

An Bord Pleanála



Inspector's Report

Appeal Reference No: PL09.246427

Development: Partial demolition of existing 2 storey mixed use building, construct steel framed steel clad lightweight building for storage of up to 11 cars or as staff car park when space is available.
Market Square, Newbridge, Co. Kildare.

Planning Application

Planning Authority: Kildare County Council
Planning Authority Reg. Ref.: 16/109
Applicant: Richard and Ursula Mooney
Planning Authority Decision: Refuse Permission

Planning Appeal

Appellant(s): Richard and Ursula Mooney
Type of Appeal: First Party v Refusal
Observers: None on file
Date of Site Inspection: 6th July 2016

Inspector: Sarah Moran

1.0 SITE LOCATION AND DESCRIPTION

1.1 The site is located on Market Square, off Eyre Street in the centre of Newbridge, Co. Kildare. Market Square is a small, pedestrianised enclave, which is an amenity space for the local area along with pedestrianised George's Street to the immediate south. The square leads to residential areas to the north and the local office of the Department of Social Welfare is located on the eastern side of the square, opposite the subject site. The site has a total stated area of 0.246 ha and comprises the following:

- Existing 2 storey building facing Market Square, i.e. a 2 storey house with part of the ground floor used as a shop, which has a more recent 2 storey extension to the rear, stated total floor area of 323.2 sq.m. Documentation on file states that this was built in the early 1800s, with the 2 storey extension to the rear added in the 1970s. The internal floor plans indicate that the interior is laid out as a shop and 10 no. apartments.
- The site boundary includes a small part of a larger yard situated to the rear of the building, which has vehicular access to Market Square and to Eyre Street. The yard is used in association with a car repair / testing business, Peter Mooney & Co. Ltd, which also has a modern premises on the southern side of the yard, facing Eyre Street and a new shed on the southern side of the shared yard.

The site is bound by a 2 storey building at the corner of Eyre Street and Market Square to the east, by open space to the west, by frontage to Market Square to the north and by 2 storey buildings in the test centre premises to the south.

2.0 PROPOSED DEVELOPMENT

2.1 The proposed development involves:

- Demolition of the existing 2 storey building at the site except for the retention of the façade to Market Square and the side elevation, along with part of the roof;
- Construction of a steel-framed, steel clad lightweight building behind the façades to be retained (stated area 207.5 sq.m.) and
- Use of the new structure as a facility for the storage of up to 11 cars awaiting replacement parts, or as a staff parking area when vacant space is otherwise available, in connection with the adjoining car mechanic workshop.

3.0 PLANNING HISTORY

3.1 14/936

3.1.1 Permission sought by Peter Mooney & Company Limited for demolition of the existing 2 storey building, retaining the front and side facades and the construction of a steel framed, steel clad lightweight building behind the

retained facades, with a change of use from existing mixed use to vehicle maintenance. Kildare County Council refused permission for the following reasons:

1. *Having regard to the nature and extent of the proposed development, which is considered to be a 'non conforming use' within this Town Centre zoned site; the intensification of such use as proposed, and the zoning objective of the Newbridge Local Area Plan 2013-2019, which seeks 'to provide for and improve retailing, residential, commercial, office, cultural and other uses appropriate to the centre of Newbridge', would result in a development that would be seriously injurious to the residential and visual amenities of properties in the vicinity, and the area generally, contrary to the stated objectives, and therefore not in the interests of the proper planning and sustainable development of the area.*
2. *Having regard to the proposed development, which involves the demolition of an existing vernacular townhouse, which contributes strongly to the collective streetscape and roofscape character of fine-grained buildings within the town centre, and where it is a stated policy objective in the Newbridge Local Area Plan, to protect and enhance the special character of such buildings. Notwithstanding the proposed retention of the façade, and associated front roof pitch of the existing building, the proposed development would detract from the historical streetscape character and would therefore be contrary to the proper planning and sustainable development of the area.*

