, should be

checked if they have a window facing within 90° of due south. Kitchens and bedrooms are less important, although care should be taken not to block too much sun. Normally loss of sunlight need not be analysed to kitchens and bedrooms, except for bedrooms that also comprise a living space. Section 3.3.3 advises that the availability of sunlight should be checked for all open spaces where it will be required. This would normally include gardens, such as the main back garden of a house.

5.3. Natural Heritage Designations

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

- Rye Water Valley/ Carton Special Area of Conservation, about 6 kilometres to the south west of the site, designated for petrifying springs and whorl snail; and
- North Bull Island Special Protection Area, about 16.5 kilometres to the east, designated for various bird species.

5.3.2. The application site is not in, or within 15 kilometres of, any Natural Heritage Area (NHA). There are nine proposed NHAs in Fingal, which are identified on Green Infrastructure Map 2 (Sheet 15) of the Development Plan. The nearest of these areas to the application site are Liffey Valley and Royal Canal.

6.0 Environmental Impact Assessment 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

7.1.1. The appellant's key planning concerns are tabulated below:

<u>Issue</u>	<u>Impact on 33 Rusheeney Crescent</u>
Gable window	Potential overlooking and loss of privacy
Boundary development	Excessive length creating overbearing effect
Overshadowing	Reduced access to natural sunlight
Encroachment	Maintenance concerns
Non-compliance	Development may exceed authorised plans

- While permission was previously granted under FW23A/0293 for a two-storey extension, the development as constructed and subject to this retention application differs in form, scale and impact. The increased length, continuous massing along the boundary and the upper-floor window result in a more intensive development than originally assessed.
- The gable window aligns with the rear elevation of the appellant's dwelling, including bedroom areas. The Council's Condition 7 requires obscure glazing but does not require that the window be fixed shut. An opening window allows angled views and noise transmission. Obscure glazing does not prevent a perception of overlooking.
- The structure extends 13 to 14 metres along the shared boundary. There is no meaningful setback or visual break. The result is a continuous and dominant built form, which creates a strong sense of enclosure and an overbearing presence when viewed from the appellant's home.
- The planning authority decided to grant permission without requiring a shadow analysis or daylight/sunlight assessment in accordance with the BRE 209 guidelines. Due to the southern orientation and length of the unmitigated structure, the appellant's primary outdoor amenity space and rear living areas are cast into permanent shadow from early afternoon onwards. The rear extension length, combined with the two-storey gable, prevents low-angle winter or mid-afternoon summer sun reaching her property.
- It appears that elements of the structure, including eaves, gutters or capping, may extend to or over the boundary line. While such matters may be civil in

nature, they have planning relevance where ongoing maintenance may require access to adjoining lands, raising practical concerns regarding the long-term sustainability of the development.

- The Council's Condition 2 requires that, aside from the permitted retention elements, development is in accordance with the previously approved plans. However, works observed include roof alterations (removal and reinstatement); the installation of an additional vertical flue on 17th March 2026; and vents/openings. These elements do not appear on the approved or retention drawings. This undermines confidence in the accuracy and completeness of the submitted documents.
- Impacts on adjoining amenity have not been fully assessed and key mitigation measures remain incomplete. The Council's Condition 8 defers drainage assessment and its Condition 3 requires post-decision design amendments. These matters should have been resolved prior to the Council's decision. Granting retention permission in these circumstances risks undermining the integrity of the planning system and may set an undesirable precedent for similar boundary developments.
- The cumulative effect of overbearance, loss of privacy, overshadowing and the intensification of development has not been adequately considered. These impacts arise not in a public space but within the appellant's private rear garden and directly affect the enjoyment of her home. It is requested that retention permission be refused but if it is granted, strengthened conditions should be imposed, including that the gable window be fixed shut.
- Thirty-six photographs were submitted with the appeal statement showing the gable window, the boundary development and the extra flue.

7.2. Applicant's Response

7.2.1. The applicant's response, which was accompanied by a re-dated copy of the as-built drawing previously submitted to the planning authority, may be summarised as follows:

- The appellant did not object to the previous grant of planning permission (FW23A/0293) for a two-storey extension to the side of the applicant's property

but she has objected to the retention of the modest alterations to that development now proposed.

