



An
Bord
Pleanála

Inspector's Report PL16.248117

Development	Retain extension to house with associated site works
Location	Castle Road, Belleek, Ballina Co. Mayo
Planning Authority	Mayo County Council
Planning Authority Reg. Ref.	P16/828
Applicant(s)	John Bourke
Type of Application	Retention Permission
Planning Authority Decision	Grant
Type of Appeal	First Party
Appellant(s)	John Bourke
Observer(s)	None
Date of Site Inspection	27/04/2017
Inspector	Gillian Kane

1.0 **Site Location and Description**

- 1.1. The subject site is located on the northern side of Castle Road, a mature residential area in the north Mayo town of Ballina. Currently on site is a two storey detached dwelling with a part single part two storey extension to the rear (north). A detached garage lies to the west of the dwelling. The site is slightly overgrown and the dwelling is vacant. A stone wall with gate & gate piers bounds the roadside with no footpath present. The site to the south of the subject is an undeveloped plot. A running track and associated sports ground surrounds the subject site to the north east and west.
- 1.2. Photographs and maps are attached in Appendix 1.

2.0 **Proposed Development**

- 2.1. Permission was sought for the retention of a part single part two storey extension of 92sq.m. to an existing two storey dwelling of 190sq.m., all on a site of 0.88ha. Drawings submitted with the application state that the dwelling was constructed in 1958 and extension in 1986.

3.0 **Planning Authority Decision**

3.1. **Planning Authority Reports**

- **Engineer:** Front boundary wall as planned is 'not all right'. Handwritten note asking "How does the applicant propose to achieve adequate visibility at the vehicular entrance?"
- **Ballina Area Office:** Further information required regarding sightlines, surface water drainage on site and a deposit to cover costs in the event of road damage.
- **Executive Architect:** Retention approved. Trees and hedges at front garden must be retained to screen extension.
- **Roads Design Section:** Not satisfied with the access onto the local road, the access visibility in both directions is substandard in particular toward Belleek Woods. Applicant should show on an enlarged scale a new lower front boundary wall set back two metres from its current

position with a 2m wide footpath along the whole length of the site boundary. Applicant should be requested to show visibility triangle.

- **Planning Report:** Further information required.

3.2. **Request for FI**

3.2.1. Applicant was requested to provide the following details:

- Revised site layout with new lower front boundary wall set back 2m and a 2m wide footpath
- Revised site layout plan showing the visibility triangle

3.3. **Planning Authority Reports following submission of FI**

3.3.1. **Planning Report:** Retention to be retained is considered acceptable and in keeping with the character of the existing dwelling house. Revised plans show set back wall and a 2m wide footpath. Recommend grant of permission.

3.4. **Planning Authority Decision**

On the 16th January 2017 Mayo County Council issued a notification of their decision to GRANT permission subject to two conditions. Condition no. 2, the subject of this appeal is as follows:

2. “The existing wall shall be set back to improve sight visibility and to provide for a 2m wide footpath the whole length of the site boundary, as per the site layout plan submitted to Mayo County Council on 11/01/17. No surface water shall be discharged from the site onto the adjoining public road. Existing roadside drainage shall not be impaired and the new entrance shall be designed and shaped to ensure the uninterrupted flow of existing drainage.

Reason: To prevent interference with existing roadside drainage and in the interests of proper planning and development.

4.0 **Planning History**

4.1.1. None on file.

5.0 Policy Context

5.1. Ballina Town and Environs Plan 2009 -2015 (extended)

- 5.1.1. According to Map 6 of the Ballina development plan, the subject site is zoned **RL: Recreation and Leisure**. The zoning objectives for such zones are to provide for public open space, to provide for recreation/amenity development and to protect visual and scenic amenity. The development plan states that any proposed development including the development of paths or other leisure facilities, on the land zoned RL in the vicinity of the Moy and Brusna rivers shall be subject to a Habitats Directive Assessment in Accordance with Article 6 (3) of the Habitats Directive and development will only be permitted in accordance with the results and recommendations of such an assessment.
- 5.1.2. Map no. 7 of the development plan shows the amenity area as being subject to the SLO **RL13**. RL13 seeks to protect woodlands and to make Tree Preservation Orders under Section 205 of the Planning and Development Act 2000, as and when the necessity arises. The policy notes that the removal of some trees may be necessary to facilitate the provision of essential infrastructure such as Roads, Water Services etc.
- 5.1.3. Specific Local Objective **RL 2** seeks to integrate Belleek Woodlands into the town by the careful landscaping and development of the intervening areas along the riverbank and in the vicinity of the existing athletics track and football pitches
- 5.1.4. In relation to sightlines section 16.3 of **Volume Two of the Mayo County Development Plan 2014 – 2020** states that the the minimum visibility requirements from a development onto the public road in a rural or urban setting shall be as set out in Table 3, that the visibility shall be measured from a minimum of 3m from the edge of the road or as determined by Mayo County Council. In limited instances this may be reduced to 2.4m and to 2.0m in difficult circumstances on urban roads and that site visibility requirements shall be provided within the development boundary of the site.
- 5.1.5. The standard that would apply to the subject site is 2.4m from the edge of the road and 50m in both directions.

