



An
Bord
Pleanála

Inspector's Report ABP-307869-20

Development

Retention of the existing rear balcony terrace of circa 15.7m² and for new works comprising the replacement of the existing terrace surface, the provision of obscure screens at each end of the terrace and a glazed weather canopy over existing door openings, with associated works to the existing railings including increasing the height.

Location

9 Newtownsmith, Sandycove, Co. Dublin.

Planning Authority

Dún Laoghaire Rathdown County Council

Planning Authority Reg. Ref.

D20A/0357

Applicant(s)

Anthony McMahon & Eleanor Burnhill

Type of Application

Permission & Permission for Retention

Planning Authority Decision

Refusal

Type of Appeal

First Party v. Decision

Appellant(s)	Anthony McMahon & Eleanor Burnhill
Observer(s)	None.
Date of Site Inspection	17 th November, 2020
Inspector	Robert Speer

1.0 Site Location and Description

- 1.1. The proposed development site is located at 9 Newtownsmith, Sandycove, Co. Dublin, approximately 700m southeast of Dún Laoghaire Harbour and 630m west of Sandycove Harbour, where it occupies a position in an established residential area overlooking the park and esplanade area at Sandycove (with Dublin Bay beyond), just to the north / northwest of Glasthule village centre. Newtownsmith is a continuation of Marine Parade, both of which are connected to the village centre by the 'Link Road.'
- 1.2. The immediate site surrounds are generally characterised by mature housing which predominantly consists of terraced period residences of varying design, although there are several examples of detached and semi-detached properties in the vicinity with some more contemporary developments in the wider area. In this respect, it is notable that the surrounding area retains an attractive quality and is of some interest from a built heritage perspective.
- 1.3. The site itself has a stated site area of 0.0447 hectares, is rectangular in shape, and comprises a mid-terrace, two-storey property with a rear garden area. The dwelling house has been extended to the rear and includes a first floor balcony / terrace area which extends across the full width of the elevation. It is bounded by existing housing to the northwest and southeast with the wider grounds of St. Joseph's Church and the Old Parochial House / Presbytery to the southwest.

2.0 Proposed Development

- 2.1. The proposed development consists of the following:
 - Permission for the retention of a first floor balcony / terrace (floor area: c.15.7m²) which extends across the full width of the rear elevation of the existing dwelling house and is accessible from 2 No. bedrooms as shown on the submitted drawings.
 - Permission for new works comprising:
 - o The replacement of the existing terrace surface with a new tiled finish set over insulation with a fall towards the gutter. The terrace floor level will be raised by 80mm to 115mm to provide a fall to the gutter, to

allow for the installation of the insulation, and to eliminate steps at the door thresholds.

- The provision of obscure glass-block screens set within a stainless steel frame to a height of 1.835m at each end of the terrace with the existing steel railing to be modified to allow for same.
- The erection of a glazed weather canopy ('Simplicity Xtra Veranda' or similar) over the existing central door opening. This will comprise clear glazed roofing set within an aluminium (PPC finish) frame with c/w aluminium gallows brackets and Victorian column base accessories.
- Associated works to the existing railings, including increasing the height of the handrail to 1.1m to ensure compliance with applicable standards.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On 15th July, 2020 the Planning Authority issued a notification of a decision to refuse permission for (and retention of) the proposed development for the following single reason:

- It is considered that the terrace proposed to be retained and notwithstanding the proposed new works to same, including obscure screens, the terrace, by reason of its location, design and use, coupled with its relationship to adjoining private open spaces, results in an unacceptable level of overlooking and seriously injures the residential amenity of the adjoining properties and therefore is not in accordance with the zoning objective for the area which is, 'A', 'to protect and/or improve residential amenity'. The development to be retained would, therefore, be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports:

Details the site context, planning history, and the applicable policy considerations, before stating that particular cognisance will be had to the potential for the proposed development to impact on the residential amenity of neighbouring properties given the applicable land use zoning which seeks *'to protect and / or improve residential amenity'*. It subsequently states that notwithstanding the upgrading works proposed, the retention of the terrace in question would give rise to the unacceptable overlooking of the rear private amenity space of the adjacent dwellings to the east and west of the site and thus would have an adverse impact on the residential amenity of those properties contrary to the land use zoning objective. The report thus concludes by recommending a refusal of permission & permission for retention for the reason stated.

3.2.2. Other Technical Reports:

Drainage Planning, Municipal Services Dept.: No objection.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

None.

