



An
Bord
Pleanála

Inspector's Report PL15.248869

Development	Retention of existing balcony and permission of a new 1.7m privacy screen
Location	13 Rampark Shore, Rampark Td, Jenkinstown, Dundalk, Co. Louth
Planning Authority	Louth County Council
Planning Authority Reg. Ref.	17/314
Applicant	Anthony McKeown
Type of Application	Retention Permission
Planning Authority Decision	Refusal
Appellant	Anthony McKeown
Observers	Mr. Sean Gallagher Mr. and Mrs. Ronan and Ann Keelan
Date of Site Inspection	12 th October 2017.
Inspector	L. W Howard.

1.0 Site Location and Description

- 1.1 The stated c.3.19m² application site (ie. the red line shown on the application documentation relates to the existing front porch / balcony area), comprises an existing balcony and associated supporting structure
- 1.2 The existing balcony and associated supporting structure has been erected on the front, south facing elevation of an existing modest, traditional vernacular coastal dwellinghouse which has undergone extensive renovation.
- 1.3 A light weight glass guarding with stainless steel hand railing surrounds the balcony. The balcony is accessed via a new door access at first floor level, on the front elevation.
- 1.4 The modest 2-storey domestic dwellinghouse is located on the northern shoreline / coast of Dundalk Bay, opposite from Dundalk Town. The site is located on the coastline at the end of a private narrow access laneway within Rampark, Jenkinstown. This laneway enables access to 7no. coastal properties. The existing renovated dwellinghouse, forms the eastern end of a row of similarly renovated original fisherman cottages.

2.0 Proposed Development

- 2.1 Retention permission, and planning permission for development to consist of
 -
 - Retention of an existing balcony and glass enclosure structure, and
 - Permission for a new 1.7m high privacy screen comprising opaque glass within a stainless steel frame on the western side of the balcony to match materials and finishes to the existing balcony enclosure.
- 2.2 The balcony area has dimensions of 1.1m by 2.9m to give an overall area of 3.19m². The balcony is formed by the flat roof area of a porch permitted as part of Reg.Ref.No.15/722.
- 2.3 The balcony serves an existing dwellinghouse.

3.0 Planning Authority Decision

3.1 Decision

- 3.1.1 Retention and planning permission Refused, for three stated 'refusal reasons'.

3.1.2 The ‘refusal reasons’ addressed consideration that the proposed development:

1. would be out of character with existing development, contrary to Policy SS35 of the County Development Plan 2015-2021.
2. would result in adverse impact on coastal amenities and on the character of the area, contrary to the Objective for Development Zone 3 – “protect the recreational and amenity value of the coast”.
3. would adversely impact the amenities of the adjoining property, by way of continued overlooking and / or perceived overlooking.

3.2 Planning Authority Reports

The Planning Officers report can be summarised as follows :

3.2.1 Principle of Development

- Having regard to existing development on site, and to its location and the nature and character of contextual surroundings, the Planning Authority considered the principle of development for which retention permission is sought, required further assessment under the relevant Development Plan 2015-2021 policies.

3.2.2 Design, Scale and Form

- S2.19.8 of the County Development Plan 2015-2021 provides guidance for the refurbishment of existing dwellings and vernacular buildings in rural areas of the County.
- Policy SS35 requires that new extensions are sympathetic to the scale, massing and architectural style of the existing building.
- The proposed development is considered :
 - adverse to the character and style of the original dwelling, and
 - out of keeping with the modest, simple form and design of the existing dwelling on site and of the adjoining dwellings.
- Planning Authority acknowledge the supporting structure of the balcony was granted under **Reg.Ref.No.15/722**. However, it was Conditioned that the steel support structures would be encased within the porch and rendered to match the existing.

This would reduce the visual impact of the steel structures, and was therefore considered to be acceptable.

The use of the roof of the porch as a balcony was not considered acceptable, and was refused under the same application **Reg.Ref.No.15/722.**

- Planning Authority acknowledge the presence of other balconies in the area. However, Planning Authority considers these examples referenced, are primarily detached dwellings, whereas the dwelling on the application site is immediately adjacent the adjoining property, with the balcony being only 2.5m from the boundary with the adjoining property.
- Overall, the proposed development (ie. both retention of the existing balcony and the proposed privacy screen), is :
 - contrary to the requirements of Policy SS35 of the County Development Plan 2015-2021, and
 - adverse to the visual amenities of the area.
- Contrary to the Development Zone 3 Objective, of the County Development plan 2015-2021, the proposed 1.7m high opaque privacy screen would further interfere with the visual amenities of the coast and erode the character of the area.

3.2.3 Impact on Adjoining Residential Amenities

- Two Submissions received state that the first floor balcony, as developed, causes overlooking and loss of privacy to adjoining residents.
- The proposed 1.7m high opaque privacy screen will not mitigate the loss of the only amenity space available to the residents of the adjoining properties, which is to the front of the dwelling.
- The 'privacy screen' proposed, will still result in perceived overlooking. Notwithstanding, overlooking would still be possible from the front / southern edge of the balcony.
- The 1.7m high privacy screen would exacerbate the visual impact of the balcony on the small cottages adjacent to the application site.

3.2.4 Natura 2000 Sites

- Application site located c.22m from the Dundalk Bay SPA and SAC.
- However, given the scale of development, conclude that :
 - no appropriate assessment (AA) issues arise, and
 - the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

3.2.5 Conclusion

Conclude that the proposed development be 'refused', for the same three 'Refusal Reasons' set out in the Managers Order.

3.3 **Other Technical Reports**

3.3.1 Internal

None.

3.3.2 External / Prescribed Bodies

None.

3.4 **Third Party Observations**

3.4.1 Two 3rd party submissions received by the Planning Authority from Mr. Sean Gallagher and Mr. and Mrs. Ronan and Ann Keelan.

