



An
Bord
Pleanála

Inspector's Report

ABP-314383-22

Development	Retention of one and a half storey detached house and single storey garage.
Location	Site 10, Walker Hall, Newtown Cross, Kildare Town, Co. Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	22/468
Applicant	Sid Xhezaj.
Type of Application	Permission.
Planning Authority Decision	Grant Permission
Type of Appeal	First Party V Condition of Permission
Appellant(s)	Sid Xhezaj.
Observer(s)	Loretta Noone.
Date of Site Inspection	08/02/2023.
Inspector	Enda Duignan

1.0 Site Location and Description

- 1.1.** The address of the appeal site is Site No. 10 Walker Hall, Newtown Cross, Kildare Town, Co. Kildare. The site is situated c. 1.4km to the south of Kildare Town and c. 750m to the south of the M7 junction. Walker Hall is a relatively recently constructed residential estate, comprising a total of 11 no. detached double storey dwellings. The estate is located on the eastern side of the R415 and is accessed from a local road (L7024) to the north.
- 1.2.** The appeal site (Site No. 10) is located towards the eastern end of the estate and comprises a detached, double storey dwelling. The dwelling has a gable fronted, pitched roof form with a single storey flat roof element extending to its side and rear. A flat roof outbuilding, measuring c. 33sq.m. is located within the rear amenity space, adjacent to the site's southern and western boundaries.
- 1.3.** In terms of the site surrounds, Site No. 9 is located to the immediate west of the appeal site and currently under construction and No. 11 is located to the east (Third Party Observer). Both sites contain detached, double storey dwellings with a contemporary architectural expression. Lands to the south of the appeal site appear to be in agricultural use.

2.0 Proposed Development

- 2.1.** The proposed development seeks retention permission for the dwelling as constructed on the appeal site. The Planning Authority refer to the extant permission on site (i.e. Ref. 21/116), and modifications for which retention permission are sought include:

 - An increase in height from 7.745m to 8.725m.
 - An increase in floor area from 290sq.m. to 375sq.m.
 - An increase in the width of the dwelling.
 - Modifications to the front elevation treatment.
 - Modifications to the fenestration (front, side and rear elevations).
 - The construction of a sun room to the rear of dwelling.
 - Construction of a garage to the rear of dwelling.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority granted planning permission subject to compliance with a total of 11 no. standard conditions.

Conditions of note included:

Condition No. 2

- a. The first floor rear elevation windows shall be revised, the full length windows shall be omitted and shall be replaced with windows similar to those as permitted under 21/116 (drawing No SX/PLN-003). Revised drawings indicating same shall be submitted for the written approval of the planning authority within six weeks of the issuing of the final grant of permission.
- b. All first floor bathroom windows shall be permanently fitted with obscure glazing.
- c. The flat roof of the sunroom shall not be used as a balcony area or open space area.

Reason: In the interest of visual and residential amenity.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Kildare County Council Planning Reports forms the basis for the decision. The First Planning Report provides a description of the site and the subject proposal and summaries the issues raised in the third-party observation on file.

Within their assessment of the application, the Planning Authority raised concerns regarding the fenestration at first floor level on the dwelling's rear elevation. The Planning Authority noted that the use of the flat roofed single storey sunroom as a balcony was not acceptable as it would significantly impact on the residential amenity of the neighbouring properties. It was stated that the windows granted under Ref. 21/116 are considered more appropriate and additional information was requested with respect to this matter. Additional information was also requested with respect to:

- Provision of opaque glazing on the first floor western elevation.

- Revised drawings indicating the omission or relocation of a first floor level bedroom given the reliance on a clear glazed window on the eastern elevation.
- Revised site layout plan showing foul drains and surface water drains together with connections to the sewers and a demonstration that each system is independent of each other.
- Revised drawings with accurate dimensions of the existing garage.

The submission of the additional information by the Applicant was noted by the Planning Authority within the Second Planning Report. A grant of permission was recommended, subject to compliance with a total of 11 no. conditions.

