



An
Bord
Pleanála

Inspector's Report ABP-309245-21

Development	Permission to retain extension to rear of Cork's footwear shop, change of use from commercial to residential, permission to complete works to accommodate two dwellings and all associated site works.
Location	Main Street, Urlingford Co. Kilkenny
Planning Authority	Kilkenny County Council.
Planning Authority Reg. Ref.	20/709
Applicant(s)	SFT Moore Developers Ltd.
Type of Application	Permission.
Planning Authority Decision	Refuse permission
Type of Appeal	First Party
Appellant(s)	SFT Moore Developers Ltd.
Observer(s)	(1) Mary Shaw & Joe Fitzgerald
Date of Site Inspection	16 th day of March 2021
Inspector	Fergal Ó Bric

1.0 Site Location and Description

- 1.1. The appeal site has a stated area of 0.19 hectares and is located on the north-western side of Main Street, Urlingford, Co. Kilkenny. The site is within the town centre and accommodates two terraced structures (one a former shop and a dwelling) with long narrow rear gardens. Works have commenced but are presently ceased on site. The works completed include the removal of an internal partition wall and upper-level floors and the construction of two storey extensions to the rear of both properties. The two structures present as one internally. The rear elevations of both properties, including a single storey extension have been removed as have a considerable amount of the first-floor areas. A two-storey flat roofed extension has been constructed across the full width of the rear of the properties. The site is within the town centre 50 kilometre per hour speed control zone, public lighting is in place; and there is a public footpath along both sides of the street.
- 1.2. Within this part of the Main Street there are a mix of uses including residential properties, offices, a post office, and a bank. To the north-east, the site abuts the curtilage of a two-storey, terraced house that also fronts onto the Main Street, with a tall (approximately three metres) limestone party boundary wall, which has been partially knocked. To the southeast, the site abuts the curtilage of a two-storey house that fronts onto the Main Street and there is an opening in the boundary wall from the appeal site to this property.

2.0 Proposed Development

- 2.1. Permission is sought to retain two storey extensions to the rear and permission to change the use of the vacant shop on site from commercial to residential and to complete the project to accommodate two dwellings on site. No dedicated-on site car parking is proposed to serve the development; however, it is noted that there is on-street parking available along the site frontage. Water supply would be from the

public mains and foul waste is discharged to the public foul sewer. Surface water would be discharged to a soakpit.

3.0 Planning Authority Decision

3.1. Decision

By Order dated 14th day of December 2020, Kilkenny County Council issued a notification of decision to refuse permission for one reason as follows:

1. Having regard to the proximity of the rear two-storey extension to the northeast site boundary together with its scale and height, it is considered that the development detracts from the residential amenities of the adjoining property and depreciates the property values. By reason of (a) overly dominant visual impact (b) failure to demonstrate that the sunlight and daylight values for the neighbouring dwelling and associated private open space is not adversely affected, and (c) by reason the poor quality of design, scale, bulk, and height of the extension. The development would be contrary to the policy as stated in Section 12.5.6 of the Kilkenny County Development Plan 2014-2020, that the “principal requirement for any proposed domestic extension is that the design should have regard to the need for light and privacy of adjoining properties. The form and design of the existing building should be followed, and the extension should integrate fully with the existing building” and would, therefore, be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The basis for the Planning Authority decision include:

- The development was screened for Appropriate Assessment and Environmental Impact Assessment. Both screenings concluded that due to the nature and modest scale of the development, and absence of sensitive receptors, neither were required.

- The Executive Planner recommended a refusal of planning permission on the following grounds: Due to the scale, bulk, and height of the rear two storey extensions that it would adversely impact upon neighbouring residential amenities and that the development would be contrary to the provisions of the Development Plan regarding domestic extensions.

3.2.2. Other Technical Reports

Road Design: No objections, subject to conditions

Conservation Officer: Further information requested regarding breach of rear boundary wall, which forms part of the curtilage of protected structures.

