



An
Bord
Pleanála

Inspector's Report ABP 308674-21

Development	Construct a sunroom extension to existing first floor apartment and new velux windows to existing roof.
Location	11A Upper Sunny Hill, Killarney Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	20/777
Applicant	Don Keogh
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	3 rd Party v. Grant
Appellants	Eileen Lynch
Observers	None
Date of Site Inspection	18 th May 2021
Inspector	Mary Kennelly

1.0 Site Location and Description

- 1.1.1. The site is located within a long-established housing estate which is within easy walking distance of Killarney town centre. Sunny Hill Upper is a terrace of two-storey houses which is accessed off Lewis Road. There is a rear lane which runs parallel to the street from where rear access to the rear of site is available.
- 1.1.2. The site comprises an end-of-terrace property which has been converted into two apartments and has been extended to the rear at ground floor level. The site area is given as 0.011ha and the existing floor area as 156.65m². There is a rear extension to the ground floor flat with a pitched roof which extends to the rear boundary, and a further smaller extension with a flat roof, and a small yard (c.9m²). The flat roof extension has a timber deck on the roof. I note from the file that there had been a balustrade in place as well, which has since been removed. This is the site of the proposed sunroom. The western boundary of the space is defined by a rear annexe protruding from the appeal property which contains a bathroom window, and the eastern boundary of this space is formed by a 2-storey full-length extension at No. 10 Upper Sunny Hill (the appellant's property).

2.0 Proposed Development

- 2.1.1. The proposed development seeks permission to construct a first-floor pitched roof extension to the rear of the existing apartment (11A). The extension is to be used as a 'sunroom' and has a stated floor area of 14.5m². It will replace the unauthorised roof garden. The dimensions are given as 3.8m x 3.7m and it is proposed to provide a folding window of 3.449m width with 6 no. glazing panels and a further triangular windowpane above. It is also proposed to provide two velux roof lights, one on either side of the roof slope of the proposed extension.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The P.A. decided to grant planning permission for retention of the works carried out to the dwelling subject to 5 conditions including:

Condition 3: extension to be as shown in submitted drawings (31/08/20) but the amount of glazing is to be reduced by 50%. Revised drawings to be submitted.

Condition 5: Building works to be carried out between 0800 and 1800 Mon – Fri and 0800 to 1300 on Saturdays. No work to be carried out on Sundays or bank holidays.

3.2. **Planning Authority Reports**

3.2.1. **Planning Reports**

The Planner's report noted that the site is an end-of-terrace dwelling in an established, mature housing development. It was noted that several of the other properties have been extended at first floor level. It was considered that the sunroom would be less intrusive to adjoining residents than the balcony area, but that the amount of glazing was excessive and should be reduced by 50%.

A **grant of permission** subject to conditions was recommended.

3.3. **Other Technical Reports**

3.3.1. None received.

3.4. **Prescribed Bodies**

3.4.1. None received.

3.5. **Third Party Observations**

One objection received by the planning authority from the appellant (10 Upper Sunny Hill). This submission is on file for the Board's information. The issues raised are comparable to those set out in the 3rd Party appeal received and summarised in section 6 below. The concerns raised related to the following issues

- Unauthorised development - No planning permission granted for balcony/roof garden. Handrail still to be removed.
- Overlooking – the development would overlook adjoining properties and the objector's rear garden. Overdevelopment of site.
- Concern regarding proximity to boundary and lack of detail regarding construction and weathering, as well as impact on gutters, fascias and soffits.

- Concern regarding access to the sunroom through an inner room and whether this complies with building regulations.

4.0 Planning History

- 4.1.1. 19/1284 – Permission for retention of balcony at rear refused by reason of loss of privacy to adjoining residents and creation of an undesirable precedent.
- 4.1.2. 15/555 – Permission granted for (i) construction of new window to side of existing GF apartment (No. 11) (ii) retention of existing extension to rear of GF apartment, and (iii) for construction of a new window to the side of the First-Floor apartment (11A).

5.0 Policy Context

5.1. National Planning Framework 2018

The NPF seeks to focus growth on cities, towns and villages with an overall aim of achieving higher densities than have been achieved to date.