- The ground of appeal concerning loss of sunlight and daylight should relate only to the single-storey extension at the back of the property, as the two-storey extension has already been permitted. The single-storey extension is about 2.8 metres to the rear and not 13 to 14 metres as the appellant suggests. The rear extension is about 2.01 metres at its widest, narrowing down to about 1.215 metres. Its height above the existing back garden boundary wall (sloping from about 1.75 metres above wall level to about 0.7 metres above wall level) could not reasonably be said to prevent sun from reaching the appellant's property.
- No objection was raised to the absence of a light study in respect of the previously permitted development. It would be disproportionate for a planning authority to require a light study now for the modest infill extension. The photos accompanying the appeal relate to purported light restriction caused by the original extension (which is not accepted) and not by the extension which is the subject of the current application. Accordingly, they should be disregarded.
- The appellant has not objected to the presence of a window in the gable but has requested that it be fixed shut. The window is located in a small shower room on the first floor. There should be no material noise transmission. It has opaque glass as per the planning condition to ensure the appellant's privacy. The opening is intended to allow ventilation. The window is hinged on the right-hand side, which restricts the ability to look out. The opening distance is also restricted for health and safety reasons. A planning authority would not reasonably insist on the window being fixed shut in such circumstances.
- The appellant cannot raise issues associated with the impact or scale of the development previously permitted. Any objection should be limited to the alterations included in the current application. The only alteration relating to impact or scale is the modest infill single-storey back extension, which could not be regarded as causing undue dominance over the appellant's property.
- Any assertion that the development encroaches on the appellant's property is rejected. The owner has received no correspondence regarding encroachment or trespass.

- Any assertion that the development is not in compliance with the Council's Condition 2 is rejected. Other than the shower-room window, the only openings in the gable wall relate to air vents. The central-heating flue on the roof of the back extension is not material and does not encroach on the appellant's property. The established law is that the intention and clarity of conditions govern enforcement/compliance requirements. Minor discrepancies (such as the ones raised by the appellant) that do not alter the planning intent do not constitute a breach of the condition.

7.3. Planning Authority Response

- 7.3.1. Having reviewed the appeal submission, the planning authority concurred with its original decision and the conditions attached. It noted the third-party photographs and concerns regarding natural daylighting but emphasised that the two-storey built form of the retention development is comparable in size and scale to that of the previously approved development. It recommended the Commission to uphold its decision. Provision should be made in the determination for applying a financial contribution and/or any special development contribution required in accordance with the Council's Development Contribution Scheme.

7.4. Further Responses

- 7.4.1. The **planning authority** noted the first-party evidence but had no further comment.
- 7.4.2. The **appellant's response** to the applicant's appeal submission may be summarised as follows:
- The previous planning application was submitted shortly before her husband passed away in January 2024. She was not in a position at that time to engage fully with or properly assess the revised plans and roof design in detail.
 - The retained works should not be assessed in isolation as individual minor alterations. The cumulative visual and environmental impact of the overall development as experienced from the adjoining residential property should be considered. A hipped-roof design would have reduced the overbearing impact and loss of sunlight experienced at the property

- No first-floor side opening window should be permitted at this location in order to protect adjoining residential amenity and privacy. Alternative ventilation options are available under [the Building Regulations 2019,] Technical Guidance Document F.
- An additional flue appears to have been installed at the structure following commencement of the appeal process. As there are now two flues in close proximity to the shared boundary, there is a noticeable increase in smoke and fumes in the vicinity of the appellant's rear garden and garden shed area.
- In addition to the shower room window and vents referred to in the applicant's submission, there are further openings visible in the gable wall which do not appear to have formed part of the originally approved drawings. These include one opening located near the shower room window and another about 1 foot above boundary wall level, both of which appear to have been drilled through from inside the structure. While the appellant cannot comment on their intended final use, these additional openings contribute to the cumulative intensity of development along the shared boundary and further demonstrate that the development as constructed differs from the originally approved plans.
- Although the applicant's submission rejects any assertion of oversailing or encroachment, the appellant has obtained an independent measured survey which indicates that elements of the roof, gutters, eaves and the ledge beneath the shower room window appear to project beyond the boundary alignment and demonstrates the extremely limited separation distance between the development and the adjoining property.
- While ownership and boundaries may ultimately be civil matters, the inclusion of Note 2 on the decision notice demonstrates that the issue of potential oversailing or encroachment was considered sufficiently relevant to be specifically referenced by the planning authority. The appellant has not provided consent for any oversailing or encroachment.

