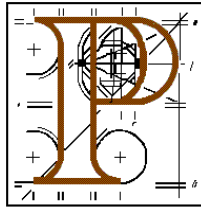


An Bord Pleanála



Inspector's Report

PL16.245287

DEVELOPMENT:

Description: Retention and completion of houses no.'s 2 to 5 Chapel Street and permission to amend P14/420 to provide for demolition of Chapel Street elevation.

Address: Chapel Street, Louisburgh, County Mayo.

PLANNING APPLICATION

Planning Authority: Mayo County Council

Planning Authority Reg. No: P15/191

Applicant: Devlin Construction

Application Type: Permission

Planning Authority Decision: Grant

APPEAL

Appellant: Mark Coyne

Types of Appeal: Third Party –v- Grant

Observers: None

Date of Site Inspection: 13/11/15

INSPECTOR: Paul Caprani

1.0 INTRODUCTION

PL16.245287 relates to a third party appeal against the decision of Mayo County Council to issue notification to grant planning permission to retain and complete four houses on Chapel Street, Louisburgh and also to provide for the demolition of the existing elevation of front façade of the Chapel Street elevation which was granted by Mayo County Council under a previous grant of permission reg. ref. P14/420. The grounds of appeal argue that the application was made in the name of a non-existent legal entity. Therefore the validity of the entire application and previous application pertaining to the site is questioned. The grounds of appeal also argue that the proposal has not been carried out in accordance with appropriate construction methods and will, when completed, interfere with the neighbours right to light.

2.0 SITE LOCATION AND DESCRIPTION.

The planning application and appeal relates to an infill site which is located on the southern side of Chapel Street in central Louisburgh in west Mayo. The site is located approximately 40 metres to the south-east of 'The Diamond' (central crossroads) within the village of Louisburgh. It comprises of a roughly triangular plot of land located between existing commercial and residential structures fronting directly onto Chapel Street. The site has a stated area of 495 square metres. It is currently a construction site. The previous structures have been demolished and removed from site with the exception of a partially retained front façade salvaged from the previous structures on site fronting directly onto Chapel Street. Long elongated gardens run to the rear (south) of the site to a laneway/tow-path which runs along the northern side of the Bunowen River which flows along the southern boundary of the town. The south-eastern boundary of the site lies adjacent to a two-storey dwelling. A house is located adjacent to the northern boundary of the site.

The buildings that front onto Chapel Street comprise primarily of two-storey nineteenth century buildings interspersed with more modern infill development particularly outside the town core.

2.1 Background to the Current Application

Reg. Ref. P14/420

Under reg. ref. P14/420 Mayo County Council granted planning permission for the substantial demolition of buildings comprising of a supermarket, a retail unit and a dwelling which were destroyed by fire together with the demolition of all existing outbuildings and stores. As part of the application it was proposed only to retain the front façade facing onto Chapel Street. Planning permission was sought to construct reinstatement of the street terrace comprising of four 2½ storey 2-3 bed town houses in the form of live/ work units and the construction of one two-storey 2/3 bed town house with a live work unit.

To the rear of the site and outside the confines of the current application boundary Reg. Ref. P14/420 provide a terrace of single-storey units for elderly persons to the rear of the town houses facing westwards within the scheme. These townhouses comprise of two-bedroomed units with a gross floor area of circa 75 square metres. To the rear (south) of these units for it was proposed to construct a two-storey apartment block set back from the riverside walk to the south and facing southwards onto the Bunowen River. This final apartment element of the proposed development was omitted on the Planning Authority's grant of planning permission.

Mayo County Council on 2nd December 2014 granted planning permission for the reinstatement of the street terrace containing five townhouses fronting onto the street and also granted planning permission for four two-bed single-storey dwellings for the elderly to the rear of the townhouses with access provided to the single-storey dwellings from the rear of the site adjacent to the river.