NP Objective 35 seeks to increase residential density in settlements, through a range of measures including reductions in vacancy, re-use of old buildings, infill development schemes, area or site-based regeneration and increased heights.

5.2. Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009)

In order for small towns and villages to thrive and succeed, it is stated that their development must strike a balance in meeting the needs and demands of modern life but in a way that is sensitive and responsive to the past. New development should contribute to compact towns and villages. The scale should be in proportion to the pattern and grain of existing development.

5.3. Kerry County Development Plan 2014

Chapter 3 – Housing – sets out the housing policies and objectives including the following:

US-3 – Ensure that all new development within the County supports the achievement of sustainable residential communities. The Council will have regard to the

provisions of the 'Sustainable Residential Development in Urban Areas' Guidelines 2009 (DoEHLG) and the accompanying Urban Design Manual.

US-7 – Ensure that all new urban development is of a high design quality and supports the achievement of successful urban spaces and sustainable communities.

Chapter 13 – Development Management Standards includes the following: -

Building lines and private open space – A minimum of 22 metres shall generally be provided between directly opposing first floor habitable rooms. This may be reduced subject to good design and the individual design requirements of the site where it can be demonstrated that residential amenity and adequate light is not compromised.

5.4. **Killarney Town Development Plan 2009 – 2015 (as extended)**

Killarney Town Development Plan was extended by Variation 4, which was adopted in December 2018. This Variation replaces the zoning maps and many of the other maps of the original Development Plan. The site is zoned as 'Existing Residential' (R2), the objective for which is to protect and improve these areas and to provide facilities and amenities incidental to those areas.

Development management standards - Dwellings shall be provided with a minimum private amenity space of 48m² in the Town Centre and 75m² in green field sites. A minimum garden depth of 11m should be provided but exceptions may be made for residential units proposed for elderly persons or persons with a disability/special requirements. Site coverage and plot ratio (12.9) requires 50% site coverage for residential areas and a plot ratio of 0.5-1.0 in areas other than town centres and outer green field sites. Extensions to dwellings must follow the pattern of the existing house (12.41.1). Boundary treatments should be in the form of screen walls which should be 2m (in height) along the side boundaries (12.32).

5.5. **Natural Heritage Designations**

Killarney National Park, Macgillycuddy Reeks and Caragh River Catchment SAC (site code 000365) and Killarney National Park SPA (Site code 004038) are located approx. 600m to the north, west and south.

6.0 The Appeal

6.1. Grounds of Appeal

A Third-Party Appeal has been received from the owners of the properties to the immediate east of the site (No. 10 Sunny Hill Upper). The submission can be summarised as follows:

- **Established pattern of development** – the proposed development would be out of character with the other houses on Upper Sunny Hill and would set a precedence for others in the neighbourhood to make similar structures on their flat roofs.
- **Overdevelopment** – The proposal represents overdevelopment of the property and will result in overlooking of other properties. In order to access the sunroom, it will be necessary to go through another internal room. Surely this is contrary to the Building/Fire Regulations?
- **Overlooking** – the windows will directly overlook the adjoining property opposite and will overlook the appellant's garden and house. Even with 50% reduction in windows, the proposal will result in loss of privacy to adjoining properties.
- **Overshadowing** – the sunroom extension will reduce and block sunlight coming into the 2 skylights in the extension of the appellant's property.
- **Noise and disturbance** – the use of the flat roof caused significant issues regarding noise and disturbance from gatherings and parties on the balcony. The appellants do not want the sunroom to be attached to their bedroom wall which is likely to result in similar problems.
- **Proximity and encroachment** – the proposed development encroach on the adjoining dwelling with no details of how the construction and weathering will be achieved without adversely affecting the appellant's property. The position of the structure will overhang the appellant's gutter, fascia and soffit. No consent has been given for this encroachment.
- **Unauthorised development** – the flat roof deck and garden area with balustrade was constructed without planning permission. Following a

complaint, the Enforcement Section confirmed that the applicant had applied for retention of the structure and the application for retention was refused. The applicant was instructed to remove the structure, but he continued to use it for his own leisure. Subsequently, the applicant applied for a sunroom on the flat roof, which would be attached to the appellant's wall. However, in the meantime, the appellants feel that the planning authority has shown undue leniency towards the applicant on the matter and has failed to deal with the unauthorised nature of the development in a timely manner, which undermines their faith in the integrity of the system.

