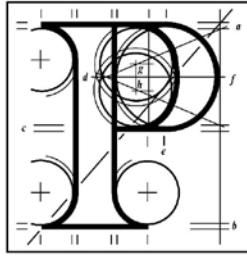


# An Bord Pleanála



## Inspector's Report

**Development:** Retention of the following changes to that granted originally by 04/2567: Part of the restaurant area for use as both butcher and deli sales, display and preparation, signage as erected on the building, and extractor fan on the northern gable of the building, at The Market House (a protected structure), Church St., Ennistymon, Co. Clare.

### Application

Planning authority: Clare County Council  
Planning application reg. no. P15/782  
Applicants: Sean & Fiona Haugh  
Type of application: Retention permission  
Planning authority's decision: Grant, subject to 4 conditions

### Appeal

Appellants: Michael & Nuala Crosse  
Type of appeal: Third party -v- Decision  
Observers: None  
Date of site visit: 28<sup>th</sup> April 2016  
Inspector: Hugh D. Morrison

## Site

The site is located towards the northern end of Ennistymon town centre on Church Street (N67). This site lies on the western side of the Street, which rises gently and curves away from the site's frontage. Its position is forward of St. Andrew's Church, which is sited prominently to the north. Between the site and the Church lie two detached dwelling houses.

The site accommodates a rectangular building under a double pitched roof building, which steps forward of the row of two and three storey buildings to the south. This building, which is known as The Market House, was originally a double height butter market. More recently, a first floor was inserted and it was in use solely as a restaurant. The buildings to the south have shops at ground floor level with associated residential/storage accommodation above.

The site also accommodates a forecourt, which is used for parking. This forecourt is set at an incline in relation to the adjoining carriageway. In total, the site has an area of 0.03 hectares and the building has a floorspace of 413.7 sq m.

## Proposal

The proposal seeks the retention of a change of use to part of the ground floor restaurant, i.e. 112.5 sq m, which is presently in use as a butcher's and a delicatessen's.

The proposal also seeks the retention of the signage, as erected on the building, and an extractor fan in the northern gabled elevation. With respect to this signage, the following signs are on the building:

- A flat sign above the arched main doorway to the building,
- Two projecting banner signs on either side of this flat sign, each of which is illuminated by a spotlight.
- A circular sign on the southern gabled elevation, which is illuminated by a spotlight.
- An elongated sign below this circular sign.

## Planning authority's decision

Permitted, subject to 4 conditions, the second of which reflects the advice of the Architectural Conservation Officer cited below.

## **Technical reports**

Architectural Conservation Officer: Objection raised to the large fabric sign on the southern gabled side elevation: this should be removed and replaced with a hand-painted, framed, wooden sign of similar dimensions and colours.

## **Grounds of appeal**

- Extractor fan: Objection is raised to this fan, on the grounds of noise and odour. Objection is not raised to the rebuilt roof-vent tower that was the subject of the parent permission.
- Oil storage tank: This tank is buried in public ground in front of the site. It constitutes development and so should have been addressed under this retention permission application.
- Waste management: The completed application forms do not address this subject and to the application should have been invalidated.
- Warning letter: Only three of the four issues raised therein are addressed by this application.
- Traffic management: The applicants have made no attempt to manage customer and delivery parking in front of The Market House with the result that the appellants who reside in the adjacent residential property have difficulty accessing/egressing their home.
- Draft planning conditions: These would not assist in the resolution of the above cited issues.

## **Responses**

The applicant has not responded to the above cited grounds of appeal and the planning authority stands by its decision.

## **Planning history**

- 04/2567: Alterations and conversion of The Market House: Permitted subject to 18 conditions, which includes ones that address usage, ventilation, odours, and signage.
- UD 15-087: Enforcement enquiry on-going since September 2015.

## **Development Plan**

North Clare Local Area Plan 2011 – 2017 (LAP) shows the site as lying within the town centre boundary and in an area zoned town centre/mixed use and designated

an ACA. Shops are permitted in principle under this zone and The Market House is identified as a protected structure ref. no. 386.

