



An  
Bord  
Pleanála

## Inspector's Report

### ABP-315723-23

#### Development

Retention of a first floor level extension over a pre-existing ground floor kitchen to the rear of dwelling house together with associated site development works.

#### Location

Bellmont or Lisderg, Co Offaly

#### Planning Authority

Offaly County Council

#### Planning Authority Reg. Ref.

Reg Ref 22575

#### Applicant(s)

James Dunican

#### Type of Application

Retention Permission

#### Planning Authority Decision

Refuse

#### Type of Appeal

First Party

#### Appellant(s)

James Dunican

#### Observer(s)

Raymond Gunning

Kevin Maher

#### Date of Site Inspection

24<sup>th</sup> September 2023

#### Inspector

Mary Crowley

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## 1.0 Site Location and Description

- 1.1. The appeal site with a stated area of 0.0398 ha is located within the centre of Belmont Village and comprises a two storey semi-detached dwelling. A set of photographs of the site and its environs taken during the course of my site inspection is attached. These serve to describe the site and location in further detail.

## 2.0 Proposed Development

- 2.1. Retention permission is sought for a first-floor extension (29.8sqm) over a pre-existing ground floor kitchen to the rear of the dwelling house (148.8sqm) together with associated site works.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. Offaly County Council issued a notification of decision to refuse permission for the following reason:

*The development subject of this planning application has a direct impact, with respect to residential amenity, on an adjoining property having regard to undue overshadowing and therefore the development materially contravenes the requirements of "DMS-55 Extensions" of the Offaly County Council Development Plan 2021-2027. The development subject of this planning application would therefore, be contrary to the proper planning and sustainable development of the area.*

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

- The **Case Planner** recommended that permission be refused. The notification of decision to refuse permission issued by Offaly County Council reflects this recommendation.

#### 3.2.2. Other Technical Reports

- **Water Services** – No objection subject to conditions as set out in their report.
- **Area Engineer** – No objection
- **Planning Enforcement** – Notes that three warning letters have been issue and 3 no applications have been submitted on site including the current application.

### 3.3. Prescribed Bodies

- None

### 3.4. Third Party Observations

- 3.4.1. There is 3 no observations recorded on the planning file from (1) Raymond Gunning, (2) Noel & Maureen Ryan and (3) Kevin Maher. The issues raised by Raymond Gunning and Noel & Maureen Ryan relate to overshadowing, sun light impacts, overlooking and surface water disposal. The observation by Kevin Maher supports the proposed development.

## 4.0 Planning History

- 4.1. No planning history has been made available with the appeal file. The following is noted from the Case Planners report.

- **Reg Ref 22/214** – James Dunican refused permission for existing 2 storey extension to rear of existing house and all associated site works for a single reason as follows:

*1) The development subject of this planning application has a direct impact, with respect to residential amenity, on an adjoining property and materially contravenes the requirements of DMS-55 Extensions of the Offaly County Council Development Plan 2021-2027. The development subject of this planning application would therefore, be contrary to the proper planning*

- **Reg Ref 21/256** – James Dunican refused retention permission for an existing 2 storey extension to rear of existing house and all associated site works for the following reason:

- 1) *It is the view of the Planning Authority that in responding to the issues raised in the issued Request for Further Information, the Applicant has failed to demonstrate that the existing two storey extension on the subject site, does not have an adverse impact on the amenities of adjoining properties. In addition, the Applicant has failed to provide an appropriate daylight and shadow projections in accordance with the recommendations of Site Layout Planning for daylight and Sunlight: A Guide to Good Practice (BR209, 2011) and BS 8206 Lighting for Buildings, Part 2, 2008: Code of Practice for daylighting or other updated relevant documents. It is therefore considered by the Planning Authority that the development subject to this planning application has a direct impact, with respect to residential amenity, on the adjoining properties and materially contravenes the requirements of DMS-55 Extensions of the Offaly County Council Development Plan 2021-2027. The development subject of this planning application would therefore, be contrary to the proper planning and sustainable development of the area.*

**Enforcement: UD/20/040** - Complaint received in September 2020 with regard to the construction of a two-storey extension to the rear of a semi-detached dwelling in excess of 40m without the benefit of planning permission. Warning letters were issued in relation to the unauthorised works and an enforcement notice was issued on the 22/12/2022.