3.2 15/384 PL09.245199

- 3.2.1 Permission sought by Richard and Ursula Mooney for partial demolition of the existing 2 storey mixed use building and the construction of a steel framed, steel clad, lightweight building behind the facades which are to be retained, also use of the structure (207 sq.m.) for parking purposes accommodating up to 11 no. new cars in connection with the adjoining car mechanic workshop. The PA refused permission for similar reasons to 14/936. The applicant appealed the refusal and the Board refused permission for the following stated reason:

The subject site area is located on land zoned 'Town Centre' in the current Newbridge Local Area Plan, 2013-2019, for which it is an objective of the planning authority to provide for and improve retailing, residential, commercial, office, cultural and other uses appropriate to the centre of Newbridge. This zoning objective is considered reasonable. The proposed development forms an integral element to the primary use on the abutting lands which is within the landownership of the applicant and that is a car repair workshop and yard area. The proposed development, consisting of the partial demolition of an existing mixed use building and the construction of a steel clad building to be used as a car parking area for the motor repair

business, would lead to the expansion and consolidation of a non-conforming use and would contravene the zoning objective for the site. It is considered that the proposed development would, therefore, seriously injure the amenities of the area and of property in the vicinity and would be contrary to the proper planning and sustainable development of the area.

3.3 16/399 Current Proposal on Adjoining Site

3.3.1 There is a current application relating to the adjoining building at the corner of Eyre Street and Market Square. Permission is sought for change of use from existing betting shop to café / restaurant with kitchen preparation area and minor alterations to the existing layout, also new signage. Kildare County Council sought further information on 14th June 2016, in relation to details of kitchen waste drainage and car parking.

4.0 PLANNING AUTHORITY DECISION

4.1 Planning and Technical Reports

4.1.1 Kildare County Council Conservation Officer 29th February 2016. Recommends refusal as the existing historic structure is being demolished except for façade retention, also contravention of County Development Plan policy on vernacular architecture VA1.

4.1.2 Kildare County Fire Service 16th March 2016. No objection subject to 1 no. condition.

4.1.3 Kildare County Council Environment Section 16th March 2016. No objection subject to conditions.

4.1.4 Kildare County Council Environmental Health Officer 19th March 2016. No objection subject to conditions.

4.1.5 Kildare County Council Transportation Department 29th March 2016. No objection subject to conditions.

4.1.6 Kildare County Council Area Engineer Western Area 16th March 2016. No objection, recommends conditions.

4.1.7 Kildare County Council Water Services 30th March 2016. Applicant already has a watermain and sewerage connection. Recommends conditions.

4.1.8 Kildare County Council planning report 30th March 2016. Recommends refusal.

4.2 Third Party Submissions

4.2.1 None on file.

4.3 Planning Authority Decision

4.3.1 Kildare County Council refused permission on 30th March 2016 for 3 no. reasons relating to (1) expansion and consolidation of a non-conforming use at a Town Centre zoned site; (2) contravention of County Development Plan policy VA1 on vernacular architecture and Newbridge LAP policy AH1 on architectural heritage (3) undesirable precedent due to removal of the existing building behind a fake façade.

5.0 GROUNDS OF FIRST PARTY APPEAL

5.1 The appeal has been submitted by Vincent JP Farry and Co. Ltd, Planning and Development Consultants, on behalf of the applicants. The main points made may be summarised as follows:

- The Board is requested to reassess the development on its merits and to consider whether it would cause sufficient harm to warrant a refusal of planning permission.
- The Inspector's Report of PL09.245199 had the effect of misguiding and misdirecting the Board in that case. The assessment considered that the applicant might use the proposed structure for repair purposes. It is not open to the authorities to consider the possibility of an unauthorised use when assessing proposals, ref. the High Court case 'Kelly v An Bord Pleanála', when a decision to deny consent for a workshop was quashed on the basis that the Board had opined that the feature could accommodate activities which fell outside the ambit of the application.
- The proposed facility has a tandem layout as the spaces would mainly be used to securely store cars awaiting replacement parts, which are currently parked in the lane outside the site. The cars are prone to vandalism as the area is not overlooked by staff. Workers might also occupy spaces at the edge of the development, if vacant.
- Section 8.2 of the Newbridge LAP, regarding non-conforming uses, shows an intention to allow flexibility in cases involving improvements to non-conforming developments. The LAP expressly envisages activities which are conflict with the zoning matrix and allows proposals that would otherwise be impermissible under with the 'Town Centre' zoning objective to take place. It also allows extensions to non-conforming uses and in doing so accepts such activities notwithstanding their inconsistency with zoning. It is unacceptable to test the acceptability of an extension to a non-conforming use against the land use matrix which generally applies, as such a development would almost always be inconsistent with the adopted zoning objective.

