



An  
Bord  
Pleanála

## inspector's Report ABP-303259-18

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<b>Development</b>	Construction of balcony.
<b>Location</b>	Alderside ,Dublin Road, Naas,Co. Kildare
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	181224
<b>Applicant(s)</b>	Marie Johnston
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Marie Johnston.
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	1 <sup>st</sup> April, 2019
<b>Inspector</b>	Stephen Kay

## 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 on the southern side of the Dublin Road R445 leading into the town centre from the M7.
- 1.2. The recently constructed two storey dwelling is located in a row of detached houses on large plots which are typically set back from the main road with mature planting along existing boundaries. The site is bounded to the east by a two storey dwelling and to the west by a single storey property. To the south, the appeal site has a short boundary with residential sites to the south located within the Gallops residential development. Further to the east is located the Church of Ireland Cemetery, a Protected Structure and National Monument.
- 1.3. The rear elevation of the house has a balcony at first floor level that is accessed via the master bedroom. This balcony measures c.4.1 metres in width by 1.5 metres in depth that is supported by 4 no. pillars. The balcony is accessed via a window that has a low cill height of c.300mm above floor level.
- 1.4. The site has a stated area of 1.128 ha.

## 2.0 Proposed Development

- 2.1. The application is for the retention of the railed balcony to the rear of the dwelling.
- 2.2. The balcony structure comprises a slab supported by 4 no. columns to ground level and is located in the centre of the rear elevation of the dwelling. Access to the balcony is available via the master bedroom and a window with a low cill height of c.300-400mm above floor level. There is no accommodation below the balcony structure. A metal railing of c.1.1 metres in height is provided to the three sides of the balcony.
- 2.3. The dimensions of the balcony are c.4.1 metres wide by c.1.5 metres in depth /projection away from the rear elevation of the dwelling. The overall area is therefore approximately 6.15 sq. metres.

## 3.0 Planning Authority Decision

### 3.1. Decision

The Planning Authority issued a Notification of Decision to refuse permission for a single reason as follows:

*'It is considered that, having regard to the positioning of the proposed first floor rear balcony to be retained as well as the height and proximity relative to adjoining residential properties, the proposed development would result in significant overlooking of adjacent residential property which would seriously injure the residential amenities and value of those residential properties and would therefore be contrary to the proper planning and sustainable development of the area.'*

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The report of the planning officer notes the planning history of the site and adjoining properties and the observation received from the adjoining property owner to the south west. It is noted that the balcony structure is unauthorised and it is considered that the balcony has an overbearing visual appearance and results in the overlooking of adjoining properties. The recent change of the previous French doors to a window with a low level cill is noted, however this change is not considered sufficient to overcome the issue arising.

#### 3.2.2. Other Technical Reports

Area Engineer – No objections.

Water Services – No objection.

Fire Officer – No objection.

### 3.3. Third Party Observations

An observation was received from the owner of the adjoining bungalow to the south west of the appeal site. This observation objects to the retention of the balcony structure on the basis of

- Overlooking and loss of residential amenity.
- It is noted that there have been previous 4 applications incorporating the balcony which have been refused.
- The current application does not differ from those previously refused.
- It is submitted that access is easily made to the balcony.
- The precedent case of the balcony on the adjoining site is not applicable to the current case.

### 4.0 Planning History

**Enforcement case UD6823** – unauthorised development at Alderside, Dublin Road Naas.

**Kildare Co. Co. Ref. 10/500081:** Permission granted on 7<sup>th</sup> September 2011, to Faxhill Homes Ltd, for extension to existing house and sub-division of site and a new two-storey house on the site (to the northeast). Development was carried out.

**Kildare Co. Co. Ref. 15/183:** Permission granted on 8<sup>th</sup> September 2015, to Marie Johnston, for extensions and alterations to existing house to include two-storey extensions to side and rear, modifications to front elevation to provide for new window style and gable feature, new front porch extension, subdivision of existing site, new boundary walls and new shared vehicular access.

**Kildare Co. Co. Ref. 15/883:** Permission granted on 12<sup>th</sup> January 2016, to Marie Johnston, for alterations to existing two-storey dwelling to include modifications to ground- and first-floor windows to front elevation, replacement front porch structure, new two-storey gable feature to front elevation and new plaster finish.

