



An
Bord
Pleanála

Inspector's Report ABP-306920-20

Development

Partial demolition of existing dwelling including rear balcony, the refurbishment and alteration to existing elevations and construction of a new rear extension to the dwelling, new retaining wall to boundaries, upgrading vehicular entrance and all associated site works.

Location

Mini Manor, The Ramparts, Kinsale, Co. Cork

Planning Authority

Cork County Council

Planning Authority Reg. Ref.

19/6861

Applicant(s)

Seamus & Sharon Palmer

Type of Application

Permission

Planning Authority Decision

Grant, subject to 8 conditions

Type of Appeal

Third Party -v- Decision

Appellant(s)

David & Angela Doyle

Observer(s)

None

Date of Site Inspection

21st May 2020

Inspector

Hugh D. Morrison

Contents

1.0 Site Location and Description	4
2.0 Proposed Development	4
3.0 Planning Authority Decision	5
3.1. Decision	5
3.2. Planning Authority Reports	5
4.0 Planning History.....	5
5.0 Policy and Context.....	6
5.1. Development Plan.....	6
5.2. Natural Heritage Designations	6
5.3. EIA Screening	6
6.0 The Appeal	7
6.1. Grounds of Appeal	7
6.2. Applicant Response	8
6.3. Planning Authority Response	9
6.4. Observations	9
6.5. Further Responses.....	10
7.0 Assessment.....	10
8.0 Recommendation.....	15
9.0 Reasons and Considerations.....	16
10.0 Conditions	16

1.0 Site Location and Description

- 1.1. The site is located on the eastern side of The Ramparts, a single/two-lane, high-level, residential street, which runs northwards from The Mall towards Kinsale town centre. This street serves several detached split-level dwelling houses on its eastern side, which avail of the fall in site levels and which have rear gardens that terminate at the top of a local cliff.
- 1.2. The site is of regular shape and it extends over an area of 0.0327 hectares. This site presently accommodates a detached split-level dwelling house, which is composed of an original two storey building with upper (roadside level) and lower (rear garden level) ground floors. This building has been extended to its rear (east) and on its southern side. It provides three-bed accommodation over a floorspace of 126 sqm.
- 1.3. The dwelling house is accompanied by a gated drive-in on its southern side, whereon there is space for one car to park. It is served by a balcony and raised patio, both of which are to the rear with a terraced garden beyond. The western elevation of this dwelling house abuts The Ramparts and the northern side elevation incorporates/abuts the boundary/retaining wall with the appellants' residential property beyond. A timber panel fence above a concrete kick board denotes the southern boundary and a thick hedgerow along the aforementioned cliff top denotes the remaining eastern boundary.

2.0 Proposed Development

- 2.1. The proposal would entail the demolition of the extensions (68.5 sqm) to the original building (39 sqm) on the site and their replacement with a two storey rear extension, which would wrap around the southern side elevation to provide lower ground floor accommodation with a drive-in for one car above at upper ground floor level (total proposed floorspace 232 sqm).
- 2.2. The main body of the proposed two storey rear extension would be of rectangular form under a flat roof with an expanse of rooflights. The height of this extension would coincide with the eaves line of the original building. It would be of contemporary design with effectively floor-to-ceiling height recessed picture windows in its eastern rear elevation. Windows would be inserted in the two side elevations,

too. Where these would be visible above existing/proposed boundary means of enclosure, they would be specified as high level ones with obscure glazing. This extension would be finished in honed Irish blue limestone. It would be sited in a position wherein it would be setback from the side and rear boundaries of the site. Existing means of enclosure would be augmented by louvred walling.

3.0 Planning Authority Decision

3.1. Decision

Following receipt of further information, permission granted, subject to 8 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Further information requested with respect to the following:

- Clarification required as the cover letter states that the extension would be set back 1.82m from the northern boundary, but the submitted plans scale to between 900 – 1600 mm.
- In view of the previous appeal decision, the 1.82m set back should be at the narrowest point.

3.2.2. Other Technical Reports

- Cork County Council:
 - Area Engineer: No objection.