3.2.2. Other Technical Reports

Roads Department: Report received stating no objection subject to conditions.

MD Engineer: Report received stating no objection subject to conditions.

Water Services: Initial report received recommending further information. Second report stating no objection subject to conditions.

3.3. Prescribed Bodies

Irish Water: Initial report received recommending further information. Second report stating no objection subject to conditions.

3.4. Third Party Observations

One third-party observation was received from Loretta Noone (Third-Party Observer to Appeal), the occupier of the property to the east. The issues raised can be summarised as follows:

- Concerns the constructed sunroom results in loss of light and overshadowing of their property.
- Concerns the roof of the sunroom will be utilised as a balcony/roof terrace which will compromise the residential amenity of their property.
- Concerns with respect to the scale and form of the garage structure.
- Scale of the constructed dwelling is excessive.

- Concerns with respect to overlooking from side windows.
- Concerns with respect to the security cameras that have been installed.
- Conditions of the parent permission have been ignored and it is stated that people should only build what they have permission for. Planning laws, permissions and conditions should be followed and adhered to.
- The proposal would set an undesirable precedent for similar developments and belittles others who abide by the laws and build in accordance with permissions.

4.0 Planning History

4.1. Relevant History of the Appeal Site

21/116: Planning permission granted by the Planning Authority in May 2021 consequent on the grant of outline permission 18/617. The development comprised the construction of a detached one and a half storey house and all associated site works.

19/854: Planning permission granted by the Planning Authority in January 2020 consequent on the grant of outline permission 18/617. The development comprised the construction of a detached one and a half storey house and all associated site works.

19/854: Outline permission granted by the Planning Authority in December 2018 for site layout and development works and outline permission for 11 individual serviced residential sites all on site of circa 1.12ha with vehicular and pedestrian access from the L7024, all boundary treatments, open space, on and off-site development works.

4.2. Enforcement History

UD7962: The Planning Report on file indicates that an enforcement file is open, and a warning letter has been issued.

5.0 Policy Context

5.1. Project Ireland 2040 National Planning Framework (NPF) Local Policy

- 5.1.1. The first National Strategic Outcome expected of the National Planning Framework is compact growth. Effective densities and consolidation of urban areas is required to minimise urban sprawl and is a top priority. 40% of future housing delivery is to be within the existing footprint of built up areas (National Policy Objective 3a).
- 5.1.2. National Policy Objective 35 of the NPF seeks to “Increase residential density in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights”.

5.2. Regional Spatial and Economic Strategy for the Eastern and Midland Region (RSES).

A key National Strategic Outcome (NSO 1) in the NPF and Regional Strategic Outcome (RSO 2) in the RSES is the need to achieve ambitious targets for compact growth in our urban areas. Urban regeneration and infill sites can contribute to sustainable compact growth and revitalisation of existing settlements of all scales. This will help to address National Policy Objective 3a, 3b and 3c of the NPF which targets the delivery of new homes within the footprint of existing settlements.

In terms of Consolidation and Re-Intensification, Objective RPO 4.3 of the RSES seeks to “Support the consolidation and re-intensification of infill/brownfield sites to provide high density and people intensive uses within the existing built up area of Dublin City and suburbs and ensure that the development of future development areas is co-ordinated with the delivery of key water infrastructure and public transport projects.

5.3. Kildare County Development Plan, 2023-2029 (CDP)

- 5.3.1. I note that Kildare Town is identified as a self-sustaining growth town as per the settlement hierarchy of the current CDP. Chapter 15 of the Plan sets out Development Management Standards that are applicable to development proposals. I note that Section 15.2.2 (Overlooking/Separation Distances) is relevant to the consideration of

this appeal. The policy states that a minimum distance of 2.3 metres shall be provided between the side walls of adjacent dwellings or dwelling blocks with each building being a minimum of 1 metre from the boundary to allow for adequate maintenance and access. In all instances where minimum separation distances are not met, the applicant shall submit a sunlight/daylight/overshadowing analysis for proposed developments. In keeping with the principle of compact development and the desire for town and village renewal, where such instances occur within established urban areas and in particular town centres, a level of flexibility may be applied by the Planning Authority. Any relaxing of standards will be assessed on a case-by-case basis and should not be viewed as a precedent for future development.

