



An
Bord
Pleanála

Inspector's Report ABP-301501-18

Development	Retention for a single storey rear extension and all ancillary site works
Location	39 Kylemore, School House Road, Castletroy, Co. Limerick
Planning Authority	Limerick City and County Council
Planning Authority Reg. Ref.	17/684
Applicant(s)	Julie Ann Dowling
Type of Application	Retention Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	Third Party
Appellant(s)	Brian Jackson and others
Observer(s)	None
Date of Site Inspection	5 th July 2018
Inspector	Ciara Kellett

1.0 Site Location and Description

- 1.1. The appeal site is located in Kylemore, Castletroy, Co. Limerick. Kylemore is part of a relatively large housing development south of the Schoolhouse Road which is just north of the M7 motorway. More houses are currently under construction to the west of the internal spine road. The Castletroy Golf Club lies c.0.5km to the north of the site.
- 1.2. The appeal site, no.39, is located on the southern side of an internal road. It is at the west-end of a row of twelve detached dwellings. The appellants live to the rear and side of no.39. No.39 is at a higher elevation than the sites to the rear and the side.
- 1.3. The Lower River Shannon SAC (Site Code 002165) lies c.2.5km to the north of the site.
- 1.4. Appendix A includes maps and photos.

2.0 Proposed Development

- 2.1. Retention permission is sought for a single storey extension to the rear and side of the existing dwelling. The extension is stated as being 41.5sq.m in area with glazing on three of the four facades. The extension has a monopitch roof sloping upwards from north-west to south-east. Near the boundary with the dwellings to the north-west it is 2.95m high rising to 3.62m. A chimney vent is stated as being 4.31m high.
- 2.2. The extension is 12.16m in length running parallel to the rear boundary walls of no's. 36 to 38 Kylemore (to the north-west) and 4.98m in width running parallel to no.51 (to the south-west). High level glazing is provided on the north-west façade and full length glazing is provided on the south-west and south-east façades. The extension is sub-divided with a playroom to the rear and a new family living area connected to the existing kitchen/dining area.
- 2.3. Materials include limestone cladding, a light grey plaster finish and black/grey roof tiles. The rear garden is noted as being 94.2sq.m in area.

- 2.4. Following the response to the request for Further Information, opaque privacy shields were added to the glazing on the north-west and south-west façades.
- 2.5. Shadow surveys, 24 photographs and a Design Statement were submitted at Further Information stage, as well as drawings and required documents.

3.0 **Planning Authority Decision**

3.1. **Decision**

The Planning Authority decided to grant permission subject to three conditions. Condition no.3 refers to the windows on the side and rear elevations and requires them to be permanently obscured.

3.2. **Planning Authority Reports**

3.2.1. **Planning Reports**

The Planner's Report is the basis for the Planning Authority's decision. In summary, it states:

- Considers a full photographic survey is required of the site.
- Notes 8 submissions were received raising a number of serious issues with regard to the extension.
- Considers level of detail submitted is lacking and that the applicant has failed to submit a Design Statement, in accordance with the requirements of the Development Plan.
- Notes issues are: elevated site; incongruous finish on extension; levels not indicated on file; overlooking and loss of amenity; and load bearing retaining wall.
- Requests Further Information to address concerns.
- Following the response to the Further Information, the Planner considered the response acceptable, and recommended permission be granted subject to conditions.

The decision was in accordance with the Planner's recommendations.

3.2.2. Other Technical Reports

No internal or prescribed body submissions were received.

3.3. Third Party Observations

There were eight third party objections from neighbours to the rear and side. The objections are similar to those outlined in the appeal and are detailed in Section 6 below.

4.0 Planning History

- **DC-116-17:** Warning Letter – Unauthorised extension.
- **Reg. Ref. 05/1237:** Permission was granted in June 2005 for alterations to dwellings previously permitted under Reg. Ref. 04/612.
- **Reg. Ref. 04/612:** Permission was granted in July 2004 for 198 houses, 51 apartments, and 1 no creche and associated site works.

