



An
Bord
Pleanála

Inspector's Report ABP-300962-18

Development	Retention of guard rail over permitted flat roof with modifications to include for escape door to rear of house.
Location	Dublin Road, Naas.
Planning Authority	Kildare Country Council.
Planning Authority Reg. Ref.	17/1301.
Applicant(s)	Fergus Johnston.
Type of Application	Retention.
Planning Authority Decision	Refusal.
Type of Appeal	First Party V. Decision.
Appellant(s)	Fergus Johnston
Observer(s)	<ol style="list-style-type: none">1. Janet Fletcher, Select Vestry of Naas Union.2. Patricia O'Donnell.
Date of Site Inspection	22 nd May 2018.
Inspector	Susan McHugh.

1.0 Site Location and Description

- 1.1. The appeal site is located approx. 1km to the south of Maudlings roundabout off the M7 and approx. 1.3km north east of the edge of Naas Town Centre. It is located to the south east of the Dublin Road R445.
- 1.2. The newly constructed house is located along a row of detached houses on large plots which are typically set back from the main road with mature planting along existing boundaries.
- 1.3. The site is bounded to the east and southeast by the Church of Ireland Cemetery, a Protected Structure and National Monument. Adjoining the site to the south are two storey residential properties within The Gallops estate. The adjoining house to the west is a two storey detached dwelling which includes a first floor balcony to the rear, beyond which is a bungalow.
- 1.4. The site has a stated area of 0.98ha. The rear garden is bounded by a 2m high wall along its boundary with the adjoining Cemetery to the east. This wall runs at an angle such that the rear garden tapers towards the south. The site is bounded to the south west by a newly constructed 2m high wall and new planting.
- 1.5. The rear elevation of the house comprises a ground floor kitchen bay with flat roof over and first floor master bedroom with two windows either side of double doors giving access to a balcony. There are first floor windows on the east and west side elevations of the house.

2.0 Proposed Development

- 2.1. Permission is sought for the retention of a timber guard/railing over a permitted flat roof bay window to the rear of the existing house. This rail extends by 1.2m from the rear elevation of the house for a length of 5.83m. It is 1.1m high and finished in timber painted a mute grey colour.
- 2.2. It is also proposed to retain modifications to an already approved central window opening which now includes an escape glazed door at first floor to the rear master bedroom of the house.

- 2.3. The floor area of the first floor balcony is 7sqm. It is located 3m from the eastern side boundary to the adjoining Cemetery and 6m to the western side boundary to the adjoining two storey house.

3.0 **Planning Authority Decision**

3.1. **Decision**

The planning authority decided to refuse permission for the following reason;

1. Having regard to the existing character of the area and to the provisions of Section 17.4.8 of the Kildare County Development Plan 2017-2023, which requires that extensions to dwellings should not provide for new overlooking of the private area of adjacent residences where no such overlooking previously existing, to permit the retention of the development would seriously injure the amenities of the area which includes an adjacent Cemetery, by virtue of overlooking and visual intrusion, would seriously injure the visual amenity of the area, would depreciate the value of property in the vicinity, would set an undesirable precedent for similar developments of this nature and would therefore be contrary to the proper planning and sustainable development of the area.

3.2. **Planning Authority Reports**

3.2.1. **Planning Report** (dated 22/01/2018)

The planners report is the basis for the planning authority decision. It includes;

- The development to be retained is an extension to the footprint of the dwelling over the flat roof below effectively creating a balcony/terrace of 7sqm.
- Access to the site was not possible due to the electric gates at the entrance.
- The balcony is large enough to accommodate persons with resultant long-distance views and overlooking of adjacent lands where there was no previous overlooking.

- The balcony would result in a loss of privacy and have a significant impact on the residential amenity of adjoining dwellings.
- Contrary to Section 17.4.8 with respect to overlooking, residential and visual amenity and would devalue property.
- Notes previous refusal for retention of a balcony on the adjacent site under P.A. Reg. Ref. 17/1064.
- A refusal of permission for one reason is recommended.

3.2.2. Other Technical Reports

Area Engineer – No objection.

Water Services – No objection

CFO - No Objection.

