



An
Bord
Pleanála

Inspector's Report

ABP-318796-24

Development

Retention: deck at first floor level, under deck area on the ground floor left open for bins and storage, also some changes to the fenestration to the rear elevations

Location

Main Street, Ballylanders, Co. Limerick, V35 X3V5

Planning Authority

Limerick City and County Council

Planning Authority Reg. Ref.

2360741

Applicant(s)

Paraic and Simon O'Donnell

Type of Application

Retention Permission

Planning Authority Decision

Refuse retention

Type of Appeal

First Party

Appellant(s)

Paraic and Simon O'Donnell

Observer(s)

None

Date of Site Inspection

26 February 2024

Inspector

Claire McVeigh

1.0 Site Location and Description

- 1.1. The subject site is located on the western side of Main Street in Ballylanders. The two-storey semi-detached building is positioned on the prominent corner with Kilfinane Road. The building comprises a pharmacy at ground floor and apartment at first floor.
- 1.2. An ESB building is located north of the neighbouring property and to the rear of the property there are a number of single storey stores and sheds.

2.0 Proposed Development

- 2.1. The development sought to be retained comprises a deck at first floor level extending 8.77m from the rear wall of the building and is 4.93m in width (approx. 43 sqm) and an open area under the first floor on the ground floor for bin storage. Changes to the fenestration to the rear elevations were also carried out to provide access to the deck including the provision of double door access, raising windows cills and creating a new window at ground floor level rear elevation.
- 2.2. It is proposed to replace timber panelled privacy screen between the neighbouring property with a new block work wall/balustrade 1.5m high wall from the new floor of the first-floor deck.

I note that the statutory notices do not include the construction of a new wall at first floor level in the description of development.

3.0 Planning Authority Decision

3.1. Decision

On the 4 December 2023 the planning authority refused retention for one reason:

Having regard to the location of the deck at first floor level and in close proximity to the neighbouring house it is considered that the proposed development, by virtue of its overbearing nature and loss of light to the

adjoining property, would seriously injure the amenities and depreciate the value of the adjoining property. The proposal is, therefore, considered to be contrary to proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planner's report dated 27 November 2023

- The neighbouring property has an area of open space to the rear which is largely enclosed by a shed and the property within the subject site. The deck at first floor level is to the south of the neighbouring property.
- The height and proximity of the deck would reduce natural light and create overshadowing of the private amenity space of the adjoining property which is already limited.
- The applicant has proposed to replace the deck with a wall but the impact on residential amenity would be the same leading to loss of light and overlooking.
- Notes that the applicant provided a response submission to the third-party observation received as unsolicited further information date stamped 21 November 2023.
- Development not of a type included for under Schedule 5 of the Planning and Development Regulations 2001 (as amended). A screening determination is not required in this instance.
- The development should not exercise a significant effect on the conservation status of any SAC or SPA and, therefore, an Appropriate Assessment is not necessary.

3.2.2. Other Technical Reports

- Fire Services – No objections to the proposal.

3.3. Prescribed Bodies

None

3.4. Third Party Observations

One submission received from Martha and Martin Jordan owners of the neighbouring property:

- Loss of privacy
- Loss of light
- Changes to the fenestration will impact on privacy
- The unauthorised veranda structure sits on the boundary wall and wraps around shed on their property.

Photographs attached to their submission of the structure as viewed from their property and from the rear.

4.0 Planning History

Enforcement Case DC-138-23 Warning letter issued in relation to the construction of a car port and balcony.

5.0 Policy Context

5.1. Limerick Development Plan 2022-2028

11.4.4.5 Living over the shop

The council will promote the residential use of the upper floors of commercial properties in established retail/commercial areas.

5.2. Other guidance

- Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice – Third Edition (BRE 2022)
- Sustainable Urban Housing: Design Standards for New Apartments (2023)
- Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities (2024)

5.3. Natural Heritage Designations

There are no European Sites in the vicinity of the site. The closest site is the Galtee Mountains SAC (site code: 000646) located approximately 6.9km away from the subject site this is also a proposed Natural Heritage Area (pNHA).

