



An
Bord
Pleanála

Inspector's Report ABP300157-17.

Development	Permission for retention of new window opening (complete with window) to gable wall of existing single storey dwelling and all associated works.
Location	Tierney Street, Ardee, Co. Louth.
Planning Authority	Louth County Council.
Planning Authority Reg. Ref.	17/637.
Applicant(s)	Miriam Carroll.
Type of Application	Retention.
Planning Authority Decision	To grant.
Type of Appeal	Third party.
Appellant(s)	Colman Finlay.
Observer(s)	None.
Date of Site Inspection	19 th February 2018
Inspector	D. M. MacGabhann

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1.0 Site Location and Description

- 1.1. The c.0.07ha appeal site is situated to the east of Ardee Town Centre on Patrick Tierney Street. It is situated at the junction of Patrick Tierney Street and Tierney Street, a short residential cul-de-sac (5 properties), and comprises a corner site fronting both roads.
- 1.2. On the appeal site is a single storey residential property and garage (total gross floor is 189.sqm). Vehicular access is from the cul-de-sac to the east of the building. The external finish to the building is a mix of brick and render. The roof comprises concrete roof tiles. In the western elevation of the property, serving a living/kitchen area is a domestic window (c.1.5m x 1.5m).
- 1.3. To the west of the property, the appeal site is bounded by a painted block wall. To the west of the block wall is a commercial yard with associated structures and an adjoining undertaker's business. On the appellant's side of the party wall is an immature evergreen hedge.

2.0 Proposed Development

- 2.1. The proposed development comprises the retention of the window opening, complete with window, to the gable wall (western elevation) of the residential property at ground floor level. The window serves a living/kitchen area. The applicant states, in her covering letter to the planning authority, that (a) plans for the property had originally indicated a window in this location, which she had opted to leave out, and (b) having retired and spending more time in the property, the window provides daylight to an area of the house which she has always had to have a light on.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On the 12th October 2017 the planning authority decided to grant retention for the proposed development subject to one standard condition (development to be retained in accordance with the plans and particulars lodged).

3.2. Planning Authority Reports

Planning

- 3.2.1. The Planning Report (9th October 2017) describes the appeal site, its planning history and development plan context. It summarises the submission made on the proposed and provides an assessment of the application in terms of the principle of the development, its layout and orientation, scale and form, landscaping, boundary treatment, residential amenity, traffic matters, services, flooding and impact on Natura 2000 network.
- 3.2.2. The report considers the issue of overlooking and, by virtue of, the limited visibility of the window above the party wall, new planting along the boundary wall within the commercial premises and separation of the proposed development from the neighbouring property, no issues of overlooking arise which would seriously injure the amenities of the adjoining property.
- 3.2.3. The report concludes that having regard to the residential zoning objective for the site, and the nature of the proposed development, it would not seriously injure the amenities of the area or of property in the vicinity. It, therefore, recommends that retention permission be granted.

Other Technical Reports

- 3.2.4. None.

4.0 Observations

- 4.1. On file is one observation by the appellant. It raises similar issues to those raised in the appeal (summarised below) which relate to:
- Overlooking,
 - Impact on privacy, development potential and value of property, and
 - No consideration of alternatives or measures to mitigate the above impacts.

5.0 Planning History

- 5.1.1. Under PA ref. **17/U099** the site was subject to an enforcement case in respect of a new window opening (the subject of the current appeal).
- 5.1.2. Under PA ref. **80/682** planning permission was granted for four dwelling houses on the appeal site and adjoining lands, forming the current cul-de-sac.

6.0 Policy Context

6.1. Development Plan

- 6.1.1. The appeal site falls within the administrative areas of the Ardee Local Area Plan 2010 to 2016 and the Louth County Development plan 2015 to 2021.
- 6.1.2. Ardee is the principal town and population centre for mid-Louth. It is designated in the County Development Plan as a Level 2 settlement. The site lies within land zoned 'Residential', the objective of which is to protect and/or enhance existing residential communities and provide for new residential communities (Amended Land Use Zoning Map, Ardee LAP 2010 – 2016).
- 6.1.3. Immediately west of the appeal site, land is zoned Town Centre. The objective of this zoning is to provide, protect and enhance town centre facilities and enable town centre strengthening (see attachments).
- 6.1.4. A corridor alongside the River Dee, to the south of the appeal site, is identified as a riparian buffer area and as 'benefitting lands' (most likely to be at risk of flooding). These are afforded protection by policies NBE 1 and NBE 2 of the Plan (see attachments). Policy INF 8 of the Plan provides a general presumption against new development or the intensification of existing development in areas at risk of flooding.
- 6.1.5. Strategic objectives of the Plan seek to protect the amenities of existing residential communities (OBJ 3). Further, all developments within the town are required to comply with the design principles and development management standards set out in section 9 of the LAP and in the Louth County Development Plan (Policy DP 1, LAP). The following are relevant in respect of the appeal:

- To provide a recommended distance of at least 22m between the windows of habitable rooms which face those of another dwelling (section 9.3.6, LAP; section 4.10.3, CDP).
- Where new buildings are located very close to adjoining buildings, the provision, where necessary, of daylight and shadow projection diagrams (section 9.3.6, LAP).
- On town centre sites to limit site coverage to 80% (section 9.2.2, LAP).