5.1.6. Section 16.7.2 states that the entrance shall be designed to ensure the uninterrupted flow of roadside drainage and to avoid surface water from the site entering the public road.

6.0 The Appeal

6.1.1. A first party appeal of the Council's decision can be summarised as follows:

- House was constructed in 1958 and extended in 1975 (PD386 refers)
- Permission was received for an extension in 1986 for additional ground and first floor accommodation. No record of the permission remains.
- The mature trees bounding the roadside are over 200 years old. A 2.5m high distinct stone wall forms the front boundary and was part of the original Belleek Estate wall. The protected structure Belleek Entrance Arch lies to the west of the site.
- The appellant seeks the removal of condition no. 2 of the Council's decision.
- It is submitted that The Architects report on the Council file recommends the retention of the tree line. The Roads engineers report is unclear and does not definitively request FI.
- The Appellant was unaware of the effect of the implications of the response to the Council's FI request. He did not consent to or instruct the submission of drawings showing the 2m set back.
- It is submitted that condition no. 2 is unreasonable on the grounds that permission was sought to retain a modest rear extension which has no impact on traffic movements. The entrance has been in existence for 31 years and to force its revision is unjust.
- The proposed work will cost approximately €20,000 – €25,000 and will have limited benefit. It is grossly disproportionate.
- Other planning applications in the immediate area have not been required to set back the roadside boundary.
- The set-back will not improve visibility sightlines. The roadside boundary to the south-west and to the north-east will remain.
- The applicant is willing to increase the existing gateway by 2m and erect mirror aids to facilitate manoeuvrability when entering an existing the

site. It is submitted that this would be a more cost effective means of increasing sightlines.

- It is submitted that the applicant and his family have safely entered and exited the property for 58 years. Condition no. 2 fails to recognise the existence of the entrance, which predates the planning act. It is submitted that there is no evidence that the entrance interferes with the safe and free flow of traffic on the public road.
- The removal of the stone wall will detract from and have a negative visual impact on the adjoining Belleek Entrance Architectural, a protected structure. The stone wall is part of the original Belleek Estate boundary wall, which was noted by the Architecture Department of Mayo County Council during the subject application that on the adjoining site (PD2240 refers). Condition no. 2 will require the removal of a significant number of mature trees which will negatively affect the visual amenity of the area. This is contrary to the Councils policy to retain trees where possible.
- The removal of the wall and trees would reduce the value of the property by €50,000. Report attached with appeal.
- The removal of the wall and trees will result in an unplanned and piecemeal approach to roadside boundary treatment. There is no other public footpath along this side of the road. There is a pinch point 300m to the west of the site where the footpath finishes on one side and commences on the other.
- There are no bona fide planning reasons for the imposition of condition no. 2.

6.2. **Planning Authority Response**

6.2.1. None on file.

7.0 **Assessment**

On reading of all documentation submitted with the appeal, I consider the issues to be:

- Section 139 of the Planning and Development Act 2000- 2016
- Condition no. 2
- Appropriate Assessment

7.1. **Section 139 of the Planning and Development Act 2000- 2016**

7.1.1. 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. Condition no. 2 of the Council's decision states:

“The existing wall shall be set back to improve sight visibility and to provide for a 2m wide footpath the whole length of the site boundary, as per the site layout plan submitted to Mayo County Council on 11/01/17. No surface water shall be discharged from the site onto the adjoining public road. Existing roadside drainage shall not be impaired and the new entrance shall be designed and shaped to ensure the uninterrupted flow of existing drainage. Reason: To prevent interference with existing roadside drainage and in the interests of proper planning and development.”

