



An  
Bord  
Pleanála

## Inspector's Report

**ABP-319179-24**

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<b>Development</b>	Retention of amendments to Ref. F14B/0301
<b>Location</b>	Commons Upper, Garristown, Co. Dublin
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F23A/0744
<b>Applicant(s)</b>	Kay Cashen
<b>Type of Application</b>	Retention permission
<b>Planning Authority Decision</b>	Grant subject to 5 no. conditions
<b>Type of Appeal</b>	First Party v. Conditions
<b>Appellant(s)</b>	Kay Cashen
<b>Observer(s)</b>	Stephen & Corrina Harborne
<b>Date of Site Inspection</b>	10 <sup>th</sup> May 2024
<b>Inspector</b>	Bernard Dee

## **1.0 Site Location and Description**

- 1.1. The appeal site is located in the Townland of Commons Upper, Garristown, Co. Dublin in the NW of the Fingal County Council administrative area. The appeal site is located approximately 2.5km north of Garristown village and is accessed via a third class road in an area primarily agricultural in character with sporadic housing visible in the landscape.
- 1.2. The property on the appeal site is a dormer style dwelling, significantly extended, accessed from the public road, 'Commons Upper' which defines the northern boundary of the appeal site. To the west of the appeal site lies a private lane and further west the dormer style dwelling of the Observer to this appeal is located. The east and south boundaries of the site are defined by a timber post and rail fence.
- 1.3. It was not possible to gain access to the appeal site at the time of the site inspection on Friday, 10<sup>th</sup> May 2024.

## **2.0 Proposed Development**

- 2.1. This First Party appeal relates to the grant of permission by the Planning Authority for the retention for changes to planning F14B/0301, namely pitched roofs to the rear changed to flat roofs and a rear window changed to a door. The use of the main flat roofed extension as a balcony and permission to erect a handrail to the balcony and all associated site works.
- 2.2. The First Party is appealing against Condition Nos. 2 and 3 of the retention permission which forbid the use of a flat roofed area for amenity purposes and also requires the replacement of the first floor bedroom gable door which provides access to this flat roofed area with a window.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Permission for the development to be retained was granted on 2<sup>nd</sup> February 2024 subject to 5 no. conditions. Conditions 2 and 3 to which this First Party appeal relates are reproduced below.

2. The flat roof areas hereby permitted shall not be used for the purposes of a balcony or outdoor amenity space and shall not be fitted with handrails. Access shall only be permitted for maintenance purposes.

REASON: In the interests of residential amenity.

3. Within three months of the final grant of retention permission, the developer shall replace the door ope serving master bedroom as detailed on Drawing No. PP-03 with a window ope. Full details, including elevational drawings and photographs of the completed works shall be submitted for the written agreement of the planning authority on completion.

REASON: To preserve residential amenity.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

- The Planner's Report states that the retention of works to an existing house would be considered acceptable in principle in an area zoned RU, rural area.
- The flat roof area measuring 24m<sup>2</sup> is an amendment of a pitched roof permitted under Ref. F14B/0310 and this represents a significant outdoor amenity space if used for such a purpose.
- The set back of this first floor area, which is at a height of 3.1m, is stated to be approximately 19.7m to the common property boundary and has an overall depth of approximately 4.6m.
- Accordingly, the balcony is a discordant feature to the storey/storey and a half dwelling and this flat roofed area should not be permitted to be used as an outdoor amenity area given the potential for perceived and actual overlooking which exists.
- Neither EIA nor AA is required in relation to the development for which retention is sought.

#### 3.2.2. Other Technical Reports

- Water Services Department - no objections subject to conditions.

### 3.2.3. Prescribed Bodies

- None received.

### 3.2.4. Observations

There were 3 no. submissions to the Planning Authority in support of the works for which retention was sought and one submission objecting to the retention of the unauthorised works from the current Observers to this appeal - Stephen & Corrina Harborne.

## 4.0 Planning History

### 4.1. On the Appeal Site

- Ref. F14B/0301 – Permission was granted on 5<sup>th</sup> May 2015 subject to 7 no. conditions for the construction of a new storey and a half extension to the side of the existing dwelling and a detached domestic garage including all associated site works.
- Ref. F99B/0887 – Permission was granted for the construction of a single storey dwelling with septic tank including all associated site works.
- Ref. 23/138A – Active enforcement file open with respect to the appeal site.

### 4.2. In the Vicinity of the Site

- Ref. F22B/0106 – Permission granted on 1<sup>st</sup> November 2022 subject to 3 no. conditions for the construction of a new single storey storage unit to allow storage of classic/vintage vehicles, access from shared laneway with associated site works. This site is to the west of the appeal site and is accessed via the private lane that defines the western boundary of the appeal site. The applicant, Stephen Harborne, is the Observer to the current appeal.
- Ref F04A/1586 - Permission granted on 1<sup>st</sup> February 2005 subject to 7 no. conditions for amendments to previously approved plans (Ref. F02A/1224) incorporating (A) 2 no. dormer windows to front elevation, (B) ground floor amendments, (C) new first floor plan to single storey bungalow. This site is to the west of the appeal site and is the home of the Observer to the current appeal.