3.4.2 The issues argued included :

- The balcony causes overlooking of adjoining property and infringement on privacy of open space.
- The structure dominates the landscape and destroys the visual amenity.
- Proposed opaque glass adds to unsightly and unacceptable nature of structure.
- Structure devalues adjoining properties.
- Structure was erected with consideration of S2.19.8 of the County Development Plan 2015-2021, which relates to 'Refurbishment of Existing Dwellings and Vernacular Buildings in Rural Areas'.
- The balcony contravenes Development Zone 3 Policies, which seek to 'protect the recreational and amenity value of the coast'.

4.0 Planning History

15/722 Application made by A. McKeown for 'Retention Permission' for an existing balcony, supporting structure, glass enclosure and access door. Significant F.I. received 16/09/2016 proposing the encasement of the steel structure within an extended enclosed porch. Split Decision as follows :

Schedule 1

Refused 'retention permission' for the existing balcony for two stated 'refusal reasons' :

1. The balcony, located to the front of the dwellinghouse, would negatively impact the private amenity space of the adjoining property to the west and depreciate value.
2. Retention of the balcony would interfere with the visual amenities of the coast and erode the character of the area, for which it is the Objective of Development Zone 3 to protect.

Schedule 2

Grant 'retention permission' for the steel supporting structure and 'permission' for the proposal to be encased within an extended porch of block-work and rendered to match existing dwelling, subject to four (4no.) stated Conditions. The following Conditions are considered relevant :

C1(b) The encasing of the steel supporting frames with rendered blockwork to front south elevation as shown on Drawing No. 1501-PA-100 submitted on the 16th September 2016 shall be allowed.

Reason : To ensure the front elevation of the development does not erode the recreational and amenity value of the coast.

C2 The balcony to the front elevation shall not be permitted and shall be removed from the front elevation within 3no. months from the date of this subject permission, or as otherwise agreed in writing with the Planning Authority.

Reason : To ensure the development does not adversely impact upon the private amenities of adjoining dwellinghouse to the west, and to ensure that effective control is maintained.

Note : Comprehensive case history documentation is included on file.

07/591 Permission granted to P. Gartlan for (P) New Waste Water Treatment System to existing dwellinghouse and associated site works, subject to seven (7no.) stated Conditions.

Note : Comprehensive case history documentation is included on file.

15 U121 Warning Letter and Enforcement Notice issued on the file.

5.0 Policy Context

5.1 Louth County Development Plan 2015 - 2021

Relevant provisions include (see copies attached):

CH 2 Core Strategy and Settlement Strategy

S2.19 One-Off Rural Housing Policy

S2.19.1 Local Needs Qualifying Criteria

S2.19.7 Development Management Assessment Criteria for One-Off Rural Housing

S2.19.8 Refurbishment of Existing Dwellings and vernacular Buildings in Rural Areas

POLICY

SS 30 To encourage the sensitive refurbishment of existing vernacular dwellings and buildings in the interest of preserving the built heritage of the County.

SS 33 to ensure that the design of the proposed development does not erode the siting, setting and character of the existing building.

SS 34 to require that the development maintain or enhance the form, character and architectural features, design and setting of the existing building and not have an adverse effect on the character or appearance of the locality.

SS 35 to require that new development is sympathetic to the scale, massing and architectural style and materials of the existing building.

SS 39 to demonstrate that the development would not unduly affect the amenities of nearby residents.

CH 3

Rural Development and Natural Resources

S3.10.3

Development Zone 3 – ‘To protect the recreational and amenity value of the coast’

Table 3.2 : Strategic Objectives for Development Zones 1 to 6

<u>Zone :</u>	<i>Strategic Objective ::</i>
3	To protect the recreational and amenity value of the coast

POLICY

RD 35 To only permit development that would not be detrimental to the visual and recreational amenities of the coast. Such development would include limited one-off housing*, ... extensions to existing authorised uses and farms, ... small scale ancillary recreational facilities, leisure and recreation related projects, ...

* Refer to Section 2.19.1 for Qualifying Criteria ...

5.2 Natural Heritage Designations

5.2.1 Application site located c.22m from the Dundalk Bay SPA and SAC.

6.0 The Appeal

6.1 Grounds of Appeal

6.1.1 Background / Planning History

The applicant prefaces the appeal submission with a detailed and comprehensive overview of the planning history of the site, and with particular reference to the ‘split-decision’ by the Planning Authority under **Reg.Ref.No.15/722**, and its implications for the applicant.

With specific reference to **Reg.Ref.No.15/722** I briefly summarise the conclusions made by the applicant as follows :

- The Planning Authority has granted planning permission :
 - to form an enlarged, enclosed porch, incorporating the steel support structure.
 - Part of the porch is the roof. This roof doubles as the floor for the balcony. The balcony is little more than a ‘Juliet’ balcony, with dimensions of 1.1m x 2.9m, or a surface area of 3.19m. The balcony is so small it cannot accommodate a table and chairs.
 - Removal of the balcony would require removal of the roof of the permitted porch (ie. the floor of the balcony having been granted planning permission as part of the roof to the permitted porch).
 - for the 1st floor access door, and the glass enclosure, as
 - these were specified elements in the public notices under **Reg.Ref.No.15/722**, and
 - these elements were not refused as part of Schedule 1 to the Planning Authority’s decision, and nor were they

specified to be removed under Condition No.2 of Schedule 2 to the permission

- Therefore, under **Reg.Ref.No.15/722**, the Planning Authority effectively permitted the balcony and its access door. Further, the Planning Authority in its decision under **Reg.Ref.No.15/722**, does not require the removal of the glass enclosure, or the access door onto the roof of the porch. As these elements were specified in the public notices, “they are permitted”.
- Notwithstanding the above, having regard to the Planning Authority’s stated Refusal Reasons under **Reg.Ref.No.15/722**, and in the interests of good neighbourliness, the applicant has included a 1.7m privacy screen comprising opaque glass within stainless steel frame, on the western side of the balcony. This screen will enable privacy for the dwellinghouse to the west, mitigating their objections regarding perceived loss of residential amenity.
- Effectively, planning permission exists for the roof of the porch (ie. floor of the balcony) and the access door to the roof of the porch. In granting permission for these elements, the Planning Authority clearly considers them as acceptable in terms of visual amenity and Development Plan Policy.