4.0 Planning History

- Pre-application consultation occurred on 16th July 2018.
- 18/6956: Similar description of proposal to current one: Refused at appeal ABP-304451-19 for the following reason:

Having regard to the pattern of development in the area and the considerable level differences both within the subject site and with adjoining sites, it is considered that the proposed development, because of its scale, bulk and

proximity to site boundaries, and its height relative to the ground levels of adjoining houses and their private open space areas, would seriously injure the amenities of those properties by reason of overlooking and significant overbearing impact. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

5.0 Policy and Context

5.1. Development Plan

Under the Kinsale Town Development Plan 2009 – 2015 (TDP), the site is shown as lying within an established residential area and within the Kinsale ACA. Scenic views of the harbour are identified along The Ramparts, which lie on the zone of potential archaeological interest in Kinsale town centre.

Policy ERR 1 of the TDP addresses domestic extensions. It states the following:

Proposals for extensions to a dwelling will be permitted if all the following criteria are met:

- (i) Respects scale and character,*
- (ii) Adequate on-site parking, and*
- (iii) No adverse affect on residential amenity of adjoining occupiers.*

5.2. Natural Heritage Designations

James Fort pNHA (001060)

5.3. EIA Screening

The proposal is for a domestic extension. This type of development does not constitute an EIA project and so the question as to whether or not it might be sub-threshold does not arise.

6.0 The Appeal

6.1. Grounds of Appeal

The appellants begin by summarising the evolution of the current proposal through the various stages that preceded it under 18/6956.

- The revisions with respect to the northern elevation of the proposed extension would be inadequate in overcoming the Board's critique. In this respect, the depiction of the set back from the northern boundary should be slimmed down to reflect the measurements from the inside face of the wall, i.e. instead of 1.834m and 2.040m, 1.55m and c. 1.8m would be the relevant measurements in this respect. The reduction in height of 0.25m would be only a nominal one.
- The applicant's right to erect a louvred screen fence along the northern boundary wall is contested as, at best, this wall is a shared one. The proposed raised patio would be level with the top of this wall and the introduction of the said fence would be a further dis-amenity, especially with respect to sun lighting during winter months.
- The uneven line of the northern boundary militates against clarity as to the extent of the applicants' ownership. Thus, their legal interest in the entire site remains to be confirmed.
- While the Board did not cite lighting in its previous reason for refusal, this issue should be reconsidered as the amenity value of the appellants' garden would be affected by the proposed extension.
- The proposal would be inconsistent with CDP policies.
- The proposal would impact upon the visual and architectural amenities of Kinsale, which are recognised in the TDP.
- The impact of any construction phase upon the local road network may mean that it becomes impassable.
- While certain windows in the northern elevation of the proposed extension would be obscure glazed, this would be insufficient to overcome their un-neighbourliness, i.e. they could be opened.

The appellants have attached their previous objection and appeal to 18/6956 and an accompanying Geological Report and their objection to the current application.

6.2. Applicant Response

The applicants begin by drawing attention to those matters that were previously addressed by the PA and the Board under 18/6956 and ABP-304451-19 to their satisfaction, i.e. the proposal would not result in overshadowing/a loss of sunlight, it would not adversely impact upon the Kinsale ACA, potential construction phase impacts can be mitigated, and legal issues with respect to the retaining/boundary wall are not material planning considerations.

They then proceed to address the outstanding substantive issues as follows:

- Perceived overlooking
 - Previously, overlooking was identified as an issue with respect to views to the east from a balcony. This balcony has now been omitted and the proposal set back further from the eastern boundary of the site.
Additionally, the internal accommodation within this proposal would differ from that previously proposed insofar as the sleeping accommodation would be at upper ground floor level rather than lower ground floor level.
 - Upper floor windows in the northern elevation of the proposed extension would either be obscured glazed high-level windows or a larger window, which would be both obscure glazed and screened by a louvred wall.
 - Attention is drawn to the opportunity for overlooking the appellants' residential property from the new dwelling house on its northern side without mitigation.

- Perceived overbearance

Three factors have a bearing on this issue, i.e. proximity, depth, and height.

- The proposal would now be set back a minimum of 1.83m from the retaining/boundary wall along the northern boundary to the site.

- The proposal would now be 2.07m shorter at both upper and lower ground floor levels and it would be set back 6.09m from the eastern boundary to the site.
- The proposal would be 0.25m lower.

In combination these measures would overcome any perceived overbearance from within the appellants residential property.