5.4. EIA Screening

The proposed retention of the construction of a first-floor deck does not constitute a Class listed in Schedule 5, Part 1 or Part 2 of the Planning and Development Regulations 2001, as amended. As such, no EIAR or Preliminary Examination is required for this element of the project. See completed Form 1 attached.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal can be summarised as follows:

- Considers that based on the council's decision there are no issues arising with regard to the ground floor storage area below the deck or the minor fenestration revisions to the rear elevations.
- Note that overlooking is correctly not included as a reason for refusal despite being mentioned in the planner's report, as overlooking will not occur from the deck, or any part of the applicant's property with the appropriate boundary treatment in place.
- Are of the opinion that the planning authority's concerns relate to the proposed boundary treatment of a small section of the deck area.
- Concerned that the planning assessment draws on a conclusion that is not evidence based or supported by any technical assessment particularly with regard to overshadowing. Further information should have been sought to assess the matter accordingly.
- Shadow Analysis Report prepared to demonstrate three scenarios (original situation, planning application scenario and an alternative modified scenario).

- Shadow impact on existing areas of open space is not a matter of whether there will be a loss of light but the extent of any potential loss and whether this would give rise to any material impact having regard to appropriate guidance. Contends that significant parts of the yard are in shadow for much of the Equinox at present and this scenario is not materially altered as a result of the subject proposal.
- The vista from the yard towards the applicant's property where the new boundary treatment is proposed is substantially closed by existing built development, the new boundary will introduce a layer to this relationship across a 3.5m distance that will be lower in height than the existing gable of the applicants dwelling and the gable of the adjoining shed. The proposed boundary comfortably sits within the existing built context.
- Suggested minor modification, replacing the concrete wall with high quality timber fence to be sited behind a planter comprising evergreen planting, which is considered not material in the wider context of the application as submitted and can readily be conditioned.
- Response to issues raised by the third-party observation submitted to the planning application with respect to:
 - *loss of privacy* – considers that the provision of a high-quality boundary treatment to the deck will ensure privacy for all parties and the recent renovation work with the removal of the pre-existing stairway has removed a significant source of potential overlooking of the adjacent property,
 - *loss of light* to the rear of the house and yard area – The yard area does not receive high quality sunlight on the Equinox (21st March) and is unlikely to readily accord with the recognised BRE Guidance in this regard. The introduction of a boundary treatment across the 3.5 m of deck will not materially disimprove this condition,
 - *changes to the fenestration* will impact on privacy – Minor changes to the fenestration will have no impacts on the privacy of the adjoining dwelling, and,

- the *position of the veranda structure on the boundary wall* and on the observer's property – the applicants are satisfied that no part of the deck is sited on the observer's property.

6.2. Planning Authority Response

None.

6.3. Observations

None.

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including all the submissions received in relation to the appeal, the reports of the local authority and having inspected the site, and having regard to the relevant local, regional, national policies and guidance, I consider that the substantive issues in this appeal to be considered are as follows:

- Principle of development
- Overshadowing and loss of light
- Overbearing

I note the applicant's response to the third-party observation submitted on the planning application and will consider these issues within my assessment below to avoid duplication. The concerns raised by the third-party in respect to overlooking and boundary issues are noted. I will address the issue of overlooking in section 7.2 below as the use of the deck as private amenity space, access to and its boundary treatment to prevent overlooking are integral elements. In respect to the development on or oversailing the shared boundary this is a civil matter to be resolved between the parties, having regard to the provisions of s.34 (13) of the 2000 Planning and Development Act.

7.2. *Principle of development*

- 7.2.1. From my site inspection and from the submitted photographs of the previous building condition, it is evident that the applicants have extensively renovated and refurbished the building and made good use of the upper floors with a living over the shop apartment. A large first floor deck area (approximately 40 sq.m) with open storage area underneath and changes to the fenestration are the subject of this appeal. The submitted appeal statement confirms that at present a temporary timber fence is in situ for privacy and safety purposes.
- 7.2.2. The changes to the window fenestration, cill height and new window at ground floor rear gable end are generally of a relatively minor nature and would not give rise to concerns with respect to causing additional overlooking, with exception the altered window to a double door allowing access to the first-floor deck. The doorway access is a fundamental element of the first-floor deck. The architects have submitted, as part of the appeal documentation, a figure to illustrate the cone of vision from the double doors facing the deck. I agree that from the viewpoint indicated there will be an oblique view onto the neighbouring property's shed. However, I am of the opinion that when the deck is in use there would be different viewpoints and potential for overlooking or perceived overlooking taking into account the proposed 1.5m height of first floor boundary/guarding wall. I am of the view that this issue is integral to the acceptability, or not, of the first-floor deck.
- 7.2.3. The applicant in the appeal submission states that '*the principle of the deck as a generous area of private open space...does not form part of the grounds for refusal*'. I would not agree with this statement as the deck at first floor level and its necessary screening wall are integral elements for both building control requirements to protect users from the risk of falling and for privacy reasons. Therefore, in the first instance an assessment of the principle of a first-floor deck for use as private amenity space is warranted.
- 7.2.4. In this regard, I note the applicant is seeking to retain a first-floor deck of approximately 40 sq.m. The first-floor apartment comprises 2 no. ensuite bedrooms, kitchen/dining/living room, study/sitting room, WC and store at first floor level. Having regard to the Design Standards for New Apartments 2023 (apartment guidelines) private amenity space shall be provided in the form of balconies at upper levels with a minimum depth of 1.5m in one useable length to meet the minimum floor area requirement. The apartment guidelines set out in Appendix 1 that a two bedroomed