5.0 Policy Context

5.1. Limerick County Development Plan 2010 – 2016 (extended)

5.1.1. Chapter 10 of the Plan refers to Development Management Standards. Section 10.5.7 refers to House Extensions. It states that the Planning Authority will have regard to (inter alia):

- 'Sustainable Residential Development in Urban Areas' 2009
- Require high quality designs that respect and integrate with the existing dwelling.
- Require pitched roofs – flat roofs not generally accepted.
- Assessment of impact on amenities of adjacent residents will be required.
- Extensions normally not to break the building line.

5.2. Castletroy Local Area Plan 2009 – 2015 (extended)

- 5.2.1. A Draft Castletroy Local Area Plan 2019 – 2025 is currently on display for public consultation.
- 5.2.2. The existing Plan for Castletroy has been extended until 2019. Chapter 5 of the Plan refers to Development Management Policies. The Land Use zoning map is an Appendix to the Plan.
- 5.2.3. Map 1 identifies the area as being zoned 'Existing Residential'. No change is proposed to the zoning in the Draft Plan that is currently on display.

5.3. Natural Heritage Designations

- 5.4. The Lower River Shannon SAC (Site Code 002165) lies c.2.5km to the north and c.2km to the east of the site.

6.0 The Appeal

6.1. Grounds of Appeal

A single third party appeal has been lodged by Mr. Brian Jackson of 52 Kylemore. It is stated that the appeal is also on behalf of residents of 36, 37, 38, 51, 52 and 53 Kylemore. In summary, it states:

- All submissions and concerns submitted to Limerick City and County Council still stand.
- Considers photos submitted at Further Information stage are biased and do not show clearly the effect on surrounding boundaries and dwellings. Photos are dark and not taken at appropriate light levels. Do not show the domineering and overlooking presence on neighbouring gardens and public spaces.
- Photos submitted by appellant as part of the appeal.
- House owners of no's. 52 & 53 continually feel it is an invasion of privacy to have such an expansively glazed extension in close proximity to children's bedrooms.

- Consider response to request for Design Statement completely unsatisfactory. External finish is not in keeping with the finish of any house in Kylemore. Photo of dwellings included.
- Consider the privacy shield added to the windows can be peeled off at any time – this is not a permanent fixture.
- Overlooking is still an issue and it is unclear how an agreement was reached on this after such a U-turn by the Council.
- With respect to the Shadow Impact Assessment do not consider this is acceptable. No regard was given to the excessive use of lighting at night – photo attached.
- Note chimney stack is still in place.
- Load bearing wall was not inspected from neighbour's property. Wall was erected due to split level nature of the site taking account of the 4m differential in ground levels.
- Proximity of south boundary wall is in breach of TGD Part B as it states no part of the extension that is glazed should be within 1m of a boundary wall. The south corner is 0.9m to the wall.
- Considers the applicant's response to the third party submissions wholly unacceptable.
- Note extension appears to extend from side of house with no connection to existing house.

6.2. Applicant Response

The applicant responded. In summary, the response from Consultants states:

- Consider that the appeal is not valid and the Board does not have jurisdiction to consider the purported appeal. Queries the fact that the appeal is lodged by Brian Jackman on behalf of named others. Considers observers and appellant different legal entities. Notes 6 of the acknowledgements are absent from the appeal and therefore it is invalid.

