



An
Bord
Pleanála

Inspector's Report

ABP-303918-19

Development	Retention of Modification Works to Balcony and Windows in an Apartment
Location	Apartment Number 6, Southshore, Tramore, County Waterford
Planning Authority	Waterford City and County Council
Planning Authority Reg. Ref.	18667
Applicant	Anner Fehnert.
Type of Application	Retention Permission and Permission.
Planning Authority Decision	Grant subject to conditions.
Type of Appeal	Third Party v. Decision.
Appellant(s)	1. Anthony Green. 2. Berryline Company Ltd.
Observer(s)	Martin and Jurate Curran.
Date of Site Inspection	22 nd May 2019
Inspector	Susan McHugh

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1.0 Site Location and Description

- 1.1. The appeal site is located with an existing three storey block of apartments known as 'Southshore Apartments'. It is as the name suggests situated along the seafront, at Tramore, County Waterford. The site is adjoined to the east by another three-storey block of apartments known as 'Beechside'.
- 1.2. The apartment block comprises a total of 40 no. units with two storey duplex units over single storey ground floor units. Each unit has own door access from the northern elevation via the surface car park to the rear. The block includes balconies at first and second floor fitted with black painted metal railings.
- 1.3. Vehicular access is from Strand Street via electric sliding security gates at the north western end of the block.
- 1.4. The appeal site apartment no. 6 is a duplex unit with first floor kitchen living area, and bedroom, second floor living area, bathroom and bedroom and third floor mezzanine and bedroom ensuite.
- 1.5. The first floor includes access to 2 balcony areas each of which have clear glass balustrades. Similarly, there is access to 2 balcony areas at second floor level however the railings to the balcony from the living area have been removed. At third floor there is a single rooflight which opens as a step out balcony.
- 1.6. The stated area of the appeal site is 0.006ha.

2.0 Proposed Development

- 2.1. Permission is sought for retention of the following;
 - balcony railings and guarding's, at first floor
 - 2 no. circular windows on the recessed balcony areas of the first and second floor in place of 2 no. rectangular windows, and
 - 1 no. balcony roof light window in place of 2 no. roof light windows.
- 2.2. Permission is also sought for construction of a Juliet style balcony to the second-floor level and all necessary ancillary works. This will have a floor area of 6.57sqm and a width of approx. 1m.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to **grant** permission for retention and permission subject to 2 no. conditions as follows;

Condition 1. Compliance with plans and particulars.

Condition 2. Details of materials and finishes to the proposed second floor balcony railing to be agreed.

Footnote refers to Section 34(13) of the Planning and Development Acts 2000 (as amended).

3.2. Planning Authority Reports

3.2.1. Planning Reports (dated 22/11/2018 and 18/02/2019)

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

- The initial report which notes that the two circular windows are within the recessed balcony terrace areas and are not considered to be widely visible from the public roadside on Strand street.
- From a visual and residential amenity perspective no objection in principle to the material alterations proposed. Whilst it would be preferable for any upgrade works to balconies and windows serving the apartment units to be carried out in unison, it is considered unreasonable to restrict individual applicants from proposing same.
- A request for further information in relation to applicants' legal interest to carry out all the works on the external elevations was sought.
- The final report refers to the Land Registry Folio document submitted by the applicant, which does not clarify the entitlement to carry out works, however this is considered a civil matter between the applicant and the management company.

3.2.2. Other Technical Reports

None.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

Fifteen objections to the proposal were received by the planning authority from the following parties;

Patrick Leahy	Apart. No. 5 Southshore, Tramore.
John Doyle	Apart. No. 8 Southshore, Tramore.
Mary and Patrick Nolan	Apart. No. 18/19 Southshore, Tramore.
Anthony and Margaret Green	Apart. No. 20 Southshore, Tramore.
Anthony Green	Apart. No. 20 Southshore, Tramore.
Richard Vereker	Apart. No. 25 Southshore, Tramore.
Edel Campbell and John White	Apart. No. 32 Southshore, Tramore.
Martin and Juarte Curran	Apart. No. 34 Southshore, Tramore.
Michael Aylward	Apart. No. 43 Southshore, Tramore.
Ann O'Connor	Summerhill Lodge, Tramore.
Margaret Holohan	Bodalmore, Kilkenny.
Mary Dunny	20 St. Teresa's Terrace, Kilkenny.
Gerald Conheady	1 Hollybank Avenue Lower, Ranelagh, Dublin 6.
Norma O'Brien,	Glencarney, Mountain Road Clonmel, Co. Tipperary.
Pat Halley Architects	Berryline Co. Ltd.