2.2 Current Application

A revised planning application was lodged to Mayo County Council specifically on foot of concerns about the structural stability of the front wall which was to be retained as part of the previous application. It is stated that the applicants made every effort to retain the front elevation as required under the original application. Documents lodged with the Building Control Authority prior to the commencement of works show the provision for the retention of a front elevation and the construction of a new blockwork wall immediately inside the front elevation. The external wall was to be tied to party walls and this new internal wall. However as part of the foundation works rock breaker was used to remove rock which was projecting above floor levels. This resulted in additional

cracks developing on the front elevation and the applicant became seriously concerned about the stability of the wall. The front wall was then demolished as weather forecasts for strong winds raised concerns that the wall may collapse.

The current application seeks to provide for the full demolition of the Chapel Street elevation. The Planning Authority are asked to note that the entire wall was extensively modified 26 years ago with the creation of new opes and the incorporation of blockwork in the stone wall. Also as part of the proposed development balconies as previously granted will be covered and incorporated into an expanded kitchen area. Mayo County Council is therefore requested to grant planning permission for these amendments in the interest of the long term sustainability and public safety associated with the development.

3.0 PLANNING AUTHORITY'S ASSESSMENT

3.1 Additional Information Request

On 25th May 2015 Mayo County Council requested the following further information.

- Revised drawings of the front and rear elevation showing the adjoining building to the south-east.
- Submission of further detailed drawings of the new windows and door opes on the front elevation which reflects the existing windows in terms of depth and surrounds.
- A report from a suitably qualified engineer in relation to how it is proposed to address any structural issues that may arise at the junction of the proposed development and the adjoining property to the south-east as a result of the changes proposed on the previous grant of planning permission. Particular reference shall be made in the report to address any matters that may arise in relation to any changes in floor level and the treatment of the chimney at the junction above the properties.

3.2 Additional information Submission

Further information was submitted on 17th June 2015. Further drawings were submitted indicating front and rear elevations in the context of adjoining buildings to the south-east and drawings of proposed window and door opes on the front elevation.

With regard to the party wall between the adjoining property to the south-east and the application site, it is stated that this is a substantial stone wall. The existing wall will be structurally tied to the new work for the combination of stainless steel wall starters and galvanised metal straps (the latter used where steel wall starters cannot be utilised because of the presence of large stones on the party wall). All work will be carried out in accordance with the Building Regulations.

With regard to finished floor levels, it is stated that the finished floor level on house no. 5 will be level with the footpath level at the entrance door so as to provide a level threshold in accordance with Technical Guidance Document M. The Planning Authority is requested to note that the footpath rises from the Coyne property towards Louisburgh town square.

The applicant does not propose to demolish or alter the existing chimney stack in the party wall structure. The existing chimney will be rendered where required.

3.3 Planner's Report

The planer's report outlines the proposed development and notes that in addition to the works concerning the front façade, the application also proposes the retention and completion of alterations to the rear elevations of proposed houses 2, 3 4 and 5 whereby the balconies as previously granted will be covered and incorporated into an expanded kitchen area.

An observation was submitted by the current appellant is also referred to in the planning report. In respect of the issues raised in the observation, it is stated that the legal status of the applicant is not relevant in terms of planning and that the issues raised in the observation relate to issues previously granted under P14/420 and therefore cannot be addressed as part of the current application. The additional information submitted by the applicant has been noted and is considered satisfactory. It is therefore recommended that planning permission be granted. In its decision dated 10th July 2015, Mayo County Council issued notification to grant planning permission for the proposed development subject to three conditions.

3.0 PLANNING HISTORY

Details of the planning history relating to the site have already been outlined in section 2.1 above in my report.

4.0 GROUNDS OF APPEAL

The decision of Mayo County Council to issue notification to grant planning permission was appealed by Mark Coyne, Castlebar, and County Mayo. The grounds of appeal are outlined below.