7.4.3. An engineering report attached to the appellant's response may be summarised as follows:

- A fundamental prerequisite of a valid planning application is that the applicant must possess a verifiable legal interest or the explicit written consent of the

landowner. The Commission's attention is drawn to established jurisprudence governing the lack of sufficient legal interest and unconsented structural taking of land. For example, in *Frascati Estates Ltd v Walker* (1975) IR 177, the Supreme Court ruled that an applicant must possess a sufficient legal interest in the subject lands. Where a development actively encroaches on to third-party land without written consent, the application is invalid on administrative grounds. In *McCallig v An Bord Pleanála* (2013) IEHC 60, the High Court held that when an ownership or boundary conflict is raised, the planning authority has an administrative duty to satisfy itself that the applicant possesses a *bona fide* sufficient legal interest. In this regard, Fingal County Council fundamentally erred in its initial decision to grant.

- The applicant's architectural drawings indicate a distinct setback between the proposed development and the registered property boundary. However, as verified by engineering inspection on 14th May 2026, the drawings do not accurately represent the physical realities. Laser-level metrics attached to the report demonstrate that the building is built directly on top of the boundary wall, incorporating it into the new gable wall rather than sitting aside or tight to it. As verified by photographic evidence also attached, the eaves, roof, and gutters of the unauthorised structure physically overbuild and trespass on the appellant's private land. The overbuild measures more than 30 millimetres off the boundary alignment line.
- The boundary wall capstone has been moved 15 to 20 millimetres off-centre facing the appellant's property to simulate a boundary-aligned build. The applicant has not explained how the appellant can legally maintain or repair this structure should damage occur without incurring serious financial loss.
- The onus remains squarely on the applicant to demonstrate objectively that a development will not result in material injury to adjacent residential amenities. The historic right to light protections remain severely compromised.
- The introduction of an unpermitted, opening window directly on a shared property boundary introduces profound statutory fire hazards. Under Technical Guidance Document B, any external wall situated within 1 metre of a relevant boundary is restricted to a 0% allowable unprotected area. Standard window

glass possesses zero fire resistance and is strictly prohibited in this zone unless it is specialised, non-opening, fire-rated integrity glass. This has not been provided to the gable end window. No radiant heat calculations or space separation metrics have been provided to validate the boundary windows.

- By constructing an illegal, unprotected fire risk directly on the boundary line without a 1-metre structural setback, the developer effectively sterilises the appellant's statutory right to develop her own property in the future. Any future extension built on her side would be restricted by the building-control authorities due to the proximity of the applicant's noncompliant opening. The Building Codes are there to protect everyone.
- Under Technical Guidance Document F, natural window ventilation is not a mandatory requirement for internal rooms, utility rooms, bathrooms, or en-suites. Mechanical extract ventilation and mechanical ventilation with heat recovery are explicitly endorsed as sustainable, windowless alternatives. The invasion of the appellant's privacy via an overlooking window is a consequence of defective architectural design, not regulatory necessity.
- Because this extension to an extension has been built entirely without planning permission, it has completely bypassed mandatory inspections and independent professional oversight required under building control legislation. An Coimisiún Pleanála cannot grant retention permission to an uncertified, hazardous structure that violates national fire regulations, ignores ventilation mandates, severely degrades private residential amenity and relies on an active physical trespass and structural overbuild.

8.0 Assessment

8.1. Issues

8.1.1. Having inspected the site and considered in detail the documentation on file for this third-party appeal, it seems to me that the main planning issues are:

- the acceptability of the increase in the size of the family flat;
- the effect of the development on the appellant's residential amenity; and
- potential encroachment on the appellant's property.

8.2. The Family Flat

- 8.2.1. While the previous permission provided for a family flat on the ground floor only, the development for which retention permission is sought entails a larger flat on two floors with a separate internal staircase. However, it seems to me that the family flat as now proposed still complies with the Development Plan. It is occupied by a dependent member of the applicant's family. The accommodation is capable of being subsumed into the main property when no longer required as a family flat and this could be required by condition. It is subsidiary in scale relative to the main dwelling and has an internal floor area of less than 75 square metres. The garden has not been subdivided.
- 8.2.2. Access to the family flat is via the front door of the dwelling. It seems that there was for a time an own-door access where a window is shown on the submitted front elevation. I observed that the door has been replaced by brickwork which matches the surrounding finish. A condition is required to prohibit the opening of a separate access to the flat and to require the submission of an accurate drawing. Subject to that condition, I am content that the layout of the family flat is acceptable.

