



An  
Bord  
Pleanála

## Inspector's Report ABP-312313-21

---

<b>Development</b>	To retain indefinitely alterations to dwelling house as constructed, including doors to south-west and north-west elevations and temporary planter boxes to flat roof areas.
<b>Location</b>	Sarsfield Street, Abbeyside, Dungarvan, Co. Waterford.
<b>Planning Authority</b>	Waterford City & County Council
<b>Planning Authority Reg. Ref.</b>	21/940
<b>Applicant(s)</b>	S & C Properties
<b>Type of Application</b>	Permission for retention
<b>Planning Authority Decision</b>	Refusal
<b>Type of Appeal</b>	First Party -v- Decision
<b>Appellant(s)</b>	S & C Properties
<b>Observer(s)</b>	Michael Burke
<b>Date of Site Inspection</b>	25 <sup>th</sup> May 2022
<b>Inspector</b>	Hugh D. Morrison

# Contents

1.0 Site Location and Description .....	3
2.0 Proposed Development .....	3
3.0 Planning Authority Decision .....	3
3.1. Decision .....	3
3.2. Planning Authority Reports .....	4
4.0 Planning History.....	4
5.0 Policy and Context.....	5
5.1. Development Plan.....	5
5.2. Natural Heritage Designations .....	5
5.3. EIA Screening .....	5
6.0 The Appeal .....	5
6.1. Grounds of Appeal .....	5
6.2. Planning Authority Response .....	6
6.3. Observations .....	6
6.4. Further Responses.....	7
7.0 Assessment.....	7
8.0 Recommendation.....	11
9.0 Reasons and Considerations.....	11

## 1.0 Site Location and Description

- 1.1. The site is located in Dungarvan on the eastern side of the River Colligan. This site lies within a residential area, which is bound by Sexton Street to the north-west, Sarsfield Street to the west, and Strandside South to the south-west. The Waterford to Dungarvan Greenway passes through the centre of this area on an east/west axis.
- 1.2. The site itself is of elongated form and irregular shape. It extends over an area of 0.17 hectares, and it accommodates a two-storey dwelling house (291 sqm), which has been extended at both ground floor and first floor levels. This dwelling house is orientated on a north-east/south-west axis, and it is sited centrally in a position whereby its rear single and two storey portions are adjacent to the site boundaries, which variously wrap around and abut the ends of the rear gardens to the dwelling houses at Nos. 22 & 23 Strandside South and abut the north-western side of the rear garden to the dwelling house at No. 22 Sarsfield Street. The site is accessed off Sarsfield Street and its long northern boundary abuts the Greenway.

## 2.0 Proposed Development

- 2.1. The proposal seeks retention permission for alterations to the dwelling house on a permanent basis, including the first floor doors from the bedrooms denoted as nos. 3 & 5 on the submitted plans onto a "flat roof", i.e., variously in the south-western and south-eastern elevations.
- 2.2. The proposal also seeks retention permission for temporary planter boxes (26 sqm), which have been sited around the edge of the aforementioned flat roof and around the edge of the flat roof to the single storey extension to the dwelling house.

## 3.0 Planning Authority Decision

### 3.1. Decision

Permission was refused for the following reasons:

1. *The retention of the 2 no. doors accessing the flat roof and the planters to both the flat roof bounding bedrooms 3 and 5 and the flat roof accessible from the living area would give rise to the habitual use of these areas and the resultant activity on these first floor*

*level areas would result in overlooking of adjoining properties and would negatively impact on adjoining residential amenities. The retention of the subject developments would therefore be contrary to land use zoning objective of the Dungarvan Town Development Plan 2012 – 2018, as varied and extended, which seeks to protect residential amenities. Th retention of the development would therefore be contrary to the proper planning and sustainable development of the area.*

*2. The retention of the subject development would materially contravene conditions 10 and 11 of 19/898 and condition 1 of 20/512 and would be contrary to the proper planning and sustainable development of the area.*