3.3. **Third Party Observations**

One observation was received from the neighbouring residents, Mary Shaw & Joe Fitzgerald, who reside in the dwelling immediately north-east of the appeal site, at Main Street, Urlingford. Their submission to the Planning Authority raised the following issues:

Design and Layout:

- The applicants have constructed a 7.4-metre-deep unauthorised extension almost the entire width of the property, over two storeys, extending to 5.7 metres in height. To extension comes to within 140mm of the party boundary wall.
- The scale, mass and design of the extension is out of character with the existing building on the appeal site and with neighbouring buildings.
- The rear extension has an overbearing impact on the observers' property.
- Good practice in terms of not impacting upon daylight, whereby the 45-degree rule would apply, which would limit the rear extension depth to approximately 3.5 metres has not been followed in this instance. In practice anything beyond the 45-degree projection has the potential to adversely impact upon the neighbouring property.
- The observers would have no objection to the development of a modest rear extension, but what has been constructed is unacceptable.

- The scale and design of the extension reduces privacy in the observers' rear garden area. While first floor bedroom windows in the original building would have overlooked neighbouring gardens, views were limited due to the existence of the boundary walls, the height of the windows and their size. The windows at first floor level within the extension are large, set above the height of the common boundary and remove all privacy.
- The first-floor element of the extension should be demolished, the rear projection reduced and a modest architecturally designed extension in keeping with the architectural integrity of the existing building and which does not adversely impact upon the neighbouring property.
- The presentation of revised proposals should be accompanied by a design statement, prepared by a suitably qualified architect, including a shadow analysis study, showing potential impacts upon neighbouring properties.

Residential Amenity:

- Due to the height and scale of the rear extension, the observers' property is deprived of natural daylight and sunlight and adversely impacts upon their residential amenity. These would have been enjoyed by the neighbours, had the extension not been constructed.
- Any structure that exceeds the height of the boundary wall beyond the 45-degree projection would adversely impact on the neighbouring property.
- The extension casts a shadow over most of the rear garden where the neighbours sit out at their back door to enjoy the early evening sunshine.

Other Issues:

- Earlier this year demolition works commenced and subsequently the two-storey extension was constructed, a complaint was made to the Planning Authority, however, works continued until the structure which now exists was developed.
- The original structures comprised a single room shop connected to a three bedroomed two-storey house, with a single storey extension to the rear.

- When clearing the garden at the time of constructing the extension, the applicants removed a significant portion of the common boundary wall and trespassed on the observers' property.
- The applicants should be required to reinstate the rear common boundary damaged in the course of the works.
- The extension has reduced the value of the observers' property by diminishing the level of residential amenity previously enjoyed by them.

3.4. Further Observations

Observations were invited from the Heritage Council, The Arts Council, An Taisce, the Development Applications Unit and Failte Ireland as part of the appeal, however, no comments were received from any of the prescribed bodies.

4.0 Planning History

I am not aware of any planning history pertaining to the appeal site.

Enforcement:

Enf 20/027-A warning letter was issued relating to the alleged unauthorised development to the rear of Cook's shoe shop.

5.0 Policy and Context

5.1. Development Plan

The relevant document is the Kilkenny County Development Plan 2014-2020. Within the County Settlement Hierarchy, Urlingford is within the category 'Smaller Towns and Villages'. There is no statutory plan in force for Urlingford – the most recent one having expired in 2010. "Each of these towns will be subject to a map within this Plan which depicts a settlement boundary, within which development will be considered. There are no site-specific land use zoning objectives in these settlements. Development proposals within the boundary will be considered on their merits against the policies and objectives contained in this core strategy and the

Development Plan generally”. Figure 3.3 of the Plan indicates that the site is within the ‘settlement boundary for Urlingford’.

Section 12.5.6 of the Plan pertains to domestic extensions where the following is set out:

“The principal requirement for any proposed domestic extension is that the design should have regard to the need for light and privacy of adjoining properties. The form and design of the existing building should be followed, and the extension should integrate fully with the existing building by using similar detailing and window proportions. Where an existing dwelling is being remodelled and extended, the proposed extension will be considered on its own merits. A high standard of modern design and materials will be encouraged in this instance”.

5.2. Draft Kilkenny County Development Plan 2021-2026

Within the County Settlement Hierarchy, Urlingford is designated within the category ‘Rural Towns and Villages’. Figure 4.25 of the Draft Plan indicates that the site is within the ‘settlement boundary for Urlingford’. There are no site-specific land use zoning objectives in these settlements. Development proposals within the boundary will be considered on their merits against the policies and objectives contained in this core strategy and the Development Plan generally”.