- All parties agree that the existing use on the adjacent site is lawfully established.
- The Inspector's report of PL09.245199 almost ignored the provisions of LAP section 8.2, therefore the Board was misdirected on this issue. The proposed development is within the reasonable interpretation of section 8.2 of the LAP, however this was overlooked in the Board's analysis. The conclusion of the Inspector's Report of PL09.245199 that the development is a 'material contravention' of the LAP misrepresents the scheme which has been adopted for the subject site.
- The Kildare County Council planning report on file accepts that the zoning scheme does not apply to non-conforming developments of this type and underlines the fact that this provision is subject to the development not being seriously injurious to the amenities of the area and not prejudicing the proper planning and development of the area.
- It is accepted that section 8.2 only applies where the proposed development would not be seriously injurious to the amenities of the area. The Inspector's report of PL09.245199 did not dismiss the development on amenity issues. It is not apparent from the Board's assessment as to how the development would cause harm, especially as it merely entails the slight repositioning of vehicles which already occupy the laneway beside the site. The use of the site for parking purposes, independent of the adjacent motor activity, is classed as acceptable in the Town Centre zone. The Board refusal may have resulted from fears of unlawful use of the structure rather than from harm resulting from the storage or use of parked cars. The Board is asked to reassess the issue and to only consider the amenity issues associated with car parking and to exclude the possibility of the applicant using the development for illegal purposes.
- While motor uses, especially repairs, potentially affect amenity, no third party objections were lodged with the Council, or the Board, on any of the previous occasions. The satisfactory co-location of the existing business at the site with the adjoining land uses reflects the responsible manner in which the applicant manages this operation.
- The development simply involves the relocation of existing kerbside cars for security reasons. This raises questions as to the exact manner in which the proposal would affect amenity. Neither the Inspector's report of PL09.245199 nor the Kildare County Council planning report on file, identify the exact manner in which amenity would be affected.

6.0 RESPONSE OF PLANNING AUTHORITY TO FIRST PARTY APPEAL

6.1 The main points made may be summarised as follows:

- The development would undoubtedly contravene the town centre zoning objective applicable to the site. The zoning objective seeks to encourage the re-use and regeneration of buildings in the town centre and its purpose includes the protection and enhancement of the special character of the town centre. The development would be completely at odds with a land

use objective centred on terms such as re-use, regeneration, protection and enhancement. It is the nature and extent of the contravention of the zoning objective, in the context of the provisions of section 8.2 of the Newbridge LAP, which would be seriously injurious to the amenities of the area and would be prejudicial to the proper planning and sustainable development of the area.

- The approach of disguising a new more industrial type structure behind a remaining vernacular and fake façade is unacceptable and, if permitted, would set a seriously undesirable precedent. This is not a design response that should be encouraged. The approach would be contrary to LAP Policy AH1 and County Development Plan policy VA1, which both seek to protect and resist the demolition of vernacular architecture.
- While the existing 2 storey building is not a protected structure, it does comprise part of the historic building stock of the town centre, a vernacular town house which contributes to framing Market Square and the historic streetscape. The LAP includes Market Square as part of a historical central axis in the town inclusive of Town Hall and George's Street, and sets out a vision to reinvigorate and regenerate this historic area of the town. Demolishing part of the building to accommodate an industrial type extension to a non-conforming use would negate the realisation of the design brief as envisioned in the LAP. The report of the County Architectural Conservation Officer recommends refusal on grounds of contravention of policy VA1.
- The structural report submitted with the application is not deemed to be a justifiable basis on which to support the replacement of historic built fabric with an industrial type storage building, nor a basis on which to support the retention of the front elevation of the building as a fake façade to hide a new structure from view.