The Clare County Development Plan 2011 – 2017 (CDP) classifies the N67 as it passes through Ennistymon as a scenic route.

### **Assessment**

I have reviewed the proposal in the light of the CDP and the LAP, relevant planning history, and the submissions of the parties. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Procedures,
- (ii) Use,
- (iii) Residential amenity,
- (iv) Conservation and visual amenity, and
- (v) AA.

#### **(i) Procedures**

- 1.1 The appellants draw attention to a warning notice that the planning authority served on the applicants. This notice refers to four items, three of which are addressed by the current application. The omitted item refers to “The storage of rubbish bins at the front of the building adjacent to the public road.”
- 1.2 As submitted, the site plan shows the forecourt under the applicant’s control as extending to a depth of 3m in front of The Market House. However, “on the ground” the functioning forecourt extends beyond this depth to the adjoining carriageway. During my site visit, I observed a commercial waste wheelie bin parked on the northern side of the forecourt in the space allotted for bins on the site layout plan (drawing no. MH-6-B) approved under the parent permission granted to application reg. no. 04/2567. (Drawings nos. MH-4A and 5A also depict this bin store).
- 1.3 The case planner addresses the appellants’ concern over bins by stating that this matter was the subject of condition 5 of the parent permission, which was previously complied with, and that it would be capable of being the subject of renewed control by means of a licence under Section 254 of the Planning and Development Act, 2000 – 2015. The said condition addressed housing for the bins, which was previously provided, but now is no longer insitu. I consider that this matter can be addressed again by condition.

- 1.4 The appellants also draw attention to an oil tank that they allege lies under the forecourt. The aforementioned warning notice does not refer to this item and the case planner states that this matter will be passed onto the planning authority's enforcement section.
- 1.5 While I concur with the appellants' position that retention permission applications should address all matters in need of retention, the question of the oil tank is one that clearly needs to be investigated further. The related question of validation is one the planning authority alone is empowered to determine.
- 1.6 I conclude that the procedural matters raised by the appellants do not prevent the Board from proceeding with an assessment/determination of the current application /appeal.

## **(ii) Use**

- 2.1 Under the parent permission granted to application reg. no. 04/2567, The Market House was authorised for use in its entirety as a restaurant. Under the current proposal, retention permission is sought for a change of use of part of this restaurant to a butcher's and a delicatessen's, i.e. shops. Under Article 5(1) of the Planning and Development Regulations, 2001 – 2015, shop is defined as specifically excluding a restaurant and so there is a material change of use in changing from one to the other.
- 2.2 Under the North Clare Local Area Plan 2011 – 2017 (LAP), the site is shown as lying within the town centre boundary and in an area zoned town centre/mixed use. Within this zone, shops are deemed to be permissible in principle. Furthermore, insofar as the mix of a restaurant, a delicatessen's, and a butcher's provide a spread of active uses during the day and into the evening, they make more of a contribute to the vitality and viability of the town centre than a single restaurant would do, especially if it were only to open in the evening.
- 2.3 Under the Clare County Development Plan 2011 – 17 (CDP), the use of floorspace as shops rather than a restaurant attracts a less onerous car parking standard and so the change of use in question does not require any additional car parking spaces.
- 2.4 The appellants express concern that the forecourt within the site is the subject of unregulated parking that has a knock on effect upon access and egress to their adjacent dwelling house. During my site visit, I observed that the forecourt is not lined to promote efficient parking. While I recognise that the applicant does not control the whole of the forecourt, on the basis that the remainder lies within the control of Clare County Council, as the roads authority, I consider that it would be reasonable for the applicant to agree a scheme of lining with the County Council pursuant to a planning condition in this respect.

2.5 I conclude that the change of use would be appropriate in land use terms and that no increase in parking provision is needed. The lining of the forecourt to promote better parking practise should, however, be required.

**(iii) Residential amenity**

3.1 The appellants object to the extractor fan in the northern gabled elevation on the basis of noise and fumes. They draw attention to the rebuilt roof-vent tower that was the subject of the parent permission granted to application reg. no. 04/2567, the implication being that this tower would be a more appropriate site for this fan.