- Considers it is not open to the Board to permit the appeal to proceed in the name of Brian Jackman alone, as this would amount to amending the appeal from the form in which it was submitted which was clearly a collective appeal. Reference made to Case Law.
- Without prejudice, addresses the points made in the appeal.
- Notes house is on an elevated site which overlooks houses to the rear. Refers to Shadow Impact Assessment which concludes that the extension is predicted to have no material impact on sunlight. Extension is south facing and observers are located to the south or west of the extension.
- Most obvious overlooking is from first floor of the applicant's house which gives a far clearer view of the observer's houses, as opposed to the easterly facing windows of the extension which look into the applicant's own garden. Extension is virtually identical in its design and materials to that of house no.44 which was designed by the same architect.
- Photographs from first floor rear window included.
- Consider photographs submitted at Further Information stage give a clear presentation of the extension and surrounding dwellings. Photos were taken at 1.30pm in the day.
- Windows onto the rear have all been obscured. Sensor for external lighting has been disabled. Applicant will remove the chimney stack when a final grant of permission is received.
- Extension is wholly integrated with the house.

6.3. Planning Authority Response

No response has been received from the Planning Authority.

7.0 Assessment

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 issue of appropriate assessment

also needs to be addressed. The issues can be dealt with under the following headings:

- Procedural matters
- Residential Amenities
- Design
- Appropriate Assessment

7.1. Procedural Matters

- 7.1.1. The applicant considers that the appeal does not comply with the requirements of the Planning and Development Act 2000, as amended (P&D Act). It is considered that the appeal lists the appellant as Brian Jackman and others, but was only accompanied by one of the Planning Authority acknowledgement receipts and therefore is invalid.
- 7.1.2. Having regard to Section 127 of the P&D Act, I am satisfied that the appeal is valid. It is made in writing, states the name and address of the appellant, states the subject matter of the appeal, states in full the grounds of appeal, is accompanied by the acknowledgement receipt of the Planning Authority, is accompanied by the correct fee, and is made within the specific time, in accordance with Section 127(1) of the P&D Act.

7.2. Residential Amenities

- 7.2.1. The extension as built comprises two distinct areas – a living area which is accessed from the original kitchen/dining area, and a playroom. The playroom is separated from the living area by a wall and door opening. The wall is not full height.
- 7.2.2. The appellant addresses a number of concerns with the development, which broadly can be categorised as impacting on the residential amenities of adjacent neighbours. I intend to address the concerns under the following headings: Overlooking and impact on privacy, overbearing, overshadowing and daylight levels, lighting at night, and impact of chimney stack.

7.2.3. *Overlooking and Impact on privacy*

The appellant has serious concerns with the impact on privacy, and the appeal is accompanied by a number of photos of the extension from various dwellings to the side and rear. In response, the applicant submitted photos of the view from the existing first floor rear bedrooms. The applicant is of the opinion that overlooking already occurs from the first floor. I consider that this is to be expected in a normal suburban environment.

The dwelling, no.39, is on a significantly elevated site compared to the dwellings to the rear. The height difference between no.39 and the dwellings to the rear is substantial. The cross-section drawing submitted at Further Information stage indicates that the dwellings to the rear are at a Finished Floor Level (FFL) of 33.97m, already 4.03m below no.39, which has a FFL of 38m. The drawing also indicates that house no.38 to the side is at a FFL of 37.80m.

From my site visit I noted that the rear garden is below the level of the existing dwelling. The Site Survey drawing indicates that the garden ranges from 37.52m to 37.59m, at least 400mm below the FFL of the extension which has been built to match the FFL of the existing house and has not been stepped down, i.e. it is at a FFL of 38m.

I consider that in this instance, a comparison of the original ground floor living area compared with the new extension, is more appropriate to consider given the height differences. From the appellant's perspective, the new extension has moved the living area significantly closer to the boundaries. In my opinion it is the impact of the overlooking and impact on privacy from the ground floor level that must be considered, in this particular case.

I have viewed the appellant's and surrounding dwellings from the rear façade of the original living area of the applicant's dwelling, as well as from inside and outside the new extension. The degree of overlooking from the new extension is increased, however I consider that the privacy shields have gone some way to mitigate this overlooking.

I consider the amount of glazing is excessive and exacerbates the degree and perception of overlooking, and I am not satisfied that the privacy shields are an

acceptable permanent solution. I agree with the appellant that these could be 'peeled off' or could overtime become dislodged.