The issues raised are comparable to those raised in the third-party observations to the appeal and are summarised in section 6 below.

4.0 Planning History

Overall Apartment Block

P.A. Reg. Ref. 96/263 Permission **granted** (July 1996) for 39 Residential Apartments to Carnbay Ltd.

P.A. Reg. Ref. 96/753 Permission **granted** (Dec 1996) for alterations to P.A. Reg. Ref. 96/263 to include an additional unit.

5.0 Policy Context

5.1. Development Plan

5.1.1. Waterford County Development Plan 2011-2017

Chapter 3 refers to Core Strategy

Tramore is identified as a secondary service centre within the county settlement hierarchy.

Chapter 5 refers to Housing.

Chapter 10 refers to Development Standards.

5.1.2. Tramore Local Area Plan 2014-2020

5.1.3. The site is within an area zoned '**town centre**', the objective for which is '*To provide for an integrated mix of residential, commercial, community and social uses within the town or village centre*'.

5.2. Natural Heritage Designations

The following European sites are in the vicinity of the appeal site.

Site Name	Designation	Site Code	Distance
Tramore Back Strand	SPA	004027	1.2km E
Tramore Dunes and Backstrand	SAC	000671	1.3km E
Mid-Waterford Coast	SPA	004193	2.2km SE

5.3. EIA Screening

Having regard to the nature of the proposed alterations to be retained and proposed, the nature of the receiving environment, and proximity to the nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeals

6.1. Grounds of Appeal No. 1

The Third-Party appeal against the decision of the P.A. to grant permission for retention and permission was lodged by Anthony Green, Chairman and Director of Berryline Company Ltd. The Third-Party and his wife Margaret, are also the owners of an apartment within the development, and have an address at Fernlea, 4 Orchard Way, Market Rasen, Lincolnshire LN83HE. The grounds of appeal can be summarised as follows;

- Applicant does not have full legal entitlement to carry out the development.
- Applicant has not fully complied with the request for further information as all information has not been supplied.
- Failure to clarify legal entitlement is recognised in the Planners report and accepted by the P.A. even though it is determined to be a civil matter.
- It is incumbent on the P.A. to ensure that the information requested by way of further information is supplied. The failure to do so undermines the Management Company and subsequently all Management Companies.

6.2. Grounds of Appeal No. 2

The Third-Party appeal was lodged by Halley Murphy and Associates Architects on behalf of Berryline Company Ltd. owners of the overall development. The grounds of appeal can be summarised as follows;

- *Management Company* - hold the lease title to the overall Southshore Development have taken legal action against the applicant.
- *Balcony Railings* – There have been no issues in relation to the safety of the railings, and the applicant did not approach the Management Company in relation to their concerns. Introduction of a new pattern of railing with heavy stainless-steel upright members interferes with the pattern and rhythm set by the existing horizontally emphasised steel balustrade. Being located on the corner as the apartment is, the interference with the pattern is more obtrusive and more pronounced. A simple horizontal non-climb steel member to match the colour and profile of the existing members would have eliminated any concerns in relation to Part K Building Regulations.

- *Circular Windows* – Break the pattern set by existing rectangular windows throughout the development which are jarring and detracts from the overall clarity of the elevational treatment.
- *Replacement of 2 roof lights with a roof light / balcony window* - Results in overlooking from the third-floor level, thereby impacts on the amenity and privacy of adjoining apartments . It also interferes with the rhythm of roof windows in the roof plane provided by the original design.
- *Juliet style balcony to 2nd Floor* – Description is incorrect, it is a full balcony projecting 1m from the front face of the building. No similar balconies in the overall development. There is a pattern set in the overall elevation of a painted steel type guarding flush with the front face of the building thus limiting direct overlooking of first floor amenity spaces of adjoining owners. No details of supports to this balcony are provided. The P.A. condition in relation to details and finishes is inadequate. Potential for overshadowing of the adjoining owner immediately to the east from the late evening westerly sun.
- *Precedent* – Concern this will set a precedent for uncontrolled development to the exterior building envelope.