3.3. Prescribed Bodies

Irish Water – No objections subject to standard conditions.

3.4. Third Party Observations

- 3.4.1. Two objections to the proposal received by the planning authority have been forwarded to the Board and are on file for its information. The issues raised are comparable to those raised in the third party observations to the appeal and are summarised in section 6.4 below.

4.0 Planning History

4.1. Appeal Site

P.A. Reg. Ref. 15/184: Permission **granted** 20/11/2015 for new two storey dwelling house, subdivision of existing site, new boundary walls, new dual access site entrance and all associated site development works to Fergus Johnston. This permission has been implemented.

Condition No. 2. Required revised plans and details to be submitted to the planning authority for its written approval prior to commencement of development including

details of high quality, external durable finishes/materials throughout. Of relevance item

2 (b) Revised footprint (including revised rear portion of the plan) showing a greater separation distance between the proposed dwellings footprint and the adjoining mutual boundary wall and the adjoining Cemetery site.

2 (c) Details of the schedule/timing of localised conservation repair works to the mutual boundary wall and the Cemetery, to be supervised by a Conservation professional and carried out in accordance with details submitted on 21/09/2015.

4.1.1. *Enforcement*

P.A. Ref. UD 6903 No details available on Council website.

4.2. *Adjacent Site to the West*

P.A. Reg. Ref. 17/1064: Permission **refused** 17/11/2017 for **retention** of a first floor level gable feature over the porch on the front elevation and a first floor level balcony at the rear with supporting columns. Permission was also sought to erect 1.6m obscure glass screens to either side of the rear balcony to Marie Johnston.

P.A. Reg. Ref. 15/183: Permission **granted** 08/09/2015 for extensions and alterations to existing two storey house to include (a) new two storey extensions to side and rear of existing house, (b) modifications to front elevation to include new window style gable feature (c) new front porch extension (d) modifications and alterations to existing layout (e) sub-division of existing site, new boundary walls, new dual access site entrance and all associated site development works to Marie Johnston.

5.0 **Policy Context**

5.1. **Development Plan**

5.1.1. **Kildare County Development Plan 2017-2023**

Chapter 16 sets out Urban Design Guidelines

Chapter 17 sets out Development Management Standards.

Section 17.4.8 Extension to Dwellings.

'The extension should be sensitive to the existing dwelling in its form, scale and appearance and should not adversely distort the scale or mass of the structure or adjoining properties.'

'The extension should complement the area where it is located, and its design and scale should have regard to adjoining properties.'

'The extension should not provide for new overlooking of the private area of an adjacent residence where no such overlooking.'

'In an existing area developed area, where a degree of overlooking is already present, the new extension must not significantly increase overlooking possibilities.'

5.1.2. Naas Town Development Plan 2011-2017

The site is within an area zoned '**B**' – '**Existing / Infill Residential**', the objective for which is *'to protect and improve residential amenity, to provide for appropriate infill residential development and to provide for new and improved ancillary services'*.

Extensions are 'permitted in principle' within this zoning objective.

Chapter 11 - Architectural, Archaeological, Natural Heritage and Biodiversity.

It is the policy of the Council to:

PS 2 – *'Protect the curtilage of protected structures and to refuse planning permission for inappropriate development within the curtilage or attendant grounds of a protected structure which would adversely impact on the special character of the protected structure including loss of or damage to, any structures of architectural heritage value within the curtilage of the protected structure'*.

Appendix 3 – Naas Record of Protected Structures

Protected Structure - NS19-068 – Cemetery, gates wall and lodge.

Record of Monuments and Places - RMP 19-021 – Maudlings - Graveyard site.

Chapter 13 - Development Management

Section 13.2.3 – Overlooking

'A separation distance of 35 metres should be considered in the case of overlooking living room windows and balconies at first floor.'

Section 13.3.6 Extension to Dwellings

5.2. Other Relevant Guidance

5.2.1. Architectural Heritage Guidelines for Planning Authorities, 2004 (republished 2011)

Development guidelines for Protected Structure and Areas of Architectural Conservation.

5.3. Natural Heritage Designations

There are no European sites designated under the Habitats Directive located within the vicinity of the site.