**Kildare Co. Co. Ref. 16/499:** Retention permission refused on 7<sup>th</sup> July 2016, to Marie Johnston for gable feature over porch on this house.

**Kildare Co. Co. Ref. 17/1064:** Retention permission refused on 19<sup>th</sup> November 2017, to Marie Johnston, for gable feature over porch on front elevation and first floor level balcony to rear this house.

**Kildare Co. Co. Ref. 17/1301; ABP Ref. 302384:** Retention permission refused by the Planning Authority but granted on appeal for first floor level gable feature over front porch.

The adjoining site to the east was the subject of the following recent decision:

**Kildare Co. Co. Ref. 17/1301; ABP Ref. 300962:** Permission refused by the Planning Authority and granted on appeal for the retention of guard rail over permitted flat roof with modifications to include for escape door to rear of house.

## 5.0 Policy and Context

### 5.1. Development Plan

The relevant parent document is the *Kildare County Development Plan 2017-2023*. Section 17.4.8 deals with extensions to dwellings. It states, inter alia, “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 old *Naas Town Development Plan 2011-2017*, zoned the site for “Existing / Infill Residential” use. The new County Development Plan replaces the older Naas Town Plan and now covers the Naas Municipal District. A new Local Area Plan will be prepared for Naas, but this process is not yet completed (the draft plan has not been published at the date of writing this report).

The Church of Ireland cemetery to the northeast of the site is a Protected Structure NS19-068 – Cemetery, gates, wall and lodge” – within the old Naas Town Development Plan.

## 5.2. Natural Heritage Designations

There are no natural heritage designations either within or adjacent to the appeal site.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The following is a summary of the main issues raised in the first party appeal:

- That the recent assessment undertaken by the Board inspector on the adjoining site to the east addressed issues of visual obtrusion and overlooking.
- That the previous French doors have been removed and the cill raised to prevent access to the flat roof from the adjacent bedroom.
- That the current application was submitted to retain the railing to the balcony to provide a safe escape route for the master bedroom for security and fire concerns. The balcony would provide a refuge in the case of a break in.
- As the cill height has been raised and no easy access is available no issues of overlooking / perceived overlooking can occur.
- That a precedent for a similar form of development comprising a balcony with railings to act as a refuge has been granted by the Board on the adjoining site to the north east (ABP Ref. 300962).
- That the Board inspector was satisfied that the scale and design of the balcony in the neighbouring dwelling did not result in overlooking.
- That the balcony structure is set back c.37 metres from the rear boundary, c.8.5 metres from the north east boundary, and 8.7 metres from the south west boundary.
- Photo submitted showing the difficulty of viewed the adjoining property to the south west from within the bedroom.

- That the subject balcony is further from the site boundaries than that permitted by the Board under Ref. 300962.
- That the basis for the refusal of permission by the Planning authority is the potential for significant overlooking due to proximity to adjoining properties.
- That, as set out in the application, there would be no persons on the railed balcony and that easy access has been thwarted by removing the French doors and raising the cill height. There will be no persons on the balcony in the normal course of events.

## 6.2. **Planning Authority Response**

The response of the Planning Authority states that the planning authority considers that the development would result in significant overlooking of adjacent residential properties. Refusal of permission is requested.

## 7.0 **Assessment**

7.1. The following are considered to be the main issues in the assessment of the subject appeal:

- Principle of Development / Purpose
- Impact on Visual and Residential Amenity.
- Appropriate Assessment.
- Conclusion.

## **7.2. Principle of Development / Purpose**

- 7.2.1. The first party appeal states that the basis for the application is to provide a safe outside refuge area accessible from the master bedroom that would be available to the occupants of the dwelling in the case of robbery or fire. The purpose of the development would, however appear to have changed in the current application and it is notable that in the case of Ref. 17/1064, the application incorporated the retention of a first floor balcony structure with supporting columns to the rear of the dwelling. The change to the fenestration and the change in use from a balcony to a fire / security refuge would appear to have been undertaken on foot of the commencement of enforcement action by the Planning Authority.
- 7.2.2. The first party appeal states that the rationale for the retention of the balcony structure and railing has previously been set out to the Planning Authority in response to the enforcement proceedings initiated by the Planning Authority. It is stated that the applicants are the owners of the Court Hotel in Naas and that a refuge in the case of a break in is required.
- 7.2.3. Overall it is my opinion that the need for the balcony structure including the railing has not been clearly set out by the first party. I accept that the replacement of the French doors with a window would make access to the balcony more difficult, however the height of the cill at c.300-400mm is such that access to the balcony would still be readily available and the configuration of the balcony with the railing is such that it could still readily be accessed and used as a balcony. The need for the retention of the structure purely for fire safety / emergency refuge purposes has not, in my opinion been clearly established and I do not see how the retention of the structure is clearly justified on the basis of either of these considerations.