6.3. Applicant Response

A response to the third-party appeal was lodged by Liam Buck agent acting on behalf of the applicant and includes a number of photographs, it can be summarised as follows;

- *Property Maps* – All works carried out to the property are in the ownership of the applicant.
- *Brown Envelopes* – Reference contemptible.
- *Balcony Railings* – Alterations carried out by the applicant means that the balcony railings in Apartment No. 6 now comply with Part K Building Regulations.
- *Building Regulation Compliance* – Request the Board have regard to the fact that Apartment No. 6 is compliant with Part K of the Building Regulations.
- *Neighbouring Beachside Apartments* – Original black metal balcony railings have already been removed from the neighbouring apartment building of

Beachside in favour of the lighter looking glazed guarding similar to Apartment No. 6.

6.4. Planning Authority Response

None received.

6.5. Observations

One observation was lodged by Martin and Jurate Curran, 34 Southshore Apartments, Strand Street, Tramore, Co. Waterford. This can be summarised as follows;

- Disputes that the folio document from the Land Registry submitted by the applicant demonstrates that the applicant owns the façade outside the apartment to which the works were carried out. Asserts that the P.A. should either have made further requests or refused permission.
- Cites other apartment blocks in the vicinity all of which has a single pattern, and examples of apartment development from Copenhagen and Rotterdam.

6.6. Further Responses from Appellant No. 1

6.6.1. The third-party appellant Anthony Green lodged a response to the applicants' submission, which can be summarised as follows;

- Cover letter refers to Apartment No. 5 and not No. 6.
- Leasehold Folio confirming Anner Fehnert as the registered owner is the same as submitted in response to the further information request by the P.A.
- Planner accepts that the applicant fails to clarify legal entitlement and yet proceeds to deal with the application
- Applicant could only clarify legal entitlement with the inclusion of an authorised letter of consent from Berryline Company Limited, the legal owner of the building.

6.6.2. The third-party appellant Anthony Green lodged a response to the observers' submission, which can be summarised as follows;

- Fully support the content of the observation.

- Decision of the P.A.
 - has disregarded the fact that the applicant did not have the legal right to carry out works under the retention part of the application and does not have the right to apply for permission for a supposed Juliet balcony.
 - undermines Berryline as a Management Company and all Berryline apartment owners who respect the terms of their lease.
 - is a dereliction of duty.
- Urge the Board to uphold the grounds of appeal.

6.7. Further Responses from Appellant No. 2

6.7.1. The third-party appellant Halley Murphy and Associates Architects lodged a response to the observers' submission, which can be summarised as follows;

- *Background* - The Management Company have a totally different view of the background to the proposed works and works already carried out.
- An inspection of a number of Juliet style balconies on the building does not indicate corrosion or instability.
- *Balcony Railings* – Several options available to overcome the step arrangement which makes the balcony climbable without the removal of the entire guarding which would have no visual impact on the external appearance of the balcony.
- *Building Regulations* – Concern and justification for replacement of the guarding, there are a number of options which would make the guarding 100% compliant with the building regulations.
- *Circular Windows* – Agree that impact of the circular windows is not as jarring as the replacement balustrades.

