



An
Bord
Pleanála

Inspector's Report ABP-309220-21

Development	(a) Retain renovations, alterations and extension to existing dwelling, (b) complete renovations, alterations and extensions to existing dwelling together with all ancillary site works.
Location	18 Limerick Road, Ennis, Co. Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	20796
Applicant(s)	Sinead Madden
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Sally Cunningham & Mary McCullagh
Date of Site Inspection	15 th April 2021
Inspector	Colin McBride

1.0 Site Location and Description

1.1. The appeal site, which has a stated area of 0.035 hectares, is located on the western side of the Clare Road (R458). The site is occupied by no. 18, which was up until recently a single-storey dwelling. The dwelling has been extended to the rear and at first floor level with a mansard style roof profile. Adjoining dwellings include a single-storey dwelling to the north and one to south (the area is characterised by such). To the west the site backs onto the rear boundary of no. 14 and 13 Limerick Road, which are both single-storey dwellings (the appellants' properties).

2.0 Proposed Development

2.1. Permission is sought for retention and completion of an extension and renovation of an existing dwelling. The extension in question is to the ground floor level and a first floor extension with a new roof profile with the first floor level within the roof space. The proposed extension has a floor area 91.7sqm. The dwelling was a single-storey dwelling with a pitched roof and the roof profile has been replaced by a mansard style roof.

3.0 Planning Authority Decision

3.1. Decision

Permission was granted subject to 6 conditions. Of note is the following condition.

Condition no. 2: The use of the first floor is not permitted for habitable accommodation and shall be used for storage purposes only.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planning Report (15/12/21): The physical scale of the extension was considered satisfactory. The first floor was noted as not complying with Building Regulations regarding ceiling height and a condition restricting it to storage use was considered appropriate. Permission was granted subject to the conditions outlined above.

3.3. Prescribed Bodies

3.3.1 None.

3.4. Third Party Observations

3.4.1 Two submission were received...

Sally Cunningham, 13 Limerick Road, Ennis, Co. Clare.

Mary McCullough 14 Limerick Road, Ennis, Co. Clare.

The issues raised can be summarised as follows...

- Unauthorised development, non-compliance with development plan separation distances, loss of residential amenity/overlooking, overshadowing, set an undesirable precedent.

4.0 Planning History

4.1 R19 59: Declaration issues declaring that the demolition of an existing garage and construction of a side extension to no. 18 Limerick Road constitutes development and is not exempted development.

5.0 Policy Context

5.1. Development Plan

The relevant Development Plan is the Clare County Development Plan 2017-2023. The appeal site is zoned 'existing residential' with a stated objective is 'to conserve and enhance the quality and character of the areas, to protect residential amenities and to allow for small scale infill development which is appropriate to the character and pattern of development in the immediate area and uses that enhance existing residential communities. Existing residential zoned land may also provide for small-scale home-based employment uses where the primary residential use will be maintained'.

5.2. Natural Heritage Designations

5.2.1 None in the vicinity.

5.3. EIA Screening

5.3.1 Having regard to nature and scale of the development, which is retention and completion of an extension to an existing dwelling, 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 A third party appeal has been lodged by Sally Cunningham & Mary McCullough. The grounds of appeal are as follows...

- The appellants are the occupants of two dwellings located to the west that back onto the appeal site. The appellants raise concerns regarding the granting of permission for development that was carried out in an unauthorised manner and was subject to enforcement.
- The appellants state concerns regarding condition no.s 2 and 4 relating to restriction of the development in particular use of the first floor for habitable use and the fact that these conditions are unenforceable.
- The proposal does not comply with Development Plan policy with inadequate separation distances (11m requirement).
- Loss of residential amenity including overlooking into private living spaces, gardens and impact of construction activity.
- The fact that unauthorised works took place after issuing of a warning letter.
- The appellants' question the accuracy of development description, the public notices and compliance with building regulations.

6.2. Applicant Response

6.2.1 Response by Sinead Madden, 18 Limerick Road, Ennis, Co. Clare.

- Works took place while the enforcement notice was in effect to make the house habitable as it is the applicant's primary residence. The applicant as under the impression the works were exempt however once informed by the Council sought to rectify the situation.
- Before works took place the house did not have a 11m deep rear garden space.
- The applicant is still maintaining a rear garden space of 90.1sqm or 30% of private opens space.
- The applicant has no issue with making all glazing at first floor level obscure as per the drawings submitted.

6.3 Planning Authority Response

6.3.1 Response by Clare County Council.

- The Planning Authority do not consider that the windows in the first floor level would lead to overlooking however consider the proximity of such would have an adverse impact on adjoining amenities. In this regard the Planning Authority applied a condition restricting use of the first floor level.

7.0 Assessment

7.1. Having inspected the site and associated documents, the main issues can be assessed under the following headings.

Design, scale and adjoining amenity.

Unauthorised development

Building regulations

7.2. Design scale and adjoining amenity:

7.2.1 The proposal is for retention and completion of an extension to an existing single-storey dwelling. The extension includes a ground floor extension to the rear and an extension providing accommodation at first floor level by replacing the roof profile with mansard style roof with a new ridge height of 5.35m. The proposed extension provides for an additional living room at ground floor level and 2 no. ensuite bedroom at first floor level.

7.2.3 The overall physical scale of the extension to the existing dwelling and provision of mansard roof would be acceptable in the context of its overall scale and physical impact in terms of the visual amenities of the area. I would be of the view that despite the fact the roof profile is increased in height and has a mansard style roof, this design and scale would not be a visually obtrusive element or out of character at this location.

