



An
Bord
Pleanála

Inspector's Report

ABP-308889-20

Development	Retention of two-storey dwelling house including attached domestic garage.
Location	Drumduff North Td., Drumshanbo, Co Leitrim
Planning Authority	Leitrim County Council
Planning Authority Reg. Ref.	P.20/160
Applicant	Vincent McMorrow
Type of Application	Permission
Planning Authority Decision	Grant permission subject to conditions
Type of Appeal	First Party v. condition
Appellant	Vincent McMorrow
Observer(s)	None
Date of Site Inspection	11 th March 2021
Inspector	Máire Daly

1.0 Site Location and Description

- 1.1. The appeal site is located in the townland of Drumduff north, on the outskirts of the town of Drumshanbo in north County Leitrim. The subject site is located on the eastern side of the R207 regional road, just within the 60km/h speed limit and approximately 1.3km south of Drumshanbo town centre. The area is characterised by detached dwellings, developed in a ribbon fashion along both sides of the R207 on approach to the town.
- 1.2. The subject site has an area of circa. 0.1206ha and consists of a developed site with a vehicular entrance and driveway leading to a two-storey gable fronted dwelling house with a single storey garage attached to the southern side, with a balcony area over same accessible from first floor level. Existing dwelling houses are located on either side of the subject site to both the north and south. The adjacent site to the south contains the last dwelling house in the line of ribbon development along this stretch of the regional road and is comprised of a single storey detached dwelling house.

2.0 Proposed Development

- 2.1. The proposed development comprises:
 - The retention of a two-storey detached dwelling house and attached garage of total 191sqm in area (160.77sqm dwelling house and 30.23sqm attached garage), entrance, driveway and associated works.
- 2.2. In addition to the standard planning application documentation and drawings, the application was accompanied by an Appropriate Assessment Screening Report.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority granted permission subject to 2 no. conditions, the second of which stated the following:

Within 24 weeks of the final grant of planning permission (unless otherwise agreed with the planning authority) the door on the south elevation on the first floor shall be replaced with a window of similar proportions to those on the north elevation. Written confirmation, floorplans and elevations, along with photographs, showing the completion of the works, shall be submitted to the Planning Authority.

Reason: In the interest of proper planning and development and residential amenity.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the planning officer (November 2020) reflects the decision of the Planning Authority. The Planning Officer noted the following in their report:

- With the exception of some alterations to the style, location and number of windows/doors and the flat roof garage, the design of the dwelling is somewhat reflective of the overall design of the dwelling as originally permitted (P.A. Ref. P.4491).
- Concerns highlighted regarding the flat roof of the garage which also would appear to act as a balcony/roof patio area. The area planner considered the retention of this element would set an undesirable precedent. A door off the first-floor landing area provides access directly onto the flat roof. The area planner included a condition to replace same door with a window to restrict access to the roof terrace area.
- No development contributions are applicable to the proposal.

3.2.2. Other Technical Reports

- District Engineer – report dated 29/10/2020 – no objection.
- Enforcement Officer – email dated 30/10/2020 – the application has not arisen from any enforcement action and there are no objections to the development subject to it satisfying standard planning assessment criteria.
- Assistant Chief Fire Officer – report dated 11/11/2020 – no objection.

3.3. Prescribed Bodies

3.3.1. None received.

3.4. Third Party Observations

3.4.1. None.

4.0 Planning History

- Leitrim County Council (LCC) Ref. P.4491 – Permission granted for dwelling house on subject site in April 1978.
- LCC Ref. P.4068 – Permission sought for dwelling house on site. Further information requested 14th June 1977 – no response to FI request received.

5.0 Policy Context

5.1. Development Plan

The policies and objectives of the Leitrim County Development Plan 2015-2021 are relevant.