7.2.2. The appellant states that his client was unaware of the implications of indicating a 2m setback whilst responding to the Council's request for further information. He questions the veracity of the Engineering report and states that it was never the intention of the applicant to set back the wall. I cannot

accept this argument. Whether the applicant consented or not to the submission of the drawings is not a matter the Planning Authority or the Board can be expected to adjudicate upon. The fact remains that when the applicant was requested to set back the wall in accordance with the requirements of the Area Engineer and the Roads Design section of Mayo CC, a drawing complying with that request was submitted to the Planning Authority. The Planning Authority had no reason to believe the Applicant disagreed with the request. The option of not acceding to the Planning Authority's request was always available to the Applicant.

- 7.2.3. The appellant states that the proposed removal of the wall and trees has no connection with the application which was to retain an extension to the rear of the dwelling. One could argue that the Applicants submission of the drawing showing the set-back and removal of the trees brought the matter within the remit of the application and therefore tied the two items together.
- 7.2.4. The Appellant argues that the pattern of the Council in permitted development in the area has never been to require a roadside setback. The appellant states that the Planning Authority did not require the removal of the roadside boundary on the site to the south-east (opposite the subject site). I note that the planning permissions referenced by the Appellant are not currently available to the public. They were requested of the Planning Authority but were not received by the Board.
- 7.2.5. The Appellant states that the subject stone wall is part of the original Belleek Estate Wall and that the Architects Department of the Council require its retention. I note that the Architectural report on file states that "trees and hedges at front garden must be retained to screen extension". There is no reference to the stone wall or its the provenance.
- 7.2.6. Given that the extension is at the rear of the property and is not visible from the roadside, the removal of the wall and / or trees would not affect the visibility or invisibility of the extension.
- 7.2.7. The appellant states that visibility would only be minimally improved to the north-east. A triangular plot of undeveloped land lies to the immediate north-east of the subject site. Upon first inspection, the plot looks to lie within the

subject appeal site as the stone wall continues along the front of both sites and there is no demarcation between the two. Further north-east the boundary wall of the adjoining sports ground to the north-east of the subject site is set back approximately 2m from the building line established by the subject site. Given the small size of the plot, its development for residential development is not considered likely and so the likelihood is that the stone wall would remain at this point. The sight-line / visibility benefit gained from setting back the subject site wall would therefore be lost.

- 7.2.8. With regard to the site to the south-west of the subject site, this plot is undeveloped and has no boundary wall. On the date of my site inspection a temporary hoarding had been erected along the roadside. If permission is sought to develop the site, the Planning Authority may require the provision of a footpath and set back boundary to align with that required on the subject site.
- 7.2.9. On the point of improvements to sight visibility, I am minded to agree with the Appellant. The proposed removal of the stone wall would not significantly increase sightlines north-wards on Castle Road. Further, I accept the appellant's argument that the provision of a footpath along the subject site would be piecemeal. If the Council seek to improve sight lines and provide a public footpath along the northern side of Castle Road there are many options available to them to achieve same. Such improvements would no doubt be welcome.
- 7.2.10. The appellant argues that the imposition of the condition is unjust, disproportionate and unfair. I am minded to agree with the appellant on this point. The existing entrance gate has been in existence for a considerable period of time. Were the property not for sale and the extension not need to be regularised, the opportunity to regularise the sightlines on the road would not have been presented to the Council. It is considered disproportionately onerous to seek to remedy a long standing wrong by means of opportunity.

7.3. **Appropriate Assessment**

- 7.3.1. The subject site is located approximately 60m northwest of the Kilalla Bay / Moy Estuary SAC. However, having regard to the nature and scale of the

proposed development which is the retention of an existing extension and the nature of the receiving environment, 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. I have read the submissions on file, visited the site, and have had due regard to the provisions of the Ballina Town and Environs Development Plan 2009-2015 and all other matters arising. 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 reasons therefor.

Reasons and Considerations

Having regard to the nature and scale of the development to be retained, to the pattern of development in the area, it is considered that the imposition of condition no. 2 is unjustified and unnecessary to prevent interference with existing roadside drainage and the removal of this conditions would not contravene the provisions of the current Development Plan for the area nor create a precedent.

Gillian Kane

Gillian Kane
Planning Inspector

18 May 2017