The grounds of appeal can be summarised as follows :

6.1.2 The balcony and compliance with Policy SS35 and Paragraph 2.19.8 of the Development Plan

- Having regard to the dilapidated condition of the building when acquired by the applicant, it is unfortunate the Planning Authority refused planning permission based on Policy SS35 (Refusal Reason No.1). This is more difficult for the applicant to accept having regard to the substance of what was granted planning permission by the Planning Authority, in the proposed comprehensive renovation of the dilapidated building under **Reg.Ref.No.15/722**, and including the porch and its roof.

- Emphasise SS35 exists as one of several Development Plan 2015 policies regarding the refurbishment of existing dwellings in rural areas. These include Policies SS30 – SS39. The works completed by the applicant in renovating the dilapidated house complies with these policies.
- Having regard to the grant of planning permission by the Planning Authority for all other elements under **Reg.Ref.No.15/722**, the applicant feels it is unfortunate for the Planning Authority to reasonably argue that the modest, discreetly designed balcony, is non-compliant with Policy SS35 specifically.
- Highlight that no policy provision exists in the Development Plan prohibiting the provision of balconies to dwellings anywhere.

6.1.3 Scale of Balcony and relationship to the Dwelling

- the balcony is well proportioned relative to the building, and the front elevation.
- The difference compared to **Reg.Ref.No.15/722** is the current proposal for a 1.7m high glazed privacy screen along the western side.
- Neither the glazing, or the porch dominate the applicant's dwellinghouse or its front elevation.

6.1.4 Character of the Area and Visual Amenities

- It is an exaggeration to suggest that the proposed balcony for retention would
 - be out of character with the application site and adjoining properties,
 - interfere with the visual amenities of the coast
 - erode the character of the area.
- the use of balconies within coastal settings is not unusual.
- by comparison to other balconies locally, the use of the roof of the permitted porch as a balcony is in keeping with the character of the area.

- The balcony is within the confines of the front elevation, and does not obscure any building elements.
- the balcony has a light-weight and transparent form. It would be scarcely visible from a distance of more than a few metres.
- the balcony to be retained :
 - has no discernible impact on the visual amenities of the coast, or the character of the area, and
 - “... is actually more in keeping with the character of coastal properties”.
- Accepting that no adverse visual impact on local coastal amenities, or the character of the area will result, retention of the balcony as proposed, is not contrary to the stated Objective of Development Control Zone 3 (ie. Refusal Reason No. 2).
- Should An Bord Pleanála consider the proposed 1.7m high privacy screen excessive, the applicant will accept a Condition determining a lower height and infilled with opaque or clear glass.

6.1.5 Special Housing Needs

- Section 2.19.14 – ‘Extensions to Dwellings’ specifies that “the Council will have regard to special housing needs, such as the housing needs of ... people with disabilities”. However, the same Section clarifies that “extensions which are out of character, proportion or not incidental to the main dwelling will not be considered favourable”. Further, size of extension should be proportional to and in keeping with the character of the existing structure.
- With a floor area of 3.19m², the balcony to be retained is a very modest addition to the applicant’s dwellinghouse. The balcony is more comparable to “a Juliet / Picture Balcony”. With a 1.1m depth, the balcony cannot accommodate a table and chairs.
- The balcony is basically a small area of accessible outdoor space, very important to the applicant who is registered mobility impaired. The applicant’s Doctor confirms (see Appendix C), he “has impaired mobility

and physical stability and recommends that the accommodation favours as much rehabilitation as possible”.

- Balcony access is an important consideration in the applicant’s rehabilitation. The balcony is easily accessible by the applicant via the first floor living area. Itself, the first is accessed by a gentle gradient external ramp through the rear door. The addition of a balcony greatly improves the applicant’s quality of life, physical and mental health, and enables easy access to natural light and a small open area directly from his living room.
- Balcony is south facing. No other properties exist to the south or east.
- Balcony projects only 1.1m from the main front elevation of the house, not impacting on residential amenity of property to the west. However, in the interest of “good neighbour relations”, a 1.7m high privacy screen is proposed on the western side of the balcony.
- Clarify that the applicant is 78years and that his wife is his carer. Emphasise the applicant’s disability is such that to access the ground floor of the house (ie. the bedroom area), he exits the house at first floor level and uses the external ramp before re-entering the house at ground floor level.

6.1.6 Heritage and Conservation Issues

- The applicants dwellinghouse is not listed as a protected structure at ‘Vol.2 – Record of Protected Structures’ of the County Development Plan 2015-2021.
- The applicant’s ‘heritage and conservation’ consultant Mr. J. Cronin concludes that the use of balconies within coastal settings is not unusual, and that the applicant’s balcony, including modifications, has been undertaken “with a high degree of care and respect to the original form and character of the building and its location” (see report at Appendix D).

6.1.7 Precedent in the Area

- Several examples referenced of balconies within coastal locations.

- Particularly, 80m to the west of the application site, a very large balcony exists on the southern elevation of a dwelling.
- Having regard to the existence of comparative examples locally, the modest balcony proposed on the application site is in keeping with the character, scale and proportions of the applicants dwellinghouse.
- Reference several photo-images included with the appeal documentation.

