



An
Bord
Pleanála

Inspector's Report

ABP-309522-21

Development	Retention of first floor balcony and for permission for the erection of two glazed balcony side screens and a glazed rear facing panel.
Location	Number 4, Broguemaker Hill, Thomastown, Co. Kilkenny.
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	20/834
Applicant(s)	Barry Murphy
Type of Application	Retention Permission & Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party v. Decision
Appellant(s)	Tom & Marian Prendergast
Observer(s)	None
Date of Site Inspection	1st June 2021
Inspector	Fergal Ó Bric

1.0 Site Location and Description

- 1.1 The subject site is located within the Broguemaker Hill residential development, a development of five dwellings approximately 0.3 kilometres north of the town centre. The development is located off Maudlin Street. The appeal site comprises a two-storey semi-detached dwelling. There are four other two-storey detached and semi-detached dwellings within the same development to the north, east and south of the appeal site. The appeal site is the middle dwelling of three dwellings, with the other half of the semi-detached dwelling to the north and a detached dwelling to the south of the site. The appeal site has a hard surfaced rear amenity space to the west of the dwelling.
- 1.2 The subject site has a stated area of 0.0113 hectares. Levels on site fall gradually from east to west towards the rear of the site.
- 1.3 Access to the site is from an internal service road within the 50 kilometre per hour speed control zone.

2.0 Proposed Development

- 2.1 The applicant is seeking retention permission of a first-floor balcony area to the rear of the dwelling and for permission to erect glazed panels around the perimeter of the balcony.
- 2.2 A balcony has been installed at first floor level and attached to the rear elevation of the dwelling on the appeal site overlooking the rear garden space. Access to the balcony is from a doorway off the first-floor landing. The balcony has a timber finish with a floor area of approximately 9 square metres (sq. m.) and timber panels and a handrail around its perimeter to a height of approximately 1.2 metres. The balcony is supported by two vertical stanchions within the rear private amenity space which stand to a height of approximately three metres. The balcony is set back from the northern party boundary by approximately 1.6 metres and from the southern party boundary by approximately 1.2 metres.

3.0 Planning Authority Decision

3.1 Decision

A decision to grant retention planning permission for the balcony and permission for the glazed screening around its perimeter was issued by Kilkenny County Council.

There were two conditions, and the following is a summary of the pertinent condition:

Condition number 2: Within eight weeks of the grant of planning permission all works shall be completed including the construction of the 1.8 metre tall, frosted glass side panels.

3.2 Planning Authority Reports

3.2.1 Planning Reports

The Planning Officer's report (dated the 29th of January 2021) noted that the development was acceptable in principle given the proposal to erect the frosted glazing side panels to a height of 1.8 metres would address the issue of overlooking and impact upon the residential amenity of the neighbouring residential properties.

An Appropriate Assessment (AA) screening exercise concluded that it is not considered that there are any potential significant direct or indirect impacts on the qualifying features of any Natura 2000 site and therefore, that a Natura Impact Statement (NIS) is not required in this instance.

An Environmental Impact Assessment (EIA) screening exercise concluded that there is no real likelihood of significant effects on the environment arising from the proposed development and therefore that the submission of an EIAR is not required.

3.2.2 Other Technical Reports

No internal referrals made.

3.3 Prescribed Bodies

No referrals to prescribed bodies made.

3.4 Third Party Observations

One observation was received from neighbours, whose property is located to the north of the appeal site, at number 3, Broguemaker Hill. The issues raised in the

observation are similar to those raised within the third-party appeal submission received by the Board.

4.0 Planning History

Subject Site:

Planning Authority reference number 99/1166, In 1999, planning permission was granted for the demolition of an existing dwelling and the construction of five townhouses, a Puraflo wastewater treatment system and associated site works.

Planning Enforcement:

Planning Authority reference number Enf 00065-A warning letter was issued by the Planning Authority to the applicant regarding the installation of the balcony. These works are the subject of the current appeal.

5.0 Policy Context

5.1 Thomastown Local Area Plan 2019

The subject site is located in an area zoned Existing Residential where the objective is: To allow for new residential development and other services incidental to residential development.

5.2 Kilkenny County Development Plan, 2014

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”.

5.3 Natural Heritage Designations

None relevant.