4.0 Planning History

4.1. On Site:

PA Ref. No. D19B/0010. Was determined on 11th April, 2019 whereby a split decision was issued to Anthony McMahon & Eleanor Burnhill as follows:

- to **GRANT** permission for the retention of an extension to the rear of the existing house at ground and first floor levels (c. 116m²) carried out incrementally after 1963 and prior to 2008.
- to **REFUSE** permission for the retention of a terrace of 15.7m² for the following reason:

- It is considered that the terrace proposed to be retained, by reason of its location, design and use, coupled with its relationship to adjoining private open spaces, results in an unacceptable level of overlooking and seriously injures the residential amenity of the adjoining properties and therefore is not in accordance with the zoning objective for the area which is, 'A', 'to protect and/or improve residential amenity'. The development to be retained would, therefore, be contrary to the proper planning and sustainable development of the area.

PA Ref. No. D01B/0592. Was granted on 17th December, 2001 permitting Ronan Power permission for the removal of the existing garage door and the erection of a new external wall with windows (visible from the street) inside the existing garage.

5.0 Policy and Context

5.1. Development Plan

5.1.1. *Dún Laoghaire Rathdown County Development Plan, 2016-2022:*

Land Use Zoning:

The proposed development site is located in an area zoned as 'A' with the stated land use zoning objective *'to protect and / or improve residential amenity'*.

Other Relevant Sections / Policies:

Chapter 8: Principles of Development

Section 8.2: Development Management:

Section 8.2.3.4: Additional Accommodation in Existing Built-up Areas (i) Extensions to Dwellings

5.2. Natural Heritage Designations

5.2.1. The following natural heritage designations are in the general vicinity of the proposed development site:

- The Dalkey Coastal Zone and Killiney Hill Proposed Natural Heritage Area (Site Code: 001206), approximately 35m northeast of the site.

5.3. EIA Screening

- 5.3.1. Having regard to the minor nature and scale of the development under consideration, the site location outside of any protected site and the nature of the receiving environment, the limited ecological value of the lands in question, the availability of public services, and the separation distance from 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 Appeal

6.1. Grounds of Appeal

- The rationale for the decision to refuse permission is at total variance with the pre-planning consultations held with the Planning Authority during which the Council indicated that:

‘Based on the contents of the submission, having regard to the location and design of the obscure screens at each end of the terrace, it is considered that the terrace proposed to be retained would not give rise to an unacceptable level of overlooking of the adjoining properties’.

- The basis for the refusal of permission as set out in the Planner’s Report (i.e. that the proposal would result in the overlooking of neighbouring private amenity areas thereby adversely impacting on the residential amenity of those properties) is demonstrably incorrect.

There will always be overlooking of an adjoining property where a window below eye level is above the height of the boundary wall etc., however, the extent of the overlooking is limited by the angle across the window opening from the internal wall to the opposite reveal. Accordingly, it is submitted that the proposed screens will considerably reduce this ‘permissible’ overlooking from within the existing dwelling by making the viewing angles more acute and effectively deepening the reveals.

At present, it is possible to look directly over the low railings at either end of the terrace and into the neighbouring properties. The proposed erection of obscure screens at both ends of the terrace, which reach above eye level, will prohibit any such overlooking and, therefore, it is factually incorrect to assert that views will not be obstructed. Furthermore, the projection of the screens beyond the railing will have the same effect as the window reveals in the wall in that they will limit the viewing angle to a similar degree as to what would occur in a 'permissible' situation where the view would be through a window rather than from the terrace. The screens will also effectively move the point from which the neighbouring lands are visible further towards the rear of those properties thereby increasing the extent of the garden area which cannot be viewed from within the existing dwelling house or the terrace.

- The drawings submitted with the planning application (Drg. Nos. Annex 1.1 & 1.2) illustrate the existing and proposed conditions with regard to overlooking. They show the areas of a reference plane in each adjoining property visible from within the existing house and terrace in both the current configuration and the proposed form, including the screens, with the visibility based on a 'worst case' scenario that takes a 95th percentile eye level (at 1,800mm) and which ignores the screening effects of existing vegetation and outbuildings.

Drg. No. Annex 1.1 shows that most of the adjoining garden areas are potentially visible from the existing terrace, however, large parts of the gardens are also visible from within the house through the glazed openings with this form of oblique overlooking typical of any property and not proscribed.