## 5.0 Policy Context

### 5.1. Development Plan

The operative Development Plan is the **Offaly County Development Plan 2021-2027**. **Section 13.9.4: Other Residential Development (Rural and Urban)** sets out the following:

#### **DMS-55 Extensions**

*Proposed extensions shall:*

- *in general, be subordinate to the existing dwelling in its size, unless in exceptional cases, a larger extension compliments the existing dwelling in its design and massing,*

- *Reflect the window proportions, detailing and finishes, texture, materials and colour unless a high quality contemporary and innovatively designed extension is proposed;*
- *Not have an adverse impact on the amenities of adjoining properties through undue overlooking, undue overshadowing and or an over dominant visual impact; and*
- *Carefully consider site coverage to avoid unacceptable loss of private open space.*

*Where new extensions are proposed very close to adjoining buildings and may impact upon the residential amenities of an adjacent property, daylight and shadow projections will be required in accordance with the recommendations of Site Layout Planning for daylight and Sunlight: A Guide to Good Practice (BR 209, 2011) and BS 8206 Lighting for Buildings, Part 2, 2008: Code of Practice for daylighting or other updated relevant documents.*

## **5.2. Natural Heritage Designations**

5.2.1. The site is not located within a designated Natura 2000 site.

## **5.3. EIA Screening**

5.3.1. Having regard to the nature and scale of the proposed development there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **6.0 The Appeal**

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

6.1.1. The first party appeal against the decision to refuse permission has been prepared and submitted by ABBD Consultants and may be summarised as follows:

- The undue overshadowing referred to in the reason for refusal is not of the neighbouring site per se but rather overshadowing of a window in the neighbouring extension. Submitted that this window was installed without the agreement of the applicant.

- The applicant inherited the property in c2007 and carried out some renovations in 2008 including re-roofing the rear 1950's flat roofed kitchen extension with a lean-to roof, an exempt development. A further extension was carried out in 2020 whereby the applicant built over the single storey kitchen to provide 2 bedrooms. This caused the issuing of warning notices and subsequent retention applications following complaints from neighbours. This development is not considered exempt but in normal circumstances would not be contentious.
- However, in this case the existence of a window in the neighbour's rear extension and on the boundary line directly overlooking the applicants property was somewhat blocked by this development. Furthermore the applicant confirms that proposals have been made as part of the application to provide a roof light to the affected room.
- The applicant is concerned at the County Councils reasoning in giving protection to a window in his neighbour's property while completely disregarding the direct overlooking and impact this window has on the amenity of the applicants property.
- The overlooking window in the neighbours property materially contravenes the requirements of "DMS-55 Extensions" of the Offaly County Council Development Plan 2021-2027 and requirements of previous County Development Plans whereby windows are not and were not permitted to so blatantly overlook adjoining properties.
- The appeal was accompanied by Daylight Assessment report in accordance with the recommendations of Site Layout Planning for Daylight and sunlight: A Guide to Good Practice. See copy of report attached.
- "Additional Appendix F analysis" of said report referring to developments on boundaries and the "Good Neighbour" mirrored development. The applicant submits that Offaly County Council are discriminating against him and his family and their ability to develop their property with a development that more or less mirrors that of his neighbour and no more.

6.1.2. The appeal was accompanied by Daylight Assessment report.



## 6.2. Planning Authority Response

- 6.2.1. Offaly County Council advise that 3 no. planning applications seeking retention for the existing two storey extension have been submitted to date: 21/256, 22/214 and, the current planning, 22/5/5. Over the period of the three planning applications, no amendments were made to the layout of the existing development. The Planning Authority respectfully requests that An Bord Pleanála support its decision to refuse permission in this instance.

## 6.3. Observations

- 6.3.1. There are 2 no observations from (1) Kevin Maher and (2) Raymond Gunning. The observation from Raymond Gunning raised issues in relation to the provision of an inadequate daylight assessment report, use of the room as a bedroom and not a storeroom, overshadowing, removal of secondary means of escape in the event of a fire, unauthorised hard core area, offer to install a fixed roof light in the flat roof of the affected room, size of the overall development, rainwater soakage pit and sameness of applications. The observation by Kevin Maher supports the proposed development.

6.3.2.

## 6.4. Further Responses

- 6.4.1. None

## 7.0 Assessment

- 7.1. Having regard to the information presented by the parties to the appeal and in the course of the planning application and my inspection of the appeal site, I consider the key planning issues relating to the assessment of the appeal can be considered under the following general headings.

- Principle
- Residential Amenity
- Appropriate Assessment
- Other Issues

## 7.2. Principle

- 7.2.1. Retention permission is sought for a first-floor extension (29.8sqm) over a pre-existing ground floor kitchen to the rear of an existing dwelling house. Having regard to the location of the scheme within the village envelop of Bellmont and to the rear of an existing dwelling, it is not unreasonable that developments and uses of this nature would take place. Accordingly I consider the principle of the scheme to be acceptable subject to compliance with the requirements of the current Development Plan.