6.2. Natural Heritage Designations

- 6.2.1. The appeal site is substantially removed from any site of nature conservation interest, with the nearest Natura 2000 site comprising Stabannan-Braganstown SPA and pNHA (site codes 004091 and 000456 respectively), c. 5km to the north east of Ardee.

7.0 The Appeal

7.1. Grounds of Appeal

- 7.1.1. The appeal is lodged by the owner of the land to the west of the appeal site (Colman Finlay). Grounds of appeal are:
- The window to be retained overlooks the appellant's property and infringes on privacy.
 - The permission granted is not subject to condition e.g. raising of boundary wall.
 - The window is less than 2m from the boundary wall.
 - The room the window serves is already served by other windows and the proposed window is unnecessary for daylight or ventilation.
 - The location of the window could impinge greatly on the development potential of the adjoining site and would result in the devaluation of the site.
 - The window, if allowed to remain, would in time gain a right to daylight and impinge on the appellant's right to develop the property.

- There are many suitable alternatives available to provide additional light to the property. The application for retention did not consider any of these e.g. roof light, obscure glass, glass block or mitigation measures to address overlooking e.g. raising boundary wall above the height of the window head, erecting a new screen fence inside the applicant's boundary.

7.2. Applicant Response

7.2.1. The applicant responds to the appeal as follows:

- The site is located in Ardee town centre. The window in question is in the ground floor and there is no significant change in levels between the appeal site and the appellant's property. No part of the ground level of the adjoining property, or c.1.5m above this, can be seen from the window (see photograph on file). Whilst the adjoining structure is visible, therefore, the proposed development does not overlook it.
- The boundary wall between the properties is c.1.65m high in the vicinity of the window. The applicant has planted a laurel or similar hedge on their side of the property which is already showing above the height of the boundary wall.
- The window is sufficiently removed from the boundary wall (at less than 2m). Typically ground floor windows in housing developments are located to the side at c.1m from the opposing party boundary wall.
- The appellant's view that the window is unnecessary for daylight or ventilation is speculative and subjective and irrelevant when considering the planning merits of the development.
- Impact on the value of the adjoining property is speculative. Any development on a town centres site will have to consider adjoining properties. It is difficult to see how the window could have any significant impact on the development of the adjoining site or its development potential or value.
- The application was made to retain the existing window, as it currently exists. If the PA were of the view that there was any need to consider alternatives or mitigation measures they would have done so.

- All of the matters raised by the appellant were raised in the course of the application and were considered by the planning authority.
- The applicant could construct a rear extension up to 40sqm, in accordance with the Planning and Development Regulations, 2001 (as updated) that could contain a ground floor window facing the party wall, as it is greater than the minimum distance allowed for a ground floor window to a party wall (1m).

7.3. Planning Authority Response

7.3.1. The planning authority make no additional comments on the appeal.

7.4. Observations

7.4.1. None.

7.5. Further Responses

7.5.1. None.

8.0 Assessment

8.1. The proposed development comes forward on land which is zoned for residential development and is, therefore, acceptable in principle on the appeal site. The window to be retained serves a habitable room, a living/kitchen area and improves the internal amenity value of the space. The window faces the appellant's landholding and is separated from it by a c.1.7m boundary wall. The property is separated from the boundary wall by a footpath and grass margin. The evergreen hedge planted on the appellant's site is visible above the shared boundary wall. Direct views from the appeal site of the adjoining site are limited, both inside and outside the property, by virtue of the height of the existing boundary wall and its proximity to the window to be retained. Any views from the appeal site could be further reduced by the hedge on the appellant's side, as it matures.

8.2. The adjoining site comprises a cleared site brownfield site. Lying within the 'town centre' land use zone, policies of the plan seek to provide, protect and enhance town centre facilities and enable town centre strengthening. Consequently, development

of the site could be reasonably be expected for an appropriate town centre land use (e.g. residential, commercial, cultural, retail land uses). However, any future use of the site would have to have regard to other policies of the LAP, including those which restrict coverage of town centre sites to 80% (section 9.2.2) and to the objective of the Residential zoning of the appeal site i.e. to protect and/or enhance existing residential communities.

- 8.3. Within this context, and given the limited views of the appellant's property from the living/kitchen area of the appeal site and the opportunities to further screen these by the maturing hedgerow on the appellant's site, I would not accept that the proposed development would give rise to significant overlooking or seriously detract from the development potential or value of the adjoining site. I do not consider, therefore, that it was necessary to consider alternatives to the proposed development or to provide additional mitigation measures in respect of it.

Nature Conservation

- 8.3.1. The appeal site lies in an urban area and comprises the retention of a side window. Having regard to the nature of the development, which gives rise to no impacts on environmental factors, 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.

9.0 Recommendation

- 9.1. I recommend that retention be granted for the proposed development.

10.0 Reasons and Considerations

- 10.1. Having regard to the provisions of the Ardee Local Area Plan 2010-2016 and the Louth County Development Plan 2015-2021, the location of the site on land zoned for residential development, the nature and scale of the development and the height and proximity of the adjoining boundary wall, it is considered that, subject to compliance with the conditions set out below, the development for which retention is sought would not seriously injure the amenities of the area or of property in the

vicinity, and would not, therefore, be contrary to the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be retained in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity.

Deirdre MacGabhann
Senior Planning Inspector

19th February 2017