



An
Bord
Pleanála

Inspector's Report 311093-21

Development	New balcony to existing north-east elevation & all ancillary site works.
Location	Bluebell Lodge, Kilcullen Road, Naas, Co. Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	21783
Applicant(s)	Pierce Greaney & Sallyann Freyne
Type of Application	Permission
Planning Authority Decision	Grant permission
Type of Appeal	Third Party v. Decision
Appellant(s)	Brendan & Jacinta Colivet
Observer(s)	None
Date of Site Inspection	23 rd January 2022
Inspector	Louise Treacy

1.0 Site Location and Description

1.1. The subject site has a stated area of 0.1642 ha and is located on the eastern side of the Kilcullen Road on the southern outskirts of the town of Naas, Co. Kildare. The site accommodates a detached dormer bungalow. A detached dwelling adjoins the subject site to the south, greenfield lands are located to the north/north-east and an area of public open space which forms part of the Killashee View housing estate is located to the rear/south-east.

2.0 Proposed Development

2.1. The proposed development consists of a new balcony to the existing north-east elevation and all associated ancillary site works.

2.2. The proposed balcony is located on the rear elevation of the existing residential dwelling at 1st floor level and will serve the master bedroom. The balcony has a height of 1.1 m and a width of 3.3 m and is proposed to be finished in glass. A separation distance of c. 16 m arises between the rear elevation of the dwelling and the rear/south-eastern site boundary adjoining Killashee View.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Notification of the Decision to Grant Permission subject to 9 no. conditions issued on 22nd July 2021.

3.1.2. All conditions are generally standard in nature.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. Basis of Planning Authority's decision.

3.2.3. The Planning Officer noted that a balcony which was proposed under a previous planning application on the site was omitted by condition (Planning Authority Reg. Ref. 14/500002 refers) based on the semi-rural location of the site. In recommending

that planning permission be granted for the balcony now proposed, the Planning Officer noted that substantial residential schemes have been developed in the vicinity of the site in the interim. It was further noted that the land use zoning of the site is proposed to be changed from “I – Agriculture” to “B – Existing/Infill Residential” under the Draft Naas Local Area Plan 2021-2027. As such, the proposed balcony was considered acceptable.

3.2.4. **Other Technical Reports**

3.2.5. **Water Services:** No objection subject to condition.

3.2.6. **Area Engineer:** No objection subject to conditions.

3.3. **Prescribed Bodies**

3.4. **Irish Water:** No objection subject to conditions.

3.5. **Third Party Observations**

3.6. One third-party observation was made on the application by Gerrard L McGowan Solicitors on behalf of Brendan and Jacinta Colivert. It is submitted that the OS map included with the planning application is incorrect, as it includes a section of property which is within the observers’ ownership rather than the applicants.

3.7. The submission includes a Land Registry map which illustrates the extent of the observers’ landownership.

4.0 **Planning History**

4.1. **Planning Authority Reg. Ref. 14/500002:** Planning permission granted on 7th April 2014 for 70 m² single-storey extension with dormer accommodation over to the rear of the existing dormer bungalow.

4.2. The proposed balcony to the rear was omitted under condition no. 2 on the basis that it was considered unsuitable in this semi-rural location.

5.0 Policy and Context

5.1. Kildare County Development Plan 2017-2023

5.2. Residential Extensions

- 5.2.1. The development management standards for residential extensions are set out in Section 17.4.8 of the development plan. In general, the design and layout of extensions should have regard to the character of the existing dwelling, the nature of the surrounding area and the amenities of adjoining properties, particularly sunlight, daylight and privacy. A number of principles shall apply including, inter alia, the extension should be sensitive to the existing dwelling in its form, scale and appearance and should not adversely distort the scale or mass of the structure or adjoining properties. The extension should not provide for new overlooking of the private area of an adjacent residence where no such overlooking previously existed.

5.3. Naas Local Area Plan 2021-2027

5.4. Land Use Zoning

- 5.4.1. The site is subject to land use zoning objective "B - Existing/Infill Residential".

5.5. Natural Heritage Designations

- 5.5.1. None.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. A third-party appeal has been lodged by David Mulcahy Planning Consultants Ltd. on behalf of Brendan and Jacinta Colivet, Swordlestown, Punchestown, Naas, Co. Kildare. The grounds of appeal can be summarised as follows:

- The appellants' concerns were not addressed in the Planning Officer's assessment of the application.
- No letter of consent to include the appellants' land was included with the planning application as required under law. As such, the applicants do not

have sufficient legal interest to make this planning application and planning permission should be refused.

