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Pleanála

## Inspector's Report ABP 311710-21.

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<b>Development</b>	Works to balcony consisting of removal of existing railing, construction of balcony wall and pillars and permission to complete works to balcony to include a flat roof canopy and all associated site works.
<b>Location</b>	10 Chestnut Gardens, Bóthar Buí, Newcastle West, Co. Limerick.
<b>Planning Authority</b>	Limerick City & County Council
<b>Planning Authority Reg. Ref.</b>	21708
<b>Applicants</b>	Volodymyr Senyshyn & Olena Goshko
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant permission
<b>Type of Appeal</b>	Third Party
<b>Appellants</b>	Chestnut Gardens Management Company Ltd.
<b>Observers</b>	None

**Date of Site Inspection**

19/1/2022

**Inspector**

Siobhan Carroll

# Contents

1.0 Site Location and Description .....	4
2.0 Proposed Development .....	4
3.0 Planning Authority Decision .....	4
3.1. Decision .....	4
3.2. Planning Authority Reports .....	4
3.3. Prescribed Bodies .....	5
3.4. Third Party Observations .....	5
4.0 Planning History.....	5
5.0 Policy Context.....	5
5.1. Limerick County Development Plan 2010-2016 (as extended) .....	5
5.2. Newcastle West Local Area Plan 2014-2020 (as extended) .....	5
5.3. Natural Heritage Designations .....	6
5.4. EIA Screening .....	6
6.0 The Appeal .....	6
6.1. Grounds of Appeal .....	6
6.2. Applicant Response .....	7
6.3. Planning Authority Response .....	7
7.0 Assessment.....	7
7.1. Design and principle of development .....	7
7.2. Appropriate Assessment .....	9
8.0 Recommendation.....	9
9.0 Reasons and Considerations.....	9
10.0 Conditions .....	9

## 1.0 Site Location and Description

- 1.1. The subject site is at no. 10 Chestnut Gardens is located in the town of Newcastle West, Co. Limerick. Chestnut Gardens is located within the town centre area on the western side of Bóthar Buí.
- 1.2. The property is located in a gated development situated on the grounds of St. Catherines' nursing home. No. 10 Chestnut Gardens is an apartment located at the western an end of a three-storey terrace. It is accessed via stairs to the first floor doorway to the front. To the rear of the property there is a balcony at first floor level. This balcony faces north and has views towards a car park. The railings which originally surrounded the balcony have been replaced by a block wall and blocks have also been partially constructed to facilitate the roofing of the structure.

## 2.0 Proposed Development

- 2.1. Permission is sought for works to balcony consisting of removal of existing railing, construction of balcony wall and pillars and permission to complete works to balcony to include a flat roof canopy and all associated site works.

## 3.0 Planning Authority Decision

### 3.1. Decision

Permission was granted subject to 8 no. conditions.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

Report dated 14/7/2021: Further information was sought in relation to two issues. (1) The applicant was requested to demonstrate that the works carried out to date are structurally safe and will not undermine the adjoining property. The applicant was requested to submit a report from a chartered structural engineer. (2) The applicant shall note letter of objection on file and respond accordingly, in particular having regard to having sufficient legal interest to carry out the proposed works.

Report 22/9/2021: Following the submission of a response to the further information request the Planning Authority were satisfied with the details supplied and permission was granted on that basis.

### 3.2.2. Other Technical Reports

- No further reports.

### 3.3. Prescribed Bodies

- None received

### 3.4. Third Party Observations

- 3.4.1. The Planning Authority received one submission/observation in relation to the application. The issues raised are similar to those set out in the appeal.

## 4.0 Planning History

- None

## 5.0 Policy Context

### 5.1. Limerick County Development Plan 2010-2016 (as extended)

- 5.1.1. Chapter 10 refers to Development Management Standards
- 5.1.2. Section 10.5.6 refers to Apartments and Multiple Occupancy
- 5.1.3. In relation to design it is stated in Table 10.3 that a high standard of architectural design is required throughout. Apartments of a modern design will be encouraged.
- 5.1.4. Section 10.5.7 refers to House Extensions – High quality designs for extensions will be required that respect and integrate with the existing dwelling in terms of height, scale, materials used, finishes, window proportions etc.

### 5.2. Newcastle West Local Area Plan 2014-2020 (as extended)

- 5.2.1. Zoning

The site is located on lands that are zoned 'Existing Residential'.

### 5.3. **Natural Heritage Designations**

- None

### 5.4. **EIA Screening**

- 5.4.1. Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded. An EIA - Preliminary Examination form has been completed and a screening determination is not required.

