



An
Bord
Pleanála

Inspector's Report ABP318113-23

Development	Retain existing balcony in part of rear of existing dwelling
Location	Barrow, Ardfert, Co Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	23/784
Applicant(s)	Ger O'Mahony
Type of Application	Retention permission
Planning Authority Decision	Refusal of permission
Type of Appeal	First Party
Appellant(s)	Ger O'Mahony
Observer(s)	Joseph Doyle
Date of Site Inspection	5 th December 2023
Inspector	Ann Bogan

1.0 Site Location and Description

- 1.1. The coastal site is located at Barrow, approximately 6km from Ardfert Village, Co Kerry and overlooks Barrow Harbour to the south, while Tralee Golf Club is nearby to the north. The existing house on the site is below and to the south of the public road. There are neighbouring houses located to west and east of the subject house and also houses at a level below it, to the south.

2.0 Proposed Development

- 2.1. The development involves the part retention of an existing balcony located to the rear of the existing house. The existing balcony runs the full length of the rear of the house. The part to be retained is the central part of the balcony, which adjoins bedrooms and a lounge and is approximately 20m in length and varies in width from 4.1m to 1.4m. The parts of the balcony at the eastern and western ends of the house are not included in the application and the drawings indicate that these sections of balcony have been in place since 1982 (the year may be stated in error as the original permission for the house was in 1990).

3.0 Planning Authority Decision

3.1. Decision

Decision to refuse permission issued on 1st September 2023 for the following reason:

‘It is considered that the proposed balcony, by reason of its scale and siting, would seriously injure the amenities of the existing residential properties due to overlooking and disturbance. The proposed development would therefore depreciate the value of the properties in the vicinity and would be contrary to the proper planning and sustainable development of the area’.

3.2. Planning Authority Reports

3.2.1. Planning Reports

In report of 29th August 2023 the Planning Officer concluded that the balcony 'overlooks adjoining properties and impacts on residential amenities.' Although the applicant is applying to retain a smaller portion of the entire balcony than in a previous application, he considered that it is still too large and recommended refusal of permission. The report formed the basis of the Planning Authority's decision.

3.2.2. Other Technical Reports

A notional screening exercise was carried out by the planning authority ecologist on the development to be retained and concluded the development would not have required an Appropriate Assessment as there was no realistic pathway for impact on any European site. He also concluded that the development concerned would not have required either an EIA or EIA Screening.

4.0 Planning History

23/63 Ger O'Mahony: Application to retain existing balcony to rear of dwelling and retain existing basement as constructed. Split decision: permission granted for basement; permission refused for retention of balcony.

22/456 Ger O'Mahony: Application to retain existing balcony at rear of dwelling and retain existing basement. Application withdrawn.

90/1074 James Murphy Permission for a dwelling (which included a small balcony serving a bedroom at the western end of the dwelling)

Enforcement ENF8833 Planning Officer's report noted an enforcement case is open on the site relating to the balcony

5.0 Policy and Context

Kerry County Development Plan 2022-2028

Volume 1 Section 11 Landscape

KCDP 11-78 *Protect the landscapes of the County by ensuring that any new developments do not detrimentally impact on the character, integrity, distinctiveness or scenic value of their area. Any development which could unduly impact upon such landscapes will not be permitted.*

There are two landscape designations for the county.

1 Visually Sensitive Areas

2 Rural General

The site is located in 'Rural General':

11.6.3.2 Rural General *Rural landscapes within this designation generally have a higher capacity to absorb development than visually sensitive landscapes.*

Notwithstanding the higher capacity of these areas to absorb development, it is important that proposals are designated to integrate into their surroundings in order to minimise the effect on the landscape and to maximise the potential for development. Proposed developments should, in their designs, take account of the topography, vegetation, existing boundaries and features of the area. Permission will not be granted for development which cannot be integrated into its surroundings.

Vol 6 Development Management Standards and Guidelines

1.5.6 Other Development in Built-up Areas 1.5.6.1 Extensions to Dwellings

.....'First floor rear/side extensions will be considered on their merits and will only be permitted where the Planning Authority is satisfied that there will be no significant negative impacts on surrounding residential or visual amenities'.

5.1. Natural Heritage Designations

Adjacent to Tralee Bay Complex SPA, and Akeragh, Banna and Barrow Harbour SAC.

