



An  
Bord  
Pleanála

## Inspector's Report

### ABP-307030-20

#### Development

PROTECTED STRUCTURE:

Installation of additional windows on the western elevation, to carry out alterations to the existing roof of the dwelling, Kilrush House is a protected structure (RPS No 859)

#### Location

Kilrush House , Frances Street ,  
Kilrush, Co Clare

#### Planning Authority

Clare County Council

#### Planning Authority Reg. Ref.

2063

#### Applicant(s)

Padraig and Julie Neylon

#### Type of Application

Permission

#### Planning Authority Decision

Grant

#### Type of Appeal

First Party v. Condition

#### Appellant(s)

Padraig and Julie Neylon

#### Observer(s)

None

#### Date of Site Inspection

22/07/2020

#### Inspector

Gillian Kane

## 1.0 Site Location and Description

- 1.1.1. The subject site refers to a 4-storey over basement structure on Merchants Quay in Kilrush. At ground level a castellated wall with one blocked arched opening and one arched gated opening, links the subject site with the adjoining Merchants Quay Business Centre.

## 2.0 Proposed Development

- 2.1. On the 5<sup>th</sup> February 2020, planning permission was sought to install additional windows on the western elevation, alteration of roof profile, 2 no. dormer windows on the front elevation and the re-opening of stone arches of an existing protected structure of 314sq.m.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. On the 12<sup>th</sup> of March 2020 the Planning Authority issued a notification of their intention to GRANT permission subject to 3 no. conditions. Condition no. 2 states:  
“The proposed window on the western gable at first floor level serving the Living Area and the proposed window on the western gable at second floor level serving Bedroom are not hereby permitted and shall be omitted.

Reason: in the interests of protecting (1) the development potential of the site to the west of the structure which is zoned as Mixed Use and (2) to protect the integrity of the protected structure as the design of the windows are not considered to be consistent with the architectural treatment of the protected structure and would if permitted negatively detract from the visual amenity of the structure which occupies a very prominent location within Kilrush Town.”

### 3.2. Planning Authority Reports

- 3.2.1. **Planning Report:** Proposed development is compatible with the site zoning. Concerns that 2 no. additional windows on the western elevation may impact the development potential of the vacant site to the side. Reopening of the archways onto Merchants Quay of welcomed. Recommendation to grant permission subject to conditions.

### 3.3. **Prescribed Bodies**

3.3.1. None on file.

### 3.4. **Third Party Observations**

3.4.1. None

## 4.0 **Planning History**

4.1.1. None on file.

## 5.0 **Policy Context**

### 5.1. **Development Plan**

5.1.1. The subject site is zoned Mixed Use in the Clare County Development Plan 2017-2023. Section 19.3 of the development plan states that the use of land for 'mixed use' developments shall include the use of land for a range of uses, making provision, where appropriate, for primary and secondary uses e.g. commercial/ retail development as the primary use with residential development as a secondary use. Secondary uses will be considered by the local authority having regard to the particular character of the given area. On lands that have been zoned 'mixed-use' in or near town or village centres, a diverse range of day and evening uses is encouraged and an over-concentration of any one use will not normally be permitted.

5.1.2. The subject site is located within the Kilrush ACA.

### 5.2. **Natural Heritage Designations**

5.2.1. The subject site is 0.9km east of the Lower River Shannon SAC (002165) and the Rover Shannon and River Fergus Estuaries SPA (004077).

### 5.3. **EIA Screening**

5.3.1. Having regard to nature and scale of the development, the built-up urban location nature of the site there is no real likelihood of significant effects on the environment arising from the proposed 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

6.1.1. The applicant state that they welcome the decision of the Planning Authority but wish to appeal condition no. 2. They request that the Board remove the condition. The grounds of the appeal can be summarised as follows:

- The subject property is a family home. The 'vacant yard' as described by the planning authority is a private garden, used daily.
- The 'yard' has never been developed since the property was built in 1837, having always been part of the house and garden.
- Another window on the western elevation was permitted. This window directly overlooks the garden, which is zoned mixed use.
- The adjoining business has 63 no. obscure glazed windows overlooking the garden.
- The Planning Authority's reason for refusal infers that the enjoyment of a family home and garden is secondary to an highly improbable / aspirational development.
- The proposed gable windows respect the late Georgian proportions of the front windows of the house, maintaining consistency.
- The proposed development of new opes removes small sections of a monolithic gable wall and will not have any negative impact on the visual amenity of the building.
- Architectural glazing has been proposed instead of timber sliding sash windows to maximise the amount of natural light. The Kilkenny marble fireplace in the living room does not allow for any other position.
- Three houses, within 100m of the site have windows on the gable. These windows enhance blank gables, do not restrict future development and do not detract from the visual amenity of the area.
- Similar glazing has been used successfully in the adjoining Business Quarter. The successful restoration and redevelopment of the adjoining former Glynn's Mills building utilises modern curtain glazing between the original stack buildings.