apartment requires between 6-7 sq.m private amenity space (depending on the floor area of the bedrooms). The proposed deck area at first floor level significantly exceeds this minimum standard.

- 7.2.5. In order to assess the acceptability of the private amenity space which exceeds the minimum floor area I shall consider the overshadowing impacts in section 7.3.

7.3. *Overshadowing and loss of light*

- 7.3.1. The applicant has submitted a detailed response to the planning authority's reason for refusal and has included an alternative modification to that shown on the submitted application plans and particulars. I note the images submitted by the applicant to (a) demonstrate the original situation (the fire escape staircase and landing), (b) the proposed development to be retained as per the planning application and (c) thirdly, the introduction of some soft planting alongside a new screen/guarding fence.
- 7.3.2. The applicant considers that the planning authority's assessment as contained in the planner's report that the decks' boundary treatment would '*...result in prolonged periods of overshadowing into the adjacent property*' is not substantiated. I note that no daylight, sunlight and overshadowing analysis report was received by the planning authority with the application. I highlight to the Board that the planning authority's reason for refusal focused on the overbearing nature and loss of light to the adjoining property.
- 7.3.3. To address this gap in information the applicant has submitted a Shadow Analysis Report to accompany the appeal submission. I note that no analysis of the potential impact, of the proposed development to be retained on the neighbouring dwelling, in terms of the sunlight into living spaces having regard to the impact/change for probable sunlight hours – Annual APSH and Winter WPSH has been undertaken. My assessment therefore is limited to the impact of the development to be retained, or retained as per the suggested modifications, on access to sunlight within exterior amenity spaces.
- 7.3.4. The shadow studies submitted show hourly renderings from sunrise to sunset on both the Spring Equinox (March 21st) and the Summer Solstice (June 21st). For the purposes of my assessment, I shall focus on the results for March 21st given the Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice – Third Edition

(BRE 2022) confirms this offers representative conditions between summer and winter as an average for the year.

- 7.3.5. The applicant states that *'the orientation of the space, combined with the relationship of the yard with the surrounding existing building complex and its configuration means that the yard is in shadow for much of the day regardless of the proposed boundary treatment of the deck area'*. The results of the shadow analysis of amenity spaces as a result of the development sought to be retained, and that of the modified version, is summarised in section 5 and states *'...the study demonstrates that the proposed development does not cause additional overshadowing of the amenity spaces of neighbouring properties and that the outdoor amenity spaces of the proposed development will enjoy good quality sun and daylight levels.'* (My emphasis). Whereas the applicant in the appeal submission states that *'when the proposed boundary treatment to the deck is introduced to the assessment, there is a marginal reduction in available sunlight to the yard, but this is imperceptible in the context of a space that is receiving poor sunlight levels at present'*. I am of the opinion that there is a conflict between what the shadow analysis concludes as no *'additional overshadowing of the amenity spaces of neighbouring properties* and the applicant's statement of a *'marginal reduction in available sunlight to the yard'*.
- 7.3.6. The BRE guidelines recommend that at least 50% of the exterior amenity area should receive at least 2 hours of sunlight on 21st March. I note that the applicant's statement with respect to the pre-development situation highlights that based on the overshadowing assessment it does not appear that half of the yard is sunlit for any two-hour period (the period between 1pm and 3pm being the only potential 2-hour window where this could be reasonably achieved based on the assessment). The BRE guidance does allow for a scenario where the existing area may not meet the 50%-2hr standard and in this scenario then the area which can receive 2 hours on 21st March should not be less than 0.8 times its former value.
- 7.3.7. Having regard to the submitted shadow analysis in which no evidence has been submitted to demonstrate that the area receiving sunlight is not less than 0.8 times its former value I cannot concur with the applicant's statements of 'imperceptible' impact and 'not materially altered'. From my review of the submitted shadow analysis report there is a visible increase in overshadowing of the yard area as a result of the proposed development to be retained and also when reviewing the modified version

