



An
Bord
Pleanála

Inspector's Report PL28.248854

Development	Retention for omission of west facing louvres over glazing to west façade as noted under previous permission – Condition no.2(c) PL28.245390 and associated site works.
Location	Anneville, 22 Rockboro Avenue, Old Blackrock Road, Cork.
Planning Authority	Cork City Council
Planning Authority Reg. Ref.	17/37408
Applicant(s)	Adam Paul
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Tom & Kate Lenihan
Observer(s)	None
Date of Site Inspection	5 th October, 2017
Inspector	A. Considine

1.0 Site Location and Description

- 1.1. The site the subject of this appeal is located in a residential area of Cork City to the south of the city centre. The area comprises two storey semi-detached houses which front onto Rockboro Avenue. This street connects the Old Blackrock Road to the north, and Boreenmanna Road to the south.
- 1.2. No. 22 Rockboro runs from west to east and has been redeveloped in the recent past, providing off-street car parking to the front of the house behind electronic gates. The property has a side pedestrian access which provides access to the rear garden, which has two levels, and the appellants property in this instance is not connected to the subject house. The level of the site is slightly higher than that of the property to the north.
- 1.3. There is a recently constructed single storey extension situated to the rear. The single storey extension extends out from the rear and runs adjacent to the southern boundary of the appeal site. The site has a stated area of 0.035ha.

2.0 Proposed Development

- 2.1. The application to Cork City & County Council was for the retention for omission of west facing louvres over glazing to west façade as noted under previous permission – Condition no.2(c) PL28.245390 and associated site works.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant planning permission for the proposed development, subject to 1 standard condition.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Officers report formed the basis of the decision and Appropriate Assessment, Environmental Impact Assessment and Flood Risk Assessment are also dealt with within the report. The Planning Officer noted that there was an error in the previous condition 2(c) in that it should have read 'northern' elevation and not 'southern' elevation. The report notes that the subject window is located approximately 5m from the northern boundary, and that there is not an excessive amount of overlooking of the adjoining property. In this regard, it was determined that the louvers as proposed, are not necessary.

3.2.2. Other Technical Reports

Road Design Section: No objection.

3.3. Prescribed Bodies

Health & Safety Authority: Does not advise against the granting of permission.

3.4. Third Party Observations

There is a third party submission noted on the Planning Authority's file from Tom & Kate Lenihan, whose property lies to the north of the subject site. The objection raised concerns in terms of non-compliance with conditions of An Bord Pleanála decision PL28.245390. A second submission includes photographs to show that the development property has clear views into areas of their home. The submission concludes that privacy is non-existent and that the louvers are essential in safeguarding their privacy.

4.0 Planning History

4.1. Subject site:

The following is the recent planning history associated with the subject site.

PA ref 05/29960: Permission was granted for the demolition of existing and reconstruction of a replacement dwelling and associated site works.

ABP PL28.245390 (PA ref 15/36439): Permission was granted on appeal for the retention of a single storey extension to rear of the house. The Boards decision included the following condition:

2. The proposed development shall be modified as follows:
- (a) The proposed fence along the northern boundary shall be 1.8 metres high above existing upper patio level, and shall extend for a total of 7.5 metres, as outlined in Option 3 in the drawings submitted to An Bord Pleanála on the 22nd day of September, 2015.
 - (b) The height of the remainder of the fence along the northern boundary shall not exceed 1.9 metres above the lower patio level.
 - (c) The western-most window on the southern elevation of the single storey extension to be retained shall be finished in the vertical louvers system, as indicated in Option 3 in the drawings submitted to An Bord Pleanála on the 22nd day of September, 2015.
 - (d) The steps providing access from the upper patio to the lower patio shall be relocated away from the northern boundary, in accordance with the drawings submitted to An Bord Pleanála on the 12th day of November, 2015.

Revised drawings showing compliance with the above requirements shall be submitted to, and agreed in writing with, the planning authority within one month of the date of this order. The agreed works shall be carried out and completed within six months of the date of this Order.

Reason: In the interest of protecting the residential amenity of the adjacent properties.

4.2. Adjacent site to the north:

PA ref 08/33286: Permission was granted for the demolition of existing garage and the construction of a single storey extension to the rear and side of dwelling and all ancillary site works at 'Miranda', Rockboro Avenue (no 24.).

5.0 Policy Context

5.1. Development Plan:

- 5.1.1. The Cork City Development Plan 2015 – 2021 is the statutory Development Plan for the city of Cork. The subject site is located within an area of Cork City which is zoned ZO4, Residential, Local Services and Institutional Uses, where it is the stated objective of the zoning to 'protect and provide for residential uses, local services, institutional uses and civic uses, having regard to employment policies.

5.2. Natural Heritage Designations

The site is not located within any designated site.

6.0 The Appeal

This is a third party appeal.