## 7.3. Residential Amenity

- 7.3.1. Offaly County Council refused planning permission as the development has a direct impact, with respect to residential amenity, on an adjoining property having regard to undue overshadowing. The development materially contravenes the requirements of "DMS-55 Extensions" of the Offaly County Council Development Plan 2021-2027.
- 7.3.2. As documented in Section 4.0 Planning History above there were 2 no previous applications for retention of planning permission for the first-floor extension (29.8sqm) over a pre-existing ground floor kitchen to the rear of the dwelling house (Reg Ref PL2/22/214 and Reg Ref PL2/21/256 refers). Both of these applications were refused planning permission. I have considered these applications and agree with the comments of the Case Planner that they are similar to the development now before the Board in terms of floor plans and elevations and that there are no obvious changes to the scheme. Notwithstanding this, the case now before the Board is considered de novo.
- 7.3.3. In light of the reason for refusal I refer to Section 13.9.4: Other Residential Development (Rural and Urban) of the Development Plan that sets out DMS-55 Extensions. This section essentially sets out a number of requirements to be met in the consideration of domestic extensions. Each requirement is discussed in relation to the extension to be retained as follows:
- *In general, be subordinate to the existing dwelling in its size, unless in exceptional cases, a larger extension compliments the existing dwelling in its design and massing,*

I am satisfied that the first-floor extension to be retained is subordinate to the existing dwelling. There are no issues in this regard.

- *Reflect the window proportions, detailing and finishes, texture, materials and colour unless a high quality contemporary and innovatively designed extension is proposed;*

I am satisfied that the window proportions, detailing and finishes as constructed are appropriate and have had due regard to the parent building and adjoining properties. There are no issues in this regard.

- *Not have an adverse impact on the amenities of adjoining properties through undue overlooking, undue overshadowing and or an over dominant visual impact.* It is noted that where new extensions are proposed very close to adjoining buildings daylight and shadow projections will be required.

I refer to the drawing and details together with my site photos and photos available to view throughout the appeal file. The first-floor extension to be retained is in very close proximity to the adjoining dwelling to the south. While there is a rear part two storey, part single storey extension to the rear of this adjoining dwelling I note that there is a large skylight serving the ground floor element with a further single window serving the first-floor rear elevation. However, there is a further window on the northern elevation of this neighbouring first floor extension. Concern is raised that the development to be retained blocks off sunlight to this window, making the neighbouring window functionally useless.

I have noted the technical reports and the loss of daylight and undue overshadowing to this window as a result of the proposed scheme. While the insertion of a side window in a first floor rear extension in an urban area such as this would, if considered from first principles, be strongly discouraged (bar some exceptional circumstances) thereby averting such a situation as this, it remains that there is a window on the northern first floor elevation of the adjoining building to the south. There is a loss of daylight and undue overshadowing by reason of proximity of the proposed scheme to be retained and therefore an adverse impact on the amenities of the adjoining property. Refusal is recommended.

- *Carefully consider site coverage to avoid unacceptable loss of private open space.*

Having regard to the site layout plan and the nature of the works to be retained I am satisfied that there will be no unacceptable loss of private open space.

- 7.3.4. Having regard to the foregoing it is considered the proposed development does not satisfactorily meet the requirements DMS-55 Extensions as set out in the County Development Plan 2021 - 2027. Refusal is recommended.

#### 7.4. **Appropriate Assessment**

- 7.4.1. Having regard to the nature and scale of the proposed development and its distance to the nearest 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.

#### 7.5. **Other Issues**

- 7.5.1. **Development Contributions** – I refer to the Offaly County Council Development Contributions Scheme. It is recommended that should the Board be minded to grant permission that a Section 48 Development Contribution condition is attached.

### 8.0 **Recommendation**

- 8.1. Having considered the contents of the application the provision of the Development Plan, the grounds of appeal and the responses thereto, my site inspection and my assessment of the planning issues, I recommend that permission be **REFUSED** for the following reason.

### 9.0 **Reasons and Considerations**

1. The first-floor extension, the subject of this appeal, has an adverse impact, with respect to residential amenity, on an adjoining property immediately to the south through undue overshadowing and loss of daylight to the first floor side elevation window and would be contrary to the requirements of "DMS-55 Extensions" of the Offaly County Council Development Plan 2021-2027. The development subject of this planning application would therefore, be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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**Mary Crowley**

**Senior Planning Inspector**

**24<sup>th</sup> September 2023**