6.2. Response from first party

A response to the grounds of appeal was received from the first party on 10th December 2020. The main substance of the response was in the form of a rebuttal of the grounds of appeal. The following points of note were made:

Background – the proposed development is to construct a first-floor sunroom extension which will include a new living area to the existing apartment.

Sound insulation – the proposed sunroom incorporates a separate boundary wall with appropriate sound proofing and triple glazed windows. It would not be directly attached to the adjoining property at No. 10.

Overlooking - The apartment already has windows overlooking the flat roof and the proposed sunroom windows would face No. 12 Upper Sunny Hill and these neighbours have no objection to the proposal. The applicant is not aware of any other local objection to the proposed development.

No loss of amenity – the proposed extension would be considerably smaller and shorter than the existing extension already in place at No. 10. Photographs (with annotations and captions) have been provided to demonstrate this point and that the existing extension to the rear of the appellant's property completely overshadows the area of the proposed extension on the appeal site.

6.3. Planning Authority Response

The P.A. has not responded to the grounds of appeal.

7.0 Assessment

I consider that the issues arising can be assessed under the following headings:

- Principle of development
- Residential amenity
- Encroachment
- Environmental Impact Assessment
- Appropriate Assessment

7.1. Principle of development

- 7.1.1. The site is located in an established residential area which comprises a densely developed urban area of small, terraced houses on narrow plots. It is noted, however, that No. 11 is larger than the other houses in the terrace (approx. double the size), and may have been reconstructed, amalgamated or at least extended in the past. It also differs from the other houses in the terrace in that it has been converted into two apartments, one on each of the ground and first floors. It is further noted that the rear gardens of the terrace are located on the far side (to the north) of the rear laneway that runs behind the terrace. However, a house has been constructed in what would have been the rear garden of No. 11 (i.e. No. 12 Upper Sunny Hill). Thus, the rear garden for No. 10 (appellant's) referred to in the grounds of appeal is the walled-off area to the north of the lane opposite No. 10.
- 7.1.2. The properties within the original terrace have generally not been altered and extended to a significant degree, apart from Nos. 10 and 11. The appeal site, in addition to being approx. twice the size of the original terraced properties and being converted into apartments, has a 2-storey rear return with a single-storey pitched roof extension on the western side and a flat-roofed single storey extension to the east of the return. The flat roof extension does not extend to the boundary with the laneway and there is a small rear yard just inside the northern boundary. No. 10 has been extended with a 2-storey return which extends to the boundary with the laneway but leaves a narrow yard to the east of this extension. The rear garden of No. 10 appears to have an outbuilding with a lean-to roof of corrugated iron immediately to the north of the lane and a further outbuilding with a pitched roof at

the northern end of the garden. These structures can be seen from the photographs on the files.

- 7.1.3. The site of the proposed sunroom extension has been used as an unauthorised balcony/roof garden which has resulted in a loss of amenity to neighbouring dwellings. It is considered that the erection of an extension at this location which would remove the ability to use it as a roof garden would be acceptable in principle as it would provide for additional internal recreational space within the apartment which would be less likely to be the source of potential nuisance. The appellant has objected to the unauthorised nature of the balcony and the way in which the applicant has engaged or failed to adequately engage with the planning authority. It is considered, however, that the applicant has sought to regularise the unauthorised works by removing the balustrade and the proposed development would address the potential mis use of the space. This is considered to be reasonable.
- 7.1.4. The proposed sunroom would occupy the flat roof area of the existing ground floor extension only and would leave the existing rear yard in place. It would not extend as far as the rear boundary, unlike the extension to the east. It is considered, therefore, that the proposed development would not result in overdevelopment of the site and would be unlikely to create a precedent as No. 11 is markedly different to the other houses in the terrace.