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

See decision

#### **3.2.2. Other Technical Reports**

None

### **4.0 Planning History**

**19/898:** Extensions and alterations to existing dwelling house, demolition of existing garage, widening and realignment of entrance driveway and all ancillary services: Granted subject to conditions, including the following two:

*10. All proposed bathroom windows shall be glazed in obscure/opaque glazing. The window serving bedroom 3 to the south-west shall be fixed/non-opening and glazed with opaque glazing.*

*Reason: In the interest of privacy and amenity of occupiers of adjacent houses.*

*11. No internal access, by means of opening sashes or doors, shall be provided to the proposed flat roof areas. These flat roofs shall not be used as balconies, roof terrace or roof garden.*

*Prior to the extension being brought into use, the proposed louvre screen to the flat roof parapet shall be fully installed.*

*Reason: In the interest of clarity, privacy and amenity of occupiers of adjacent houses.*

**20/512:** Construction of a first floor bedroom extension to dwelling house, to be constructed in conjunction with 19/898: Granted subject to conditions, including the following one:

*1. The window with obscure glazing to the south-east elevation, as indicated on drwg. No. 2 stamped by the Planning Authority on the 29<sup>th</sup> July 2020, shall be glazed with opaque/obscure glazing.*

*Reason: To clarify the documents to which the permission relates and for the proper planning and sustainable development of the area.*

## **5.0 Policy and Context**

### **5.1. Development Plan**

Under the Dungarvan Town Development Plan 2012 – 2018 (TDP), the northern portion of the site is zoned open space and amenity area and the central and southern portions are zoned residential – medium density. The dwelling house on the site is the subject of the latter zoning, the objective of which is “To protect the amenity of existing residential development and to provide for new residential development at medium density.”

### **5.2. Natural Heritage Designations**

Dungarvan Harbour SPA (004032)

### **5.3. EIA Screening**

The proposal is for the retention of alterations to a dwelling house. This type of development is not of a class that attracts the need for EIA.

## **6.0 The Appeal**

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

In relation to the door in the south-west elevation:

- This door, which is obscure glazed, is 46m away from the neighbouring dwelling at No. 22 Strandside South, whereas the TDP cites an applicable separation distance of 22m. Furthermore, trees contribute to screening between the two dwellings.

In relation to the door in the south-east elevation:

- This door, which is obscure glazed, is 10m away from the neighbouring garden wall. It is not visible from first floor windows in neighbouring dwellings.

In relation to planter boxes:

- These boxes promote biodiversity by being planted with a variety of pollinators. They thus accord with Objective 3 of the Ireland Pollinator Plan 2021 – 2025, which states, “Increase the number of gardens that are pollinator friendly.”
- The boxes would be removed briefly annually for soil renewal and maintenance. These boxes need to be at roof level to maximise their exposure to sunlight and thereby promote growth.
- While the applicant was advised by the Planning Authority that the planters need planning permission, it notes that similar planters exist throughout Dungarvan, and it questions whether they received planning permission.

## 6.2. Planning Authority Response

None

## 6.3. Observations

Michael Burke of “Avondale”, 22 Sarsfield Street

The observer interacts with photographs that accompanied his submission to the application. He now provides the following commentary:

- Attention is drawn to the sunroom extension to the observers dwelling which extends to within 13.7m of the front building line of the applicant’s dwelling.

- The flat roofed areas to the applicant's dwelling are above the height of the boundary wall to the observer's rear garden and so, from within these areas, views of the observer's rear garden, sunroom, kitchen, and entrance to his property are available.
- The observer considers that the planter boxes should be placed within the applicant's garden areas, where access to them would be facilitated.
- Attention is drawn to the long window in the south-eastern elevation of the applicant's dwelling, which has not been opaque glazed.
- The observer refers to family members and the adverse effect that the works in question are having upon their health and well-being.
- If only the conditions previously attached to permissions granted to the applicant were upheld, then the observer would raise no objection.