5.4. Kildare Town Local Area Plan (LAP), 2012-2018

- 5.4.1. I note that the appeal site is located within the settlement boundary of the LAP area. Whilst it is unclear whether the life of the LAP has been formally extended, I note that the Planning Authority's website indicates that until a new plan has been adopted to replace the 2012 - 2018 LAP, any planning decisions will be based off the current LAP. The appeal site is located on lands zoned C1 (New Residential Phase 1), the objective of which is 'To provide and improve new residential areas and for associated local shopping and other services incidental to new residential development'.
- 5.4.2. The policy states that this zoning provides for low density residential development at a maximum of 4 units per acre (10 units per hectare). Serviced residential sites should be provided to people wishing to build a house to their own design and layout. Full planning permission shall be sought by the developer/landowner for the site layout and development works and outline permission for the individual houses. In addition, a design brief shall be submitted outlining principle design features for the overall scheme. The policy notes that each individual applicant shall then submit their own design and apply for full permission/approval on a serviced site.

5.5. Natural Heritage Designations

- 5.5.1. The nearest designated site is the Pollardstown Fen SAC (Site Code: 000396) c. 6.5km to the north-east of the site.

5.6. EIA Screening

- 5.6.1. 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

- 6.1.1. A First Party Planning appeal has been prepared on behalf of the Applicant with respect to the Condition No. 2(a) which was attached to a grant of permission. This specific condition requires the first floor level windows on the rear elevation to be replaced with windows similar to those permitted under Ref. 21/116 (Drawing No. SX/PLN-003). The grounds of appeal can be summarised as follows:

- It is stated that the Applicant feels aggrieved at the inclusion of this condition as the full length windows do not access a balcony and the condition is therefore onerous. Given the inclusion of Condition 2(c), this disallows the Applicant from using the flat roof of the sunroom as a balcony so it is not understood why they must now also amend the windows. It appears to be overly onerous on the Applicant to amend the existing windows.
- Photographs of the existing sunroom roof have been submitted and it is stated that the flat roof is not a balcony as it has no elements of a balcony, such as handrails, safety barriers etc.
- It is stated that the Applicant has no intention of using the flat roof as a balcony and to request the Applicant to amend the windows on the potential of a future balcony does not reflect a fair, reasonable or objective assessment of the application.
- The board is requested to amend the condition of the application to reflect a more fair, balanced and reasonable condition.

6.2. Planning Authority Response

- 6.2.1. A submission was received on 15th September 2022 which confirms they have no further observations in respect of the First Party appeal.

6.3. Observations

6.3.1. One (1) no. observation has been submitted from Loretta Noone, the occupier of the property to the immediate east of the appeal site. The matters raised summarised as follows:

- Concerns are highlighted within the observation with respect to the level of unauthorised works that were carried out on site. It is stated that the observer has been put in the unfortunate position, where they now have to object to the proposed balcony in an effort to retain their privacy.
- At the time of the original objection to the application, the observer spoke with their neighbor about their concerns, and it was confirmed that there was an intention to install a 1m high glass balustrade around the balcony.
- It is unacceptable behavior to build whatever they choose to, disrespectfully ignoring all the planning laws and permissions that were granted, seek afterwards and get retention for the unauthorised building, and then go and appeal a condition imposed by the County Council.
- To the observer, this seems unlawful, and it is considered that it belittles and makes a fool out of all citizens that abide by the planning laws and permissions granted to them.
- Concerns are highlighted with respect to the impact of the first floor level balcony, giving it will overlook every part of their garden and will look directly into their main living area.
- It is contended that this is certainly a balcony and it has porcelain tiles, outside downlighters to light up the floor and two sets of glass patio doors opening out onto it. It is stated that the only thing missing at the moment is the glass handrail.
- It is stated that the Applicant and agent, have together built whatever type of house they wanted, whatever size they wanted, put a balcony on top of it and followed no planning laws or conditions imposed. From this behavior, it is stated that there is no evidence that any conditions would be adhered to.
- Photographs of the roof area of the sunroom are enclosed within the Third Party observation, along with the original observation to the application.