7.2. Residential amenity

- 7.2.1. **Overlooking** - The third party has stated that the proposed development would overlook adjoining properties and the appellant's rear garden to the north of the lane. It is noted, however, that the appellant's garden has an outbuilding just inside the screen wall which screens much of the rear garden and in addition, the side wall of the appellant's rear return would further screen the rear garden from any views from the sunroom. It is also likely that any views across to the rear garden would be at an oblique angle. The only other property which could be affected is No. 12 and no objection has been received from the owners/occupiers of this property.
- 7.2.2. I would agree with the P.A., however, that the amount of glazing is excessive and should be reduced by 50% which would prevent any undue loss of privacy. It is further considered that a folding window is likely to give rise to the same degree of

overlooking as the balcony. Thus, subject to revisions regarding the nature and size of the glazing, it is considered that the proposed development would not give rise to any significant increase in overlooking of the appellant's property or of other adjoining properties.

- 7.2.3. **Overshadowing** – There are velux windows in the western roof slope of the appellant's rear return, which the appellant has stated would be overshadowed by the proposed sunroom. However, it is considered that these windows would be unlikely to experience any significant degree of overshadowing due to the height and relative proximity of both the proposed sunroom and the existing extensions to the rear of these properties. The appellant's garden is small and narrow with an estimated area of 40m² and a width of 4.5m. It has a North-South orientation, and the appeal site is located to the south/southwest. However, there is an existing outbuilding at the southern end of the garden, together with screen walls which are located along the eastern and western boundaries, at a height of c.2m, which together with the existing rear return and extensions at the rear of the terrace cast shadows over the rear garden.
- 7.2.4. **Noise and disturbance** – the proposed development would address any issues that would have arisen from the use of the unauthorised balcony, as the space would be enclosed and sealed. The applicant has also advised that there would be a separate wall along the common boundary which would contain sound insulation (which is indicated on the submitted plans) and that the windows would be triple glazed.
- 7.2.5. In conclusion, it is considered that the proposed sunroom would not result in any undue increase in overlooking or overshadowing and would not result in any serious injury to the residential amenities of adjoining properties.

7.3. **Encroachment**

- 7.3.1. The appellant has raised concerns regarding encroachment of the extension in terms of overhanging fascias, soffits and gutters. Furthermore, the appellant states that no consent has been given for any such encroachment. It is unclear whether there is likely to be any significant degree of encroachment, as an independent wall is proposed. This would be a civil matter in any case, and the onus is on the developer to ensure that the development, if granted, can be implemented.

7.4. Environmental Impact Assessment

Having regard to the nature and scale of the proposed development within the development boundary of Killarney town on serviced lands, 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.

7.5. Appropriate Assessment

- 7.5.1. The site is located within 600m of two European sites, Killarney National Park, Macgillycuddy Reeks and Caragh River Catchment SAC (site code 000365) and Killarney National Park SPA (Site code 004038). There are no known hydrological links to the protected sites. Given the scale and nature of the development, the distances involved, that the site is located in an established urban area, on brownfield and serviced lands, it is considered that no appropriate assessment issues are likely to arise.

8.0 Recommendation

It is recommended that permission be granted subject to conditions for the reasons and considerations set out below.

9.0 Reasons and Considerations

- 9.1. Having regard to the policies and objectives as set out in the Killarney Town Development Plan 2009-2015 (as varied and extended), to the scale and nature of the proposed development and to the nature and character of the surrounding environment, it is considered that subject to compliance with the conditions set out below, the proposed development would be an acceptable form of development at this location and would not seriously injure the amenities of the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. 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 to the Board on the 10th day of December 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.

Reason: In the interest of clarity.

2. The proposed development shall be amended as follows:
 - (a) The proposed folding window shall be omitted and shall be replaced by a standard window with a width no greater than 1800mm.

The revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development

Reason: In the interest of residential amenity.

3. Details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

4. 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.

Reason: In order to safeguard the residential amenities of property in the vicinity.

5. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

Mary Kennelly
Senior Planning Inspector

1st June 2020