6.0 The Appeal

6.1. Grounds of Appeal

A first party appeal against the decision to refuse permission by the planning authority has been lodged by the applicant Fergus Johnston. In summary, it states:

- Permission granted for a bay window structure with roof top under P.A. Reg. Ref. 15/184. When under construction it was suggested by a local joiner to provide a railing to the top of the bay window to act as a protective safety measure.
- The platform created was never intended as a 'balcony' as suggested by the adjoining neighbour 2 doors down in her letter of objection as it is only 1.1m wide and not large enough to be used as a usable space located off their master bedroom
- The house was permitted to run along the shared boundary wall with the adjoining cemetery and includes two large windows which face directly into an old area of the cemetery no longer in use.

- The new area of the cemetery is approx. 100m away and is barely visible from their windows and no visibility at all from the platform structure because of how the house is constructed.
- The immediate neighbours have never objected.
- The housing development 'The Gallops' have railings as part of the house design which similarly side face into the cemetery.
- The option of a second means of access from the bedroom is because of a house fire experienced by the applicants' wife's family in 2009.
- The cemetery side of the house is surrounded by mature trees and when in leaf there is no visibility of the cemetery. They have also recently planted mature trees to the other side of the house which over time will provide complete privacy to the rear of the house.
- They have been and are available to meet with the local vestry and neighbour who have objected but they have declined to so.

6.2. Applicant Response

None

6.3. Planning Authority Response

The planning authority had no further response to the first party appeal.

6.4. Observations

Two observations were lodged from the following parties;

- Janet Fletcher on behalf of the Select Vestry of Naas Union.
- Patricia O'Donnell Solicitor the owner of the bungalow to the southwest.

The issues raised can be summarised as follows;

Janet Fletcher

- The Cemetery is the primary Church of Ireland graveyard within the locality of Naas, it is active and burials take place on a regular basis.

- It is a Protected Structure and on the National Sites and Monuments Record.
- Application for retention of railings and a fire escape is actually a first floor balcony, and was not shown on drawings submitted with the application P.A. Reg. Ref. 15/184.
- Overlooking and substantial breach of privacy for those attending the Cemetery, balcony in very close proximity to the Cemetery with a clear view over a large area of the Cemetery.

Patricia O'Donnell

- Condition no. 2 of the permitted two storey house under P.A. Reg. Ref. 15/184 required the applicant to amend the footprint of the dwelling and highlighted the special interest of the adjoining cemetery. Revised drawings were submitted and agreed by the planning authority with no reference to a balcony.
- Disingenuous to suggest the applicants professional team was over-ruled by his joiner as a justification for this unauthorised structure.
- No regard or respect of the adjoining dwellings or cemetery despite the planning authority advising him of the sensitivity of the adjoining site.
- The fact that the immediate neighbour has not objected to the balcony is because the immediate neighbour is the applicant's sister, and she has also constructed an unauthorised balcony to the rear of her property which is currently the subject of an enforcement order with Kildare County Council UD 6823.
- The applicants reference to the 'Gallops' housing development should not be seen as a precedent as the balconies are to the front and do not project beyond the building line of the houses. The subject balcony projects beyond the rear building line and is contrary to Section 13.3.6 of the Naas Town Plan.
- Part B – Fire Safety 2017 Volume 2 Dwelling Houses of the Building Regulations gives guidance on the emergency escape from dwellings and

habitable rooms. A balcony is not required to provide safe egress from a dwelling and suggestion that it is a 'red herring'.

- Recently planted trees by the applicant was because they were required to provide adequate screening from the unauthorised balcony.
- Disputes claim by the applicant that he had been in contact.