5.2. EIA Screening

5.3. The development to be retained is not one to which Schedule 5 of the Planning and Development Regulations, 2001, as amended, applies and therefore, the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

6.0 The Appeal

6.1. Grounds of Appeal

Grounds of appeal submitted by the agent for the applicant are summarised as follows:

- The existing dwelling granted in 1990 was on sloping ground. The permission included a small basement which was extended in size. Permission was subsequently granted for the extended basement.
- Where the ground level was shown on the original section drawing there is now a balcony. It was not constructed by client but was in place when house was purchased 6 years ago.
- The ground is sloping so a balcony was felt to be a better option instead of a sloping site, exposed to the elements and could cause a landslide.
- The balcony is overlooking the neighbour's property but this would be the case either way, as the site is sloping.
- The ground levels never changed; the proposed patio was replaced with a narrower balcony. It does not interfere with the neighbour's property.

6.2. Planning Authority Response

- No additional comments

6.3. Observations

Observation submitted by agent on behalf Joseph Doyle (owner of adjacent property to the south) The key points raised are:

- Observer supports the planning authority decision and requests the Board to uphold it and has made submissions on previous applications and enforcement proceedings
- Original permission included a balcony outside a bedroom but this has now been extended, wrapping around the western, southern and eastern elevations of the property

- What was a small ancillary informal space has become a large social space where large numbers of people can gather, with no provision to minimise overlooking of adjoining properties or provide privacy screening
- Observer is not disputing that the owner of the property would wish to avail of the views from the house but he has not attempted to put in place a design solution to avail of the views while not adversely affecting adjoining residents.
- The balcony severely and adversely impacts on the residential amenities of the property of the observer.
- Argument that a larger balcony in some way addresses a potential issue of a future landslide does not hold credibility. There are effective engineered design solutions that would address such a possibility.

6.4. Further Responses

- None

7.0 Assessment

7.1. Having examined the application details and all other documentation on the appeal file, including the appeal submission and observation on the appeal, and having inspected the site, and having regard to relevant local policies, I consider the main issues are:

- Impact on residential amenities
- Appropriate Assessment Screening

7.2. Impact on residential amenities

7.2.1. The proposed application refers to retention of part of the existing balcony to the rear of the dwelling, which overlooks Barrow Harbour and Tralee Bay to the south. A previous application which was refused by the Planning Authority sought retention for the entire balcony but in this application the eastern and western portions are omitted. There are some contradictory statements as to the timing of the construction of the various parts of the balcony, however the application relates only to the central

part and issues relating to the remainder of the balcony are outside the scope of the application, and any enforcement issues are a matter for the Planning Authority.

- 7.2.2. The balcony overlooks the neighbouring house to the south, particularly the rear area and a paved seating area to the side of the house. There is also some level of overlooking of the house to the east. A reference is made in the cover letter with the application to the Planning Authority to screening the balcony by way of plants boxes etc to soften the effect of the balcony, however no details of such proposals were provided.
- 7.2.3. The appeal documentation argues that overlooking of the house to the south would have occurred in the absence of the balcony in any case as it is at a lower level. In my opinion, based on the drawings submitted and the site inspection, the presence of the balcony greatly increases the level of overlooking. It is also evident that the extensive nature of the balcony and its connectivity to most of the communal rooms in the dwelling significantly increases the potential for overlooking and impacts negatively on the residential amenities of the dwelling below. I do not accept the validity of the claim in the appeal documentation that the balcony was a way of reducing a risk of a landslide on the sloping ground. I recommend refusal of permission for retention of the development due to the serious impact on residential amenities of neighbouring properties, contrary to the proper planning and sustainable development of the area.

7.3. Appropriate Assessment Screening

- 7.3.1. Having regard to the nature and scale of the development to be retained, the absence of emissions therefrom, the absence of a pathway between the application site and any European site it is possible to conclude that the requirement for the submission of an NIS and carrying out of an EIA could have been screened out at an initial stage.

8.0 Recommendation

- 8.1. Refusal of retention permission is recommended.

9.0 Reasons and Considerations

- 9.1. Having regard to location of the dwelling, elevated above neighbouring properties, and the extensive interconnected nature of the balcony which overlooks neighbouring dwellings, it is considered that the development to be retained seriously injures the residential amenities of the dwellings in the vicinity and is, therefore, 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.

Ann Bogan
Planning Inspector

11th December 2023