## **7.3. Impact on Visual and Residential Amenity,**

- 7.3.1. The balcony structure proposed for retention comprises a slab supported by four columns and topped by a railing of c.1.1 metres in height. The design, located to the rear of the dwelling is not, in my opinion, such to have a significant negative impact on the overall character of the existing dwelling.



- 7.3.2. The primary justification for the first parties view that the retention of the balcony would not have a significant impact on the amenity of adjoining residential properties relates to the contention that it would not be used as a balcony, the precedent created by the permitted balcony development to the rear of the adjoining dwelling to the north east and the degree of separation to the site boundaries.
- 7.3.3. As set out at 7.2 above, I do not consider that it has been clearly established that the balcony structure would not be capable of use for amenity purposes and I do not therefore agree with the first party appeal that there clearly would not be persons on the balcony in the normal course of events.
- 7.3.4. The first party appeal makes reference to the precedent established by the decision of the Board to grant permission for would that would facilitate a balcony and escape access on the adjoining dwelling, (ABP Ref. 300962). This permission is noted, however it is also noted that the only dwelling potentially impacted by this development is the current appeal site, the owners of which are related to the adjoining dwelling to the north east and who did not object to the development. While the precedent created by this permission is noted, each application has to be considered on its individual merits.
- 7.3.5. The photographs contained in the observation submitted by the owner of the dwelling to the south west of the appeal site to the Planning Authority, in my opinion clearly shows that their property would be significantly overlooked by the use of the balcony proposed for retention. It is also my opinion that the projecting balcony would comprise a visually obtrusive element when viewed from the rear garden of to the adjoining dwelling to the south west.

#### 7.4. **Appropriate Assessment**

- 7.4.1. Having regard to the nature and scale of the proposed development and its location relative to Natura 2000 sites, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

## **7.5. Conclusion**

- 7.5.1. In conclusion, it is my opinion that the use of the existing structure as a balcony would have a significant negative impact on the residential amenities of adjoining residential properties, and particularly on the existing single storey dwelling to the south west by virtue of overlooking and visual intrusion. The case made by the first party for the retention of the structure on the basis that it will not be used as a balcony in the ordinary course and would serve an important role as a security and fire refuge is noted, however I do not consider that either of these are clear reasons for the retention of the structure.
- 7.5.2. Having regard to the low cill height accessing the balcony and to the retention of the railing, the structure in its current configuration clearly in my opinion retains the potential to be used as a balcony for amenity purposes. In view of this, and having regard to the impact on residential amenity it is considered appropriate that retention of the structure should be refused on the basis that it would seriously injure the residential amenities of adjoining properties by virtue of overlooking and overbearing visual impact.
- 7.5.3. A grant of permission subject to a condition restricting the use of the structure to specifically omit its use as a balcony was considered, however as set out above I do not consider that a clear justification for its retention for non-amenity use has been made. A grant of permission subject to such a condition would also in my opinion result in issues of enforcement. In the event that the Board do not agree with this assessment and are considering a grant of permission it is recommended that this would be subject to a restriction on the use of the structure to omit use as a balcony for amenity purposes and a requirement that the railing would be omitted which would further limit its potential for amenity use.

## **8.0 Recommendation**

- 8.1. Having regard to the above, it is recommended that retention is refused based on the following reasons and considerations.

## 9.0 Reasons and Considerations

1. Having regard to the design of the balcony structure to be retained including the access arrangements and to its location relative to surrounding residential properties, it is considered that the development would impact negatively on the residential amenities of adjoining properties by virtue of overlooking and visual intrusion. The development for retention would therefore seriously injure the amenities of surrounding residential properties and would be contrary to the proper planning and sustainable development of the area.

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Stephen Kay  
Planning Inspector

9th April, 2019