6.1. Grounds of Appeal

The grounds of appeal reflect the issues raised during the Planning Authority's assessment of the proposal and include a background to the issues arising at the appeal site. The appeal is summarised as follows:

- The installation of the louvres was the applicant's suggestion.
- The retention application is in breach of a planning condition imposed by the Board.
- The Board's decision of December 2015 was and is final and could only have been challenged by Judicial Review.
- A grant of permission would directly contradict the Board's previous decision, which has been ignored by the applicant.
- A grant of permission would contravene the line of case law to the effect that unless there is a material change in circumstances, An Bord Pleanála are bound by their previous decisions, *The State (Kenny & Hussey) v An Bord Pleanála, Athlone Woolen Mills Co. Ltd. v Athlone Urban District Council*,

Grealish v An Bord Pleanala, Mone v An Bord Pleanala and Ashbourne Holdings Ltd. v An Bord Pleanala are referred.

A number of enclosures, including photographs are included.

6.2. **Applicant Response**

The first party responded to the third party appeal outside the appropriate period and the submission was returned.

6.3. **Planning Authority Response**

The PA has responded to this third party appeal, advising no further comments.

6.4. **Observations**

None

7.0 **Assessment**

The Board should be aware that on the date of my inspection, I could not gain access to the rear of the subject appeal site. I did, however, gain access to the rear of the appellants property to the north. Having undertaken a site visit and having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site, the nature and scale of the proposed development and the nature of existing and permitted development in the immediate vicinity of the site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. Impacts on residential amenity
2. Appropriate Assessment

7.1. **Impacts on residential amenity:**

- 7.1.1. As a point of clarification, the Board will note that there was an error in the condition the subject of this appeal. Condition 2(c) of the previous grant of planning permission, refers to the 'southern' elevation, while clearly, the louvre system

proposed related to the 'northern' elevation. Since the grant of planning permission, the development has been completed without the inclusion of the vertical louvre system as conditioned.

- 7.1.2. The development before the Board seeks essentially to amend a previous condition of the Board. Under PL28.245390, the Board granted planning permission for the retention of an extension and associated site works, permission for new treatment to northern boundary, new shed, electronic gate and associated works. In the assessment of this proposed development, the previous Inspector considered the matter of residential amenity and the potential for overlooking from the site into the neighbouring property. In order to address concerns, the applicant proposed the installation of a vertical louvre system to the western-most window of the extension which faces the appellants property. The reason for this inclusion was in the interests of protecting the residential amenity of the adjacent properties.
- 7.1.3. It is the submission of the applicant that having complied with all other conditions, including the addition of the 1800mm boundary fence and additional landscaping and planting, the applicant was of the opinion that the 'on the ground effect' of the new measures surpassed the privacy measures as conceptually conceived during the louvre design. The applicant questioned the relevance of the louvres, which would reduce the quality of light in the dining area. Having consulted with Cork City Council, it was determined that the boundary treatment adequately served the purposes of privacy to both parties adequately. The planning application was lodged to avoid erecting the louvre system.
- 7.1.4. In terms of the appellants, it is considered that the measures have not addressed the privacy issues. It is further submitted that the Boards previous decision was final and as there has been no material change in circumstances, the Board is bound by their previous decision. This is affirmed in cited case law. In support of their appeal, the appellant considers that the development provides views into their first floor bathroom, toilet and landing which is an invasion of their privacy. I would note the right of the applicant to make a planning application and it is clear that issues at the subject site has resulted in distress to the appellants.
- 7.1.5. Having undertaken a site visit, I would also advise the Board that concern has been raised in terms of the 'landscaping' works which have been carried out along the

boundary which has been put forward as a reason to omit the louvres. The planting which has occurred inside the appeal site is just above the fence height and it is a concern that this will be allowed to grow to a height which would further block light from the rear of the appellants property. I would accept the third party concerns in this regard and should the Board be minded to grant permission in this instance, a condition should be included to restrict the height of this planting in the interests of protecting the residential amenities of the adjacent property.

- 7.1.6. In terms of the nature of the appeal before the Board, it is the potential impacts on the residential amenity of the appellants property that is in question. Certainly, the third party considers that their amenity has been impacted upon and I understand the logic of the applicant in their desire to omit the louvres. Overall, I consider that the louvres, as a proposal put forward by the applicant in order to protect the residential amenities of the neighbouring property, are appropriate, and that a grant of permission to omit same would run contrary to a previous condition of planning permission, which I consider to be reasonable and necessary.

7.2. **Appropriate Assessment**

- 7.2.1. The closest European Sites are the Cork Harbour SPA (site code 004030) and the Great Island Chanel cSAC (site code 001058). Having regard to the nature of the site, being a developed residential site, together with the minor nature and scale of the works proposed, 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.

8.0 **Recommendation**

I recommend that planning permission be refused for the proposed development for the following stated reasons.

9.0 Reasons and Considerations

The development would contravene materially a condition attached to an existing permission for development, condition 2(c) of An Bord Pleanála Decision PL28.245390 refers, which states that 'the western-most window on the southern elevation of the single storey extension to be retained shall be finished in the vertical louvers system, as indicated in Option 3 in the drawings submitted to An Bord Pleanála on the 22nd day of September, 2015.' The reason for this condition is in the interest of protecting the residential amenity of the adjacent properties.

A grant of planning permission would therefore, seriously injure the amenities of the adjacent property and would be contrary to the proper planning and sustainable development of the area.

A. Considine

Planning Inspector

8th October, 2017