

An Bord Pleanála



Inspector's Report

Appeal Ref. No:	PL06F.246521
Proposed Development:	Retention of 2 no. high level side facing windows in rear extension
Location:	89 Taylors Point, Quay Road, Rush, Co. Dublin
Applicant:	Clive Nolan & Sarah Carroll
PA Reg. Ref:	F16B/00051
Planning Authority:	Fingal County Council
P.A. Decision:	Grant
Appeal Type:	Third
Appellants:	Dermot & Fiona Gleeson
Date of Site Inspection:	22 July 2016
Inspector:	Una Crosse

1. SITE AND SURROUNDINGS

The site comprises a terraced property at No. 89 Tayleurs Point in Rush which is a residential development accessed from Tower Street close to the shore and south east of the Main Street in the town centre. The windows subject of this appeal are located on the east and west elevations of the single storey extension constructed to the rear of the property. The property is adjoined to the east by No. 88 and to the west by No. 90 which is an end of terrace property. The houses address the central green area to the north of the terrace.

2. PROPOSED DEVELOPMENT

The proposal herein seeks to retain two high level windows located on the east and west elevations of a single storey rear extension. The windows are located 1800mm from ground floor level and are approximately 1.5m x 0.4m. A letter accompanying the application states that the applicant recognises that the 2 windows require permission. It notes that the purpose of the windows is to enhance natural light and solar gain. It is stated that the height of the windows are set above eye level at 1800mm with the glass obscured.

3. PLANNING HISTORY

No relevant history. An Enforcement Notice issued in December 2015 (Ref. ENF 15/120A).

4. PLANNING POLICY FRAMEWORK

4.1 COUNTY PLANNING POLICY

Fingal County Development Plan 2011-2017

The site is zoned 'RS' the objective of which is to 'provide for residential development and protect and improve residential amenity'.

5. PLANNING AUTHORITY DECISION

The Planning Authority decided to grant permission subject to two conditions with No. 2 stating that the glazing in the two windows on the east and west elevations of the rear extension shall be permanently maintained with obscure glazing. The Planners Report states that no overlooking arises given the position of the windows above head height with the glazing obscured. It is stated that the development due to its design and scale would not unduly impact on the residential amenity of neighbouring property. Appears that the extension is within the confines of the application. The installation of rain goods which may over sail adjoining property is stated to be a civil matter.

6. APPLICANT'S GROUNDS OF APPEAL

The grounds of appeal may be summarised as follows;

- Never made aware of additional non-legislative planning codes that would be considered;
- Advisor for applicant acknowledged breach of planning laws yet permission granted by the PA;
- Legislative context of Enforcement Notice not included in the Order with inconsistencies arising;
- House referred to as a semi-detached property but is in fact terraced questioning accuracy of site visit;

- Requirement for obscured glass of little use with a sash opening and while window above head height it is possible to see into neighbouring patio with sound transmittance;
- No visit made to No. 89 by the PA;
- Inappropriate precedent set for other dwellings;
- Window does not meet the requirements of Schedule 2, Part 1 (exempted development);
- Window results in privacy being lost with breakdown of relationship with neighbours;
- Allan Jones (advisor) has notified PA that extension does not comply with Part B and Part E of Building Regulations including fire safety requirements;
- Housing units are dual aspect with north and south light available with development of the window creating additional aspects which appears excessive;
- Guttering running over the boundary wall leaks into appellant's property;
- Value of property already affected by pyrite in the estate with the window creating additional impact;
- No. 90, the house on other side of No. 89 is owned by applicant's parent and is rented;

7. RESPONSES

7.1 PLANNING AUTHORITY RESPONSE

The planning authority commented on the appeal as follows;

- Remains the opinion of the PA that the overall development is considered acceptable subject to the conditions attached.