7.0 POLICY CONTEXT

7.1 Kildare County Development Plan 2011-2017

7.1.1 Chapter 12 of the Plan deals with architectural and archaeological heritage, including section 12.5 on vernacular architecture.

7.2 Newbridge Local Area Plan 2013-2019

7.1.1 The site has the zoning objective A 'Town Centre':

To provide for the development and improvement of appropriate town centre uses including retail, residential, commercial and civic uses.

LAP section 7.5 sets out Town Centre policy and section 7.11.1 sets out policy on architectural heritage.

8.0 ASSESSMENT

8.1 The following are the issues considered relevant in this case:

- Principle of Development with regard to the Town Centre zoning objective;
- Architectural, heritage, visual and amenity impacts;
- Other issues;
- Conclusion.

These may be considered separately as follows.

8.2 Principle of Development

8.2.1 It should be noted at the outset that the current proposal is essentially a repeat application of the development refused by the Board under PL09.245199. The layout and elevations are very similar. However, in the current case, the applicant has provided additional details of the intended use of the proposed structure and of its relationship with the adjoining garage / car testing premises. In the case of PL09.245199, the Board considered that the development was an integral element of the overall car repair workshop and yard area and would lead to the expansion and consolidation of a non-conforming use and would contravene the zoning objective for the site under the Newbridge LAP 2013-2019. The applicant submits that the proposed building would be used to store cars awaiting replacement parts, which are now parked in the lane outside the site. There are concerns about vandalism of cars parked in Market Square. While I note the comments in the appeal about the previous Board decision being based on fears of possible unauthorised uses of the development, that issue is outside the scope of the subject appeal. I intend to consider the proposed development and land use, as set out in the application, on its merits with regard to the relevant policy objectives.

8.2.2 The same LAP is currently in force as when the Board made its decision on PL09.245199. The site has the zoning objective A, 'Town Centre', with the stated objective to provide for the development and improvement of appropriate town centre uses including retail, commercial and civic uses. The LAP states:

The purpose of this zoning objective is to protect and enhance the special character of Newbridge town centre and to provide for and improve retailing, residential, commercial, office, cultural and other uses appropriate to the centre of Newbridge. The Council will encourage the appropriate re-use and regeneration of buildings, backlands and derelict/obsolete land. Innovative design approaches will be welcomed in the area, particularly with regard to residential and commercial development.

The zoning matrix provided in Table 18 of the LAP indicates that the use 'garage / car repairs' is not permitted under this zoning objective. It has been

established that the proposed development would be used as part of the overall garage / car repair operation at the adjoining premises. The development is therefore clearly a 'non-conforming use'.

- 8.2.3 LAP section 8.2 sets out policy on non-conforming uses and is referred to in the grounds of appeal. It is submitted that the Board did not take the provisions of section 8.2 into consideration in its previous assessment under PL09.245199. Section 8.2 states:

Throughout the town there are uses that do not conform to the zoning objectives for that area. These are uses which:

1. *Were in existence on 1st October 1964,*
2. *Have valid permissions or,*
3. *Have no permission and which may or may not be the subject of enforcement proceedings.*

Extensions to and improvement of premises referred to in categories 1 and 2 above may be permitted. This would apply where proposed development would not be seriously injurious to the amenities of the area and would not prejudice the proper planning and development of the area.

I note that under 00/494, permission was granted to Richard Mooney to demolish an existing 2 storey premises consisting of a car showroom, etc. and to erect a new 2 storey car showroom & sales office on ground floor with 2 no. two bedroom apartments on first floor, all on the adjoining yard and building fronting onto Eyre Street. I also note from the documentation on file that permission was originally granted to O'Brien Mooney for erection of a garage workshop at this location under 75/1059. I therefore consider that the overall premises would fall under category 2 above. The proposed operation would involve an extension of such premises and therefore, with regard to section 8.2, may be permitted and can be considered on its merits as to whether or not it would be 'seriously injurious to the amenities of the area'.