The Board may wish to request that the windows on the corner of the extension, in the playroom end, are replaced with permanently obscured glazing by way of condition, or removed altogether from the playroom and replaced with a solid structure.

Quite simply, I am not satisfied that the extension is acceptable in its current form. I am of the opinion that the playroom should be removed completely which would mitigate the impacts. In its current form, I am of the view that the extension provides for an unacceptable increase in overlooking and impact on privacy.

7.2.4. Overbearing

The appellant considers the extension to have a domineering presence on the neighbouring gardens and the public spaces. As noted above, the dwellings along this section of road were originally built at a much higher elevation than the dwellings to the rear and as such, any extension could be perceived to have a domineering and overbearing presence.

The design incorporates a monopitch roof which rises from 2.95m in height along the south-west boundary to 3.62m along the south-east boundary. A normal room height in urban dwellings is closer to 2.7m. I consider the extension height to be excessive, and coupled with the 400mm height above the rear garden, to be unacceptable in terms of its overbearing effect on the neighbouring dwellings.

The extension has been built in very close proximity to the boundary walls on both the north-west and south-west. The drawings indicate that the distance from the boundaries ranges from 900mm in the very south corner to 1.29m along the west corner, thereby offering no relief to the adjoining residents in the vicinity.

I consider the overbearing impact and domineering presence of the extension to be unacceptable, particularly as other design solutions would have been available. As recommended above, I consider that the removal of the playroom will address and mitigate the overbearing impact to an acceptable level.

7.2.5. *Overshadowing and impact on daylight*

The appellant refers to concerns with shadowing and loss of daylight. The applicant submitted a Shadow Impact Assessment at Further Information stage which concludes that the extension is predicted to have no material impact on sunlight access to the gardens.

Having regard to the orientation of the extension to the south, south-west, I am satisfied that the extension will not have an adverse impact on daylight. There may be a small reduction in the early morning light to the properties to the west, but this is not significant. The applicant's own garden is likely to be the most affected in the late evenings when the sun is setting.

I am satisfied that the extension will not have a seriously negative impact on access to daylight or overshadowing.

7.2.6. *Lighting at night*

The appellant considers that lighting is excessive and includes a photo indicating the extension fully lit at night. The applicant states that the external light sensor has been deactivated. Having regard to the excessive amount of glazing incorporated into the design and the height differences, I am of the opinion that the extension in its current form does constitute a form of light pollution.

7.2.7. *Chimney stack*

The location of the chimney stack to the side of the extension was raised as an issue. It is noted in the documentation that there have been issues with the downdraught of the chimney and various changes to its height were made. The applicant has committed to remove the chimney stack in the event that permission is granted.

7.2.8. *Conclusions*

To conclude, the dwelling at No.39 is at an elevated position in the first instance. While an extension is permitted in principle in this location, as detailed in the County Development Plan, it is expected to adhere to good design principles and not to impact on the amenities of adjacent residents. In its current form, I am of the opinion that the extension does seriously impact on the amenities of adjacent residents and the design has not had regard to those amenities. I have considered recommending

refusal on the basis of those impacts, however, I am of the opinion that a reduction in the length of the extension will mitigate those impacts satisfactorily, as it will result in a c.4 metre distance between the boundary wall of the appellant's dwelling and the extension.

In conclusion, I recommend to the Board that should they consider granting permission, a condition is added requiring the applicant to reduce the length of the extension. The extension is divided internally into a living area and playroom. The playroom is to the rear and if this was removed, the impacts discussed above would be mitigated to an acceptable level. Therefore, I am recommending to the Board that the extension is reduced in length by at least 3m back to the playroom dividing wall as indicated on the submitted drawings. I also recommend that there is no glazing added to this relocated/new south-west wall.

7.3. Design

7.3.1. Materials chosen

The appellant considers that the external materials chosen are inconsistent with the external finish of the dwellings on Kylemore estate and includes photos to demonstrate that point.