8.3. Residential Amenity

- 8.3.1. I confine my assessment to the matters for which retention permission is sought in the present application, as described in the public notices and depicted in the submitted drawings. As those are the only matters under consideration in this appeal, I see no need to attach the Council's Condition 2 to any permission that may be granted. It seems to me that the Council's Condition 5 is not a condition but a statement of fact.
- 8.3.2. The submitted drawings do not show the flues which have been installed above the wedge-shaped additional rear extension or the vents above the gable window. Their planning status is a matter for the planning authority to consider and beyond the scope of this assessment
- 8.3.3. I see no objection to the proposed roof light over the attic and none has been raised.
- 8.3.4. I inspected the gable window from inside the shower room. It is recessed from the side wall. As shown on the first-floor plan, it is located beside a toilet. It has obscure glass and is hinged on the right-hand side and at the base. In order for overlooking to occur, a person would have to stand on the toilet seat and stick his or her head into

the restricted opening. That is not likely to happen often or at all. Perceptions aside, the window does not pose an actual threat to the appellant's privacy. I am not persuaded that significant noise transmission is likely to occur. While other ventilation options are possible, I do not consider that it would be reasonable to impose a condition requiring the window to be fixed shut.

- 8.3.5. In considering overbearance and overshadowing, I must concentrate on the additional wedge-shaped rear extension and not on development that has already been permitted. Given its small floor area, sloping nature and modest height above the boundary wall, I do not accept that the rear extension is dominant or obtrusive when seen from the appellant's dwelling or back garden.
- 8.3.6. The BRE 209 guidelines do not advocate that a daylight and sunlight assessment be carried out in all situations. Given the distance between the rear extension and the existing windows in No. 33 relative to the vertical position of the extension, there is, according to BRE 209, no need for a daylight analysis.
- 8.3.7. The appellant's dwelling sits closer to the street than No. 32 and its south-western side elevation is angled away from the northern side elevation of No. 32. In my opinion, no main living room of the appellant's dwelling would suffer a significant loss of sunlight as a result of the rear extension. While some sunlight to the back garden would be lost (over and above that already lost to the approved development), in my judgement the net loss would be minor. I consider that it would not be justifiable to withhold planning permission on daylighting or sunlighting grounds. This conclusion is without prejudice to any rights to light which the appellant may have in private law.
- 8.3.8. Compliance with building control legislation, including provisions relating to fire safety, are evaluated under a separate legal code and thus need not concern the Commission for the purposes of this appeal.
- 8.3.9. Having regard to the location and small scale of the development (as described in the public notices and thus within the remit of this assessment) and to the juxtaposition of the properties, I see no good reason why a grant of retention permission would prevent the appellant from developing her own land. Taking all the foregoing matters into account, I am not persuaded that the development to which this application relates would have an unacceptable effect on the appellant's residential amenity.

8.4 Encroachment

- 8.4.1. The effect of Article 22(2)(g) of the Planning and Development Regulations 2001 is that an applicant for planning permission must either be the owner of the land or provide landowner consent. In this case, it is stated on the application form that the applicant is the owner of the application site. The planning authority did not query this and accepted the application as valid.
- 8.4.2. The appellant did not allege encroachment on her property in her submission to the planning authority at application stage. In her grounds of appeal, she suggested that elements of the structure, including eaves, gutters or capping, may extend to or over the property boundary. In her further response, she stated that the ledge beneath the shower room window appeared to project beyond the boundary alignment. She also presented engineering evidence to indicate that elements of the roof, gutters and eaves of the unauthorised structure are built over and trespass on her land.
- 8.4.3. I make no comment on any possible encroachment beyond the ownership boundary of any part of the previously approved family flat which is not the subject of the present planning application.
- 8.4.4. I note that the appellant's engineering evidence did not refer to the window ledge. During my site inspection, I judged that it is possible but by no means certain that the ledge extends slightly into the appellant's property. However, that depends on the precise position of the ownership boundary within the thickness of the wall. I have not seen title deeds and in any event, it is not the Commission's role to resolve a property dispute. It seems to me that in these circumstances the Commission is entitled to grant planning permission even though the question of legal title remains outstanding, but that any cover letter enclosing the Commission's decision should make reference to Section 34(13) of the Planning and Development Act.
- 8.4.5. During my inspection, I observed that roof tiles and flashing which form part of the wedge-shaped additional rear extension overhang the appellant's back garden. The continuation of the roof, eaves and gutters beyond the gable wall of the dwelling is not depicted on the submitted as-built drawing and therefore does not form part of the application for retention permission. Should the Commission grant permission, any overhanging elements of the rear extension would not be authorised. It would be

important to attach a condition to any permission requiring runoff from the rear extension to be contained within the application site.