7.2.4 Bedroom 4 is served by roof lights on the northern and southern roof plane whereas bedroom 3 is served by roof lights on the western roof plane. The windows serving bedroom 4 are high level windows and would be satisfactory in the context of adjoining amenity. The windows serving bedroom 3 are larger windows and are located on a roof plane that has a near vertical angle and are orientated towards the rear of the appellants' property. The Planning Authority questioned whether these windows would provide for overlooking as they are roof lights and the plans submitted provided for these windows being opaque. The appellants raise concerns regarding separation distance noting a requirement for 11m separation distance. Development plan policy and the Development management Guidelines in Appendix 1 (A1.3.2 Urban Residential Development) state that "normally, a rear garden depth of 11m will be required. This is a minimum depth and larger distances may be required dependent on the nature and scale of the subject development. In the case of high density, infill developments or for housing for the older people, shorter garden lengths may be permitted if there are no overlooking issues". A common requirement for Development Plan is a 22m separation distance between opposing first floor windows. This is not included in the Clare County Development Plan.

7.2.5 In my view the physical scale of the extension and its proximity relative to the adjoining properties is satisfactory as the scale of the dwelling is still modest in scale and accommodation at first floor level is confined to the roof profile. I would be satisfied that the proposed extension would be acceptable in the context of its physical bulk and scale relative to adjoining properties. In relation to separation distances I do not consider that the separation distance policy of 11m applies in this case with the existing dwelling having less than this and the extension projecting no further than the existing rear building line of the dwelling on site. In relation to separation distances at first floor level, the existing dwellings are single-storey so there are no opposing windows.

7.2.6 I would consider that the provision of the 2 no. windows serving bedroom 3 and their size, design and angle is problematic. I would disagree with the Planning Authority's assessment that overlooking is unlikely to be possible from these windows. These windows are large in volume and the western roof plane is close to vertical that these windows would facilitate overlooking to the rear of the dwellings to the west. Although there is no requirement for a 22m separation distance between back to back first floor windows and the dwelling immediately west is single-storey (no. 14 Limerick Road), some degree of separation is required. I would be of the view that this configuration would render it impossible for the appellants' dwelling at no. 14 to be extended in a similar manner due to the size of the windows proposed and the small degree of separation distance provided.

7.2.7 The applicant is proposing that the 2 no. first floor windows serving bedroom be fitted with opaque glazing. At the time of the site visit the extension is complete and these windows have normal glazing. I am of the view that these windows would be injurious to residential amenities through overlooking due to their orientation, size and proximity to the rear of the dwellings to the west of the site. I am of the view that the need to provide for opaque glazing demonstrates this fact and that the need to insert such glazing constitutes substandard residential development. I would also consider that the proximity of these windows to the rear of no. 14 would inhibit the extension of the appellant's dwelling (no. 14) in a similar manner. The proposed

development would therefore be injurious to residential amenity and contrary to the proper planning and sustainable development of the area.

7.3 Unauthorised development:

7.3.1 One of the main complaints in the appeal submission is the fact that unauthorised development has taken place on site and that enforcement action was undertaken including a warning letter. The appellants also note that work continued after issuing of the warning letter. The proposal is for retention of an extension and completion of such. At the time of the site inspection it would appear the extension is fully complete.

7.3.2 There is provision for retention applications under the Planning and Development Act, 2000. All powers and functions in relation to unauthorised development are a matter for the Local Authority to deal with and it is not within the remit of the Board to deal with issues concerning unauthorised development. The Local Authority have ample powers under the Planning and Development Act to deal with such issues. As retention applications are provided for under the Planning and Development Act such are dealt with on their merits and development cannot be precluded purely on the basis that unauthorised development has taken place on site.

7.4 Building regulations:

7.4.1 The issue of building regulations is raised in the appeal. The floor to ceiling height of the first floor does not fulfil the requirements for habitable rooms set down under the Building Regulations (2.4m over 50% of the floor space). The ceiling height over the entire first floor is 2.377m. The Planning Authority applied a condition restricting use to storage use and not as habitable rooms, whereas the appellants are of the view that this is an unenforceable condition with the floor plan clearly indicating 2 no. bedrooms.

7.4.2 The application of Building Regulations is not a planning function and is not an issue that is assessed or determined by the Board. There is obligation to comply with

Building regulations and provision for enforcement of such through Building Control at Local Authority level. I intend to assess the proposal based on the development sought and described in the public notices and the layouts and floor plans submitted. As noted earlier I have issues regarding the design and layout the proposal in regards to first floor windows and separation distances and such is outlined in previous section of this report.

8.0 Appropriate Assessment

8.1 Having regard to the nature and scale of the proposed development and its 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.

9.0 Recommendation

9.1. I recommend a refusal based on the following reason:

10.0 Reasons and Considerations

1. Having regard to the design and scale of the proposed development, in particular the 2 no. windows serving bedroom no. 3 on the western elevation at first floor level, which by virtue of their size, orientation and proximity to the rear of existing of the adjoining dwellings to the west, would have an overbearing impact, result in an unacceptable degree of overlooking and prevent the extension of such dwellings in a similar manner. The proposal to insert opaque glazing in these windows would also represent substandard residential development for the future occupants of the proposed development and illustrate the inherent issues caused by their design, scale, orientation and proximity to adjoining dwellings. The proposed development would be seriously injurious to the residential amenities of adjoining properties and would, therefore, be contrary to the proper planning and sustainable development of the area.

Colin McBride
Planning Inspector

14th May 2021