



An
Bord
Pleanála

Inspector's Report

ABP-314369-22

Development	Retention of a double storey rear extension, a single storey front extension and roof lights.
Location	No. 2 Ballsgrove, Drogheda, Co. Louth.
Planning Authority	Louth County Council
Planning Authority Reg. Ref.	22/451
Applicant	Michael McCabe.
Type of Application	Retention Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party V Grant of Permission for Retention
Appellant	Sinead Connolly.
Observer(s)	None.
Date of Site Inspection	29/11/2022.
Inspector	Enda Duignan

1.0 Site Location and Description

- 1.1. The address of the appeal site is No. 2 Ballsgrove, Drogheda, Co. Louth. The site is located on the northern side of Donore Road, c. 120m to the east of the junction of Donore Road and Donore Avenue. The site has a stated area of c. 0.0294ha., and comprises a mid-terrace, double storey dwelling. Car parking is provided within the dwelling's front setback and an area of amenity space is located to the rear. There is a single storey, detached structure at the northern end of the site within its rear amenity area.

In terms of the surrounds, the site is located within an established residential area which is typically characterised by terrace style dwellings of a similar architectural style. The site is bound to the west by No. 3 Ballsgrove and to the east by No. 1 Ballsgrove (i.e. the Third Party appellant).

2.0 Proposed Development

- 2.1. The proposed development seeks retention permission for the following works:
- The construction of a double storey extension to the dwelling's rear.
 - The construction of a single storey extension to the front of the dwelling.
 - The installation of velux style roof lights on the front roof slope.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority granted retention permission for the proposed development subject to compliance with a total of 3 no. conditions.

- 3.1.2. Condition No. 2 was included as follows:

Within three months of the date of this permission, the bedroom and kitchen windows located on the eastern side of the rear extension for which retention permission is sought shall be permanently closed over. The exterior wall shall be made good and match the remainder of the wall on that side of the dwelling. The applicant shall forward details for the written agreement of the planning authority of how this is to be achieved.

REASON: To protect the amenity of neighbouring residents.

3.1.3. Condition No. 3 was included as follows:

Surface water from the dwelling shall be disposed of within the boundaries of the site and shall not discharge onto the public road or adjoining property.

REASON: In the interest of traffic safety and orderly development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Louth County Council Planning Report form the basis for the decision. The report provides a description of the site and the subject proposal, and it identifies the site as being located within lands zoned 'A1 Residential Existing' of the Louth County Development Plan, 2021-2027. The report sets out the planning policy that is relevant to the development proposal and provides a summary of the issues raised in the third-party observation on file.

In terms of layout and design, the Planning Authority raise no concerns with respect to the proposed rear extension given its location to the rear of the dwelling. However, the Planning Authority have noted the presence of the existing windows at ground and first floor level which are identified on the submitted plans as being obscured glazing. Concerns are highlighted with respect to the potential for overlooking and it is recommended that a condition be included for these windows to be permanently closed over. A note is also included within the conclusion of the Planning Report that granting retention permission for these windows would hinder the development potential of the adjoining site. The Planning Report recommends a grant of retention permission subject to 3 no. conditions.

3.2.2. Other Technical Reports

None.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

One third-party observation was received from the owner of the property to the east (Third-Party Appellant). A summary of the issues raised in the observation are included as follows:

- Concerns with respect to overlooking.
- Concerns highlighted with respect to works which encroach upon the shared site boundary.

4.0 Planning History

None.

5.0 Policy Context

5.1. Louth County Development Plan (CDP), 2021-2027.

The Louth County Development Plan (CDP), 2021-2027, came into effect on the 11th November 2021. Under Map 1.1 of the CDP, the site is zoned 'A1 Residential Existing', the objective of which is 'To protect and enhance the amenity and character of existing residential communities'.

Given the nature of the proposals, Policy Objective HOU 34 is relevant to the consideration of the appeal. The policy seeks "To encourage sensitively designed extensions to existing dwellings which do not negatively impact on the environment, residential amenities, surrounding properties, or the local streetscape and are climate resilient".

Section 13.8.35 of the current CDP provides policy guidance with respect to the design of house extensions. Any application for the extension to or renovation of a property shall consider the following:

- Scale – The scale of the extension shall normally be ancillary to the main dwelling. There are, however, circumstances where an existing property is limited in size (e.g. a single bedroom cottage) and a large extension is required to allow it to be brought up to modern living standards. Such developments will be considered on a case-by-case basis and will require a sensitive design to

ensure that the proposal will not dominate the local streetscape and has a plot size that can absorb the development.