- Ref. F02A/1224 - Permission granted on 1<sup>st</sup> February 2005 subject to 14 no. conditions for the construction of a single storey bungalow, waste water treatment system and associated works on site. This site is to the west of the appeal site and is the home of the Observer to the current appeal.
- Ref. F17B/0277 (referenced in the First Party appeal) - Permission granted on 6<sup>th</sup> March 2018 subject to 9 no. conditions for a) the removal of the existing single storey garage/utility/boiler house to the side of the existing dwelling b) the removal of the existing shed and kennels to the rear of the existing dwelling house c) the construction of a new 2 storey and 1 storey extension to the side and rear of the existing dwelling house d) alterations to the existing house to include external rendering, new windows, modifications to existing windows and new porch to the front e) new detached car port and games room/gym/garden room to the rear f) new entrance gates, gate piers and walls to replace the existing g) removal of existing septic tank and percolation area and installation of a new wastewater treatment unit and percolation area and h) all associated site works. This site is located approximately 2.3km south of the appeal site.

## 5.0 Policy and Context

### 5.1. Development Plan

Fingal County Development Plan 2023 - 2029 is the statutory plan for the area within which the appeal site is located. The policies and objectives relevant to this appeal are listed below.

- The appeal site is zoned 'RU – Rural' where the objective is to 'protect and promote in a balanced way, the development of agriculture and rural-related enterprise, biodiversity, the rural landscape, and the built and cultural heritage'.
- The vision for RU zoned areas is to promote the value of the rural area of the County. This rural value is based on:
  - Agricultural and rural economic resources
  - Visual remoteness from significant and distinctive urban influences,

- A high level of natural features.

Agriculture and rural related resources will be employed for the benefit of the local and wider population. Building upon the rural value will require a balanced approach involving the protection and promotion of rural biodiversity, promotion of the integrity of the landscape, and enhancement of the built and cultural heritage.

- The landscape character is defined as 'High Lying Agricultural'.
- Policy SPQHP41 – Residential Extensions - Support the extension of existing dwellings with extensions of appropriate scale and subject to the protection of residential and visual amenities.
- Policy SPQHP045 - Domestic Extensions - Encourage sensitively designed extensions to existing dwellings which do not negatively impact on the environment or on adjoining properties or area.

## 5.2. Natural Heritage Designations

The appeal site is not located in the vicinity of any designated European site.

## 5.3. EIA Screening

Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity/ the absence of any connectivity to any sensitive location, there is no real likelihood of significant effects on the environment arising from the development. The need for environmental 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

The First Party appeal relates to the imposition of Condition Nos. 2 and 3 of the grant of retention permission. The appeal submission puts forward the following grounds.

- The location of the proposed first floor balcony area is designed to minimise overlooking of or intrusion into the neighbouring property and an additional mitigation measure of a 1.1m high timber fence on the west elevation of the

proposed balcony area will act as a screen and will mitigate any potential for overlooking.

- The concern of overlooking and loss of amenity by the neighbouring property owners to the west is overstated given that there is an agricultural lane between the two properties and the distance from the proposed balcony area to the neighbouring house is 36.6m.
- The proposed balcony is not in continuous or even frequent use and no noise or light pollution occurs when the flat roofed area is occasionally used as a balcony. The balcony is primarily used in the summer months as a vantage point looking south over farmland in the ownership of the appellant.
- There is precedent in the area for the type of balcony proposed at the appeal site and drawings of Ref. F17B/0277 of permission for a house with a balcony 3m<sup>2</sup> larger than the current proposal are enclosed with the appeal.
- Having regard to the Fingal County Development Plan 2023-2029 and to the existing pattern of development in the area, the retention of the balcony would not have an adverse impact on the amenity of nearby properties.

## 6.2. Planning Authority Response

- The Planning Authority has applied the correctly calculated financial contribution as per the provisions of section 8.2 of the Development Contribution Scheme 2023-2029.
- The fact that the mezzanine space has been in use for 10 years has no bearing as section 9 of the Development Contribution Scheme 2023-2029 states that no exemptions or waivers shall apply to any developments subject to retention permission.

## 6.3. Observations

An Observation was received from Stephen and Corrina Harborne which, in summary, makes the following points.

- The appellants have used the unauthorised balcony for the duration of our occupation of the house to the west of the appeal site and we have serious

concerns regarding infringement of privacy due to the use of this balcony by the appellant's family.