Drg. No. Annex 1.2 shows the effect of the proposed screens on those areas of the adjoining gardens that are potentially visible from the terrace and from within the house. It is clear that the proposed screens have a significant effect in reducing the extent of overlooking in both situations. The area potentially visible from the terrace would be reduced to exceeding less than 9% of the area currently visible from within the house, with the difference in area occurring in a narrow strip parallel to the garden wall. The screens will also significantly reduce the extent of those areas visible from within the house.

- Use of the terrace will be limited by its narrow depth and the Irish climate and, therefore, the potential for overlooking from within the house is a more relevant consideration in terms of residential amenity as it will be a more likely and frequent occurrence.
- The proposed balcony screens, which will allow light through whilst ensuring privacy, will serve to mitigate the existing situation and will also reduce the levels of 'permissible' overlooking to such an extent that the proposal can be considered to '*protect and / or improve residential amenity*' as per the land use zoning objective.
- The submitted drawings demonstrate that the development as proposed will reduce the overlooking of neighbouring garden areas with the newly protected locations immediately adjacent to the rear of the adjacent houses representing a significant improvement in amenity.

The area of the neighbouring properties visible from the terrace (as proposed) will be less than 9% more than the area currently visible from within the rear first floor windows. Moreover, the area that will continue to be visible from the balcony, which is not presently visible from the rear windows, is largely limited to a narrow strip parallel to the boundary walls (as shown on the submitted drawings) and this will not be readily apparent from the neighbouring gardens in the same way that a person looking over the ends of the balcony will be. Furthermore, the figure quoted is a theoretical maximum and a 'worst-case' scenarios that will never be experienced where there are trees, plants and structures that obstruct this narrow strip (as evident from aerial photography).

In effect, the development proposed protects and improves the residential amenity of all the properties concerned and thus the zoning objective would be better achieved by a grant of permission.

- Both of the adjoining property owners have provided letters in support of the proposed development and thus are not of the opinion that it will detract from their residential amenity.
- By way of precedent, the Board is advised that there are at least 3 No. similar rear balconies / terraces in the immediate vicinity of the site, all of which are much larger, and two of which are considerably higher, so much so that they

are visible from the public realm. Indeed, one of these balconies is visible from – and directly overlooks – the rear garden of the subject site and was granted permission for retention (PA Ref. No. D17A/0043) in its current form, and with no screening, despite it overlooking many more properties (and to a greater extent) than the subject proposal.

6.2. **Planning Authority Response**

- States that the grounds of appeal do not raise any new matter which, in the opinion of the Planning Authority, would justify a change of attitude to the proposed development.

6.3. **Observations**

None.

6.4. **Further Responses**

None.

7.0 **Assessment**

7.1. From my reading of the file, inspection of the site and assessment of the relevant policy provisions, I conclude that the key issues relevant to the appeal are:

- Impact on residential amenity
- Appropriate assessment

These are assessed as follows:

7.2. **Impact on Residential Amenity:**

7.2.1. From a review of the available information, it is apparent that the principle issue requiring consideration in the assessment of the subject appeal is the potential for the development as proposed to have a detrimental impact on the residential amenity of those neighbouring properties to the immediate southeast and northwest of the application site, with particular reference to their rear garden areas / private amenity space, by reason of overlooking (and perhaps also the perception of being

overlooked) (the lands directly to the rear / southwest of the site are occupied by the wider grounds of St. Joseph's Church and the Old Parochial House / Presbytery). In this regard, I would advise the Board that the development as constructed comprises a first floor balcony / terrace that has been provided atop a single storey rear extension to the rear of the existing dwelling house which extends across the full width of the property. It is accessible via a pair of door openings from 2 No. first floor bedrooms and offers unobstructed views over the applicants' rear garden area. At present, the construction comprises a balcony / terrace area set over the flat-roof of the extension below (c. 1.6m in depth) which has been enclosed on all sides by painted steel railings to a height of 1.1m with additional bamboo screening provided at both ends of the terrace perpendicularly to the main house. In addition to retaining the balcony / terrace, the proposal also seeks permission to undertake further works which will include raising the balcony floor level (to provide a fall to the roof guttering, to allow for the installation of insulation & a new tiled floor finish, and to eliminate steps at the doorway thresholds), the erection of a glazed weather canopy over the existing central door opening, the provision of obscure glass-block screening to a height of 1.835m at both ends of the terrace, and associated works such as increasing the height of the handrail to 1.1m.