6.1.8 Residential Amenity

- Refusal Reason No.3 cannot be substantiated.
- The applicants dwellinghouse sits forward of the adjacent dwelling to the east. Consequently, the applicants dwelling itself interrupts any view of the front yard of the adjacent property.
- Distinguish that the adjacent property to the west has a large area of private amenity space both south facing and sea facing. Accordingly, the area to the immediate front of this dwelling and adjacent the common boundary, is not the only recreational space serving that dwelling.
- The adjacent property southern boundary is a low rise wall, beyond which is the road and public beach. Therefore, the front yard “is in permanent public view”. The public beach is used extensively for recreational purposes. The proposed development would have no impact on this arrangement.
- The applicants proposed “very small scale Juliet type balcony”, together with the proposed privacy screen “would absolutely ensure no actual or perceived overlooking occurs”.
- The adjacent dwelling / property is exposed to the public beach which is used for public recreation.
- Clarify the balcony is to the front of the applicants dwellinghouse, which itself is forward of and angled away from the adjacent 3rd party objectors’ / observers property. This together with the privacy screen proposed for the western side, completely eliminates potential for harm to the adjacent residential amenity.

- Further, the visible parts of the balcony comprise glass panels which are clear / transparent to the front (south) and side (east).
- Emphasise, use of the balcony is restricted to periods of dry and relatively warm weather.
- The balcony is so small, it could not be used for entertainment purposes. Therefore, no such disamenity will arise.

6.1.9 Conclusion

Having regard to the arguments made comprising the applicants appeal documentation, request that the Board “overturns the Decision of the Planning Authority and grants planning permission”.

6.2 **Planning Authority Response**

6.2.1 Refer the Boards attention to the Planners Report dated 09/06/2017.

6.2.2 **Reg.Ref.No.15/722 – Refusal Reasons / Conditions**

Contrary to the applicant’s arguments, while the door leading to the balcony is not itemised separately within Schedule 1, the refusal of the unauthorised balcony incorporated the doorway as this formed an element of the balcony.

6.2.3 **Reg.Ref.No.15/722 – Analysis of Decision**

- Removal of the balcony would not require the removal of the roof of the permitted porch.
- The porch was permitted. However, retention of the balcony was refused planning permission.
- The Planning Authority decision “Conditions that the roof not be used as a balcony”.
- Permitting the retention of the porch did not permit the balcony, as stated by the applicant.
- Refusal of the balcony included the glass enclosure, as this formed part of the balcony.

6.2.4 **Balcony and Compliance with Policy**

- Note the applicants reference to County Development Plan 2015-2021 Policies SS30 – SS39, regarding the ‘refurbishment of existing dwellings in rural areas’.

- With respect to their relevance to the current retention of balcony application, the Planning Authority respond as follows :
 - SS30 Acknowledge that whilst much of the dwelling and outbuildings have been sensitively refurbished, the provision of a balcony is not sensitive.
 - SS31 Considered not applicable (ie. structural engineers report).
 - SS32 Considered not applicable (ie. structural engineers report).
 - SS33 Retention of the balcony erodes the character of the applicants existing dwelling. The original dwelling did not have a balcony, nor do the immediately surrounding properties. The proposed balcony is out of character with the existing and surrounding dwellings.
 - SS34 Non-compliant with policy SS34, for the same reasons as for Policy SS33.
 - SS35 Retention of the balcony, is not considered to be sympathetic to the host property.
 - SS36 The proposed development does not exceed 100% of the existing floor area.
 - SS37 and SS38 Not applicable to the current application.
 - SS39 Use of the property as a dwelling, would not affect the amenities of nearby residents, as historically, the property was used as a dwelling. However, the use of the balcony is considered to impact adjacent residential amenities.

6.2.5 Scale of Balcony and Relationship to Dwelling

- The balcony is out of character with the existing dwelling.
- The proposed 1.7m glazed privacy screen will result in further visual impact.

6.2.6 Precedent in the Area

- Whilst other balconies do exist in the area, these relate primarily to detached dwellings, and not immediately adjacent another property.

- These examples therefore do not have the same impact as the existing balcony for retention.
- As these examples of balconies are not directly comparable, the precedent does not override the impact of the existing balcony being 2.5m from the adjacent boundary with the adjoining property.

6.2.7 Impact on Adjoining Residential Amenities and Residential Amenity

- Located 2.5m from the boundary, the balcony directly overlooks the usable amenity space of the adjoining property.
- Space identified to the west of the adjacent dwelling is the entrance / driveway onto the property, and cannot be regarded as a large area of amenity space.
- The area to the front of the adjoining dwelling is directly overlooked by the existing balcony (for retention).
- Notwithstanding proposed mitigation via the proposed 1.7m glazed privacy screen to the western side of the balcony, “there will still be perceived overlooking and impact on the residential amenities of the adjoining property”.

6.2.8 Conclusion

Request that the Board uphold the Planning Authority’s decision to refuse retention permission.

6.3 Observations

6.3.1 Mr. Sean Gallagher

- Confirm ownership of the small cottage to the west of the application site.
- The applicant’s property has already been extensively renovated and extended by the applicant.
- Erection of the applicant’s balcony severely impacts their open space to the front of their dwelling. No outside space is available to the rear of their dwelling.
- The applicant’s balcony therefore overlooks their only available outdoor space.

- As erected, the balcony has the capacity to totally devalue the value of their property.
- The existing balcony is totally out of character with the neighbouring small dwellings, and destroys the visual amenity of the area.
- The existing balcony contravenes the Louth County Development Plan 2015-2021 Objectives to do with ‘shoreline properties’.
- Appeal to the Board to refuse retention permission for the existing balcony, thereby requiring its removal.

