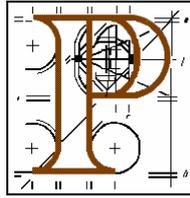


An Bord Pleanála



Inspector's Report

Appeal Reference: PL55.241724

Development: Permission for retention of ground floor window in eastern elevation at,

236 Coast Guards, Lower Point Road, Dundalk, Co. Louth.

Planning Application

Planning Authority: Dundalk Town Council
Planning Authority Reg. Ref.: 12/130
Applicants: Peter Neary
Type of Application: Permission for retention
Planning Authority Decision: Refuse permission

Planning Appeal

Appellants: Peter Neary
Type of Appeal: First Party v Decision
Observer: Pdraig McKenna
Date of Site Inspection: 25th June 2013

Inspector: Suzanne Kehely
Appendices: Photographs and maps

1. SITE LOCATION AND DESCRIPTION

- 1.1** The appeal site is a residential site located in a coastal setting on the southern side of Dundalk Bay to the east of the town. It is located at the end of a cul-de-sac and closes the northern vista along Lower Point Road in the direction of the sea. Development along the road in the vicinity of the site consists of an attractive terrace of two storey cottages (Coastguard Cottages) on the south east overlooking open space between the road and the sea. The sewerage treatment plant works is located in the far side of the open space. The subject dwelling is detached and at an oblique angle facing south west away from the cottages. There is a pedestrian pathway (Navy Walk) on its western side providing access to the coast/shore. There is a large undeveloped tract of land between the house and established coast guard cottages - It is to the east of the site and this also extends to the north of the terrace of cottages. It has direct frontage onto the road and has been closed off by metal sheeting.
- 1.2** The dwelling comprises an original four over two bay traditional type farmhouse which has a series of extensions to the rear and which together extends across the full width of the original dwelling. The original frontage width is retained at 12.2m but the depth now extends to 20.2m. The width also extends to 15.7m to the rear of the dwelling.
- 1.3** The site is irregular in shape but the house is substantially set back from its site boundary on three sides – and has a front and back garden as well as space to the western side.
- 1.4** On the eastern side of the house the gable/side walls are on the boundary. The gable wall of the original dwelling has a small first floor window and a small ground floor window. In the more recent extension there is a ground floor window in the side elevation. (subject of appeal) Deeper into the site the relatively straight line of the site boundary is breached by a small square indentation into the adjacent field. This appears to be depicted on the ground by a foundation or single layer of concrete blocks. There is a small gate to the rear of the dwelling in the eastern boundary which provides pedestrian access to the adjacent site.
- 1.5** The adjoining site is used for grazing of horses. There are also some containers and a mobile home.
- 1.6** I inspected the site on 25th June and the applicant provided access to the subject ground floor gable window on both sides.

2. PROPOSED DEVELOPMENT

- 2.1** This applicant seeks to retain a ground floor window in the eastern elevation. The window serves a lobby area/second stairwell with an internal door from the utility area and with another internal door to a small office which has an internal window onto the lobby. (*This is a different layout than in approved plans -09/136*)
- 2.2** It is explained in a cover letter that

- The house was extended on foot of permission (09/136) and minor internal amendments caused a small ground floor window to appear.
- The retention of the window will not impact on privacy of existing or future residences.
- By reference to a report PL55.235477 it is argued that overlooking by gable windows is not the issue in respect of development of adjacent land but rather flooding and conservation.
- The condition in the permission requiring omission of windows related to first floor windows.

3. TECHNICAL REPORTS

- Roads Department: No objection
- Sanitary Service: No objection
- Transportation Section: No objection

4. PLANNING AUTHORITY'S DECISION

4.1 Assessment

The planning report notably refers to

- Development plan objectives
- The objection in relation to overlooking and boundary location
- The planning history (notably 09/136) which involved the requirement to submit revised plans. The revised plans do not contain an additional ground floor window but do include first floor windows which were subsequently required to be omitted in a condition of permission. Drawing no. 0902-200-P was submitted in compliance however the extension has not been constructed in accordance with the permission.
- The detrimental impact on future development potential of adjoining land to east.
- The status of Dundalk Bay as an SAC and the nature of the development being of such that would not have an adverse impact

4.2 Decision

Dundalk Town Council issued a notification of decision to refuse planning permission for the proposed development for the stated reason:

It is considered that the proposed retention of the ground floor window along the eastern elevation is unacceptable as to permit same abutting the site boundary could be prejudicial to the future development potential of adjoining lands to the east, be injurious to potential future residential amenity, which could result in the depreciation of the value of these lands.

5 APPEAL GROUNDS

5.1 A first party appeal was lodged against the decision of the Planning Authority. The grounds of appeal and main points raised in this appeal are summarised as follows:

5.1.1 The retention of the window would not prejudice future development of adjoining lands It is submitted that it was the large expanse of window at first

floor level in the eastern elevation that was offensive as proposed in the initial application (09/136) and consequently omitted by condition no.2. It is submitted that the ground floor window was not at issue. Reference is made to the inspector's report in respect of a proposed development on the adjacent site and the potential development constraints. For example it is pointed out that the site is constrained by the mature trees. There are also already 2 windows in the gable wall therefore development up to the gable wall would not be permitted. These factors are apparent in the site layout of that application.

5.1.2 The retention of the window would not be injurious to future residential amenity on the basis that:

- There will be adequate separation distance due to restriction set by crown and root spread of trees.
- Separation distances are already required for the existing windows.
- It only serves a stairwell and it is also proposed to use opaque glazing.

5.1.3 The retention of the window would therefore not result in depreciation of land value.

5.1.4 The adjacent site is further restricted by ecological, flooding and visual amenity in a comprehensively sensitive landscape where there is a presumption against development.