7.2 APPLICANTS RESPONSE

A response to the appeal from the applicants is summarised as follows:

- Document referenced by the appellant refers to windows which are exempt with no claim that windows subject of the appeal are exempt;
- Note the hardship and stress encountered by more than one party;
- All dealings with FCC were on public record and any other suggestion is misleading;
- No problem to agreeing not to open the window with the window unopened since July 2014 with privacy of the living area also requiring protection;
- Location of windows above eye level and use of obscured glass show attempts to protect privacy;
- Planners report shows thorough consideration of possible impact;
- Do not consider precedent is legally binding in terms of planning applications with each application considered on its own merits;
- Application submitted proof that applicant trying to comply with all relevant planning laws;
- The layout of the scheme provides gardens are adjoined and adjacent and given terraced nature not much privacy afforded.
- Poor insulation provides sound and noise can be heard from adjoining properties;
- No conflict or lack of compliance with building regulations;

- Natural light from the subject windows creates a healthy and enjoyable environment;
- Property boundaries not breached and guttering can be repaired;
- Suggestion that high level window would significantly reduce value of the house is not credible;
- No. 90 is part owned by father of appeal property with retention application discussed with owners of No. 90;
- Owners of No. 90 sought valuation from auctioneer in respect of impact of the window and no impact was evidenced;
- Photos attached to demonstrate how more of the rear garden of No. 88 can be seen from the bedroom window of the appeal site than the side window;
- Photos of window open submitted with appeal not taken in last 2 years;
- 100mm void between the extension and the party boundary wall to create a fire stop with rockwool insulation incorporated into the property;

8. ASSESSMENT

This assessment will consider the following;

- Principle of Proposal
- Impact on Residential Amenity
- Appropriate Assessment

8.1 Principle of Proposal

The appellant raises issues about compliance with the exempted development provisions for extensions and breach of same. While the appellant's assertions are correct in respect of breaching the exemption, the applicant has sought to remedy the breach by seeking permission to retain the windows which are outside the conditions and limitations set out in the exemption. In this respect, the Planning Authority, and the Board on appeal are required to assess the development on its merits and decide on same. This is what has been carried out by the PA and is being undertaken in this assessment. The exemption provisions facilitate works to be undertaken without permission subject to certain limitations and any development outside of that requires permission. I would note in respect of the concern raised about precedent that each case is considered on its merits. Matters related to building regulations and the issue of guttering are not matters to which the Board have regard in the context of this appeal. Finally issues relating to relationships between parties is not a planning consideration.

8.2 Impact on Residential Amenity

The central and salient issue in this appeal, in my opinion, is the potential impact of the window on the eastern elevation on the residential amenity of No. 88. The window is located above eye level c. 1800mm from ground level. Therefore there is no direct overlooking through the window given its height. In addition, the glazing is obscured and therefore there is no direct view through the glass. The applicants state that they have not opened the window in 2 years and I would note that the window can be locked. In addition the window is not required for escape or ventilation so therefore could remain locked in perpetuity. I acknowledge the concerns of the appellants in respect

of the impact they consider has been created in respect of their amenity. However, I would suggest that what arises is a perception of overlooking or being overlooked rather than any actual overlooking taking place from this window. Sound transmission would not arise if the window remains closed. I would also note that the first floor windows in both the appellants and the applicant's property have direct views into the others rear garden spaces with overlooking currently achievable from the first floor windows. I do not consider that the window the subject of the appeal would add to overlooking already existing by virtue of the terraced nature of the dwellings. The same issues arise in respect of the property to the west of the appeal site and the window addressing that garden. The Board may consider, if they are minded to grant permission, the inclusion of a condition requiring the permanent closure of the windows and the use of obscured glazing in perpetuity.

8.3 Appropriate Assessment

Having regard to the nature and scale of the proposed development, nature of the receiving environment, and proximity to the nearest European sites, I am satisfied that no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

9. CONCLUSION

I consider that while a perception of overlooking may arise that actual overlooking is not a material issue in respect of the windows proposed to be retained. The windows should remain closed and a condition could be attached to require same.

10. RECOMMENDATION

Having regard to the foregoing I recommend to the Board that permission is granted.

REASONS AND CONSIDERATIONS

Having regard to the provisions of the Fingal Development Plan 2011-2017, it is considered that, subject to compliance with the conditions set out below, that the proposed development would not negatively impact on the residential amenity of adjoining properties and therefore would accord with the proper planning and sustainable development of the area.

CONDITIONS

1. The glazing in the windows on the east and west elevations shall be permanently maintained with obscured glazing and shall be permanently closed and locked.

Reason: In the interest of residential amenity.

Una Crosse