3.2 During my site visit, I observed that in accordance with drawing no. MH-3W, submitted under the aforementioned application and received by the planning authority on 19<sup>th</sup> December 2004, ovens have been installed at first floor level against the northern gabled elevation of the building. There is a hood above these ovens that connects with the extractor fan. Externally, this fan is not visible, due to the presence of ivy on the said elevation.

3.3 The parent permission was granted subject to eighteen conditions, two of which relate to ventilation, i.e. no. 5, which required that the design issue of “venting arrangements (location, type and design)” be addressed, and no. 7, which states that noise and odours should not be admitted such as would give reasonable cause for annoyance to any person in any residence or public place in the vicinity.

3.4 The case planner reports that condition no. 5 was complied with insofar as the planning authority stated in correspondence that “the air intake ventilation and extraction for the building shall be through the rebuilt roof venting housing.” This condition refers explicitly to plans received by the planning authority on 9<sup>th</sup> December 2004, which depict a different first floor layout than the one that pertains today. This layout, as distinct from that shown on the plans submitted on 19<sup>th</sup> December 2004, appears to be consistent with the said venting requirement.

3.5 The applicant has submitted no specification for the extractor fan and no information has been submitted as to the noise that it generates or the measures that it incorporates to control odour emissions. While the visibility of the extractor fan is not an issue, I am concerned that the applicant has not addressed its environmental impact, which could potentially affect the residential amenity of the adjacent dwelling house to the north. The Board may wish to seek, under a request for further information, to attempt to rectify this deficiency in the application.

3.6 I conclude that the applicant has submitted insufficient information to facilitate an assessment of the extractor fan and so, in these circumstances, it should be omitted from the ambit of any retention permission.

#### **(iv) Conservation and visual amenity**

4.1 Under the LAP, The Market House is a protected structure (ref. 386), which lies within the Ennistymon town centre ACA. The NIAH identifies this House as being of architectural and social interest and regional importance and the description given refers to its external features. The accompanying photograph appears to date from when the House was in use as furniture/antiques store. No signage exists on the elevations, but a freestanding sign is sited in the forecourt.

4.2 The applicants propose to retain the four signs that are presently mounted on the exterior of the building. Two of the signs approximate to the two signs that were approved under the parent permission, i.e. the flat sign above the arched main doorway to the building and the circular sign on the southern gabled elevation, which is illuminated by a spotlight. I note from drawing no. MH-4A that the flat sign was approved with two spotlights above it, although, as installed these two lights lie to either side of this sign. I note, too, that conditions nos. 6 and 18 seek to control all further signage proposals.

4.3 The two other signs that are the subject of this application are two projecting banner signs on either side of the flat sign, each of which is illuminated by the aforementioned spotlights, and an elongated sign below the circular sign. (During my site visit, I also observed a mobile freestanding sign that was sited in the forecourt).

- The former banners signs are denoted as B and C in the submitted plans. Each is 550 mm wide and 1200 mm deep and one is red and refers to the delicatessen and the other is grey and refers to the butchers. The accompanying flat sign has the words “Market House Food Hall” inscribed upon it.
- The latter elongated sign is denoted as A in the submitted plans, too. It is 6800 mm long and 700 mm deep. This sign has the words “Café & Deli Market House Butchers” inscribed upon it against a khaki green background.

4.4 I consider that the originally permitted signage for the building was restrained and modest in scale and design and so it is arguably compatible with the essentially simple and uncluttered character of The Market Hall. The two banner signs are also restrained and modest in scale and design. They elaborate on the information set out on the flat sign and they serve to emphasize the one of two arched doorways in the front elevation that is the main public entrance to the building.