Nevertheless, insofar as the appellants take exception to the proposed louvred wall, the applicants would be prepared to omit the majority of this wall as shown on drawing no. P.23.

- Accuracy of plans

The appellants draw attention to the comparison of the current proposal with the previous one in its original rather than revised form. The applicants explain that this comparison was chosen to show the full evolution of the project. They also state that the submitted plans are accurate throughout.

- Other issues

- Legal matters: Section 5.13 of the Development Management Guidelines is cited in this respect.
- Neighbouring developments: The appellants draw attention to the refusal of a proposal to the east of the site and at a substantially lower level, i.e. a three-storey apartment scheme on Lowe O'Connell Street. This refusal is not relevant to the current proposal, whereas the development referred to above, to the north of their residential property, is and yet they have omitted to refer to it.

6.3. Planning Authority Response

None

6.4. Observations

None

6.5. Further Responses

None

7.0 Assessment

7.1. I have reviewed the proposal in the light of the TDP, relevant planning history, the submissions of the parties, and my own site visit. Accordingly, I consider that it should be assessed under the following headings:

- (i) Legalities,
- (ii) Visual amenity,
- (iii) Residential amenity,
- (iv) Miscellaneous, and
- (v) Screening for Stage 1 AA.

(i) Legalities

- 7.2. The appellants draw attention to the variable alignment of the wall along the northern boundary of the site. They state that it is “almost impossible to ascertain from the documentation submitted as to whether the entire property on which the application is based is in the ownership of the applicants.” They further state that the wall in question is “at best” a shared one and insofar as it would be affected by the proposal, i.e. louvred walling for privacy purposes would be erected over it, their consent would be necessary for the same. Such consent has not been sought by the applicants.
- 7.3. The applicants have submitted the current application on the basis that they own the subject site, which is denoted by a red edge around their house plot, a red edge which includes the entirety of the aforementioned northern boundary wall.
- 7.4. Neither the appellants nor the applicants have submitted legal documentation to support their contentions/claims.
- 7.5. During my site visit, I observed that the northern gabled side elevation to the original building incorporated within the applicants’ existing dwelling house is continuous with the said boundary wall. I also observed that this wall is composed of differing

materials, i.e. on the applicants' side it is composed of stone and on the appellants' side it is composed of blockwork.

- 7.6. While definitive conclusions on the question of ownership cannot be made from the above observations, I consider that they suggest that the wall is at least a shared one. If this is so, then the applicants may need to obtain the consent of the appellants if the wall needs to be altered. Such consent would be a separate matter to that of the current planning application, as acknowledged by Section 34(13) of the Planning and Development Act, 2000 – 2019.
- 7.7. I conclude that there are no legal impediments to the Board proceeding to assess and determine the current application in the normal manner.

(ii) Visual amenity

- 7.8. The appellants express concern over the visual impact of the proposal upon the townscape of Kinsale.
- 7.9. The proposal would be of strikingly contemporary design in its rectangular form, glazing system, and finishing materials. Due to the elevated position of the site on the eastern side of The Ramparts, this proposal would be most prominent within middle distance views from the far side of Kinsale Harbour, e.g. the Long Quay and Scilly. It would be visible in conjunction with other modern extensions/dwelling houses of similar rectangular form, e.g. the new dwelling house “two doors up” on the northern side of the appellants' residential property. Thus, existing views include within them examples of contemporary design, which contrast with more traditionally designed dwelling houses and other buildings and which arguably add to the visual interest of the evolving townscape.
- 7.10. The aforementioned contrast is one that current thinking amongst conservationists tends to welcome, as it ensures the distinctiveness of old and new buildings, thereby aiding their legibility as such. It also ensures that differing period architectural styles are represented within a townscape.
- 7.11. In the case of the proposal, its prominence would be more muted than that of comparable modern extensions/dwelling houses, insofar as the specification of the dark finishing material, honed Irish blue limestone, would tend not to draw the eye.

7.12. I conclude that the proposal would be compatible with the visual amenities of the area.

(iii) Residential amenity

7.13. The current proposal represents a revised version of a previous proposal, which was refused by the Board on the grounds that it would be overbearing and that it would lead to overlooking. The appellants do not consider that this revised version would be sufficient to overcome the said grounds and they continue to state that these should include overshadowing. Their concerns focus on the relationship that would exist between the northern side elevation of the proposal and their adjacent residential property, which lies to the north and at a sunken level in relation to the application site. This relationship would be affected too by the proposed louvred walling that the applicants propose to add to the wall along the boundary between the two adjoining residential properties.