6.0 The Appeal

6.1 Grounds of Appeal

A first-party appeal has been received from neighbours who own number 3, Broguemaker Hill, immediately north of the appeal site. The issues raised are summarised as follows:

Background and Context:

- Their privacy has been affected since pre 2014 when they notified the Council of the balcony and the Planning Authority did not take any action at that time.

Residential Amenity:

- The balcony is open sided and looks directly onto the rear yard area of number 3, Broguemaker Hill.
- The balcony is elevated 2.6 metres off the ground, and the boundary wall is only 1.6 metres tall which allows any person on the balcony to look directly into their property.
- The proposed frosted glazed side panels will not prevent overlooking, as overlooking will still arise from the front (west) of the balcony.
- The Planning Authority have not considered the loss of light that will arise from the installation of the glazed panels.
- 90% of the appellants rear garden space will remain visible from the balcony area even with the installation of the glazed panels.

- The rear garden area of the appellants is rarely used due to the lack of privacy afforded by the balcony, and it should not be permitted to be retained.

Design and layout

- The applicant acknowledges within his planning documentation that overlooking arises from the balcony but that the frosted glass panels would prevent overlooking of neighbouring properties.

Other Issues:

- The balcony may devalue the appellants property by virtue of the reduced privacy it affords to the neighbouring properties.

6.2 Applicant's Response

The applicant has issued a response to the third-party appeal submission as follows:

Residential Amenity

- The introduction of the glazed panels would eliminate overlooking from the balcony area into the neighbouring residential properties.
- Even without the balcony, within semi-detached dwellings there is the potential for overlooking from the rear elevation first floor windows into the appellants rear private amenity space.
- No unacceptable loss of daylight would arise from the proposals. However, perhaps a shadow will be cast for an hour each day at around midday where the balcony and glazed side panels would cast a shadow on the rear elevation of the appellants house.
- The applicant would be entitled to erect a larger two storey extension to the rear of his property under the Schedule 2, Part 1, Class 1 of the Planning and Development Regulations 2001, under the exempted development provisions. This exempted development would have a far greater impact on the daylight and sunlight received in the appellants rear amenity space than the balcony.
- The impact would be similar to that of the existing extension to the rear of number 5, Broguemaker Hill on the applicant's rear amenity space.

- The frosted glass panels would deflect the line of vision to the rear of both neighbouring gardens and limit the angles of vision to obscure angles only rather than direct lines of vision.

Design and layout:

- The balcony area at 9.2 sq. m., is considerably less than the 40 sq. m two-storey rear extension that could be constructed under the exempted development provisions.
- The balcony structure is not overly large or out of proportion.

Other Issues:

- A similar balcony was permitted by the Planning Authority on Chapel Lane in Thomastown under Planning Authority reference number 18/380.
- Under the parent permission, on-site balconies to the front of the dwellings were permitted.
- The applicant's agent in 2008 advised him that the balcony to the rear constituted exempted development (correspondence to this effect was submitted as part of appeal submission).
- No evidence of property devaluation has been submitted.

6.3 Planning Authority Response.

The Planning Authority stated that it had no further comment to make regarding this appeal.

7.0 Assessment

7.1 General Comment

The principle of extending a house at number 4 Broguemaker Hill is not at issue in this instance, rather its design and layout and potential to impact upon the amenities of neighbouring properties. The following are therefore considered to be the core planning issues that arise from the appeal and observer submissions:

- Layout and Design
- Residential Amenity

- Other issues
- Appropriate Assessment

7.2 Layout & Design

- 7.2.1 The design of the balcony presently provides for wooden screens on the sides and front (west) of the balcony to a height of approximately 1.2 metres. This allows for direct overlooking from persons using the balcony into the neighbouring rear amenity spaces of numbers 3 and 5 Broguemaker Hill. The applicant is proposing to erect 1.8 metre tall, frosted glass screens on both sides of the balcony and a clear glazed panel on the front (west facing) aspect of the balcony.
- 7.2.2 Guidance for domestic extensions is set out within Section 12.5.6 of the Development Plan. The guidance recommends that the design of extensions 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. There is no specific guidance provided within the Development Plan in relation to balconies. The balcony extends 2.2 metres beyond the rear building line and is 4.2 metres wide, however it is set back from the northern party boundary by approximately 1.6 metres and 1.2 metres from the southern party boundary wall. Neither is the balcony visible from the front (east) of the appeal site.
- 7.2.3 It is accepted that the balcony is visible from the neighbouring rear amenity spaces immediately north and south of the appeal site. However, the balcony feature is not considered to be visually prominent. The balcony is not considered to be in-sensitive to the dwelling on site by virtue of its scale, design and height and would not be inconsistent with the character of the area. Neither is it considered to be contrary to the provisions of the Section 12.5.6 of the Development Plan, given that the Plan is silent on the provision of balcony features.
- 7.2.4 Overall, the balcony with its proposed glazed panel modifications would not be considered to have an adverse impact upon the visual amenity of the area by virtue of its design, scale, and height.