- 8.4.6. The rear extension is unfinished. A condition should be imposed to require its external finishes to harmonise with those of the existing dwelling. Completion of the extension would almost certainly necessitate the co-operation of the appellant, although a grant of planning permission would not entitle the applicant to carry out construction or maintenance work from her property without her consent. However, in my opinion, the decision on whether to grant permission cannot be contingent on such consent. That is a private matter between the parties concerned.

9.0 Appropriate Assessment Screening

- 9.1. Having considered the nature, location and small scale of the proposed development, the nature of the receiving environment as a built-up urban area, the absence of emissions therefrom, the distance from the nearest European site and the absence of any known hydrological link between the application site and any European site, I am content on the basis of objective information that the development is not likely to have a significant effect on any European site, either alone or in combination with other plans or projects. I therefore conclude that the carrying out of an appropriate assessment under Section 177V of the Planning and Development Act 2000 is not required.

10.0 Water Framework Directive

- 10.1. The application site is located about 110 metres from the watercourse known as Huntstown. The proposed development comprises an extension and alterations to a dwelling. No water deterioration concerns were raised in the planning appeal.
- 10.2. I have assessed the development and have considered the objectives as set out in Article 4 of the Water Framework Directive (WFD) 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 either qualitatively or quantitatively.

- 10.3. The reason for this conclusion is as follows the nature and small scale of the works; the distance from the nearest water body and the lack of hydrological connections.
- 10.4. I conclude 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 to the Commission that planning permission be granted, subject to the conditions set out below.

12.0 Reasons and Considerations

- 12.1. Subject to compliance with the following conditions, it is considered that the development is consistent with the relevant provisions of the Fingal Development Plan 2023-2029, that it is not seriously injurious to the residential amenity of neighbouring property, and that it is in accordance with the proper planning and sustainable development of the area.

13.0 Conditions

1.	The development shall be completed and retained in accordance with the plans and particulars lodged with the application and re-presented to An Coimisiún Pleanála on 5th May 2026, 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.	There shall be no own-door access to the family flat. Within three months of the date of this permission, amended drawings shall be submitted for the written agreement of the planning authority accurately portraying the front elevation and ground-floor layout of the building. Reason: In the interest of clarity
3.	The enlarged family flat shall not be used independently of the main dwelling and shall be reintegrated into the dwelling when no longer required for use as a family flat. Reason: In the interest of residential amenity and to comply with the provisions of the Fingal Development Plan 2023-2029.
4.	Surface water drainage arrangements shall comply with the requirements of the planning authority for such services and works. Runoff from the rear extension hereby permitted shall be contained within the application site. Reason: To prevent flooding and in the interest of sustainable drainage.
5.	The external finishes of the rear extension hereby permitted shall harmonise with those of the existing dwelling. Reason: In the interest of visual amenity.
6.	The gable window serving the shower room shall be fitted with obscure glass and hinged on the right-hand side and at the base. These arrangements shall be permanently retained. Reason: In the interest of residential amenity.

7.	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. The contribution shall be paid prior to the 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 Coimisiún Pleanála to determine the proper application of the terms of the Scheme. Reason: It is a requirement of the Planning and Development Act 2000 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.
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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 me, directly or indirectly, following my professional assessment and recommendation set out in my report in an improper or inappropriate way.



TREVOR A RUE

Planning Inspector

25th June 2026

Appendix A: Form 1 – EIA Pre-Screening

Case Reference	PL-501128-DF-26
Proposed Development Summary	Extension and alterations to dwelling
Development Address	32 Rusheeney Way, Dublin 15
	In all cases check box /or leave blank
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes, - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	☒ Yes, it is a 'Project'. Proceed to Q2.
2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?	
☒ No, it is not a Class specified in Part 1. Proceed to Q3	
3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?	
☒ 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.	No Screening required.
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)?	
No ☒	Pre-screening determination conclusion remains as above (Q1 to Q3)

Inspector: 

Date: 25th June 2026