- Design – Whilst the design of extensions shall normally reflect the character of the existing property, contemporary and innovative designs that would make a positive contribution to the local streetscape will be considered. Privacy – Extensions shall not result in any new opportunities for overlooking into properties where no previous overlooking existed unless appropriate separation distances can be achieved and the extent of overlooking from an existing property will not be significantly increased because of the extension.
- Daylight – Extensions shall not result in a significant decrease in daylight or sunlight entering a property. There may be instances where a daylight and sunlight assessment will be required. This shall be carried out in accordance with the recommendations of the BRE Guidance ‘Site Layout Planning for Daylight and Sunlight’: A Guide to Good Practice (2011).
- Private Open Space – An adequate area of functional private open space shall be retained.
- Car Parking – Any loss of on-site car parking shall not result in a requirement for vehicular parking on the public road, particularly in locations where there is no or limited additional on street parking available.
- Services – If the property is served by an individual on-site wastewater treatment system this system must have the capacity to accommodate any additional loading in accordance with the requirements of the EPA Code of Practice: Domestic Waste Water Treatment Systems (p.e. ≤10) (2021). This may result in the requirement for existing on-site systems to be upgraded to the current standards.

5.2. Natural Heritage Designations

- 5.2.1. The nearest designated site is the River Boyne and River Blackwater Special Area of Conservation (SAC) (Site Code: 002299) c. 600m to the north-east of the site.

5.3. EIA Screening

- 5.3.1. The proposed development does not fall within a Class of Development set out in Part 1 or Part 2, Schedule 5 of the Planning and Development Regulations, 2001 (as amended), therefore no EIAR or Preliminary Examination is required.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are submitted by the Third Party (Sinead Connolly, the owner of the property to the east). A summary of the matters raised in the grounds of appeal are included as follows:

- The unauthorised two-storey extension to the rear of the appeal property has been partially constructed on the Third Party appellant's property. It is stated that the red line indicating the boundary of the site is incorrectly drawn on the submitted drawings and the boundary between the two properties is in fact a straight line and not a staggered line as shown. It is stated that the Applicant is not entitled to build or apply for planning permission to build on a Third Party property without the express permission of the owner and it is confirmed that no such permission was given.
- It is stated that the unauthorised extension to the rear of the property has three windows in its eastern elevation which overlook the garden to the rear of the Third Party appellant's property. This has resulted in the loss of privacy and residential amenity and the Third Party appellant has had to erect a fence to protect her tenants. It is stated that this fence is not the boundary as implied in the application.
- A condition attached to the decision requires that the windows in the bedroom and kitchen are blocked up. However, this condition should read that all windows on the eastern elevation should be blocked up as a window remains to the porch to the rear of the dwelling (ground floor level). The retention of this window would impact the ability of Third Party appellant to extend their house in the future.
- The unauthorised extension represents a very poor design and would set an undesirable precedent for similar type structures if permitted. It is submitted that

planning permission should be refused for the retention of the structure, and it should be taken down.

6.2. Planning Authority Response

- 6.2.1. In response to the first party appeal, the Planning Authority confirms its decision and indicates that the issues raised in the appeal have been covered in the Planner's report. The Board is requested to uphold the decision of the Planning Authority.

6.3. Observations

None.

6.4. Further Responses

- 6.4.1. A response by the Applicant to the Third Party appeal has been received dated 7th September 2022 which noted the following:

- Details are provided with respect to the history of the site which confirms the dwelling was the family's home from the early 1960s and the house was extended in the 1970s with the consent of their neighbour.
- The Applicant notes that at no point have they suggested that they own the area stepped with a timber fence boundary. The red line as shown on the plans are for identification purposes only.
- The Applicant raises questions over whether the appellant is the legal owner of No. 1 Ballsgrove. Included with the response is Folio LH21553F.
- It is confirmed that the Applicant took it upon themselves to close up the windows in question on the eastern elevation as per Condition No. 2 of the permission. The Applicant did not realise that they were not supposed to do this until a final decision was made and they sincerely apologise for being in breach of planning.

7.0 Assessment

The main issues to be considered are those raised in the Third Party's grounds of appeal, and I am satisfied that no other substantive issues arise. The issue of

appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Principle of Development
- Residential & Visual Amenity
- Boundary Encroachment
- Appropriate Assessment

7.1. Principle of Development

- 7.1.1. I note that the site is located on lands zoned 'A1 Residential Existing', the objective of which is 'To protect and enhance the amenity and character of existing residential communities'. Section 13.21.5 of the current CDP notes that 'Infill developments, extensions, and the refurbishment of existing dwellings will be considered where they are appropriate to the character and pattern of development in the area and do not significantly affect the amenities of surrounding properties. Given the nature of the proposal (i.e. retention of existing extensions) and the pattern of development in the surrounding area, I consider the principle of the development to be retained to be acceptable at this location.