6.3.2 Mr. and Mrs. Ronan and Ann Keelan

- Refer the Boards attention to the planning history on the application site under **Reg.Ref.No’s.15/722** and **17/314**.
- The applicant lodged an appeal, subsequent to **Reg.Ref.No.15/722**. This appeal was withdrawn.
- Under **Reg.Ref.No.17/314** another application was lodged. No alteration to the structure was proposed, except than to include a privacy screen.
- Confirm ownership of the single storey cottage to the west of the application site.
- Clarify these dwellings as “two exceptional old seaside fishermans dwellings having been erected in the mid 1800’s.
- The balcony, located less than 2m from the boundary wall, is a serious invasion of their privacy and directly overlooks their only recreational space. No such space exists to the rear of their dwelling. This outside space to the front is used extensively. This front space is a key piece of their onsite amenity.
- Disagree with the applicant’s description of the balcony as a “Juliet” balcony.
- The applicants offer of a privacy screen is an obvious admittance of interference with their privacy. This impact on their outdoor amenity space, serves to devalue their property and interferes with their outdoor amenity.

- The applicant incorrectly suggests that because retention permission was granted for the porch, this implies that the porch roof is permitted for use as a balcony. This is not the case, and has been refused planning permission twice previously.
- The grant of permission under **Reg.Ref.No.15/722** was for a porch area only. The porch roof area does not form part of a step-onto balcony floor.
- They seek the removal of the glass structure to negate the use of the porch roof as a balcony area
- The applicants reference to other similar balcony type development locally, does not justify retention of the existing balcony. These similar developments are large independent dwellinghouses on adequate sites, with no impact on adjoining properties.
- The existing balcony impacts negatively on their property and on their privacy.
- Request the Board uphold the decision of the Planning Authority to refuse retention permission for the existing balcony and glass enclosure, thereby requiring its removal.
- The application site (13 Rampark) is not the primary permanent residence of the applicant.
- Refer the Board's attention to "a current Warning Letter in place by Louth County Council on this property".

7.0 Assessment

7.1 I have examined the file and available planning history, considered the prevailing local and national policies, physically inspected the site and assessed the proposal and all of the submissions. The issue of appropriate assessment also needs to be addressed. The following assessment covers the points made in the appeal submissions, and encapsulates my *de novo* consideration of the application. The relevant planning issues relate to :

- Planning History – **Reg.Ref.No.15/722**
- Principle and Location of the proposed development
- Visual Amenity Impact – Coastal Landscape

- Residential Amenity Impact
- Wastewater Treatment and Disposal
- Road Access and Traffic Safety
- Appropriate Assessment

7.2 Planning History – Reg.Ref.No.15/722

7.2.1 I have had regard to the planning history of the site under **Reg.Ref.Nos.15/722** and **07/591**. Of specific relevance to the applicant's current application for retention permission of the 1st floor balcony is the 'split-decision' by the Planning Authority under **Reg.Ref.No.15/722**, and its implications for the applicant. The applicant prefaces the appeal submission with a detailed and comprehensive overview of the 'split-decision' by the Planning Authority under **Reg.Ref.No.15/722**, and its implications.

7.2.2 Before consideration of the applicant's conclusions from the **Reg.Ref.No.15/722** 'split-decision', and its implications, I reference the June 2007 Planning Guidelines for Planning Authorities – "Development Management". Chapter 7 addresses "Drafting Planning Conditions / Reasons for Refusal of Permission". Paragraph 7.3 outlines "Basic Criteria for Conditions". Having regard to the applicant's conclusions from the **Reg.Ref.No.15/722** 'split-decision', and its implications, I believe that the 'criteria' regarding 'enforceability' (para. 7.3.3) and 'preciseness' (para. 7.3.4) are particularly relevant regarding the Planning Authority Conditions. In my view, the deficiencies in the Schedule 2 Conditions regarding 'preciseness' and 'enforceability' did not clearly backup the refusal decision of the balcony by the Planning Authority in Schedule 1, which then consequently, reasonably enabled the conclusions argued by the applicant that the Planning Authority has granted planning permission :

- for an enlarged, enclosed porch, incorporating the steel support structure, the roof of which doubles as the floor for the small c.3.19m² balcony, and .
- for the 1st floor access door, and the glass enclosure.

7.2.3 In itself, I comment that Schedule 1 would also appear deficient, having regard to the provisions of paragraph 7.14 – “Reasons for Refusal of Planning Permission” of the June 2007 Planning Guidelines for Planning Authorities – “Development Management”. Paragraph 7.14 sets out that “Reasons for refusal should therefore be clear and unambiguous, as informative and helpful as possible, should be self-contained statements, ...”.

7.2.4 Clearly, in my view, the steel support structure was purposeful in its role as support to the balcony. It held the balcony up, nothing else. From a strictly visual and aesthetic perspective, the Planning Authority correctly sought to incorporate the steel support structure within an enlarged, enclosed porch. However, I am curious as to the Planning Authority’s objective in this regard if at Schedule 1, it had decided to refuse planning permission for the balcony. If this is so in my view, there would logically be no clearly identifiable proposal for, nor use proposed by the applicant under **Reg.Ref.No.15/722** for an enlarged, enclosed porch, except to provide a support base for the balcony. The existing porch appears quite adequate, with no apparent motivation for its enlargement. In fact, an enlarged porch with the purpose of supporting the balcony, never appears as part of the various elements comprising the applicant’s renovation of the dilapidated fishermans cottage. Rather, as built, the applicant’s choice was for the steel support structure as support to the balcony.

I can therefore understand as reasonable, the applicant’s conclusion that the Planning Authority has granted planning permission for an enlarged, enclosed porch, incorporating the steel support structure, the roof of which doubles as the floor for the small c.3.19m² balcony.