Section 13.16 of the Draft Plan pertains to domestic extensions where the same guiding principles as set out within Section 12.5.6 of the current Development Plan are reiterated.

5.3. Natural Heritage Designations

The site is neither within nor immediately abutting any natural heritage site. The closest such is The Loughans Special Area of Conservation (Site code 000407) – is

located approximately 2.8 kilometres north-northeast of the appeal site. There is no surface water pathway connection between the two.

6.0 The Appeal

6.1. Grounds of Appeal

A first party appeal by Michael Reilly, Consulting Engineer on behalf of the applicants, SFT Moore Developers Ltd, can be summarised as follows-

Principle of Development:

- The policy within the Development Plan regarding domestic extensions upon which the refusal reason is based, is not cast in stone, but is a guiding principle which can be varied, and that the relaxation of the policy does not in essence, contravene the Development Plan.

Design and Layout:

- The Planning Officer incorrectly describes the development as having an overly dominant visual impact. The extension extends across the width of the two properties but does not exceed the ridge height along the street front.
- No loss of daylight arises from the extension, the gable wall can be plastered in a white plaster finish to better reflect daylight.
- There are no gable windows at first floor level within the extension and the rear facing windows at first floor level are bedroom windows, and consequently mostly occupied at night-time for sleeping purposes.
- The present design provides good living space with decent sized bedrooms, proper headroom, insulation standards, adequate light, and ventilation for future occupiers.

- By keeping the roof pitch of the extensions low, the extensions are not visible from the street front, reducing the bulk of the building from the rear and side.
- If the Board are mindful to grant planning permission, the applicants would be willing to lower the wall plate of the rear extensions to the height of the party boundary wall and re-roofing this area at an angle of 45 degrees.

Residential Amenity:

- The applicants were not given the opportunity to demonstrate that sunlight or daylight values within neighbouring properties would not be adversely impacted upon.
- Overshadowing arises from the existing party boundary wall and that by virtue of the orientation of the sun, the neighbour's property is almost permanently in shade, particularly from September to March.
- The extension does increase the shadow cast on the neighbouring yard area, but not adversely especially so, given the height of the party boundary wall is approximately 3.2 metres.
- There is extensive rear garden space which is not affected in any way by overshadowing from the existing party boundary wall, existing buildings, or the new extension. The garden is the place one would sit to enjoy the sunshine, not a yard area.
- There is no overlooking of the observers' property, and overshadowing of the rear yard area is minimal, and non-existent within the rear garden area.

Other Issues:

- The applicants purchased a shoe shop with associated private accommodation which had two ground floor rear extensions, constructed pre-1963.

- The rear annexes were in poor condition and were demolished by the applicants, who constructed a two-storey extension to the rear of the properties.
- The demolition works were completed during the Covid 19 lockdown and the blockwork and roof were constructed once lockdown had ceased, all works halted when directed to do so by the Planning Authority.
- There is a strong demand for domestic accommodation in Urlingford at present.
- There are no social or affordable homes under construction in Urlingford and not likely to be any constructed in the short to medium term.
- There is no evidence that the rear extension depreciates the value of adjoining properties.
- There are dwelling houses on each side of the appeal site and the vacant unused property was beginning to deteriorate and had been subject to anti-social behaviour.
- The applicants purchased the property with the boundary walls in their present state. The appellants are happy to engage with the neighbours to agree a boundary treatment solution.

6.2. Planning Authority Response

The response of Kilkenny County Council, received by An Bord Pleanála on 27th day of January 2021, indicating that they had no further comment on the appeal.

6.3. Third party observation to first party appeal

An observation was made by residents to the north-east of the appeal site, Mary Shaw & Joe Fitzgerald, who raised the following issues:

Design and Layout:

- What is proposed to be retained was so objectionable to the Planning Authority that they were left with no option but to refuse planning permission for the development.
- The applicants' have not availed of the opportunity to submit revised plan as part of their appeal submission. Which may have overcome the objections.
- The plans and photographs submitted by the observers support the Planning Officer's description of the development as being as having an "overly dominant visual impact".
- The height and scale of the extension blocks light into the neighbour's property and the extension is out of character with the existing building on the appeal site and the neighbouring buildings.
- The observers would welcome modified rear extension proposals, if presented to them to consider.