7.2. Residential & Visual Amenity

- 7.2.1. The proposal seeks planning permission to retain an existing double storey extension to the rear of the dwelling on site. The extension comprises a bathroom, kitchen/dining room and porch at ground floor level and a WC, 2 no. bedrooms and a portion of an additional bedroom at first floor level. The double storey extension projects by c. 4.5m beyond the rear building line of the dwelling and adjoins the eastern and western site boundaries for its entire length. The extension has a flat roof form with a maximum height of c. 5.3m above natural ground level. The extension also includes a single storey porch type structure on its eastern side which extends by a further c. 1.3m and has a height of c. 2.3m. I note the extension is located adjacent to the rear amenity spaces of the properties to the east and west of the appeal site. Although it is unclear when the extensions were constructed, it was evident upon inspecting the appeal site that the extensions were not a recent addition to the dwelling. This point is confirmed by the Applicant in their response to the appeal. I also noted that there was evidence of similarly scaled extensions further to the west of the appeal site. Having regard to

the overall scale, height and form of the rear extensions, the suburban context of the site and surrounds and the pattern of development in the surrounding area, I am satisfied that the development will not unreasonably compromise the residential amenity of properties within the vicinity of the site by reasons of overshadowing or by being visually overbearing.

7.2.2. Concerns are highlighted by the Third Party appellant with respect to the potential for overlooking from the existing extension given the presence of ground and first floor level windows on the eastern elevation. The Third Party appellant refers to the condition attached to the permission which requires that the windows in the bedroom and kitchen on the eastern elevation are blocked up. However, it is contended that this condition should read that all windows on the eastern elevation should be blocked up as a window remains to the porch to the rear of the dwelling. Concerns are also highlighted that the retention of this window would impact the ability of Third Party appellant to extend their property in the future should the need arise. Upon inspecting the appeal site, I observed that all windows at ground and first floor level have now in fact been blocked up. The Applicant has confirmed that these works were undertaken in error. Notwithstanding this, I concur with the recommendations of the Planning Authority, insofar that the inclusion of Condition No. 2 would satisfactorily address the potential for overlooking from the development and would ensure that the development potential of the adjoining site is not compromised. Notwithstanding that works have already been undertaken on site, I recommended the inclusion of a similar condition, requiring the Applicant to submit details of the works for the written agreement of the Planning Authority.

7.2.3. In terms of the visual impact of the proposal on the existing streetscape, the proposal seeks retention permission for a single storey extension to the front of the dwelling. The extension projects by c. 1m beyond the front building line of the existing dwelling and has a total length of c. 4.7m. I note that the pitched roof extension has maximum height of c. 2.8m. The proposal also seeks to retain the 2 no. roof lights on the front roof slope which serve attic level storage. Overall, I am satisfied that the works do not detract from the character of the site or surrounds and are generally consistent with

the pattern of development in the surrounding area. I am therefore satisfied that the proposal is acceptable having regard to the visual amenity of the surrounding area.

7.3. Boundary Encroachment

7.3.1. The Third Party appellant has highlighted in their submission that the double storey extension to the rear of the appeal property has been partially constructed on the Third Party appellant's property. It is stated that the red line indicating the boundary of the site has been incorrectly drawn on the submitted drawings and the boundary between the two properties is in fact a straight line and not staggered line as shown. It is contended that the Applicant is not entitled to build or apply for planning permission to build on a Third Party property without the express permission of the owner and it is confirmed that no such permission was given. I consider the issues raised in the grounds of appeal are a civil and/or legal matter, that is outside the statutory remit of this appeal. I also refer to Section 5.13 of the Development Management Guidelines which state that "the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. The Board is therefore not required to arbitrate on such a matter in the making of a decision with respect to this appeal. Furthermore, it is of relevance to highlight the provisions of section 34(13) of the Planning and Development Act, 2000 (as amended), which states:

- 'A person shall not be entitled solely by reason of a permission under this section to carry out any development.'

7.4. Appropriate Assessment

7.4.1. Taking into consideration the modest nature, extent and scope of the development to be retained and to the nature of the receiving environment, with no direct hydrological or ecological pathway to any European site, that no appropriate assessment issues arise and that the development to be retained would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

8.0 Recommendation

8.1. Grant of retention permission is recommended.

9.0 Reasons and Considerations

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

10.0 Conditions

1.	The development to be retained shall comply with the plans and particulars lodged with the application submitted, 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 completed in accordance with the agreed particulars
2.	Within three months of the grant of permission, the ground and first floor level windows on the eastern elevation of the rear extension shall be permanently closed over. The exterior wall shall be made good and match the remainder of the wall on that side of the dwelling. The Applicant shall forward details for the written agreement of the Planning Authority as how this is to be achieved. Reason: In the interest of residential amenity.
3.	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.

Enda Duignan
Planning Inspector

15/12/2022