During my site visit I viewed the extension from viewing points along the public footpath and road. The extension is visible. The Development Management Standards as stated in the Limerick County Development Plan require extensions of high quality design that respect and integrate with the existing dwelling. The materials chosen are different to those of the existing dwelling and the surrounding dwellings. The extension incorporates a grey limestone cladding and grey window frames and fascia's, which is inconsistent with the yellow/mustard plaster and red brick façades of the dwellings complete with white PVC window frames in the vicinity. However, as recommended above, should the extension be reduced in length and therefore moved away from the boundary wall, the visual impacts will be mitigated.

7.3.2. *Retaining Wall*

The appellant expresses concern with the stability of the retaining wall and if it will exhibit structural damage. The applicant has not addressed this aspect of the appeal specifically.

The applicant's Consultant noted that during a site visit in January 2018 no visual evidence of movement or cracking was noted on the applicant's side of the wall. I can confirm that this was also the case during my site visit. The appellant has not submitted evidence of issues but notes that it is yet to be determined if the wall will exhibit structural damage in the future. As there is no evidence or complaint of any structural issues to date, I am of the opinion that this is not a reason for refusal of retention permission.

7.3.3. *Building Regulations*

The appellant notes that the south corner window is 0.9m to the boundary wall which is considered in breach of Technical Guidance Document Part B which relates to Fire Safety. I consider this a matter for compliance with Building Regulations.

7.3.4. *Conclusion*

To conclude with respect to the design, I consider that the materials chosen could have been more sympathetic to the surrounding dwellings. Having regard to its visibility from the public footpaths as well as surrounding dwellings, I am of the opinion that the design is not in accordance with the Development Plan standards, but consider recommended amendments to reduce the length of the extension will satisfactorily address this.

7.4. **Appropriate Assessment**

Having regard to the nature and scale of development proposed for retention and to the nature of the receiving environment, namely an urban environment, no appropriate assessment issues arise and it is not considered that the proposed development for retention 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 retention permission should be granted for the development subject to conditions.

9.0 Reasons and Considerations

Having regard to the nature and location of the development for which retention is sought, and the pattern of development in the vicinity, it is considered that, subject to compliance with the conditions set out below, the development would not seriously injure the amenities of the area or of property in the vicinity. The development for which retention is sought would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be retained, carried out and completed in accordance with the plans and particulars lodged with the application, amended by the further plans and particulars submitted to the planning authority on the 6th day of March, 2018, 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 development shall be amended as follows:
 - (a) The area identified as the playroom on the drawing prepared by BDB Consulting, No.17-76-04, submitted to the Planning Authority on 6th day of March 2018, shall be removed. No glazing shall be included on the new south-west wall.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority.

Reason: In the interests of residential amenity.

3. The existing dwelling and extension shall be jointly occupied as a single residential unit and the extension shall not be sold, let or otherwise transferred or conveyed, save as part of the dwelling.

Reason: To restrict the use of the extension in the interest of residential amenity.

4. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, no development falling within Class 1 or Class 3 of Schedule 2, Part 1 of those Regulations shall take place within the curtilage of the house, without a prior grant of planning permission.

Reason: In the interest of the amenities of the area.

5. No part of the development, including fascia boards, soffits, gutters, drainpipes or other rainwater goods shall at any time overhang or encroach onto the neighbouring properties.

Reason: To protect the amenities of the adjoining property.

6. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

7. Notwithstanding the provisions of Article 10(4) of the Planning and Development Regulations, 2001, or any statutory provision modifying or replacing them, no room in the house shall be used for the purpose of providing overnight paying guest accommodation without a prior grant of planning permission.

Reason: In order to prevent overdevelopment of the site in the interest of residential amenity.

8. The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with the planning authority prior to the next planting season.

Reason: In the interest of residential and visual amenity.

9. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Ciara Kellett

Senior Planning Inspector

16th July 2018