- **Section 5.1.1 Development Management Requirements** – the following is of note “*Development which is in accordance with aims, policies and objectives of the Plan will be permitted, provided that the development*”
 - *is of materials, form and detailing appropriate to the design and function of the building and locality in which it is set;*
 - *does not materially/detrimentally affect the amenity of local residents, other land and property users or characteristics of the locality by virtue of increased activity, disturbance, noise, dust, fumes, litter & provides satisfactory amenity standards itself;*
- **Section 5.1.4 Rural Areas** - Map 4.3 of the Plan identifies the appeal site as being within a rural area with ‘low capacity/low availability’ for housing, which are areas adjoining towns and villages that are under pressure from residential development. Within such areas Policy 17 of the Plan states that

housing will only be facilitated where an applicant can demonstrate that they fit into at least one of the listed categories.

- **Section 5.3.10 House Extensions**

5.2. Natural Heritage Designations

- 5.2.1. The nearest designated sites to the appeal site is the Kilronan Mountain Bog Natural Heritage Area (NHA) (Site Code:000617) which is located approximately 5.9km to the northwest and the Cuilcagh-Anierin Uplands Special Area of Conservation (SAC) (Site Code: 000584), which is located approximately 6.4km to the northeast.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. A first-party appeal has been lodged against condition no.2 which was attached to the Planning Authority's notification of a decision to grant planning permission. The following is a summary of the grounds of appeal raised:

The applicant asks the Board to give consideration to allowing the existing door access to the concrete roof (over garage) to remain in place for the following reasons:

- The doorway has been in place now for over 40 years for use as a fire escape if required. The applicant and his wife, both in their 70s have mobility issues as a result of previous back operations.
- The existing layout of the first floor means that the stairs is at one end of the building, leaving the distance from the furthest away bedroom to the front door considerably longer than what would be normal if the stairway had a central location in the house.
- The situation that currently exists gives the applicant and his wife more peace of mind when occupying the bedrooms at night.
- The applicant has sought approval from the planning authority to remove condition no.2 prior to lodging this appeal. No response was received.

6.2. Planning Authority Response

6.2.1. The Planning Authority's response to the grounds of appeal can be summarised as follows:

- The appellant had made a submission to Leitrim County Council during the appeal period and prior to making this appeal. It was made in the context of the clause which states "unless otherwise agreed with the planning authority". The clause relates to the timescale/period of the works and submission and not the content of the condition.
- The subject door makes provision for access onto a flat roof which is surrounded by railing and is therefore as a result in effect a balcony. Any requirements for fire safety which are assessed under separate legislation are not within the remit of the planning assessment.
- The matters pertinent to the issue are therefore those of residential amenity and potential overlooking. Although the dwellings at this location enjoy generous sites, the distance between the side of the dwelling house on which the balcony is located and the boundary of the dwelling to the south is only 3.85 meters. This would result in overlooking and a consequent loss of residential amenity to the private rear garden of the dwelling to the south and would be contrary to the County Development Plan 2015 to 2021.
- The planning authority also considers that the retention of this element of the proposal would set an undesirable precedent for such development.

6.3. Observations

- None.

7.0 Assessment

7.1. This is a first-party appeal only against Conditions no. 2 attached to the planning authority's decision to grant permission. Condition no. 2 requires the applicant to replace the door at first floor level on the southern elevation of the dwelling house

with a window of similar proportions to those on the north elevation, within 24 weeks of the final grant of planning permission.

7.2. Having regard to the nature and scale of the proposed development and the nature of condition no.2 it is considered that the determination by the Board of the application, as if it had been made to it in the first instance is not needed, and that a de novo assessment would not be warranted. Therefore, the Board should determine the matters raised in the appeal only, in accordance with Section 139 of the Planning and Development Act 2000, as amended.