7.2.5 Similarly, the 1st floor access door, and the glass enclosure were specified elements in the public notices under **Reg.Ref.No.15/722**, and were not specifically itemised as part of the refusal at Schedule 1. Further, nor were they specified as elements to be removed under Condition No.2 of Schedule 2 to the permission. In my view it would have been of assistance to the Planning Authority to have done so, having regard to Paragraph 7.3 – “Basic

Criteria for Conditions” of the June 2007 Planning Guidelines for Planning Authorities – “Development Management”, particularly with respect to ‘preciseness’ and ‘enforceability’. Clearly therefore, the 1st floor access door now constructed in the front elevation serves the applicant no other purpose than to enable access onto the balcony. This expectation is reasonable in my view.

7.2.6 I note that in their response to the appeal, the Planning Authority argue that whilst the door accessing the balcony is not itemised separately within Schedule 1, the refusal of the unauthorised balcony, incorporated the doorway, as this formed an element of the balcony. I can understand this viewpoint. However, it relies in my view on silent implication of the door as an element of the balcony. Rather in my view, ‘preciseness’ and ‘enforceability’ as criteria for Conditions would have been achieved, by an explicit Condition requiring the omission and closing up of the opening occupied at present by the doorway. The refusal of the balcony at Schedule 1, would have been further backed-up and consolidated were a further Condition to be included in Schedule 2 requiring the omission and taking down completely of the steel support structure for the balcony. Without the steel support structure, there is no balcony. It served no other apparent purpose. However, by Conditioning the enlarged, enclosed porch, incorporating the steel support structure, both Schedule 1 has been undermined, and the applicant has reasonably been enabled with the conclusion that an argument exists in favour of retention of the existing balcony.

7.2.7 Having regard to all the information available, I am inclined to share the conclusion derived by the applicant that effectively, planning permission exists for the roof of the porch (ie. floor of the balcony) and the 1st floor access door to the roof of the porch. If this is so, these elements must consequently be considered as acceptable in terms of visual amenity and Development Plan Policy

7.2.8 These conclusions therefore beg the question in my view, ‘when is a balcony not a balcony?’ In the current instance, the applicant has a reasonable argument in my view, that he has planning permission already for two principal elements of the balcony. This being the floor and the access door. I am not convinced by the applicant’s arguments in favour of the glass enclosure around the perimeter edge of the balcony.

7.3 Principle and Location of the proposed development

7.3.1 Balconies at 1st floor level and above, are an acceptable element of residential units, enabling residents access to the outside, direct natural light and views. Veranda’s or patios enable the same amenity for residents at ground floor level.

7.3.2 The applicants dwellinghouse at 13 Rampark Shore is the only two-storey house in the row. Positioned directly up against the coastal dune / embankment, no space exists for the balcony to be positioned to the rear of the house. If there were, the balcony would be in permanent shade and the outlook would be directly on the soil embankment.

7.3.3 The only reasonable capacity is for the balcony to be attached onto the front, south facing elevation of the dwellinghouse, where it currently exists. The coincidental advantage in my view, of this location, is that the balcony will enjoy direct sunlight when available, together with a spectacular outlook and views over Dundalk Bay and Dundalk Town and coastline to the south.

7.3.4 It is to the applicant’s advantage that the dwellinghouse is located on the northern coastline of Dundalk Bay. In my view, the use of balconies within coastal settings is not unusual. In this regard, I can find no policy or development standard within the Louth County Development Plan 2015 - 2021, prohibiting the attachment of balconies to dwellinghouses.

7.3.5 I therefore believe the principle of the inclusion of the existing balcony at 1st floor level, to the front, south facing elevation of the applicants dwellinghouse to be acceptable. However, having regard to the relevant provisions of the

County Development Plan 2015-2021, consideration is necessary to, whilst enabling residential development, ensuring amongst others, that the development would not unduly affect the amenities of nearby residents (SS 39), and the protection of the recreational and amenity value of the Dundalk Bay coast (Development Zone 3 Objective).

7.3.6 Having regard to the discussions below, I believe the proposed retention of the small, modest c.3.19m² balcony, to meet the personal special needs of the applicant, is satisfactorily compliant with the relevant provisions of the Louth County Development Plan 2016-2021, and subject to Conditions, would be in accordance with the proper planning and sustainable development of the area.

7.4 Visual Amenity Impact - Coastal Landscape

7.4.1 I have taken note of the established, contextual scale and pattern of residential development along 'Rampark Shore' generally, and proximate to No.13 specifically. The applicant's recently renovated dwellinghouse is the only 2-storey dwellinghouse in this vicinity.

7.4.2 Having regard to the dilapidated condition of the historical traditional fishermans cottage when acquired by the applicant, I believe the applicant's completed renovation and upgrade of both the original cottage and the associated outbuildings, positively contributes to and enhances the local character of the 'Rampark Shore' row a dwellinghouses within the contextual coastal landscape. In my view, the works completed by the applicant in renovating the original dilapidated cottage complies with the suite of relevant policies and development standards set out within the Louth County Development Plan 2015-2021. As discussed at paragraph 7.2 above, I believe that this compliance includes the porch and 1st floor door.

7.4.3 Consequently, I share the applicant's bemusement at the Planning Authority's refusal of 'retention' permission of the existing balcony, a subordinate but

important element of the total renovation and upgrade of the house, to meet the applicant's special needs (ie. Refusal Reasons No. 1 and 2).

7.4.4 I note that no policy provision clearly exists within the County Development Plan 2015-2021, prohibiting inclusion of balcony spaces with residential dwelling units anywhere within County Louth, and particularly coastal settings.

7.4.5 Neither is the applicants dwellinghouse listed as a protected structure at 'Vol.2 – Record of Protected Structures' of the County Development Plan 2015-2021, or notwithstanding its historical use as a traditional fishermans cottage, is it included in the National Inventory of Architectural Heritage (NIAH).

