



An
Bord
Pleanála

Inspector's Report

ABP-308236-20

Development	Retain two first floor gable windows in house.
Location	Ballygowloge, Listowel, Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	20603
Applicant(s)	Joe and Angela Kearney.
Type of Application	Permission.
Planning Authority Decision	Grant Permission with conditions.
Type of Appeal	Third Party First Party
Appellant(s)	Jimmy Delaney Joe and Angela Kearney
Observer(s)	None.
Date of Site Inspection	20 th November 2020.
Inspector	Bríd Maxwell

1.0 Site Location and Description

- 1.1. The appeal site 0.3hectares is located within the townland of Ballygowloge, Listowel on the southern side of the N69 national secondary road to the east of Listowel Town. The site is occupied by a recently constructed dormer type dwelling with a single storey front porch. The dwelling includes a number of *velux* rooflights in the front and rear roofplane. There is a single storey dwelling to the east and a site under construction to the west.

2.0 Proposed Development

- 2.1. The application involves permission to retain two first floor gable windows. Notably larger gable windows were proposed in the governing permission on the site 19/637 however these were conditioned out in the decision of Kerry County Council. The subject windows serve two upstairs bedrooms and are glazed with obscure glass.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1 By order dated 1st September Kerry County Council issued a split decision to refuse permission to retain 1st floor gable window on the west for the following reason:

“It is considered that the proposed retention of the first-floor gable window on the west elevation would seriously injure the residential amenities of the adjoining property by reason of over-looking and interference with privacy and would be contrary to the proper planning and sustainable development of the area.”

- 3.1.2 Permission was granted to retain 1st floor gable window to the east.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planner’s report asserts that east facing gable is acceptable as it does not overlook the rear garden space of the dwellinghouse to the east due to the level of

development on the site. Western gable will directly overlook the adjoining site to the west which has outline permission.

3.2.2. Other Technical Reports

Roads Report no comment.

County Archaeologist. No recorded monuments in close proximity. No mitigation required.

3.3. Prescribed Bodies

Transport Infrastructure Ireland no observations.

3.4. Third Party Observations

Submission from Mr Jimmy Delaney and Mr Michael Gaine, Cahirdown. Velux windows considered adequate for escape and requirement for the gable windows is questioned. The application does not address the loss of privacy to the nearest neighbour to the east of the property. Proposal will set an undesirable precedent for similar such development.

4.0 Planning History

On the appeal site

19/637 Permission granted to Sean McCarthy to construct a house on the site.

Condition 3 required first floor gable windows to be omitted. Additional roof lights to the satisfaction of the planning authority shall be permitted.

Appeal site and adjoining site to west

19/119 Permission granted to demolish a house and outline permission to build two houses on the site.

Adjoining site to the west.

20/666 Permission consequent on grant of outline permission 19/119 for the construction of 1 no dwellinghouse with new vehicular access and all associated landscaping and drainage works.

5.0 Policy Context

5.1. Development Plan

Kerry County Development Plan 2015-2021 and Listowel Town Development Plan 2009-2015 refer. The site is zoned residential existing.

5.2. Natural Heritage Designations

The site is not within a designated area. The nearest such site is the Lower River Shannon SAC Site Code 002165 which lies within 400m to the south.

5.3. EIA Screening

Having regard to the nature and scale of the development 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

6.1.1 The **First Party** appeal is against the refusal of permission for the first-floor window on the western gable and grounds of appeal are summarised as follows.

- Separation distance between the dwelling and the permitted dwelling to the west is 6m. The window pane is of manufactured frosted glass and the window opens out from the right angle which hinges to the left at a 90-degree

angle to limit viewing possibilities solely to the neighbouring gable or front portion of the adjoining site.

- The proposed gable window for retention will not result in significant overlooking possibilities or have an overbearing effect on the principal amenity space of the rear garden or of habitable rooms of the adjoining site to the west.
- Additional screen planting could further mitigate perceived impact.
- Concern in relation to escape in the event of fire.