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 issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings;

- Design and Visual Impact
- Residential Amenity
- Other Matters

7.2. Design and Visual Impact

- 7.2.1. As already described there have been a number of external alterations to the design of apartment No. 6 over three floors. These alterations are on the seaward south facing elevation within the overall block of 40 No. units.
- 7.2.2. Concern has been raised by the appellants that the alterations which are subject of retention detract from the design and visual amenity of the development.
- 7.2.3. I accept that the replacement balcony railings and guarding's, circular windows and roof light are different to other units within the block. I do not however agree with the appellants assertion that the alterations and finishes detract from the overall façade of the building. I have formed this opinion on the basis of the design high quality finishes and materials used which I consider complement the overall design of the unit.
- 7.2.4. The replacement clear balustrade and metal railings to first and second floor balcony areas are contemporary and lightweight in design. They are in line with the metal railings of the adjoining balcony's either side.
- 7.2.5. The replacement circular windows at first and second floor are recessed and not clearly visible. The replacement roof light which opens out to provide a balcony type standing area is also relatively minor.
- 7.2.6. In my opinion the location of the unit within the block is worthy of consideration, in that it is the last unit in the block before it angles/turns reflecting the curve in Strand street. I consider that this also helps to assimilate the alterations within the block.
- 7.2.7. In relation to the proposed Juliet balcony at second floor I concur with the appellants in that there is very little detail regarding its design. It would appear that it is to extend beyond the original balcony which would not be acceptable. I am satisfied that a treatment similar to the other balcony areas to be retained is appropriate on the condition that it will not extend beyond the original. This can be dealt with by way of an appropriately worded condition.

7.2.8. I conclude, therefore, that the proposed elements for retention and proposed balcony will not result in a serious visual impact, and that the grounds of appeal on the basis of design should not be upheld.

7.3. Residential Amenity

7.3.1. In relation to the impact on residential amenity I have considered the following; overlooking/loss of privacy and overshadowing.

7.3.2. In particular the appellants have raised concern in terms of overlooking and overshadowing from the proposed Juliet balcony at second floor and overlooking from the existing roof light/balcony at third floor.

7.3.3. I do not share the concerns of the appellants in relation to overlooking and overshadowing from the proposed Juliet balcony, as there was originally a balcony at this location. Subject to the proposed balcony not extending beyond the original I am satisfied that it will not result in overshadowing of the adjoining units.

7.3.4. I can also confirm from my site visit that there are no overlooking issues in respect to the roof light / balcony at third floor.

7.3.5. I am satisfied therefore that there is no basis to this ground of appeal.

7.4. Other matters

7.4.1. *Sufficient Legal Interest* – The appellants have raised concern in respect of the applicant's legal interest to carry out the works, as they have not received permission from the Management Company. It is of note that the issue of ownership is a civil matter and I do not propose to adjudicate on this issue. I note here the provisions of s.34(13) of the Planning and Development Act: 'A person shall not be entitled solely by reason of a permission under this section to carry out any development'. Under Chapter 5.13 'Issues relating to title of land' of the 'Development Management – Guidelines for Planning Authorities' (DoECLG June 2007) it states, inter alia, the following: 'The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts...'

7.4.2. *Compliance with Building Regulations* – The applicant has justified the proposed works in the context of compliance with the Part K of the Building Regulations

(Amendment) Regulations 2006. This is strongly disputed by the appellants. While noted and of importance relevant to compliance with current safety standards, this issue is not within the remit of the Board and is more appropriately dealt with under separate remit by the relevant authority.

- 7.4.3. *Precedent* – In relation to the matter of precedent I would note that each application is assessed on its own merits having regard to the relevant planning considerations and site context. I am satisfied that the elevational changes in this instance does not set an undesirable precedent.

7.5. **Appropriate Assessment**

Having regard to the nature and scale of development proposed for retention and proposed, to the nature of the receiving environment, namely a fully serviced location, no appropriate assessment issues arise, and it is not considered that the development proposed 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 planning permission for retention permission and permission should be **granted** for the reasons and considerations as set out below.

9.0 **Reasons and Considerations**

Having regard to the location and zoning objectives pertaining to the site of the development, the pattern of development in the area, the design and layout of the development proposed for retention and proposed, 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 residential or visual amenities of the area or of property in the vicinity. The proposed development and the development proposed for retention 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.

Reason: In the interest of clarity.

2. The proposed Juliet style balcony shall not extend beyond the width and height of the original. Details of finishes and materials shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

Reason: In the interest of residential amenity.

Susan McHugh
Planning Inspectorate

18th June 2019