7.0 **Assessment**

7.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The matter of appropriate assessment also needs to be considered. The issues can be dealt with under the following headings;

- Impact on the Protected Structure
- Residential Amenity
- Appropriate Assessment

7.2. **Impact on the Protected Structure**

- 7.2.1. The site is located adjacent to a protected structure NS19-068 and specifically the cemetery and boundary wall. The cemetery is also noted as a National Monument Site in the Record of Monuments and Places - RMP 19-021 – Maudlings - Graveyard site.
- 7.2.2. The cemetery is surrounded on three sides by residential development, with the two storey houses in the Gallops backing onto the cemetery.
- 7.2.3. I would concur with the observers to the appeal that the description of the development to be retained, while referring to guard rails and an escape door, is in fact a balcony with double doors. The balcony is set back from the boundary wall and the cemetery by 3m.
- 7.2.4. I am satisfied that the scale and design of the balcony to be retained does not result in a negative impact on the setting of the cemetery. The balcony is modest in scale

with an area of 7 sqm and extends by 1.1m from the rear building line. As such the use of the balcony to a first floor bedroom is restricted. The existing house includes windows at first floor along its eastern elevation which directly overlook the cemetery.

- 7.2.5. The design of the timber guard rails and double doors complement the ground floor kitchen bay of the existing house, with the guard rails set back from and subsidiary to the ground floor bay. I am satisfied that the finishes and materials are of a high quality and complement the overall design of the house.
- 7.2.6. I noted from my inspection the presence of very large mature beech trees located along the boundary with the subject site which provide significant screening to the existing house.
- 7.2.7. I do not consider that the setting of the cemetery is negatively impacted upon as a result of the balcony. I would also note that the subject site is not located within the Architectural Conservation Area as designated in the Naas Town Plan. I would also note that the cemetery appears to have been extended to the east and includes more recent burials and that the area of the cemetery closer to the appeal site appears to be much older.
- 7.2.8. I conclude therefore that no serious impact will result on the setting of the existing Cemetery, a protected structure, and that the reason for refusal should not be upheld.

7.3. Residential Amenity

- 7.3.1. In relation to the impact on residential amenity I have given consideration to the following; visual obtrusion and overlooking/loss of privacy.
- 7.3.2. In relation to visual obtrusion, I do not consider that the balcony detracts from the visual amenity or character of the area, having regard to the nature of surrounding developments, and having regard to the scale of the balcony in proportion to the existing house.
- 7.3.3. In relation to overlooking of neighbouring properties, I note that the balcony has views of the rear gardens of the houses to the south west. While I would have concerns in relation to overlooking of the immediately adjoining house to the

southwest, and that the balcony may give rise to perceived overlooking, I do not consider that the balcony and double doors gives rise to significantly more overlooking than the existing rear and side windows at first floor level. I also consider, with a separation distance of 6m, that any issues of overlooking will be mitigated over time with the planting already implemented on site along the boundary.

- 7.3.4. Whilst I acknowledge the observers concerns regarding overlooking, I do not concur. Given the separation distance of approx. 26m to the rear side boundary of the bungalow to the southwest, I do not consider that this would be sufficient justification for a refusal in this instance. I consider that the proposal is relatively modest in scale, that while there is a degree of overlooking already, the proposed development will does not significantly increase overlooking possibilities.
- 7.3.5. In my opinion the design of the balcony and double doors is to a very high standard. Accordingly, to introduce a modification to the rear balcony in an attempt to restrict views would detract from the overall design. I would also note that the balcony does not give rise to overshadowing of adjoining properties.
- 7.3.6. Overall I am of the view that the balcony has no serious or disproportionate negative impact on the prevailing residential amenity and I consider that the development to be retained is satisfactorily compliant with the Zoning Objective and Section 17.4.8 of the development plan, and accordingly would be in accordance with the proper planning and sustainable development of the area.

7.4. **Appropriate Assessment**

Having regard to the nature and scale of development to be retained and to the nature of the receiving environment, namely an urban and fully serviced location, 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 a grant of retention permission subject to the following conditions.

9.0 Reasons and Considerations

9.1. Having regard to the Zoning Objective 'B' for the area, to the planning history on the site and in the vicinity of the site, and to the pattern of development in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development to be retained would be in accordance with the provisions of Section 17.4.8 of the current Kildare County Development Plan 2017-2023, would not seriously injure the residential or visual amenity of the area and would not detract from the character or setting of the adjacent Protected Structure. The proposal would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be retained and completed 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.

Susan McHugh
Planning Inspectorate

25th May 2018