7.4.6 Having regard to the scale of the balcony and its relationship with the 2-storey dwellinghouse, I share the applicants view that the balcony is well proportioned relative to the dwellinghouse, and the front, south facing elevation particularly. Further, neither do the stainless steel frame and glassed enclosure, or the porch disproportionately dominate the scale and character of the applicant's dwellinghouse and the front elevation. I understand that this is consequent of the considered design and choice by the applicant of materials and finishes, in proactive mitigation of threat of visual impact, and in compliance with relevant provisions of the County Development Plan 2015-2021.

7.4.7 The anticipated incorporation of the existing steel framed support structure, into the enlarged, enclosed porch, consequent of the permission granted under **Reg.Ref.No.15/722**, will positively impact the character and associated visual amenity of the applicants dwellinghouse, inclusive of the balcony. In this regard, I share the applicant's 'Heritage and Conservation' Consultant's opinion that this extension of the walls of the existing porch, to stand fully under the balcony floor overhead, will have the positive "effect of "grounding" the balcony into the front elevation", without obvious distortion or alteration to the scale or intrinsic character of the dwellinghouse.

7.4.8 The insertion of the access door at 1st floor level into the fabric of the original building, as permitted in my view under **Reg.Ref.No.15/722**, is set over the already off-centre doorway to the front elevation. I share the applicant's 'Heritage and Conservation' Consultant's view that this opening "reinforces the original horizontal division of the front elevation" and has no significant visual impact. I attach a copy of the applicant's 'Heritage and Conservation' Consultant's (John Cronin & Associates) report dated 05/09/2016, which was included with the applicant's documentation under **Reg.Ref.No.15/722**.

7.4.9 With respect to the threat of impact to the local coastal setting, for which the Development Zone 3 Objective is to protect the recreational and amenity value of, I share the applicants view that the c.3.19m² balcony, a modest and minor element of the applicants dwellinghouse, with a light-weight and transparent form, is not obviously noticeable when viewed from a distance. In my view, retention of the balcony will have no discernible impact at all on the visual amenities characterising the coastline at Rampark Shore, nor will it erode the character of the area.

7.4.10 Therefore, accepting that no adverse visual impact on local coastal amenities, or the character of the area will result, I am left to conclude that retention of the balcony as proposed, would not be in conflict with the stated Objective of Development Control Zone 3 and the other relevant provisions of the County Development Plan 2015-2021.

7.4.11 Having regard to all of the above, I believe that subject to compliance with the Conditions below, the proposed 'retention' of the existing 1st floor balcony to the front elevation of No.13 Rampark Shore, would have no adverse visual impact on local coastal amenities, or the character of the area. In my view, the proposed 'retention' of the balcony would be in accordance with the proper planning and sustainable development of the area.

7.5 Residential Amenity Impact

- 7.5.1 Policy SS 35 of S2.19.8 – ‘Refurbishment of Existing Dwellings and Vernacular Buildings in Rural Areas’, requires that development not unduly affect the amenities of nearby residents. This policy is not unique or unusual, and is in my view reasonable.
- 7.5.2 The applicants dwellinghouse forms the eastern end of a row of modest historically traditional fishermen’s cottages. It is the only 2-storey dwellinghouse in this row. No dwellinghouses exist to the east, front / south or the rear / north. The closest dwellinghouse is adjacent to the west, understood in the ownership of the 3rd party objectors / Observers.
- 7.5.3 All parties appear to concur that the applicant’s existing balcony proposed for retention, is located c.2.5m from the common boundary with the adjacent property to the west.
- 7.5.4 I understand that each case requires consideration of relevant planning issues on their individual merits. In this regard I believe the current application for retention of the existing 1st floor balcony, positioned c.2.5m away from the adjacent property boundary, is unique, requiring planning consideration on the case specific merits.
- 7.5.5 Having thoroughly inspected the application site at the time of site visit (see attached photographs), I am acutely mindful of the importance of the accessibility to outside natural amenity that the existing balcony affords the applicant, due to his chronic illnesses and consequent severely restricted mobility. The gentle gradient of the ramped pathway to the east of the house, enabling the applicant’s accessibility between the two floor levels is alone, substantive evidence of this. In my view the existing balcony for retention, is another important element of the 1st floor, enabling consolidation of the liveability and amenity of the 1st floor for the applicant’s best advantage, by way of access to fresh air, direct sunlight and the spectacular views. In my view, it would not be unreasonable to supplement the purely planning and land use control considerations, with the more clinical considerations

regarding the applicant's health, and the positive role of the balcony, as an appropriately sized and accessible amenity space, in the sustained management of the applicant's health.

7.5.6 S2.19.14 – 'Extensions to Dwellings' of the County Development Plan 2015-2021 specifies that "the Council will have regard to special housing needs, such as the housing needs of ... people with disabilities". This provision is clearly to the applicant's advantage. I confirm that the house was occupied at the time of my site visit, well into Autumn and midweek.

7.5.7 Positioned c.2.5m away from the adjacent property boundary, I understand the concerns by the 3rd party objectors / Observers, and the Planning Authority, that adjacent residential amenity to the west, particularly privacy, will be seriously impacted due to overlooking from the balcony. Under normal conventional circumstances, I would agree. However, I have already outlined that reasonably anticipated use of the balcony by the applicant and his wife (understood carer) will not be as normally expected by residents. In this regard I emphasise :

- the applicant's chronic illnesses and consequent severely restricted mobility. Use of the balcony by the applicant must therefore be expected as passive and proportional, contributing to the applicant's quality of life, physical and mental health,
- the small modest c.3.19m² floor area of the balcony to be retained, more comparable to "a Juliet / Picture Balcony". Further, with a 1.1m depth, the balcony cannot accommodate a table and chairs thereby ensuring quieter, more passive use of the balcony space. In my view, the balcony is so small, it could not be used for entertainment purposes. Therefore, no serious disamenity impact will arise.
- without the balcony, the applicant would be required to exit the house at first floor level comprising the household living area, and using the external ramp either re-enter the house at ground floor level or avail of the front yard amenity.