- The house has changed and evolved since it was first built in 1837. Images submitted of the house in late C19th, 1917 and 1920.
- The proposed development seeks to increase the natural light into the most used rooms of the house. A sunlight analysis highlights the restrictions of the dwelling currently.
- The Board is requested to remove condition no. 2 from the decision to grant permission.

## 6.2. **Planning Authority Response**

- The Planning Authority has reservations about the windows having regard to the town centre location of the site, the zoning objective of the site and the development potential of the site.
- The Planning Authority considers that the proposal does not accord with the proper planning and sustainable development of the area and requests the Board to uphold the decision of the Planning Authority.

## 6.3. **Observations**

6.3.1. None on file

## 7.0 **Assessment**

- 7.1.1. I have examined the file and the planning history, considered national and local policies and guidance and inspected the site. Section 139 of the Planning and Development Act 2000- 2016 provides that where an appeal is made to the Board against only a condition of a permission and where the Board is satisfied that a de novo assessment of the appeal is not required, that the Board may issue a direction to the Planning Authority relating to the attachment, amendment or removal of the condition.
- 7.1.2. In the case of the current appeal against condition no. 2, I am satisfied that the appeal accords with the criteria of section 139 and therefore I restrict my assessment of the appeal to condition no. 2 only.

## 7.2. Condition no. 2

- 7.2.1. As noted above the decision of the Planning Authority to grant permission was subject to condition no. 2 which omitted the two proposed windows on the western elevation, on the first and second floors.
- 7.2.2. The applicant refutes the Planning Authority's assessment of the area to the west of the site as being a vacant site, with development potential. The applicant states that the area to the west of the site is the family garden associated with the site and as such has no development potential.
- 7.2.3. The applicant also refutes the Planning Authority's assessment that the proposed development would negatively affect the visual amenity of the prominent dwelling. The appeal provides details of similar development on gable windows within 100m of the subject site and provides detail of the architectural evolution of the dwelling since 1837.
- 7.2.4. The western elevation of the existing building is exposed by virtue of the undeveloped nature of the remainder of the site to the west which creates a gap in the streetscape above ground level. Nonetheless It is considered that the introduction of two demonstrably modern windows on this gable would not significantly detract from the architectural merit of the dwelling or the streetscape. The Board will note the successful restoration and redevelopment of the adjoining heritage building to the west. It is considered that the streetscape, and the subject protected structure are capable of absorbing the relatively minor alterations proposed. The proposed use of contemporary finishes is considered appropriate, thereby creating a new entry in the architectural record of the subject property.
- 7.2.5. It is considered that amendment required by condition no. 2 would be made with no appreciable gain to the visual amenity of the streetscape but with significant disadvantage to the subject dwelling. I am satisfied that the proposed development is acceptable in terms of visual impact and residential amenity and is in compliance with the development plan. I recommend that condition no. 2 be omitted

## 7.3. Appropriate Assessment

- 7.3.1. Having regard to the nature and scale of the proposed development to be retained in a fully serviced built-up urban area, no appropriate assessment issues arise, and it is

considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects, on a European site.

## **8.0 Recommendation**

- 8.1.1. Having regard to the nature of the condition the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and, based on the reasons and considerations set out below, directs the said Council under subsection (1) of section 139 of the Planning and Development Act, 2000 to REMOVE condition number 2 and the reason therefore.

## **9.0 Reasons and Considerations**

- 9.1.1. Having regard to the nature and scale of the development to be retained and to the pattern of development in the area, it is considered that the imposition of condition number 2 is unnecessary and the removal of this condition would not contravene the provisions, as set out in the current Development Plan for the area nor create a precedent.

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Gillian Kane  
Senior Planning Inspector

10 August 2020