



An
Bord
Pleanála

Inspector's Report 301622-18.

Development	Modifications to the permitted window arrangement on the southern and western elevations and the provision of a Velux roof light. Permission is also sought to construct a timber screen set back from site boundary to facilitate boundary planting.
Location	38 Marine Village, Ballina, County Tipperary.
Planning Authority	Tipperary County Council.
Planning Authority Reg. Ref.	18/600225.
Applicant	Richard Meaney
Type of Application	Permission.
Planning Authority Decision	Refusal of permission.
Type of Appeal	First Party
Appellant	Richard Meaney.
Observer(s)	1. Eamon and Moira Brehony 2. Joe, Paschaleen and Aaron Cahalane
Date of Site Inspection	4 th July 2018.
Inspector	Derek Daly.

1.0 Site Location and Description

- 1.1. The site is located in the town of Ballina in County Tipperary. The site is located within an established residential estate Marine Village which comprises detached dwellings located off an internal residential road network. The site has a stated area of 0.109 hectares.
- 1.2. The appeal site fronts onto an estate road which defines the site's eastern boundary. The remaining boundaries to the north, south and west adjoin existing residential development.
- 1.3. On the appeal site is a detached two storied dwelling which is in the course of renovation. There is a defined fall in level in a westerly direction and there are views of the River Shannon from the rear/west of the site which is a much higher level than the residential property to the west.

2.0 Proposed Development

- 2.1. The proposed development as submitted to the planning authority on the 23rd of February 2018 was for;
 - (a) Modifications to the permitted window arrangement on the southern and western elevations at ground floor level, in effect a modification of a previous permission on the western elevation with the extension of a glazed area to form a corner window which also extends onto the southern elevation. The window on the western elevation would extend to a previous permitted window on the western elevation with some level of a reduction in the area of glazing at its northern extent.
 - (b) The provision of a Velux roof light on the southern elevation.
 - (c) Permission is also sought to construct a timber screen set back from the southern site boundary to facilitate boundary planting. The timber screen is approximately 11 metres in length and represents a western extension of an existing timber screen located along the common boundary though this screen fence is set back from the boundary and is a series of panels varying between 1600mm and 2000mm and has a stepped height reflecting the fall in level.

2.2. A cover letter relating to the proposed development outlining the planning history and rationale of the development was also submitted.

3.0 Planning Authority Decision

3.1. Decision

The decision of the planning authority was to refuse planning permission. Two reasons were stated.

The first reason refers to chapter 10 of the current development plan and that the revised window design would give rise to overlooking of the adjoining property to the south resulting in the loss of privacy.

The second reason for refusal refers to the timber screen and that works have already commenced and that the application should have referred to retention but that notwithstanding this the fence is atop of a concrete wall which exceeds acceptable heights and would injure the amenities and depreciate the value of property in the vicinity.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning report dated the 10th April 2018 refers to the

- Site history;
- Submissions received;
- Planning policy in relation to domestic extensions.
- An appraisal of the development applied for indicating issues in relation to the planning history and that the development is considered to give rise to overlooking and loss of privacy.
- Refusal of permission was recommended.

3.3. Third party submissions were received in relation to the planning application referring to the impact on privacy, the planning history, the absence of adherence to previous planning decisions on the site and overall adverse impact on adjoining properties.

4.0 Planning History

The appeal site has a long planning history.

P.A. Ref. No. 5119643

Permission was refused for a dwelling and ancillary site works on the grounds of visual amenity.

ABP Ref. No. PL22.237798/P.A. Ref. No. 10510362

Permission granted by the planning authority for retention and completion of extension and alterations to an existing dwelling. Retention works included reinstatement of a collapsed terrace; retaining walls and alterations to ground levels. The completion works an extension at the rear at basement and ground level including a garage and a lift shaft; provision of living space within the basement area; a dormer extension at first floor level; an extension to the side at first and ground floor level; modifications to external elevations and alterations to site boundaries.

The Board on appeal refused the development referring to impact on adjoining property and injuring the amenities of property in the vicinity in the refusal of the development.

ABP Ref. No. PL22.239576/P.A. Ref. No. P11/510249

Permission granted for the retention and completion of works to the dwelling. The works permitted included the reinstatement of a collapsed terrace; retaining walls and alterations to ground levels. The completion works included a playroom, store, utility room, bathroom stairwell and corridor at basement level within the undercraft of the dwelling; an extension at to the side of the dwelling at ground floor level; a dormer extension at first floor level; an extension at first floor level; modifications to external elevations and alterations to site boundaries and associated site works. The Board in its decision dated the 02/04/2012 to grant modified the decision of the planning authority to grant permission.