7.3 Residential Amenity

- 7.3.1 The Planning Authority and the appellant have raised a number of issues in relation to impacting upon their amenities by virtue of overlooking from the balcony and diminishing the value of their properties.
- 7.3.2 Given the separation distances between the appeal site and the appellants property and the low height (1.2 metres) timber screens on the existing balcony, it is acknowledged that overlooking arises from the balcony. However, I am satisfied that with the installation of the proposed frosted glazed panels around the perimeter of the balcony to a height of 1.8 meters, that the issue of adversely impacting on neighbours' amenities by virtue of overlooking would be overcome. I consider that all of the screen panels should have opaque glazing installed in order to protect the amenities of the neighbouring residents. Neither do I consider that the balcony and proposed glazed screen panels would have an adverse impact upon the residential amenities of the neighbouring properties to the north by reason of overshadowing or loss of light, by virtue of the orientation of the appeal site.
- 7.3.3 In term of overlooking, it is noted that there is an existing bedroom at first floor level with a rear (west facing) window, from which overlooking of the neighbouring rear garden spaces of the properties to the north and south arises. It is accepted that overlooking also arises from the existing balcony feature. However, given the proposals to insert the 1.8 metre tall, glazed screens around the perimeter of the balcony feature, I am satisfied that the balcony will not significantly increase overlooking possibilities. Furthermore, the overlooking would not be increased significantly from the balcony feature above that which occurs presently from the rear first floor bedroom window. The development, therefore, accords with the provisions of Section 12.5.6 of the Development Plan.
- 7.3.4 Overall, it is considered that the development, by reason of its design, setbacks, and height (subject to the installation of the frosted glass panels on all aspects) would not seriously injure the residential amenities of property in the area and that it would accord with the underlying residential zoning objective and with the proper planning and sustainable development of the area.

7.4 Other Issues

7.4.1 Depreciation of Property Values:

This issue was also raised in the appeal observations. The depreciation of property values is not a material planning consideration and that there is no evidence that the balcony has resulted in a loss in neighbouring property values.

7.4.2 In the absence of any substantive evidence to the contrary presented in this case, I do not consider that this ground of appeal should be upheld.

7.5 Appropriate Assessment

Having regard to the nature and scale of the development, the distance from 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

I recommend that retention planning permission of the balcony feature and that planning permission for the glazed panels be granted.

9.0 Reasons and Considerations

Having regard to the design and layout of the development, the existing building on site and the pattern of development within the area, it is considered that the development (as amended) would not adversely impact on the residential amenities of neighbouring properties by reason of overlooking or overshadowing. The development is considered to be in accordance with the underlying land use zoning objective pertaining to the site and with the policies and objectives of the current Kilkenny County Development Plan in relation to extensions and alterations. The retention of the development, therefore, would be in accordance with the proper planning and sustainable development of the area.

1. The development shall be retained and constructed in accordance with the plans and particulars lodged with the application to the Planning Authority on the 3rd 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 and the development shall be retained and constructed in accordance with the agreed particulars.

Reason: In the interest of clarity.

- 2 Within eight weeks of the date of the order from the Board all works set out within Drawing number pp-03 submitted to the Planning Authority on the 3rd day of December 2020 shall be carried out in full. The balcony feature shall be fitted with 1.8-metre-tall opaque glazed panels on the northern, southern, and western sides. Photographic evidence of the insertion of the glazed panels shall be submitted to the Planning Authority within seven days of their erection.

Reason: To minimise overlooking of adjoining residential property

- 3 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 and to ensure a proper standard of development.

Fergal O'Bric
Planning Inspector

8th June 2021