- 7.2.2. At present, although the orientation and positioning of the existing balcony is intended to overlook the applicants' own garden area, having conducted a site inspection, it evidently also affords relatively unobstructed views towards and over much of the private rear garden areas / amenity spaces of the immediately adjacent housing to the northwest and southeast at Nos. 8 & 10 Newtownsmith respectively. Accordingly, in an effort to mitigate any concerns as regards the overlooking of these neighbouring properties with a view to protecting / improving their residential amenity, it is proposed to install new 1.835m high glass-block screens (set within a stainless steel frame) to both ends of the balcony / terrace thereby narrowing the viewing-angle towards those garden areas. In this respect, it has been submitted that cognisance should be taken of the views already available towards the neighbouring garden areas from within the dwelling house by way of the first floor windows whilst it has also been asserted that the introduction of the proposed screening measures will not only serve to reduce overlooking from the balcony / terrace but will considerably reduce the allowable / permissible levels of overlooking available from the existing

dwelling by making the viewing angles from the first floor windows more acute. It has further been submitted that the projection of the new screens beyond the handrails will have the same effect as the window reveals in the rear wall of the dwelling house in that they will limit the viewing angle to a degree comparable to that which would normally be considered permissible from a first floor window. Moreover, the case has been put forward that the erection of the screens will effectively move the point from which neighbouring lands are visible thereby increasing the extent of those garden areas which cannot be viewed from either the existing dwelling house or the terrace. In effect, it has been submitted that the development as proposed will reduce the overlooking of the neighbouring garden areas with the newly 'protected' amenity space immediately adjacent to the rear of those houses representing a significant improvement in their amenity in keeping with the intent of the land use zoning objective.

7.2.3. In addition to the foregoing, it has been suggested that usage of the balcony / terrace will be limited due to its narrow depth and the inclement nature of Irish weather and thus a greater weighting should be attached to the potential for overlooking from within the main house.

7.2.4. Having considered the available information, whilst I would acknowledge the merits of the arguments put forth by the applicants in support of the existing balcony and the associated modifications, I am unconvinced of the comparison that has sought to be drawn between the level of overlooking typically associated with first floor windows and that available from a larger and more expansive external balcony. In my opinion, it is clear that the existing balcony allows for considerable views over much of the private amenity areas of the adjacent properties and whilst the screening measures proposed will serve to mitigate this impact in part, I am nevertheless inclined to conclude that the degree of overlooking arising is excessive and would unacceptably impact on the residential amenity of the neighbouring properties by reason of a loss of privacy. For example, with respect to the assertion that the proposed screening measures will actually serve to improve the residential amenity of the neighbouring properties by increasing the extent of their respective garden areas which will be free from undue observation / overlooking, this is reliant on the premise of comparing the views available from the existing and modified balcony / terrace and fails to consider the lesser overlooking arising from the

omission of the balcony in its entirety. I am also conscious of the perception of being overlooked from the balcony area in question and the associated impact on the ability of neighbouring residents to reasonably enjoy the amenity of their home (in the interests of clarity, I would advise the Board that I am cognisant of the amenities of both the existing and future occupants of the adjacent dwellings irrespective of the views of current residents).

7.2.5. Furthermore, whilst the applicants have sought to emphasise that any usage of the balcony will be somewhat limited and infrequent, in my opinion, it would be reasonable to suggest that any actual usage of the balcony for amenity purposes (e.g. socialising, reading, sunbathing etc.) would likely be for a more prolonged period than would typically be associated with an individual enjoying the view from a bedroom window. It is also notable that the proposal to provide a roofed canopy over part of the balcony would seem to be in direct response to the inclement nature of the Irish weather and is intended to accommodate increased usage of the space in question. A further concern would be the potential for additional noise / disturbance arising from the elevated position of the balcony relative to neighbouring garden areas, although I would concede that some parallels could be drawn with the normal use / enjoyment of a domestic private garden space.

7.2.6. Therefore, on the basis of the foregoing, I would concur with the decision of the Planning Authority that the proposed development would result in an unacceptable level of overlooking which would seriously injure the residential amenity of adjoining properties and be contrary to the land use zoning objective.

7.3. **Appropriate Assessment:**

7.3.1. Having regard to the minor nature and scale of the development under consideration, the site location within an existing built-up area outside of any protected site, the nature of the receiving environment, the availability of public services, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

8.0 Recommendation

- 8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission be refused for the retention of the proposed development for the reasons and considerations set out below:

9.0 Reasons and Considerations

1. The proposed development would seriously injure the residential amenities and depreciate the value of adjoining properties by reason of overlooking and, therefore, would be contrary to the proper planning and sustainable development of the area.

Robert Speer
Planning Inspector

19th November, 2020