7.14. In making the current application, the applicants have highlighted the revisions that have shaped their new proposal. Thus, the depth and the height of the rear extension would be reduced by 2.07m and 0.25m, respectively, and this extension would be setback within the site's boundaries as follows:

- *1.83m from the northern boundary (previously proposed on the boundary),*
- *A maximum of 8.13m from the eastern boundary (previously proposed at 4.09m), and*
- *A maximum of 1.16m from the southern boundary (previously proposed on the boundary).*

7.15. The appellants question the first of these setback distances. They consider that the width of the northern boundary wall should be excluded from the calculation, i.e. the measurement should be from the inside face of this wall, and so the pinch point dimension on the submitted plans of 1.834m should be 1.55m.

7.16. I note that the northern boundary wall varies in its width and in its alignment. I note, too, that the proposed northern elevation would be of straight alignment. Accordingly, a range of separation distances would exist between these corresponding features, which would increase from the aforementioned pinch point dimension. While arguments could be made in favour of including or excluding the wall's width, the

essential point is that the proposal would now be setback by an appreciable distance from the northern boundary.

- 7.17. A comparison between the previous proposal, *as amended*, and the current one shows that a setback distance from the northern boundary was submitted. This distance at the aforementioned pinch point was not the subject of a notational dimension, but it scales to c. 0.9m. It was reproduced in the originally submitted version of the current proposal but was subsequently revised to 1.55m under further information.
- 7.18. Thus, with respect to the northern elevation, it would be set slightly further back than that previously proposed and it would be slightly lower and somewhat shorter, i.e. by 2.07m (a reduction of 15.62%) at 11.185m rather than 13.255m. The design of this elevation would be simplified, and it would be finished in honed Irish blue limestone.
- 7.19. The northern elevation would feature full floor to ceiling height windows at lower and upper ground floor level. These windows would serve habitable and non-habitable spaces at lower ground floor level and non-habitable spaces at upper ground floor level. They would overlook either the retaining wall or, in the case of the one at upper ground floor level, the proposed louvred walling. This level would also be served by two high level windows, which would be obscure glazed. The louvred walling would stepdown to below the cill height of these windows and, thereafter, this walling would stepdown again in its accompaniment of the existing boundary wall. It would thus serve a dual function in affording privacy and in reducing the perceived mass of the northern elevation, when viewed from within the appellants' residential property.
- 7.20. At the appeal stage the applicants have sought to respond to the appellants' concerns over the proposed louvred wall by submitted drawing no. P.23, which shows the omission of this wall except for a short expanse at the eastern end of the northern boundary. This expanse would be 2.33m in height, i.e. 20.87m OD over the adjacent patio of 18.50m OD.
- 7.21. I welcome the reduction in the height of the louvred wall now proposed by the applicants. I note, however, that the removal of this wall from above the 20.87m OD section of existing wall would be problematic as it would be over a ground level of 19.55m OD, i.e. a height of 1.32m. I, therefore, consider that a 1m high louvred wall should be retained above this wall in order to safeguard neighbour privacy and to

ease the perceived mass of the extension. I note, too, that while the applicants propose to secure neighbour privacy by relying upon the obscure glazing of not just the high-level upper ground floor windows in the northern elevation, but the large one too, that in the case of the latter this should be accompanied by the retention of the adjacent 2.4m high louvred wall in a bid to obviate any perception of overlooking within the adjacent raised portion of the appellants' garden. These matters should be conditioned.