8.3 Architectural, Heritage, Visual and Amenity Impacts

- 8.3.1 The existing site is a 2 storey townhouse with part of the ground floor laid out as a shop. Although it is not a protected structure or of any unique architectural merit, it is a vernacular building dating to the early 1800s. Both the County Development Plan and the Newbridge LAP note the importance of such structures to the heritage of Co. Kildare. County Development Plan policy VA1 states:

VA 1: To encourage the protection, retention, appreciation and appropriate revitalisation of the vernacular heritage of the county.

Development Plan Policy VA6 is also considered relevant:

VA 6: *To ensure that both new build, and extensions to vernacular buildings are of an appropriate design and do not detract from the building's character.*

Newbridge LAP policy AH1 also applies:

AH1: To resist the demolition of vernacular architecture of historical, cultural and aesthetic merit, which make a positive contribution to the character, appearance and quality of the local streetscape and the sustainable development of Newbridge.

- 8.3.2 The proposed development would involve retaining the Market Square and side façades of the building and the front part of the roof. However, the retention of a façade only is generally not considered to be compatible with maintaining the character of historic buildings. I note section 6.8.17 of the DoAHG Architectural Heritage Protection Guidelines for Planning Authorities (2011), which states the following in relation to protected structures:

Façade retention, or the demolition of the substantive fabric of a protected structure behind the principal elevation, is rarely an acceptable compromise, as only in exceptional cases would the full special interest of the structure be retained. Such cases may occur if the building had previously been redeveloped behind the façade, in which event proposals for new redevelopment behind the façade could be favourably assessed, subject to receiving adequate assurances on how the historic fabric would be protected during the works.

Any such permitted redevelopment should relate floor levels and room sizes to the fenestration of the façade, for example to avoid having open-plan office space behind a Georgian façade that would be visibly discordant seen from the exterior.

I also note section 7.7 of the same document, which states:

The demolition of all but the façade of a structure will inevitably result in a loss of character and should rarely be considered acceptable. In cases where the façade is the sole surviving feature of a building, any proposal to construct a new building behind that façade should respect the location, not only of existing openings, but also of the original floors and internal walls to avoid an adverse impact on the external appearance of the building.

- 8.3.3 The existing building at the subject site has been substantially amended with the addition of a large 2 storey extension to the rear in the 1970s and the conversion of the entire structure into 10 no. bedsit type residential units and a shop. There is a structural survey of the building on file, which was carried out by a structural engineer in April 2015. It appears from same that the original walls and roof remain but are in poor condition. The walls are cracking

and the roof is infested with woodworm. There is mould and evidence of rising damp throughout the building. A substantial amount of work would be necessary to make the property habitable, details of same are provided. It would appear, however, from the photographs on file, that much of the original building fabric remains. The proposed development would involve removing all of the existing internal fabric, as well as the 2 storey rear extension. They would be replaced with a steel clad garage structure with large doors opening onto the yard area. The design would have an industrial appearance to the yard and the internal floorplan would not match the external fenestration. While I accept the poor condition and amended layout of the original building, I do not consider that the proposed development would be in keeping with the above recommendations of the DoAHG guidelines as it is likely to be 'visually discordant' with the retained facades. Although the guidelines specifically relate to protected structures in this instance, they are based on general best practice and conservation principles and are reflected in the report of the Kildare County Council Conservation Officer, which recommends refusal on the grounds that the development would contravene policies VA1 and AH1, as set out above. I concur with this view. I also consider that the development would contravene Development Plan policy VA6.

- 8.3.4 The proposal may also be considered with regard to the policies for Newbridge town centre, as set out in LAP section 7.5. The regeneration and conservation of the town centre are important objectives of the LAP. The key aim is to improve the strength and vitality of the entire town centre and to identify areas that have the potential to develop further. The area around Eyre Street is identified as the more historic part of the town centre, characterised by a number of smaller streets forming a grid like pattern with a fine urban grain. LAP section 7.5.3 notes that recent new retail developments in the town centre have resulted in a loss of footfall along Eyre Street and Main Street. Georges Street, to the immediate south of the subject site, is identified as having the potential to strengthen the image of the town centre and increase footfall to this area of Main Street. Section 7.5.7 notes that the predominant uses in the town centre include residential, retailing, financial and professional services, cafes and public houses, community facilities and schools. Section 7.5.9 notes that the existing town centre zone needs considerable regeneration to carefully expand its retail offer and increase physical synergies and linkages with other areas of the town. Policy RR6 states:

RR6: To reinforce Main Street/Edward Street as a vibrant town centre with a diverse mix of uses and to consolidate the town centre areas surrounding these streets by intensifying development in order to create a compact core.