Condition no 2 of the Board decision required *“the first floor window serving bedroom number 3 shall be omitted. Revised drawings showing compliance with this requirement shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development”*.

P.A. Ref. No. 16600568

Permission granted for an extension of the duration of permission.

P.A. Ref. No. 17660574

Permission granted for modifications to the existing ground floor window on the northern elevation and retention permission granted modifications in the eaves overhang to the eastern elevation and retention and completion of modifications to the permitted window arrangement on the southern and western elevations including window omitted by condition and the retention and completion of a doorway on the southern elevation.

P.A. Ref. No. P17/600996

Permission granted for modifications to a permitted extension which included modifications to the permitted window arrangement on the southern and western elevations; 3 no. additional Velux roof lights and the provision of a dormer roof to accommodate an internal lift.

The decision of the planning authority was to refuse the retention and completion of the modification to the permitted window arrangement and permission granted for the 3 no. additional Velux roof lights and the provision of a dormer roof to accommodate an internal lift.

The site also has an enforcement history.

5.0 Policy Context

- 5.1. The relevant plans are the North Tipperary County Development Plan 2010-2016 adopted in July 2010 as varied and the Ballina Settlement Plan. The county plan has had its lifetimes extended (11A Planning and Development Act 2000, (as amended)), and will remain in effect until a new Regional Spatial and Economic Strategy is made by the Southern Regional Assembly, thereafter a new Tipperary County Development Plan will be made.

Chapter 10 of the plan refers to Development Management Guidelines and Design Standards. Specifically, in relation to domestic extensions in section 10.11.7 it is indicated that;

“The Council will require proposals for extensions to comply with the following guidelines:

- the extension should generally be subordinate to the main building;*
- the form and design should integrate with the main building, following window proportions, detailing and finishes, including texture, materials and colour;*
- the extension shall be designed to ensure that no overshadowing or overlooking of adjacent residential properties occurs”.*

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The appellant c/o HRA Planning in the grounds of appeal dated the 11th of May 2018 indicates refers to the following;

- It is contended that the revised window design will not give rise to overlooking or result in loss of privacy associated with the proposed timber screen and planting which will prevent overlooking of the adjoining property.
- The Velux window serves a non-habitable room and there is a substantial distance between the window and the adjoining property and affords views of the sky only.
- The screen fence does not exceed acceptable heights for such a fence and reference is made to the 2 metre Exempted Development provisions and in particular Class 5, Part 1 of Schedule 2 of the 2001 regulations as amended.
- Consideration must be made of the context of the area and that extensive overlooking already occurs within linear development of housing.
- Existing wooden decks and rear gardens devoid of any formal privacy screening already give rise to substantial overlooking within and between neighbouring properties and the proposed development does not exacerbate the existing overlooking situation and enhances residential amenities.

- Reference is made to the history of the residential development, the topography of the overall area and that an initial open plan design was integral to the estate and that over time definitive boundary treatment evolved.
- The property to the south made no provision for boundary screening and this facilitates overlooking by adjoining properties.
- The dwelling on the site always had from its initial design a window at first floor window on the southern elevation of the master bedroom which afforded views over properties to the south. This window was blocked up and will be replaced by a new window was proposed on the ground floor. The overall effect is greater privacy afforded to neighbours.
- Reference is made to the planning history and in particular P11/510249/ABP PL.22.239576 where permission was granted with modifications and P17/600996 where permission was granted for modifications to the permitted extension including the provision of 3 no Velux roof lights and the provision of a dormer roof and where by condition the window arrangement at ground floor level on the southern and western elevation was excluded.
- In relation to the proposed Velux roof light, this does not serve a habitable room but is required to provide additional light to a ground floor bathroom and will only afford views of the sky and will not give rise to loss of privacy or overlooking of a property.
- In relation to the window on the southern boundary it is 9 metres from the southern site boundary and 13.5 metres from the neighbouring house on site 37 Marine Village. A window over 1 metre from the boundary would be exempted development.
- There are windows on the southern elevation of other properties and 39 Marine Village is referred to which has a window only 2.4 metres from the southern boundary of its site and which is the northern boundary of the appeal site.
- A previous refusal of a window on the southern boundary expresses concern in relation to overlooking and the provision of a 1.9 metre timber screen fence is proposed to address this concern.