Planning History:

- No evidence has been submitted to demonstrate that the single storey rear extensions that were demolished were constructed prior to 1963. Their demolition was unauthorised.

Residential Amenity:

- Simple daylight/sunlight modelling could have been used by the applicants to support their claims that the development does not adversely impact upon neighbouring properties in terms of casting shadows and blocking light.

- The suggested solution of painting the gable white to reflect light is not practical, as the applicants cannot apply or maintain the render from within their own property.
- The observers accept that the sunlight in their rear garden space will not be adversely impacted upon, however the yard area and their rear windows are adversely impacted upon by the development in terms of loss of light.

Other Issues:

- Works continued subsequent to a warning letter being issued to the developers by the Planning Authority.
- The observers are happy to engage with the applicants about the reinstatement of the party boundary wall.

7.0 Assessment

7.1. Planning Policy

- 7.1.1. There is no zoning in place for the town. The site lies within the settlement boundary for the town. It is indicated in the County Development Plan that- “Development proposals within the boundary will be considered on their merits against the policies and objectives contained in this core strategy and the Development Plan generally”.
- 7.1.2. The “Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (Cities, Towns & Villages), issued by the Department of Environment, Heritage and Local Government in May 2009, are of relevance. Chapter 6 deals with small towns and villages – identified as having a population between 400 and 5,000: the town of Urlingford would fall within this category. The re-development of the terraced house and vacant shop unit on a brownfield site is acceptable in principle. subject to being of an appropriate design and layout, not adversely impacting upon the neighbouring residential amenities nor resulting in the creation of a traffic hazard.

7.2. Design & Layout

- 7.2.1. The development provides for the conversion of a vacant shop and adjoining dwelling unit into two terraced dwelling units and the retention of two-storey extensions to the rear of both properties. The extension has a depth of approximately 7.4 metres and provides for a stated floor area of 122 square metres (sq. m.), the existing structures on site have a stated area of 129 sq. m. Floor and elevation plans of the original structures and the existing structures on site have been submitted as part of the planning documentation. The original structure had first floor bedrooms to the rear, however, from the drawings submitted, it is apparent that there were no rear facing windows at first floor level. There were single storey extensions to the rear of the terraced buildings. The scale, mass, bulk, and height of the rear extension, sought to be retained is significantly greater than the single storey extensions that previously existed on site.
- 7.2.2. Section 12.5.6 of the Development Plan pertains to domestic extensions. This policy statement sets out that “the principal requirement for a domestic extension is that the design should have regard to the need for light and privacy of adjoining properties”, and that “the form and design of the existing building should be followed”, and that “extensions should integrate fully with the existing building”. I note that the two-storey rear extension has a footprint of similar scale to that of the existing shop and residential buildings on site. The two-storey extension by virtue of its scale, mass, and bulk, across the full width of the site is not considered to integrate with the existing building on site, in terms of its window proportions, which are significantly larger than previously existed on site and the roof style, proposed as flat roofed, to the rear of the terraced pitched roofs of the existing buildings fronting onto the Main Street. I consider that the two-storey rear extensions would not accord with the provisions of Section 12.5.6 of the Development Plan, nor with the proper planning and sustainable development of the area.

7.3. Residential Amenity

- 7.3.1. Regard is had to the matters raised by the Planning Authority and to the content of the observation received by the Planning Authority with respect to the adverse impact upon the residential amenities of the neighbouring residential property to the north-east of the appeal site, due to the scale, mass, and bulk of the unauthorised two-storey rear extension.