Also the following town centre objective:

RO6: To safeguard the important architectural and streetscape heritage of the town centre area.

The site adjoins the area of 'Design Brief 4' as per LAP section 7.6.9. This is an urban block along an axis between Town Hall and Georges Street and includes Market Square. The LAP states:

Market Square was once a formal square framed by the Courthouse in Newbridge. The old Courthouse was burnt in 2002 and was demolished shortly thereafter. Consequently, the Square lacks a defined edge and sense of enclosure. Views to the Square from Georges Street have also been damaged as the sense of enclosure within a 'framed' street has been lost.

The LAP outlines a vision to develop a cultural quarter focusing on boutique style shopping mixed with a café/restaurant culture. Market Square is to be redesigned as an urban green space flanked by a new civic building to enclose the streetscape and square. While I accept that the development would improve the parking situation at the applicant's overall premises, I do not consider that this should be achieved at the expense of historic building material. The adverse impacts to the appearance of the site resulting from the proposed development would mitigate against the achievement of the above vision.

- 8.3.5 I concur that the removal of all but the façade of the existing building would not be in accordance with good conservation practice. I do not consider that the proposed development is compatible with the above County Development Plan and LAP policies and objectives, or with the stated purpose of the 'Town Centre' objective, i.e. to protect and enhance the special character of Newbridge town centre.

8.4 Other Issues

- 8.4.1 The development is located on a serviced site and I note that, aside from the Conservation Officer, none of the technical reports on file have any objection to the scheme. Having regard to the nature and scale of the development within a fully serviced location, no AA 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.

8.5 Conclusion

- 8.5.1 The proposed development comes within the scope of LAP section 8.2, category 2. It therefore may be permitted if it is not seriously injurious to the amenities of the area and if it would not prejudice the proper planning and development of the area. However, the development involves the demolition of most of the existing 2 storey vernacular building on the site. It therefore would contravene County Development Plan policies VA1 and VA6 on vernacular heritage, as well as LAP policies AH1 on vernacular architecture and RO6 on architectural and streetscape heritage. It would also contravene the LAP 'Town Centre' zoning objective to protect and enhance the special

character of Newbridge town centre. In addition, it would not be compatible with the vision for the area as outlined in the LAP 'Design Brief 4', which includes Market Square. On this basis, I also conclude that the provisions of LAP section 8.2 do not apply. Accordingly, I recommend refusal for the reason set out below.

9.0 RECOMMENDATION

- 9.1 Having regard to the foregoing, I recommend that permission be refused for this development for the reasons and considerations set out below.

REASONS AND CONSIDERATIONS

The subject site area is located on land zoned 'Town Centre' in the current Newbridge Local Area Plan, 2013-2019, for which it is an objective of the planning authority to provide for and improve retailing, residential, commercial, office, cultural and other uses appropriate to the centre of Newbridge. This zoning objective is considered reasonable. The proposed development forms an integral element to the primary use on the abutting lands which is within the landownership of the applicant and that is a car repair workshop and yard area. The proposed development, consisting of the partial demolition of an existing mixed use building and the construction of a steel clad building to be used as a car parking area for the motor repair business, would lead to the expansion and consolidation of a non-conforming use. It would contravene Kildare County Development Plan 2011-2017 objectives VA1 and VA6 on vernacular heritage and Local Area Plan policies AH1 on vernacular architecture and RO6 on architectural and streetscape heritage. The development would also contravene the Town Centre zoning objective for the site as it would seriously injure the amenities of the area and of property in the vicinity and would be contrary to the proper planning and sustainable development of the area.

Sarah Moran,
Senior Planning Inspector,
11th July 2016