- the adjacent property to the west has a large area of private amenity space within the front yard, all south and sea facing, with maximum direct sunlight. Accordingly, the area to the immediate front of this dwelling and adjacent the common boundary, is not the only onsite amenity space available to the 3rd party objectors / Observers.
- the adjacent property's southern boundary is a low-rise wall, beyond which is the road and public beach. During summer time and associated peak use, the whole front yard must reasonably be expected to be in permanent public view with consequent impact on privacy.
- the applicants passive use of the balcony is restricted to periods of dry and relatively warm weather.
- the balcony is to the front of the applicants dwellinghouse, which itself is forward of and angled away from the adjacent 3rd party objectors' / observers property.
- the visible parts of the balcony comprise glass panels which are clear / transparent to the front (south) and side (east). I understand that this is consequent of the considered choice by the applicant of materials and finishes, in proactive mitigation of threat of visual impact. Once integrated within the enlarged, enclosed porch, the removal from sight of the steel support structure, will further enhance the applicant's objectives in this regard.
- that whereas the applicants proposal for a 1.7m high glazed privacy screen to the western side of the balcony may in fact physically block intervisibility between the 3rd party objectors / Observers to the west and the applicant when on the balcony, I believe rather that in itself the 1.7m high glazed screen, being adhoc and inconsistent with the height and finishing of the remaining perimeter enclosure, has the potential to become the negative visual externality that the applicant's design considerations have been so mindful as to avoid. As outlined above, if I believe that no serious, disproportionate negative impact on adjacent residential amenity will result from the applicants passive and occasional use of the balcony, then there should be no need for the

privacy screen. In my view, it would be preferential for the existing understood 1.1m high stainless steel frame and glass perimeter to be extended through the western side of the balcony. The Board may be of a different opinion in this regard. I note the applicant's expressed willingness to accept a Condition determining a lower height and infilled with opaque or clear glass.

7.5.8 Having regard to all of the above, I believe that subject to compliance with the Conditions below, and specifically the design modifications in mitigation of residential amenity impact, the proposed 'retention' of the existing 1st floor balcony to the front elevation of No.13 Rampark Shore, would not be overbearing or disproportionate on the adjacent neighbours, and coastal environment in context, with no disproportionate negative impact on the prevailing residential amenity. In my view, the proposed 'retention' of the balcony would be in accordance with the proper planning and sustainable development of the area.

7.6 **Wastewater Treatment and Disposal**

7.6.1 Previously, under **Reg.Ref.No.07/591**, permission was granted on the application site for (P) New Waste Water Treatment System to existing dwellinghouse and associated site works, subject to seven (7no.) stated Conditions (see Comprehensive case history documentation is included on file).

7.6.2 Subsequently, under the permission granted under **Reg.Ref.No.15/722**, Condition 4 (a) – 4(d) outlined the requirements for the sustained operation and maintenance of the waste water treatment system installed on the site.

7.6.3 In my view, nothing further in this regard is required.

7.6.4 It is not clear if storm water runoff from the balcony, is an issue to be addressed. If anything, I believe anticipated surface water runoff from the c3.19m² flat balcony surface will be minimal. In my view as a precaution, it

would be appropriate that the applicant comply with the requirements set out in the Codes of Practice from the Louth County Council Water Services Department in this regard, to ensure a satisfactory standard of development.

7.7 Road Access and Traffic Safety

7.7.1 Having regard to the limited and narrow scope of the current proposed development for retention, ancillary to an existing recently renovated 2-storey dwellinghouse (see **Reg.Ref.No.15/722**), considered with satisfactory access, this is not an issue for attention in my view, in the current application for retention.

7.8 Appropriate Assessment

7.8.1 Having regard to the nature and modest scale of the c.3.19m² balcony development proposed for retention, ancillary to an existing domestic dwellinghouse, to the location of the site within a rural coastal environment, and to the separation distance and absence of a clear direct pathway to the Dundalk Bay SPA and SAC, 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

8.1 I recommend that planning permission be granted for the reasons and considerations as set out below.

9.0 Reasons and Considerations :

9.1 Having regard to the provisions of the Louth County Development Plan 2015-2021 and of the pattern of limited, modest residential development in the vicinity, it is considered that, subject to compliance with the Conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health and would be acceptable in terms of traffic safety and convenience. The

proposed retention of development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions :

1. The development for retention shall be in accordance with the plans and particulars lodged with the application on the 28th day of April 2017, 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. The proposed development shall be amended as follows:
 - (a) Omission of the 1.7m high privacy screen proposed for the west facing side of the balcony
 - (b) Extension of the 1.1m high stainless steel and glass treatment proposed for the east and south facing sides of the balcony, through to the west facing side of the balcony.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development.

Reason: In the interests of visual and residential amenity.

3. The existing dwelling, inclusive of the development for retention, shall be occupied as a single residential unit.

Reason : In the interest of clarity and of residential amenity.

4. All the external finishes shall harmonise in materials, colour and texture with the existing finishes on the house. Details including samples of the materials, colours and textures of all the external finishes, shall be submitted to, and agreed in writing with the Planning Authority prior to commencement of development.

Reason : In the interest of orderly development, and of the visual amenities of the area.

5. Storm Water runoff / drainage arrangements, including the attenuation and disposal, shall comply with the requirements of the planning authority for such works and services.

Reason : In the interest of public health.

6. Development described in Classes 1 or 3 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, or any statutory provision modifying or replacing them, shall not be carried out within the curtilage of the proposed dwellinghouse, without a prior grant of planning permission.

Reason : In the interest of residential and visual amenity, and in order to ensure that a reasonable amount of private open space is provided for the benefit of the occupants of the proposed dwelling.

L W Howard

Planning Inspector

27th October 2017