- 7.3.2. There is a limestone boundary wall which constitutes the party boundary wall with the neighbouring residential property to the north-east. The height of the flat roofed rear extension exceeds the height of the boundary wall by approximately 2.5 metres. It is noted that there are two large bedroom windows on the rear (northern) elevation at first floor level which I consider would adversely impact upon the amenities of the neighbouring residential property to the north-east by reason of excessive overlooking, where previously the extent of overlooking was minimal, by virtue of the small-scale windows and height of the windows above ground level. The extent of overlooking is considered to have increased materially within the current development and adversely impacts upon the residential amenities of the neighbours to the north-east.
- 7.3.3. In terms of overshadowing, by virtue of the orientation of the appeal property in relation to the observers' property, the development would impact upon the extent of afternoon and early evening sun enjoyed by the neighbouring residents, especially from April to September, by virtue of the bulk, height, and scale of the two-storey extension. No daylight or sunlight analysis has been submitted to verify the exact impact in terms of loss of daylight or sunlight by the applicants, apart from some rudimentary calculations, submitted by their Consultant Engineer, as part of the applicants appeal submission to the Board. However, no accompanying drawings or illustrations to support the claims set out within that element of the appeal submission have been submitted. Even within the rudimentary daylight/sunlight calculations, it is acknowledged by the applicants that the extension does impact upon the neighbouring residents to the north-east in terms of casting shadow on an area within the neighbours' rear amenity area that is nearest their back door area. This area would be in shadow between April and September in the late afternoon and evening time, an area where the neighbours state that like to sit out and enjoy the sun. It is therefore, considered, that due to the orientation of the appeal site, the height, bulk, and scale of the rear extension, that the development adversely impacts upon the residential amenities of the neighbouring property to the north-east by reason of overshadowing and loss of light.
- 7.3.4. The applicants have two large first floor bedroom windows within the rear elevation. It is accepted that within an urban environment, an element of overlooking is inevitable. The question is whether the extent of overlooking would excessively

impact upon neighbouring amenities. However, given, the modest separation distances, from the nearest part of the appeal site to its party boundary wall to the north-east, which comprises a three-metre-high limestone boundary wall, any overlooking would be of the yard and garden area of the neighbouring property to the north-east. I am not satisfied that the design and layout as constructed, adequately respects the amenities of the neighbouring residential properties in the vicinity of the site given the limited separation distances. It is considered that the proposal would result in an adverse impact upon the amenities of the neighbouring residential property to the north-east, by reason of overlooking from the first-floor bedroom windows, one of which is located less than 0.2 metres from the party side boundary.

- 7.3.5. Overall, in its current form, it is considered that the development would have an adverse impact upon neighbouring residential amenities by reason of loss of light and overlooking and would diminish their residential amenity so as to warrant a refusal of permission. It is considered that the development, by reason of the scale, bulk and mass of the two-storey extension element would seriously injure the residential amenities of property in the area and would, therefore, be contrary to the provisions of the Development Plan and with the proper planning and sustainable development of the area.

7.4. **Other Issues**

Depreciation of Property Values:

This issue was raised within the submission to the Planning Authority by the neighbouring residents. The applicants contend that depreciation of property value is not a material planning consideration and that there is no evidence that rear extensions would result in a loss in neighbouring property values. In the absence of any substantive evidence to the contrary presented in this case, I do not consider that this issue should be upheld by the Board in its considerations.

7.5. **Appropriate Assessment**

The closest European site is The Loughans SAC (Site code 000407) – some 2.8km north-northeast of the appeal site. There is no pathway connection between the appeal site and the European site. Having regard to modest nature of the development, and to the fact that the site is connected to the public sewer/mains

network, 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 any European site.

8.0 Recommendation

8.1. I recommend that planning permission be refused for the following reasons:

9.0 Reasons

- 1 Having regard to the pattern of development in the area and the proximity to existing dwellings, it is considered that the extension, by reason of its scale, mass, bulk, and proximity to party boundaries, would seriously injure the residential amenities by reason of visual obtrusion and overshadowing. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
- 2 Section 12.5.6 of the Development Plan sets out the policy statement for the development of domestic extensions. This policy requires that regard be had to the light and privacy of neighbouring properties and that the form have regard to that of the existing dwelling. It is considered that the development, by reason of the scale, bulk and height of the two-storey extensions seriously injure the residential amenities of property in the area and do not satisfactorily integrate with the form of the existing structures on site. Therefore, the development would be contrary to the policies and objectives of the Development Plan, specifically Section 12.5.6 and contrary to the proper planning and sustainable development of the area.

Fergal Ó Bric,
Planning Inspectorate.

17th May 2021.