- Due to the non-compliance with the plans and particulars of Ref. F14B/0301, we have experienced overlooking from this flat roofed area and consequently experienced a loss of privacy and amenity.
- The proposed handrails and timber screen will not mitigate against overlooking of our property and the proposed material to be used are aesthetically poor and will detract from the visual amenity of the area.
- If permission is given for the use of the flat roofed area as a balcony, we have serious reservations about potential noise and light pollution associated with its more intensive use which would naturally follow if the use of this outdoor area as a balcony is legitimised by the Board.
- The precedent case cited by the appellant, F17B/0277 is not comparable with the current appeal case as there is a greater distance from that balcony to neighbouring properties (c. 76m) than in the current case (c. 36m), the lower levels compared with neighbouring properties in the precedent example cited by the appellant and a greater screening effect by trees than is the case in the current appeal situation.

## **7.0 Assessment**

- 7.1. Having examined all the application and appeal documentation on file, and having regard to relevant local and national policy and guidance, I consider that the main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise.
- 7.2. The primary planning issue therefore is the issue of whether the use of the first floor flat roofed area for amenity purposes is appropriate having regard to the location, orientation and the potential impact on the residential amenity of the area. The issue of AA Screening is also addressed in this assessment.
- 7.3. Residential Amenity
  - 7.3.1. It is the appellants case that the occasional use of the balcony and the screening mitigation measures proposed will, in addition to the distance between the two



properties, address the overlooking, privacy and loss of amenity issues raised by the neighbouring property owners. It is the case of the Planning Authority and the Observer that there is potential for overlooking and a detrimental impact on the residential amenity of the area associated with the use of the flat roofed extension area as a balcony for outdoor amenity purposes.

- 7.3.2. Having inspected the site I would comment initially that the flat roofed extension as constructed is visually jarring and aesthetically poor in terms of its design and its relationship to the larger and extended built form of the main house. Given the isolated location of the appeal site I recommend that the flat roofed extension be permitted by the Board notwithstanding its inferior design qualities. Were the appeal site located in a more visually prominent location I would have no hesitation in recommending a refusal of retention permission for this extension due to its substandard design. The narrative of how a pitched roof became transformed into a flat roofed structure during the course of construction is irrelevant to the Board's consideration of this appeal.
- 7.3.3. I note the distances cited by both neighbours as being approximately 36m from the proposed balcony to the Observer's house. However, the side and rear garden areas of the neighbouring properties also have potential to be overlooked from the first floor flat roofed area were its use as a balcony to be permitted by the Board.
- 7.3.4. I note the timber screening proposed as an overlooking mitigation measure but I am not convinced that this would eliminate the overlooking issue sufficiently to offer a reasonable level of privacy to the occupiers of the neighbouring property.
- 7.3.5. In addition, it is not necessarily the actual overlooking that is the primary issue in the majority of cases like this current case, there is also the perceived overbearing, overlooking and loss of privacy to consider. The use of the flat roofed area as a balcony would be, as it would be ancillary to the enjoyment of the dwelling, essentially unregulated, and any conditions that the Board may consider attaching with regard to limiting noise emissions and light pollution, would, in my opinion, be unenforceable.
- 7.3.6. Given the site specific circumstances, and given that there is ample outdoor amenity space available to the appellant, I would recommend to the Board that the conditions attached by the Planning Authority be retained in this instance.

#### 7.4. AA Screening

- 7.4.1. Having regard to the relatively minor development to an existing dwelling and the distance from 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.

### 8.0 Recommendation

I recommend therefore that the Planning Authority be directed by the Board that Conditions 2 and 3 be affixed to the Final Grant of Retention Permission for the reasons and considerations set out below.

### 9.0 Reasons and Considerations

Having regard to the provisions of the Fingal County Development Plan 2023-2029; and to the site specific context, it is considered that, subject to compliance with the conditions in the Notification of Decision to Grant Retention Permission, the development for which retention is sought would not seriously injure the visual or residential amenity of the area nor have an adverse impact on neighbouring properties. The proposed development would, therefore, be in accordance with 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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**Bernard Dee**  
**Planning Inspector**

**13<sup>th</sup> May 2024**

**Appendix 1 - Form 1**  
**EIA Pre-Screening**  
**[EIAR not submitted]**

<b>An Bord Pleanála</b> <b>Case Reference</b>	<b>ABP-319179-24</b>		
<b>Proposed Development Summary</b>	Retention of amendments to Ref. F14B/0301 (house extension)		
<b>Development Address</b>	Commons Upper, Garristown, Co. Dublin		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b>  (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	
		<b>No</b>	√
<b>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?</b>			
<b>Yes</b>			EIA Mandatory EIAR required
<b>No</b>			Proceed to Q.3
<b>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]?</b>			

		Threshold	Comment (if relevant)	Conclusion
No		N/A		No EIAR or Preliminary Examination required
Yes				Proceed to Q.4

4. Has Schedule 7A information been submitted?		
No		Preliminary Examination required
Yes		Screening Determination required

Inspector: \_\_\_\_\_

Date: 13<sup>th</sup> May 2024

Bernard Dee