- The legal validity of the appeal is questioned as the application was made under “Delvin Construction Ltd” which it is contended is a non-existent legal entity. This company no longer exists and is dissolved. No details of the name of the Company Directors were given as per the requirement of Article 22(1) (b) (iii) of the Act. The applicants should be required to reapply for planning permission and any interested party should be given the opportunity to make observations on the planning application made in respect of the correct name of the applicant. Details of the dissolution of the company are attached to the grounds of appeal.
- It is also noted that the property steps to the rear of the appellant’s mothers property and in doing so interferes with the right to light and the interior of the property is now visible from the balcony associated with the development.
- The appellant is also unable to confirm that the tying of the wall into the existing stone wall was carried out at all. Mayo County Council sought further information in this regard and this is not referred to in the grant of planning permission. This is particularly important as the party wall has not been protected during construction which took place during a period of especially inclement weather.
- Finally it is stated that there is a need to provide an element of chemical damp proofing which has not been mentioned either in the applicant’s response to the additional information request or in the planning decision itself.

5.0 APPEAL RESPONSES

5.1 Applicants Response to the Grounds of Appeal

A response was received by John Lambe Architectural and Engineering Services Ltd., agent on behalf of the applicant.

The planning application which is the subject of the current appeal was made in the name of Delvin Construction Ltd. and the decision to grant planning permission was made in the name of Delvin Construction. It is stated that the appellant was obviously not in any way inconvenienced or misled by the name of the applicant as they lodged an observation with Mayo County Council in respect of the development. Mayo County Council has a rigorous invalidation procedure and Mayo County Council validated this application.

With regard to other issues, it is stated that the rear wall referred in the grounds of appeal is at exactly the same location as that already permitted under the extant permission. The development granted under the extant permission lies to the north of the appellant's mother's house and does not in any way interfere with rights to light. There is no balcony approved or proposed under the current application. Consequently there will be no overlooking of the Coyne property. The roof over part of the first floor is a flat roof which can only be accessed for maintenance purposes and will not be used for amenity purposes.

With regard to the southern gable wall this is the exclusive property of the owners and developers of the site. This wall has been tied into the new work with a combination of stainless steel wall starters and galvanised metal straps. All work to date has been carried out in accordance with the Building Regulations.

The Land and Conveyance Law Reform Act of 2009 provide a means of dealing with disputes between neighbours over party-walls. This is the correct way to deal with the dispute is through the Courts rather than the Planning Appeals Board.

5.2 Planning Authority's Response to the Grounds of Appeal

The Planning Authority has not submitted a response to the grounds of appeal.

6.0 DEVELOPMENT PLAN PROVISION

The site is governed by the policies and provisions contained in the Mayo County Development Plan 2014-2020 and the Louisburgh Area Plan 2014-2020. The objectives for Louisburgh include:

KTLB – 01. It is an objective of the town centre to encourage development in the town of Louisburgh in accordance with the land use zoning map LB1. The site in question is zoned ‘town centre’ in the plan.

7.0 PLANNING ASSESSMENT

I have read the entire contents of the file, visited the site in question and have had particular regard to the planning history associated with the site and the issues raised in the grounds of appeal. I consider the following issues to be pertinent in the Board’s determination of the application and appeal before it.

- Validity of application.
- Impact on amenity having particular regard to the issues of daylight and overlooking.
- Issues relating to the party wall along the south-eastern boundary of the site.

7.1 Validity

With regard to the issue of validity, the grounds of appeal argue that the Board should invalidate the application on the grounds that the application was made under the name “Delvin Construction Ltd.” which it is argued is a non-existent legal entity. In this regard a copy of a letter from the Company’s Registration Office is attached to the grounds of appeal which indicates that the above Company was dissolved in 1993. The applicant in his response to the grounds of appeal has not specifically addressed the issue as to whether or not the company in question has been dissolved. I do note however that Mayo County Council validated the application and in making the decision on the said application, has de facto accepted the applicant’s name as being valid. It is not to my knowledge a requirement or a protocol for a Planning Authority to check the validity of any company with the company’s registration office before validating a planning application.

If the Board consider it appropriate it could request that the applicant clarify the legal position in respect of the name of the applicant in this instance or alternatively request that the applicant re-advertise the proposed development stating the name of the applicant or the names of the company director’s as required under Article 22(1)(b)(1)(iii).