#### 6.4. Further Responses

None

### 7.0 Assessment

7.1. I have reviewed the proposal in the light of the Dungarvan Town Development Plan 2012 – 2018 (TDP), the planning history of the site, the submissions of the parties and the observer, and my own site visit. Accordingly, I consider that this application/ appeal should be assessed under the following headings:

- (i) Planning history and alterations,
- (ii) Planning history and amenity,
- (iii) Water, and
- (iv) Appropriate Assessment.

#### **(i) Planning history and alterations**

7.2. The planning history of the site indicates that the original dwelling house on the site was of conventional form and design and that, under 19/898 and 20/512, it was extended at ground and first floor levels in a contemporary idiom.

- 7.3. The current proposal seeks retention permission for certain alterations that have taken place to the dwelling house beyond those which were permitted under the above cited applications. These alterations are set out below:
- First floor doors from the bedrooms denoted as nos. 3 & 5 on the submitted plans onto a “flat roof”, i.e., variously in the south-western and south-eastern elevations.
  - Temporary planter boxes (26 sqm), which have been sited around the edge of the aforementioned flat roof and around the edge of the flat roof to the single storey extension to the dwelling house.
- 7.4. The Planning Authority draws attention to a further first floor door, which affords access to the flat roof over the single storey extension. It reports that this “door” was depicted as an opening and described in an accompanying note as “Triple glazed uPVC windows and doors or similar approved” on drawing no. 2 dated November 2019, which was submitted as part of 19/898. This drawing did not show any flat roof abutting this opening and so it was interpreted as being a window. However, the opening now abuts an unauthorised portion of flat roof, which is continuous with the flat roof over the single storey extension. Although an alteration, this portion of flat roof is not explicitly shown as being part of the current application, i.e., it is not highlighted on the submitted drawing no. 1 dated October 2021 by means of a broken red line. However, it is integral to facilitating the use discussed below.
- 7.5. The applicant reports that it was advised by the Planning Authority that the planter boxes need planning permission, although he questions this advice. He explains that these boxes are demountable, and they would be removed briefly annually for soil renewal and maintenance.
- 7.6. During my site visit, I observed that the planter boxes are slotted-into/supported by timber brackets and so they are capable of being demounted. They are not therefore permanently attached to the dwelling house and so they may not constitute development involving “works” as defined by Section 2(1) of the Planning and Development Act, 2000 - 2022. I have consulted the Board’s history of referrals. One comparable example of planter boxes features in this history, i.e., RL3461, only this entailed concrete boxes that were permanently attached to the ground and so judged to have involved a building operation in their provision.



7.7. Under condition 11 attached to the permission granted to 19/898, the use of the flat roofs of the dwelling house as roof gardens was expressly prohibited. Insofar as the box planters facilitate such use, they contravene this condition and so they are integral to an unauthorised use of their host flats roofs, i.e., this garden is a material change of use of the roof and as such development under Section 3(1) of the aforementioned Act.

7.8. I conclude that the alterations that clearly constitute operational development in the current application are the two doors to the small flat roof and the extension to the large roof. I conclude, too, that as the roof planters contravene an extant condition prohibiting the use of flats roofs as roof gardens, they, too, constitute development.

#### **(ii) Planning history and amenity**

7.9. The planning history of the site indicates that under 19/898 and 20/512 questions of overlooking and neighbour privacy were addressed.