- 7.22. Under the first heading of my assessment, I discussed the contested opportunity for the applicants to alter the existing northern boundary wall. In this respect, the proposed louvred walling is shown, in plans submitted at the appeal stage, as being supported by a cantilever structure, which would thereby obviate the need for the existing wall to be altered.
- 7.23. I consider that the proposed northern elevation would not result in overlooking of the appellants' residential property and that its presence, in conjunction with scaled back louvred walling, would not be unduly overbearing. Any overshadowing would be less than that which would have occurred under the previous proposal, when this impact was not considered to be an issue warranting objection.
- 7.24. The southern elevation of the proposal would be blank apart from two lower ground floor windows at its western end, where they would correspond with the existing boundary fence beyond which lies the platform for the neighbouring garage at roadside level.
- 7.25. The eastern elevation would be setback from the eastern boundary to the site by a minimum of 6.634m. This boundary marks the top of a local cliff, where there is drop of c. 9m. Thus, the picture windows in the eastern elevation would afford commanding views over the inner Kinsale Harbour. The boundary itself is presently denoted by a hedgerow. This would be replaced by a retaining wall to the edge of a new patio with 1.2m high glazed panels above.
- 7.26. I conclude that, subject to the lowering of the easternmost portion of the proposed louvred walling, the proposal would be compatible with the residential amenities of the area.

(iv) Miscellaneous

- 7.27. The appellants draw attention to the site's challenging geological conditions and to the risk that any construction traffic may block the adjoining single lane portion The Ramparts.
- 7.28. During my site visit, I observed that a new dwelling house has recently been constructed on the northern side of the appellants' residential property and so I anticipate that the two issues that they raised would have been addressed during its construction period. Elsewhere, too, in Kinsale there are examples of sites that pose comparable challenges.
- 7.29. Essentially, other codes address the issues of stability and health and safety that are raised by the site's geology. The question of construction traffic is one that should be addressed by conditioning the submission of a construction management plan.
- 7.30. The existing dwelling house is connected to the public water mains and it is served by an on-site WWTS. Under the proposal, this WWTS would be replaced by a connection to the public sewerage system, via the adjoining site to the east. The owner of this site has consented to such usage of its site.
- 7.31. Under the OPW's flood maps the site is not identified as being the subject of any identified flood risk.

(v) Screening for Stage 1 AA

- 7.32. The site does not lie in or near any Natura 2000 site. It is presently a partially serviced urban site, which under the proposal would become fully serviced by public drainage infrastructure. Consequently, no AA issues would arise.
- 7.33. Having regard to the nature and scale of the proposal and the nature of the receiving environment, no Appropriate Assessment issues arise, and it is not considered that the proposal would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

That permission be granted.

9.0 Reasons and Considerations

Having regard to the Kinsale Town Development Plan 2009 – 2015, the Board considers that, subject to conditions, the proposal would be compatible with the visual and residential amenities of the area. It would raise no water or AA issues. This proposal would thus accord with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>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 7th day of February 2020 to the Planning Authority and further plans and particulars submitted on the 29th day of May 2020, 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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The proposed development shall be amended as follows:</p> <p>(a) The louvred wall as shown on drawing P.23 submitted to An Bord Pleanala on 29th May 2020.</p> <p>(b) The existing wall with a height of 20.87m OD shall be accompanied by a 1m high louvred wall.</p> <p>(c) The 2.4m high louvred wall adjacent to the large upper floor window shall be retained</p> <p>Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p>

	Reason: In the interests of visual and residential amenity.
3.	<p>The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall -</p> <p>(a) Notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,</p> <p>(b) Employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and</p> <p>(c) Provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.</p> <p>In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.</p> <p>Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.</p>
4.	<p>Details of the materials, colours, and textures of all the external finishes to the proposed extension shall be as stated in the application, unless agreed otherwise in writing by the planning authority prior to commencement of development.</p> <p>Reason: In the interest of visual amenity.</p>
5.	<p>The applicant or developer shall enter into a waste water connection agreement with Irish water, prior to the commencement of development.</p> <p>Reason: In the interest of public health.</p>
6.	<p>The upper ground floor windows on the northern elevation shall be glazed with obscure glass, as specified in drawing no. P.23 submitted to An Bord Pleanála on 29th May 2020.</p> <p>Reason: To prevent overlooking of adjoining residential property.</p>

7.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
8.	<p>The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise and dust management measures, access arrangements for construction vehicles, specifications and locations of any security lighting, and off-site disposal of construction/demolition waste.</p> <p>Reason: In the interests of public safety and residential amenity.</p>
9.	<p>The developer shall pay to the planning authority a financial contribution of €4212 (four thousand two hundred and twelve euro) 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. The application of any indexation required by this condition 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.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the</p>

	Development Contribution Scheme made under section 48 of the Act be applied to the permission.
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Hugh D. Morrison
Planning Inspector

10th June 2020