6.2 The **third-party appeal** is submitted by Jimmy Delaney, Cahirdown, Listowel. The grounds of appeal relate to the decision of Kerry County Council to grant permission to retain the gable window to the east. The following grounds are outlined:

- Window is injurious to residential amenity by reason of overlooking and loss of privacy.
- Dormer windows are adequate for escape in the event of fire. Gable windows are not required.
- Decision would set an undesirable precedent for similar such development.
- Photographs submitted with the appeal to support the appellant's case.

6.3 Applicant Response

6.3.1 The response of the first party to the third-party appeal is summarised as follows:

- The line of sight from the gable window proposed for retention in relation to the adjoining dwelling to the east is below the ridge line of the rear extension element therefore there would be no possibility of overlooking of the adjoining dwelling's rear garden / private amenity space.
- The window proposed to the eastern elevation is to have manufactured frosted glass window panel that opens out a maximum 90-degree angle to further limit any viewing possibilities.

- Application of a standard condition on all permissions in the urban area requiring the omission of gable windows without having regard to site specific considerations would set a negative precedent.
- Precedent cases 18/1059 and 20/30. Permission granted for gable windows based on site specific assessment.
- Notably the owner of the adjoining property to the east has no objection to the window as indicated on signed letter from Mr Pete Lyons, Cahirdown attached.

6.4 Planning Authority Response

6.4.1 The Planning Authority asserts that the window to west proposed for retention would have negative impact on residential amenity by reason of overlooking of the adjoining site to the west yet to be developed but which has the benefit of permission 20/666. A frosted window will not address the issue as it will not stop the window from being opened. No first-floor windows proposed on gable of 20/266.

7.0 Assessment

7.1 It is reasonable, in assessing an application for works to any residential property that the amenities and privacy of adjoining dwellings and the established character of the area be protected. The question arising in this appeal case which considers the development proposed for retention within the application de novo is whether the benefit for the applicant by way of the provision of gable windows to the first-floor bedrooms is adequately balanced with the impact on the adjoining properties in terms of the potential for overlooking. I note that having visited the site and assessed the windows proposed for retention and their relationship to the adjoining dwelling sites, I am satisfied that the potential for overlooking of the adjacent sites is adequately mitigated by way of the opaque glazing, the hinging to the inner side of the window frames and provision for opening to an angle of 90 degrees. I consider that landscaping on the site will also further mitigate any perceived overlooking. In this regard I consider that the decision of the Planning Authority to treat the two

windows proposed for retention differently in granting permission for retention of that to the east and refusing permission of retention for that to the west is unwarranted. As regards the concerns raised by the third-party appellant with regard to setting an undesirable precedent for side gable windows within the built up area I would concur with the first party that all applications should be assessed on their own merit and the provision for a blanket ban would be inappropriate.

7.2 Having regard to the nature and scale of the proposed development and the nature of the receiving environment, and proximity to the nearest European Site, no appropriate assessment issues arise, and it is considered that the proposed development would not 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 conclude that the development is acceptable in terms of its design, the impact on the streetscape and the impact on the adjacent residential properties. I recommend that the decision of the planning authority to grant permission for the retention of the window to the east be upheld, and that the decision to refuse permission for the retention of the window to the west be overturned for the reasons and considerations and subject to the conditions below.

9.0 Reasons and Considerations

9.1 Having regard to the pattern of development in the area, it is considered that the development proposed to be retained, subject to compliance with the conditions set out below, would not seriously injure the amenities of the adjacent houses or detract from the character of the area and the streetscape. The proposed development

would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be retained and completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to the commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The gable windows to western and eastern elevation shall be permanently glazed with obscure glass.

Reason: In the interest of residential amenity.

3. The site shall be landscaped in accordance with a comprehensive scheme of landscaping detail of which shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interests of residential and visual amenity.

Bríd Maxwell

Planning Inspector

8th December 2020