7.3. Condition no.2

7.3.1. The applicant in his appeal states that the subject doorway on the southern elevation at first floor level has been in place for the past 40 years for use as a fire escape if required. He also states that due to the location of the stairs (on the southern side of the house) and the existing layout of the dwelling house at first floor level, that a greater travel distance is involved to get from the furthest away bedroom to the front door. The presence of this door at first floor level, opening out onto the garage roof area, therefore gives the applicant and his wife peace of mind when occupying the bedrooms at night.

7.3.2. Having examined the submitted floor plans I note that for an occupant to exit the first floor onto the flat roof, one would have to pass the staircase in all cases bar one, that exception is when exiting from the front southernmost bedroom. The applicant refers to the location of the stairs and the travel distance to the front door, this does not appear to be justified when examining the floor plans for three of the upstairs bedrooms and the bathroom, which are all located closer to the staircase than to the subject first floor balcony door. In addition, I note the area planner's response to the appeal where they state that "any requirements for fire safety, which are assessed under separate legislation, are not within the remit of the planning assessment". The dwelling house, the subject of the initial application, is of average size and no justification has been submitted with the appeal to suggest that this exit would be required under fire safety grounds. In addition, I note that the door was not discussed in the submission received on file from the Council's fire officer.

7.3.3. Having visited the site I noted that the subject door provides access to a flat concrete roof above the garage and that this area is then surrounded along its edges by

existing hand railing circa. 1.1m in height. This would suggest that the area is used as a balcony or terrace and not just as a means of a fire escape. In addition, I noted that several potted plants were located within this area which again suggests the terrace area is used on a regular basis. I note the area planner's concerns in relation to use of same area in their response to the appeal.

- 7.3.4. Section 5.1.1 of the Development Plan lists Development Management Requirements. The following in relation to residential amenity is emphasised under this section, development should "*not materially/detrimentally affect the amenity of local residents, other land and property users or characteristics of the locality by virtue of increased activity, disturbance, noise, dust, fumes, litter & provides satisfactory amenity standards itself*". The accessible flat roof area is circa 3m above ground floor level and at its nearest point is located 2.19m from the boundary of the adjoining site to the south. By virtue of the balcony's location it allows for significant overlooking of the private rear garden of this adjoining residential property and in my opinion therefore would result in a consequent loss of residential amenity for the occupants of this adjoining property. While I note that a window exists on the eastern side of the southern elevation, within close proximity of the adjoining property also, this is a bathroom window and therefore would not give rise to the same opportunity for overlooking.
- 7.3.5. While I acknowledge the area planner's concerns in relation to the undesirable precedent that this type of balcony may set for future development in the area, it is my opinion that all applications should be assessed and determined on their own merits having regard to the sensitivities of the receiving environment. In this case I would consider the matters pertinent to the appeal are those relating to the impacts on residential amenity and potential overlooking which have been dealt with in the aforementioned paragraphs.
- 7.3.6. In summary I would consider the retention of this element (access doorway onto flat roof at first floor level) of the development to be contrary to the provisions of the development plan and by virtue of the access it provides to this concrete roof/terrace area would result in overlooking and loss of residential amenity for the adjoining property to the south. Therefore, in conclusion, it is my opinion that condition no.2 is justified and should remain.

7.4. Appropriate Assessment

Having regard to the nature and scale of the development for which retention is sought, the nature of the receiving environment and the proximity to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development 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. Having regard to the nature of the condition the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and, based on the reasons and considerations set out below, directs the said Council under subsection (1) of section 139 of the Planning and Development Act, 2000 to ATTACH condition number 2 and the reason therefor.

9.0 Reasons and Considerations

Having regard to the residential nature of the site and that of the adjoining properties, and to the pattern of development in the area, it is considered that the proposed access doorway to the flat roof area and this area's location with respect to adjoining property would provide opportunity for overlooking of the private amenity space of this adjoining property and would therefore seriously injure the amenities of the property by reason of overlooking and loss of privacy. The planning authority's Condition 2 requiring the replacement of this door with a suitably scaled window is therefore considered warranted.

Máire Daly
Planning Inspector

08th April 2021