- Under the first of these applications, the applicant originally proposed a balcony off bedrooms numbered 3 and 4, which would have been accessed by means of the doors in the south-west and south-east elevations of the dwelling house. (Bedroom no. 4 is now denoted as bedroom no. 5). He also proposed a further balcony off bedroom no. 4 on its north-western elevation. Under revised plans, bedroom no. 4 was omitted, both these balconies were omitted in favour of flat roofs, and the door from bedroom no. 3 was respecified as an obscure glazed window. The subsequent permission was subject to condition no. 10, which required the specification of obscure glazing to the aforementioned window and the installation within it of fixed lights, and condition no. 11, which prohibited the use of the flat roofs as balconies, roof terraces, or roof gardens. These conditions were attached “In the interest of privacy and amenity of occupiers of adjacent houses.”
- Under the second of these applications, the applicant proposed to reinstate bedroom no. 4, only it was denoted as bedroom no. 5. The subsequent permission was subject to condition no. 1, which required that the window in the south-eastern elevation be opaque/obscure glazed. This condition was

attached “To clarify the documents to which the permission relates and for the proper planning and sustainable development of the area.”

- 7.10. Under the current proposal, the applicant seeks to retain his reinstatement of the two doors to the small flat roof, albeit with obscure glazing. Such reinstatement facilitates access to this roof for the purpose of attending to the planter boxes. It also facilitates its use as a balcony.
- 7.11. The Planning Authority’s refusal of the proposal cites how the accessibility of both the small flat roof and the large flat roof would lead to their habitual use, which would result in the overlooking of adjacent residential properties. The applicant has responded by drawing attention to the clearance distances between the obscure glazed doors in question and their corresponding boundaries with neighbouring residential properties to the south-east and the south-west and the dwelling houses within these properties. These boundaries are denoted by walls and, in the case of No. 22 Strandside South, an evergreen hedgerow on the neighbour’s side of the wall. The observer, who resides in No. 22 Sarsfield Street, draws attention to the views that are available from the small flat roof into his residential property.
- 7.12. During my site visit, I observed from the small flat roof that the hedgerow to the south-west forms an effective screen, at present, to the rear garden of No. 22 Strandside South. I also observed that there is a clear line of sight into the rear garden of No. 22 Sarsfield Street, although not the dwelling house. I further observed from public vantage points that the large flat roof is prominent within its immediate vicinity and so it affords views into adjacent residential properties.
- 7.13. I note that the above cited conditions attached to the two most recent permissions for the dwelling house on the site were intended to safeguard neighbour privacy by effectively ensuring that the flat roofs would not be accessible/useable and that relevant openings were obscure glazed . These conditions were not appealed by the applicant, and they are presently being contravened by the reinstated doors to the small flat roof and the unauthorised extension to the large flat roof. I note, too, from my observations set out above that the need for these conditions remains.

I conclude that the proposal would contravene extant conditions applicable to the applicant’s dwelling house and that such contravention has led to a situation within

which overlooking of neighbouring properties and a consequent loss of privacy can occur.

**(iii) Water**

- 7.14. The proposal relates to alterations to an existing dwelling house which do not give rise to any issues relating to water.

**(iv) Appropriate Assessment**

- 7.15. The proposal relates to minor alterations to an existing dwelling house, which is not within a European site. No Appropriate Assessment issues arise.
- 7.16. Having regard to the nature, scale, and location of the proposal and the proximity to the nearest European site, it is concluded that no Appropriate Assessment issues arise as the proposal would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

**8.0 Recommendation**

That retention permission be refused.

**9.0 Reasons and Considerations**

Having regard to the Dungarvan Town Development Plan 2012 – 2018 and the planning history of the site, it is considered that the retention of the two doors to the small flat roof and the presence of an unauthorised extension to the large flat roof has led to a situation wherein both roofs are accessible and useable as balconies, roof terraces, and roof gardens in material contravention of Condition No. 11 attached to the permission granted to application 19/898. Such use leads to overlooking of adjacent residential properties and a consequent loss of privacy to these properties which seriously injures their amenity. The continuation of this use, which is facilitated by the proposed retention of the two doors and the unauthorised roof extension, would thus be contrary to the proper planning and sustainable development of the area.

---

Hugh D. Morrison  
Planning Inspector

15<sup>th</sup> June 2022