4.5 When looking north along Church Street, the southern gabled elevation projects forward of the buildings to the south and so it is clearly visible. The two arched windows at first floor level contain the words “Deli” and “Café” inscribed on their inside surfaces. At the same level is the aforementioned circular sign that repeats these words, along with a reference to the butchers and the Market House. Given the presence of these signs, I consider that the elongated sign simply duplicates the information already available. This sign is sited in an off-centre position to maximise its visibility and it is sited beneath the cill level of the arched windows and so at a lower level than the other signs on this elevation. In view then of the size and siting of the sign, its composition from a non-traditional fabric material, and the proliferation that it would represent, I consider that its retention should be refused.

4.6 I conclude that the signage on The Market House is compatible with the character of this building, except for the elongated sign on the southern gabled elevation.

#### **(v) AA**

5.1 The site does not lie within a Natura 2000 site. However, the Inagh River Estuary SAC coincides with the Inagh River that flows 0.38 km to the south of the site. The proposal is for the retention of a change of use of part of an existing building, which is served by mains water supply and the public sewerage system. It also entails the retention of an extractor fan and signage. Given the aforementioned factors, I do not consider that this proposal would have a significant effect upon the Conservation Objectives of the said Natura 2000 site.

5.2 Having regard to the nature and scale of the proposed development, 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.

#### **Recommendation**

In the light of my assessment, I recommend that this application be the subject of a split decision. Thus,

(i) Retention of the part of the restaurant area for use as both butcher and deli sales, display and preparation, and signage as erected on the building, except for the elongated sign on the southern gabled elevation, at The Market House, Church St., Ennistymon, Co. Clare, should be permitted.

(ii) Retention of the elongated sign on the northern gabled elevation of the building and the extractor fan on the northern gable of the building, at The Market House, Church St., Ennistymon, Co. Clare, should be refused.



### **(i) Reasons and considerations**

Having regard to the planning history of the site and the provisions of the North Clare Local Area Plan 2011 – 2017, it is considered that, subject to conditions, the retention of the use of part of the restaurant area as a butcher's and a delicatessen's in The Market House would comply with the town centre/mixed use zoning objective for the site. Likewise, the retention of the signage erected on this building, except for the elongated sign on the southern gabled elevation, would be compatible with its character and status as a protected structure. Thus, the retention of the said shops and signage would accord with the proper planning and sustainable development of the area.

### **Conditions**

1. The development shall be retained in accordance with the plans and particulars lodged with the application, 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 and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. The following shall be omitted from this retention permission:
  - (a) The elongated sign on the southern gabled elevation, and
  - (b) The extractor fan in the northern gabled elevation.

**Reason:** In the interests of visual and residential amenity.

3. Within 6 months of the date of this Order, the developer shall submit to the planning authority a scheme for the housing of bins in conjunction with the mixed-use of The Market House. A timetable for the implementation of this scheme shall also be submitted. Thereafter, the planning authority shall agree this scheme and timetable in writing.

**Reason:** In the interests of visual and residential amenity and public health.

4. Within 6 months of the date of this Order, the developer shall submit to the planning authority a scheme for the formal lining of the forecourt for parking. A timetable for the implementation of this scheme shall also be submitted. Thereafter, the planning authority shall agree this scheme and timetable in writing.

**Reason:** In order to promote efficient parking on the forecourt.

**(ii) Reasons and considerations**

1. Under the North Clare Local Area Plan 2011 – 2017, The Market House is a protected structure within the Ennistymon Town centre Architectural Conservation Area. The proposed retention of an elongated sign on the southern gabled elevation of this building would, due to its size and siting, its composition from non-traditional fabric material, and the proliferation of duplicating signage that it represents on a highly visible elevation within the Architectural Conservation Area, be incompatible with the simple traditional character of the protected structure and seriously injurious to the visual amenities of this Area. Accordingly, to accede to its retention would be contrary to the proper planning and sustainable development of the area.
2. The applicant has submitted insufficient information with respect to the proposed retention of the extractor fan in the northern gabled elevation of The Market House to enable an assessment to be made of this fan's environmental impact, in terms of noise and odour emissions, and hence its possible affect upon the residential amenities of the area. Accordingly, to accede to its retention would be premature and thus contrary to the proper planning and sustainable development of the area.

Hugh D. Morrison

Inspector

17<sup>th</sup> May 2016