- The siting and design of the fence was carefully considered and its provision will further enhance and protect residential amenities on the adjoining property.
- Reference is made to photomontages in support of this.
- It is also contended that the principle of windows at ground floor level on the southern and western elevations was accepted under P11/510249.
- The timber fence does not require to be the subject of a retention application and reference is made to Exempted Development provisions and in particular Class 5, Part 1 of Schedule 2 of the 2001 regulations as amended in this regard.
- The location although located 2 metres from the boundary fulfils the function of a boundary fence but its siting ensures views of the lake are maintained.
- The timber screen is an acceptable height.
- The overall proposal is consistent with the proper planning and development of the area.

6.2. **Observer submissions.**

6.2.1. Eamon and Moira Brehony with an address of 37 Marine Village in a submission refer to;

- The Board are requested to uphold the decision of the planning authority.
- The window modifications impact on their privacy and reference is made to ground level modifications and provision of a wall and a high concrete foundation on which the fence is erected.
- The Velux window also infringes privacy.
- Reference is made to a tendency to carry out works without permission.

6.2.2. Joe, Paschaleen and Aaron Cahalane with an address of 39 Marine Village in a submission refer to;

- The appeal site is not used as a primary residence as inferred.
- The proposed fence is actually in place.

- Reference is made to additions to the original dwelling not in compliance with grants of permission.
- There will be a double door on the western elevation notwithstanding the removal of a door in question.
- There are also substantial glazing areas on the southern elevation.
- Reference is made to the concrete wall on which the screen is built. It is not a fence or a wall of brick but is a mass concrete wall with a timber fence on top of it. It is not exempted development.
- The bathroom for which the Velux window is proposed is already well lit.
- Reference is made to the difference in design of the dwelling on the appeal site to the adjoining properties.

7.0 Assessment

7.1. This is a third first party appeal in relation to the refusal of permission by the planning authority of the development as applied for. The development as applied for incorporated three elements;

- Firstly, modifications to the permitted window arrangement on the southern and western elevations at ground floor level in effect a modification of a previous permission eliminating a patio door on the western elevation with a corner window which also extends onto the southern elevation. The window on the western elevation would extend to a previous permitted window on the western elevation.
- Secondly the provision of a Velux roof light on the southern elevation and
- Thirdly permission is sought to construct a timber screen set back from the southern site boundary to facilitate boundary planting. The timber screen is approximately 11 metres in length and represents a western extension of an existing timber screen located along the common boundary though this screen fence is set back from the boundary and is a series of panels varying between 1600mm and 2000mm and has a stepped height reflecting the fall in level.

7.2. It is noted that the site has a long planning history where the original dwelling has been the subject of applications for extensions to the floor area of the dwelling and

also for subsequent modifications and retention to permissions granted. As a consequence, the original permitted dwelling has been considerably modified over time.

- 7.3. In assessing the current appeal, I intend to address the matters applied for individually. I would however note that in assessing the individual components the site must be considered in the context of the topography and the general pattern of development of the area.
 - 7.3.1. The site forms part of a row of dwellings served by an internal residential estate road.
 - 7.3.2. There is a very defined fall in level in a westward direction from the estate road.
 - 7.3.3. The rear gardens of the properties are therefore lower than the finished floor level of the dwellings.
 - 7.3.4. Many of the dwellings also have deck areas at the rear/west looking over their rear gardens and adjoining rear gardens.
 - 7.3.5. There is also a fall in level southwards and as a consequence the rear garden areas of the dwellings are overlooked by adjoining properties in particular from patio/decking areas which are relatively elevated to the immediate garden levels.
- 7.4. In relation to the first element of the development modifications to the permitted window arrangement on the southern and western elevations at ground floor level which is a modification of a previous permission on the western elevation with the extension of a glazed area to form a corner window and which also extends onto the southern elevation. The window on the western elevation would extend to a previous permitted window on the western elevation with some level of a reduction in the area of glazing at its northern extent.
 - 7.4.1. This modified window arrangement was in situ at the time of inspection and is indicated on the photographs accompanying this report. The proposal is in effect for a corner window immediately adjoining a doubled panel patio door which affords access to a terrace.
 - 7.4.2. The window extends onto the southern elevation and it is noted that there is an additional window at ground level on the southern elevation.