as proposed in the appeal submission. The architects in their cover letter supporting the appeal describe this difference as 'small'. Whilst I highlight the different scales of impact referred to in the submitted appeal documentation from no additional, imperceptible and small none of the impact is quantified. I acknowledge that the BRE guidance allows for discretion, however, taking into account the scale of the proposed deck area and given the limitation of the existing amenity space of the adjoining property I do not consider that it has been demonstrated sufficiently that the proposed development to be retained would not impact negatively on the established residential amenities of the adjoining property as a result of increased overshadowing having regard to the guidance contained in Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice – Third Edition (BRE 2022).

- 7.3.8. In conclusion, having regard to the above summarised test results I am of the view that the proposed development to be retained, including the suggested modified proposal, by reason of its extension of the first floor level gable enclosing the original gap between the existing buildings fronting onto Main Street and the structures to the rear, taking into account the already acknowledged limitations of the existing amenity space at the adjoining property, would have an adverse overshadowing impact on this private amenity space. Therefore, I consider that the depth of the deck at first floor level and its integral guarding wall/screen would seriously injure the established residential amenities of the adjoining property and is, therefore, contrary to the proper planning and sustainable development of the area.

7.4. *Overbearing*

- 7.4.1. The existing building has a two-storey rear extension, which extends approximately 4.5m adjacent to the shared boundary and extends beyond the rear façade of the adjoining property. The proposed boundary treatment comprises a block work wall of 1.5 m in height to replace the timber fencing currently in place, as previously noted these proposed works were not described in the statutory notices. I note that the matter was considered acceptable by the planning authority. I am satisfied that this did not prevent the third party from making representations. A modification is proposed as part of the appeal comprising the provision of a timber fence and to introduce some soft planting. The proposed modification may be visually softer but would, in my opinion give rise to future maintenance issues and is not a suitable alternative.

- 7.4.2. I am of the view that the proposed development to be retained, including the suggested modified proposal, by reason of the size of the deck area and the resultant extension of the first floor level gable along the shared boundary and infilling of the existing gap between the existing buildings fronting onto Main Street and the structures to the rear would result in the complete enclosure of the shared boundary and the sense of overbearing would be exacerbated. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

8.0 AA Screening

- 8.1. I have considered the proposed development of retention of deck at first floor level, under deck area on the ground floor and some changes to the fenestration to the rear elevation in light of the requirements S177U of the Planning and Development Act 2000 as amended. The closest European site is the Galtee Mountains SAC (site code: 000646) located approximately 6.9km away from the site. No nature conservation concerns were raised in the planning appeal.
- 8.2. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion is as follows:
- Nature of works, including the small scale and nature of the development
- 8.3. I conclude that on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects. Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

9.0 Recommendation

I recommend that RETENTION permission is refused in accordance with the following reasons and considerations:

10.0 Reasons and Considerations

1. Having regard to the submitted Shadow Analysis Report the proposed development to be retained, including the suggested modified proposal, by reason of its extension of the first floor level gable infilling the existing gap between the main buildings (fronting onto Main Street) and the structures to the rear would result in the complete enclosure of the shared boundary and taking into account the limitations of the existing amenity space at the adjoining property, would have an adverse overshadowing impact on this private amenity space and the sense of overbearing on the adjoining property would be exacerbated. The depth of the deck at first floor level and its integral guarding wall/screen would seriously injure the established residential amenities of the adjoining property 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.

Claire McVeigh
Planning Inspector

27 August 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	318796-24		
Proposed Development Summary	Retention of deck at first floor level, under deck area on the ground floor left open for bins and storage, also some changes to the fenestration to the rear elevations.		
Development Address	Main Street, Ballylanders, Co. Limerick, V35 X3V5		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	✓
		No	
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes			
No	✓		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
No	✓		
Yes			
			Conclusion
			No EIAR or Preliminary Examination required

4. Has Schedule 7A information been submitted?

No		Preliminary Examination required
Yes		Screening Determination required

Inspector: _____ **Date:** _____