6.4. Further Responses

6.4.1. None received.

7.0 Assessment

7.1.1. The First-Party Appeal relates to Condition No. 2(a) attached to the Planning Authority's Notification of Decision to Grant Permission. I have had regard to the specific concerns raised in the Third Party observation and I am satisfied that the development is otherwise in accordance with the proper planning and sustainable development of the area, and that the determination by the Board of the application as if it had been made to it in the first instance would not be warranted. My assessment will therefore be limited to the matters raised in relation to the terms of the Condition, pursuant to the provisions of section 139 of the Planning and Development Act 2000 (as amended).

7.1.2. I note that there is a history planning applications on the appeal site and the current application seeks to regularise works that did accord with the extant permission (Ref. 21/116). As noted earlier in this report, the Applicant is appealing Condition No. 2(a) of the permission. The condition requires the Applicant to replace the first floor level windows on the rear elevation with windows similar to those as permitted under Ref. 21/116 (Drawing NO. SX/PLN-003). Works to be retained included the construction of a single storey sun room to the rear of the dwelling with a flat roof. Within their assessment of the planning application, the Planning Authority raised significant concerns with respect to the revised fenestration on the first floor rear elevation, and the potential for these full height windows to enable access to the roof of the sun room. As part of their additional information response, the Applicant confirmed that these windows double up as fire regulation doors and it was stated that the flat roofed area will not be used as a balcony.

7.1.3. I note that the Third Party observer has highlighted their concerns with respect to the proposal and the potential for this roofed area to be utilised as a balcony. It is stated that this would compromise the residential amenity of their property given the potential for direct overlooking of their amenity area and their living quarters. Having inspected the appeal site, I observed that there was no balustrade erected around the perimeter

of the flat roofed area. Whilst I acknowledge the Third Party observer's concerns, I note that Condition No. 2(c) of the permission was included as follows:

- "The flat roof of the sunroom shall not be used has a balcony area or open space area."

Given the inclusion of this condition will prohibit the Applicant from utilising this roofed area as a balcony, I am satisfied that this is sufficient to safeguard the ongoing amenity of adjoining property. I again note that the flat roofed area does not have a balustrade and I consider the requirement to replace these windows to be overly onerous in this instance. I am satisfied that the retention of the existing windows, in lieu of the windows originally permitted under Ref. 21/116 does not result in additional overlooking, nor do they detract from the character of the host dwelling. In terms of the Third Party observers comments with respect to history of unauthorised works undertaken on site, I note that Planning Enforcement is the role of the respective Planning Authority, and An Bord Pleanála has no role in this matter

- 7.1.4. Having regard to the foregoing, I am satisfied that the development to be retained is acceptable having regard to the residential amenity of the surrounding area and is in accordance with the provisions of the Kildare County Development Plan, 2023-2029. In this regard, I recommend the omission of Condition 2(a).

8.0 Appropriate Assessment

Having regard to the minor nature of the proposed development and to the location of the site in a serviced urban area and the separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

9.0 Recommendation

- 9.1. Having inspected the site and reviewed the drawings and documents on file, I am satisfied that the determination by the Board of this application as if it had been made to it in the first instance would not be warranted. Accordingly, I consider that it would be appropriate to use the provisions of Section 139 of the 2000 Act, as amended.

I recommend that Condition No. 2(a) be omitted.

9.2. Reasons and Considerations

Having regard to the nature and scale of the proposed development, the 'C1' zoning for the site, the provisions of the Kildare County Development Plan, 2023-2029 and subject to compliance with conditions, it is considered that, the development to be retained would not seriously injure the residential and visual amenities of the area or of property in the vicinity and would, therefore, be in accordance with the proper planning and sustainable development of the area.

Enda Duignan
Planning Inspector

13th February 2023