- 7.4.3. In refusing the application the planning authority refers to chapter 10 of the current development plan and that the revised window design would give rise to overlooking of the adjoining property to the south resulting in the loss of privacy. This matter is disputed by the appellant and third party observers support the position as adopted by the planning authority who previously refused similar modifications to window arrangements on the western and southern elevations.
- 7.4.4. The issue which arises is whether the additional window / glazed area at this location impacts on residential amenity and gives rise to overlooking. Any additional glazed area does increase overlooking but it is difficult not to consider that given the existing / permitted development, the extent of permitted glazing area and the provision / existence of patio areas at an elevated ground floor level the potential for significant additional overlooking exists and occurs.
- 7.4.5. It is offset to some degree by the existing boundary treatment and the extension of boundary treatment proposed which arises in the third element of the development under appeal.
- 7.4.6. Having viewed the site and considered the matter I do not consider that the modifications outlined and built can be considered to increase significantly overlooking and loss of amenity in particular if they are mitigated.
- 7.5. In relation to the second aspect of the development the provision of a Velux roof light on the southern elevation.
- 7.5.1. This window based on the submissions received would appear to serve a ground floor bathroom which has an existing window on the eastern elevation. It is contended in particular by third parties that the provision of this additional window is unnecessary and that may well be the case but the issue is whether the provision of the window in the roof would impact on residential amenity and give rise to overlooking and this would not appear to arise. The Velux window would not I consider give rise to overlooking.
- 7.6. The third element of the development is for permission to construct a timber screen set back from the southern site boundary to facilitate boundary planting. The timber screen is approximately 11 metres in length and represents a western extension of an existing timber screen located along the common boundary though this screen

fence is set back from the boundary and is a series of panels varying between 1600mm and 2000mm and has a stepped height reflecting the fall in ground level.

- 7.6.1. In refusing the fence the planning authority refer to works having commenced and that the works should have been included as a retention permission. It was also indicated that the timber fence exceeds acceptable heights for such features and between residential properties in an urban area and would seriously injure the amenities and depreciate the value of residential properties in the area.
- 7.6.2. In the grounds of appeal, it is indicated that the siting and design of the fence was carefully considered and its provision will further enhance and protect residential amenities on the adjoining property and reference is made to photomontages in support of this. It is also contended that the principle of windows at ground floor level on the southern and western elevations was accepted under P11/510249.
- 7.6.3. In relation to the issue of retention the timber fence does not require to be the subject of a retention application and reference is made to Exempted Development provisions and in particular Class 5, Part 1 of Schedule 2 of the 2001 regulations as amended in this regard.
- 7.6.4. It is acknowledged that the location although located 2 metres from the boundary but that it fulfils the function of a boundary fence but its siting also ensures views of the lake are maintained. It is also contended that the timber screen is an acceptable height and an acceptable feature of an urban area.
- 7.6.5. In relation to exemption / retention the fence is a subject of an application for permission and referred to in public notices. I do note however that there is provision for timber fences in the Exempted Development provisions of the Planning and Development Regulations 2001 as amended and although the fence is not on the boundary Class 5 does refer to the "*construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete*" and in relation to conditions and limitations condition 1 refers to "*the height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres*".
- 7.6.6. The regulations do not limit the provision of fences and wall to the actual boundary but refers to within the curtilage of a house.

- 7.6.7. The stated intention of the fence is twofold. The first is to limit overlooking of adjoining properties but in doing so its siting and location is to retain for occupants of the appeal site views over the river. The nature of the terrain and fall in level does require the fence to be stepped and would also require foundations. There is reference to the level of concrete under the timber fence but the overall area between the fence and the dwelling has been considerably modified and paved over as part of works on the site.
- 7.6.8. It is also noted there the fence represents a continuation of an existing timber fence along the boundary and therefore there is an established existing type of fencing already on the site to the fencing under consideration in this appeal.
- 7.6.9. Having considered the matter, I do not consider that the fence as proposed/constructed injures amenities of property in the area. The fence does facilitate in ameliorating the potential impact arising from overlooking in relation to the window as applied for and reducing the impact to some degree from the patio area which is the major contributor to overlooking.

8.0 Recommendation

- 8.1. Having considered the submissions received in relation to this appeal I recommend that permission be granted for the development as applied for.

9.0 Reasons and Considerations

Having regard to the nature of the development and the planning history of the site it is considered that subject to compliance with the conditions set out below, the development would not detract from the character and visual amenities of the area or seriously injure the residential amenities of property in the vicinity and would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

- 1 The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the

further plans and particulars submitted on the 23rd of February 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 interests of clarity

- 2 The site shall be landscaped, using only indigenous deciduous trees and hedging species, in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development which shall include a timescale for the implementation of the planting and landscaping.

Reason: In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.

Derek Daly
Planning Inspector

12th July 2018