Attachments:

Reports for history files 12/130, 09/136, 09/10 and 01/156

6 RESPONSES BY PLANNING AUTHORITY

6.1 A comprehensive report addresses the substantive issue raised in the grounds of appeal.

- It is pointed out that it is the principal of windows in the gable elevation rather than the size. This is reflected in the decision.
- The trees are not protected by way of any protection order or specific objective in the development plan.
- The Board is requested uphold the decision.

7 THIRD PARTY OBSERVATIONS

7.1 Mr. Pdraig McKenna owner of the adjacent land makes the following observations:

7.2 The windows were previously changed from opaque to clear plain glazing.

7.3 It is alleged that the applicant has carried out a number of works/development for which he has no entitlement, such as breaches/accesses in the party

boundary, storage of mobile home, demolition and rebuilding of party boundary wall. *(These are, I consider, substantially matters of civil dispute.)*

- 7.4 Windows have been constructed without planning permission and have been subject to enforcement.
- 7.5 The adjacent site is zoned for residential development in the current development plan. Permission for the subject 'overlooking' window would severely impinge on the possibility of fully realising this land-use objective.

8 PLANNING HISTORY

- 8.1 09/136 refers to a grant of permission for a two storey extension to the rear of the subject property and is pertinent to this application and appeal. (Contained in pouch at back of file)
- 8.2 01/269 also refers to a previous permission for alterations and extension. (In pouch)
- 8.3 PL55.235477 refers to a refusal of permission for a small housing development on the adjacent site which is directly overlooked by the subject window. (report appended to grounds of appeal)

9 DEVELOPMENT PLAN

- 9.1 Dundalk and Environs Development Plan 2009-2015 governs the development objectives for the subject site. In this plan the site is zoned for residential development. 'To protect and improve existing residential amenities and to provide for infill and new residential developments.'
- 9.2 The Coastguard cottages to the south-east are in an architectural conservation area.

10 APPROPRIATE ASSESSMENT

The site is adjacent to Dundalk Bay a designated Special Protection Area and Special Area of Conservation. However as the subject development relates to alteration of an existing house and is of a small scale I consider that it is not likely to have any significant impact on the adjacent designated sites. Accordingly an appropriate assessment is not required.

11 ASSESSMENT

11.1 General

This appeal relates to the retention of a ground floor window in a party wall with a development site zoned for residential development. The owner of the site has raised objections relating to infringements along the boundary and ultimately the impact on development potential of his lands. While the issue of encroachment onto other property is strictly a civil matter best sorted through other legal channels the insertion of a window on or close to a boundary at

this location does fall to be assessed under the planning acts. The issues relate to:

- The status of the window – minor deviation
- Impact on adjacent site by reason of prejudicing development potential and loss of amenity.

11.2 Status of window

The applicant makes the case that in the context of the existing gable windows and the removal of the offending proposed first floor windows that the subject window is essentially inoffensive and that it just appeared in the course of construction.

I note that the subject window is in a substantial domestic extension which has been constructed following a grant of permission – planning authority reference 09/136. The window is however not in compliance with that permission. The initial drawings lodged in that case included a window similar to the subject window in addition to extensive glazing in the same elevation. Following a request for further information revised plans were submitted which omitted the proposed ground floor window and replaced it with an indentation- light well incorporating a window perpendicular to the party wall /boundary. The first floor windows remained contrary to the planning authority's requirements and the final grant of permission related to the revised plans (i.e. without the ground floor window) and was on condition to also omit the first floor windows. (These drawings are contained in history details in the pouch at the back of the file.)

It is quite clear that in the course of the previous application (09/136) the subject ground floor window was not permitted. The reinstatement of the window on a boundary is I consider significant and cannot be dismissed as *de minimus*.

11.3 Impact on adjacent site:

Overlooking

The subject window has clear glass and provides clear and unobstructed views across the site. The use of a blind is immaterial. While opaque glazing would inhibit overlooking the window would also have to be non-openable. It would remain a source of light and would also transmit noise. I do not agree that the existence of other windows confers right to continue building windows in the same elevation.

I am of the opinion that the subject window would injure amenity in the adjacent site and would thereby impact on development potential.

Impact on development potential

The applicant makes the case that the development potential of the adjacent site is compromised by reason of the mature trees and also by required setbacks from established windows in the subject house and moreover by the ecological and environmental constraints imposed by virtue of the coastal location adjacent to Natura 2000 site. In support of this the applicant refers to the inspector's report in the case of refusal of permission for a small housing

development in the adjacent site. The planning authority however states that the trees are not subject of any specific protection order or objective.

While it may be that future development may be constrained by existing windows – the design standards which support protection of amenity also serve to underline the additional restrictions by additional windows. To permit additional windows would exacerbate the potential for overlooking. Notwithstanding potential development constraints I consider the retention of a window at this location in a party wall would by itself inhibit the development potential of the adjoining lands

In simple terms, prior to the construction of the extension as exists it would appear that the owner of the adjacent site could build up to this wall to the rear of the original building line of the dwelling. To build up to and block a window would not be consistent with proper planning and sustainable development.

In terms of precedence I refer the Board to a previous decision to refuse permission for a high level window at a boundary location on the basis of its potential impact on future development on the adjoining lands. (PL 06S.217178- order attached.)

In conclusion I concur with the decision of the planning authority and recommend that its decision be upheld.

12.0 RECOMMENDATION

I recommend that permission for retention be refused for the following reason:

Having regard to the location of the window along the eastern boundary where it adjoins open lands not in the applicant's ownership it is considered that the proposed retention of this window would seriously injure the amenities and unduly compromise future development of the adjoining site and would, therefore, be contrary to the proper planning and sustainable development of the area.

Suzanne Kehely
Senior Planning Inspector
28th June 2013