I do not consider however that third party rights and the rights of the appellant in this instance has in any way been jeopardised or

compromised as a result of the information provided on the planning application form. It is apparent that the appellant in this instance availed of his rights in respect of submitting an observation outlining his concerns in respect of the proposed development and subsequently appealed the matter to the Board in accordance with the provisions set out under section 37 of the Planning and Development Act 2000 (as amended). It could therefore be reasonably argued in my view that any issues regarding the legal validity of the company making the application in this instance has not in any way compromised or prejudiced third party rights as set out in the planning legislation. I therefore consider that the Board could determine the application without the need to either clarify the legal status of the company in question or requesting new public notices in relation to same. The legal validity of the company in question is in my view a matter for the Courts and not the Appeals Board. I reiterate that it is my view that third party rights have not been prejudiced or compromised in respect of this issue.

7.2 Amenity Issues

With regard to amenity issues, I note that the proposal before the Board in this instance is not altered from the extant permission granted under P14420 with the exception of the omission of balconies at first floor level and the extension of the kitchen area to the rear of the units. In terms of overlooking, the omission of the balconies to the rear of the four dwellings facing onto Chapel Street at first floor level will in my view, if anything, reduce the potential for overlooking of adjoining premises.

With regard to the issue of overshadowing and access to daylight the footprint of the buildings in question remain the same as those granted under PL14/420 and as such will in no way accentuate or exacerbate issues regarding right to light.

7.3 Structural Issues

With regard to the party wall along the south-eastern boundary of the site, the wall in question is a substantial stone wall and it is clear from the information contained on file that the existing wall will be structurally tied to new construction works using a combination of stainless steel wall starters and galvanised metal straps. It is clearly indicated from the information submitted that all work will be carried out in accordance with the Building Regulations. The applicant in this instance is required under law to comply with the Building Regulations which is a separate code to that of the planning legislation.

The grounds of appeal also make reference to the requirement to provide an element of chemical damp proofing in constructing the development. Again I this is a matter for compliance under the Building Regulation Code and as such it is not a planning issue. There is no requirement for the issue of chemical damp proofing to be mentioned in the applicant's response to the Council's request for additional information (as this issue was not specifically raised in the additional information) nor is it necessary for the Planning Authority to request specifically such detailed requirements in any decision issued.

8.0 APPROPRIATE ASSESSMENT

Having regard to the nature and scale of the proposed development and the nature of the receiving environment and the proximity to the nearest European site (the west Connaught coast SAC) side code 002998 which is located in excess of 1.3 kilometres to the north-west of the 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.

9.0 CONCLUSIONS AND RECOMMENDATIONS

Arising from my assessment above, I consider the proposed development to be acceptable. Mayo County Council in granting planning permission for the proposed development has de facto validated the application in question. Furthermore if any issues exist in respect of the validity of the company which made the application this in my view could be addressed by way of requesting the applicant to re-advertise the proposed development or requesting clarification in relation to the company in question. However I do not consider that such a requirement is necessary as third party rights in respect of submitting observations to the Planning Authority or appealing the decision of the Planning Authority to the Board has not been jeopardised, compromised or prejudiced in this instance. Furthermore I do not consider that the proposal impacts on third party amenity to any material extent over and above that which already the benefit of planning permission has granted under reg. ref. 14/420. I therefore recommend that the Board uphold the decision of the Planning Authority and grant planning permission for the proposed development in this instance.

DECISION

Grant planning permission for the proposed development in accordance with the plans and particulars lodged based on the reasons and considerations set out below.

REASONS AND CONSIDERATIONS

Having regard to the town centre zoning of the site as set out in the Mayo County Development Plan 2014-2020 together with the extant permission granted under reg. ref. 14/420, it is considered that the proposed development, subject to the conditions set out below would not seriously injure the amenities of the area or property in the vicinity, would not be prejudicial to public health and would generally be acceptable in terms of traffic safety and convenience. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 17th day of June 2015 and the 19th day of June 2015, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

3. The external finishes of the proposed front elevation including colours, textures and finishes and the roof tiles/slates shall be agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interests of visual amenity.

4. All other conditions attached to the previous grant of planning permission under reg. ref. P14/420 shall continue to apply.

Reason: In the interest of orderly development.

**Paul Caprani,
Senior Planning Inspector.**

19th November, 2015

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