6.2. Applicant Response

6.2.1. A response to the grounds of appeal was received from Keenan Lynch Architects and JMG Services Ltd. on behalf of the applicants on 8th September 2021 which can be summarised as follows:

- The boundary discrepancy is minor, affects a very small area of the site and does not warrant an appeal.
- The site boundary is believed to be correct based on measurements taken on site, with the error considered to have arisen on foot of recent digitisation of the folio map.
- The subject boundary has been altered over time due to erosion on the adjoining (former) quarry site, with part of the boundary being eroded into the old quarry pit. It is believed that the digitisation process incorrectly recorded an inner boundary line and not the outer (now eroded) boundary.

6.3. Planning Authority Response

6.3.1. Kildare County Council submitted a response to the appeal on 9th September 2021. The Planning Authority has no further comment or observations to make and refers the Board to the Planning Officer's report and other technical reports which informed the decision. The Board is requested to uphold the decision to grant planning permission for the proposed development.

6.4. Observations

6.4.1. None.

6.5. Further Responses

6.5.1. A further response was submitted by David Mulcahy Planning Consultants Ltd. on behalf of the appellants on 8th October 2021 which can be summarised as follows:

- There is no professional surveying or engineering evidence to demonstrate that the Ordnance Survey mapping of the site boundary is flawed.
- There is no evidence that the purportedly flawed mapping has been reported to the Ordnance Survey.
- The applicants have not engaged with the appellants' offer to undertake a land survey of the site boundary.
- The planning application is not valid since the applicants do not have sufficient legal interest in the land.

6.6. The response includes a copy of a folio map of the subject site and copies of email correspondence between the appellants and the applicants concerning the site boundary discrepancy.

7.0 **Assessment**

7.1. The main issues for consideration in this case include:

- Procedural Issues
- Principle of the Development

7.2. Each of these issues is addressed in turn below.

7.3. **Procedural Issues**

7.3.1. The primary point of objection which has been raised by the appellants relates to the red line boundary as illustrated in the planning application drawings. The appellants submit that a portion of their land has been incorrectly included within the planning application boundary as it relates to the north-eastern side of the site. In responding to this point of appeal, the applicants consider that the error has arisen on foot of the recent digitisation of the folio map for the site. The applicants further submit that the site boundary is correct based on recent measurements taken on site. I note in this regard that the appellants have attempted to engage with the applicants to undertake a survey of the relevant boundary.

7.3.2. I have considered the grounds of appeal and the responses which have been received by the Board. In my opinion, the issue at hand is a legal matter rather than a planning matter, and as such, is not for adjudication by the Board. However,

notwithstanding the foregoing, I note that the portion of the site boundary which is under dispute relates to the shared boundary along the north-eastern extent of the subject site. No query has arisen in relation to the red line boundary as it relates to the location of the proposed balcony extension, and as such, I consider that the site boundary dispute has no bearing on the development which is the subject of this appeal case.

- 7.3.3. Thus, I am satisfied based on the information which forms part of this appeal case, that the applicants have sufficient legal interest to implement the development for which planning permission is sought and which is attached to the rear elevation of the applicants' dwelling.

7.4. Principle of the Development

- 7.4.1. The site is zoned for residential development and comprises a generous plot which accommodates a single detached dwelling. While the balcony is located at 1st floor level, there are no directly opposing dwellings to the rear of the house. As such, I consider that no overlooking issues would arise on foot of the proposed balcony extension.

- 7.4.2. Given the limited nature and scale of the development and the characteristics of the subject site, I consider that the proposed development would be acceptable at this location, and I recommend that planning permission be granted in this instance.

8.0 Recommendation

- 8.1. I recommend that planning permission be granted for the proposed development for the reasons and considerations set out hereunder.

9.0 Reasons and Considerations

- 9.1. Having regard to the nature and scale of the proposed development, the residential land use zoning of the site, the size and configuration of the subject site and the separation distances which arise to neighbouring residential dwellings, it is considered that, subject to the conditions set out below, the proposed development would be acceptable in design, form and scale and would have no negative impact on the existing dwelling or any neighbouring property. The proposed development

would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out in accordance with the plans and particulars lodged with the application.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefitting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under Section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under Section 48 of the Act be applied to the permission.</p>
3.	<p>Site development and building works shall be carried out only between the hours of 0700 to 1800 Mondays to Fridays inclusive, 0800 to 1400 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.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>

Louise Treacy
Planning Inspector

31st January 2022