## 6.0 **The Appeal**

### 6.1. **Grounds of Appeal**

A third party appeal has been lodged by Chestnut Gardens Management Company Ltd. The issues raised are as follows;

- It is set out in the appeal that external structural parts of the apartment at 10 Chestnut Gardens does not form part of the Demised Premises owned by the Applicant.
- It is stated that the granting of permission by Limerick City and County Council will therefore have serious implications for the Management Company and development at Chestnut Gardens, Bothar Buí, Newcastle West and its shareholders the owners of the 24 Demised properties within the development.
- It is stated that the Demised Premises are the structure of the Apartments but excluding from the main structural parts of each building, the external parts which include the balcony of the apartments (but not the interior faces of external walls which bound the Apartments or glass of the windows of the Apartments).

- It is stated that development can not go ahead where it allows retention and works to be carried out on Reserved Property not owned by the Applicant forming part of Demised Premises but by the Management Company, Chestnut Gardens Management Company Ltd of which the Applicant is one of 24 shareholders.
- It is stated that Chestnut Gardens Management Company Ltd has not given permission to the applicant to carry out the development work which is the subject of the planning application.
- The appellant states that if such works are allowed to be carried out, the Management Company and owner of the Reserved Property may consider taking legal action.

## 6.2. Applicant Response

- None received

## 6.3. Planning Authority Response

- None received

## 7.0 Assessment

The main issues in this appeal are raised in the grounds of appeal. Appropriate Assessment also needs to be addressed. I am satisfied that no other substantive issues arise. The issues can be dealt with under the following headings:

- Design and principle of development
- Appropriate Assessment

### 7.1. Design and principle of development

- 7.1.1. The proposal entails the works to balcony consisting of removal of the existing railing, construction of balcony wall and pillars and permission to complete works to balcony to include a flat roof canopy. As detailed on the submitted plans it is proposed to complete the pillars and construct a flat roof to cover the balcony. It is

not proposed to provide glazing. In relation to design of the proposal subject to the external balcony wall matching the colour of the existing wall of the property I am satisfied that it would integrate with the property and overall building. Having regard to the limited nature and scale of the development which comprises the provision of a roof to the existing balcony, I am satisfied that the proposed development would not unduly impact the residential amenities of adjoining properties.

- 7.1.2. The appellants have raised concern in respect of the applicant's legal interest to carry out the works. It is stated in the appeal that Chestnut Gardens Management Company Ltd has not given permission to the applicant to carry out the development work which is the subject of the planning application. This matter was also raised by the Management Company in their objection in respect of the planning application.
- 7.1.3. The Planning Authority in their assessment of the application sought further information. Item no. 2 of the further information request sought that, "*the applicant shall note letter of objection on file and respond accordingly, in particular having regard to having sufficient legal interest to carry out the proposed works.*"
- 7.1.4. In response to this matter the applicant submitted a letter from their Solicitor, Michael B. O'Donnell. The submission includes Original Folio/File Plan LK10664L. The submission from the applicant's Consultant Engineers, C Casey Consulting Engineers Ltd. states that the folio map clearly shows the red line outlining the balcony edge and this indicates that the balcony is within the ownership of Volodymyr Senyshyn & Olena Goshko. Therefore, the applicant's Consultant Engineers stated in response to the further information request that the applicant has sufficient legal interest to carry out the proposed works. The Planning Authority in their determination of the application were satisfied that the applicant had provided sufficient legal title to carry out the development.
- 7.1.5. The issue remains a matter of dispute between the two parties. The applicant has provided Land Registry mapping which indicate their ownership of the property including the subject balcony and I also note the provisions of Section 34(13) of the Planning and Development Act, which states that 'A person shall not be entitled solely by reason of a permission under this section to carry out any development'. Accordingly, I consider on that basis that permission for the subject development can be granted.



## 7.2. **Appropriate Assessment**

- 7.2.1. Having regard to the nature and scale of the proposed development, works to a balcony, and the separation distance to any 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. It is recommended that permission be granted subject to conditions for the reasons and consideration set out below.

## 9.0 **Reasons and Considerations**

- 9.1. Having regard to the pattern of development in the area and the scale and nature of the design, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area or of property in the vicinity and would respect the existing character of the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 **Conditions**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by further plans and particulars submitted on the 30<sup>th</sup> day of August 2021, the 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 prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. Water supply and drainage arrangements, including 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.

3. The external finishes of the proposed extension shall be the same as those of the existing dwelling in respect of colour and texture. Samples of the proposed materials shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenity.

4. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours 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.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

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Siobhan Carroll  
Planning Inspector

31<sup>st</sup> January 2022