



An
Bord
Pleanála

Inspector's Report PL92.248601

Development	Construction of a single storey extension to rear, upgrade and renovation works, courtyard and all associated site works to a protected structure.
Location	The Mall, Slievenamon Road, Thurles, Co. Tipperary.
Planning Authority	Tipperary County Council
Planning Authority Reg. Ref.	16/601069
Applicant(s)	John Fitzgerald and Laura Morley
Type of Application	Permission
Planning Authority Decision	Permission with conditions
Type of Appeal	Third Party V grant
Appellant(s)	James and Nuala Mason
Observer(s)	None
Date of Site Inspection	18 th August 2017
Inspector	Susan McHugh

1.0 Site Location and Description

- 1.1. The appeal site is located on the southern side of Thurles Town Centre with access onto the N62, the main road connecting Templemore to the north and the M8 to the south.
- 1.2. The site has a stated area of 0.689ha and is situated at the northern end of a terrace of three no. two storey houses built c. 1930, all three of which are protected structures. The terrace is set back from the main street with each house having its own front garden. There is on street pay and display parking to the front.
- 1.3. The end of terrace house includes concrete walls to ground floor and rendered walls to first floor with render quoins. The house is currently unoccupied and in need of repair.
- 1.4. The boundaries to the appeal site are defined to the east by a balustrade concrete with wrought-iron gate to front boundary. The site extends to the side to include a boundary wall to and including the adjoining laneway. The entrance to the laneway comprises a gated vehicular entrance with red brick archway from the street.
- 1.5. The site area to the rear comprises an overgrown rear garden to the house with existing small shed. The site includes a larger L shaped grassed area of open space located to the west and to the rear of the adjoining mid terraced house.
- 1.6. The appellants house is the end of terrace house to the south. It is bounded to the south by a tarmacked vehicular access which extends from the street along the gable of this property and serves a garage to the rear. There is also a short path leading from the rear boundary wall of this property to a private walled garden to the west.

2.0 Proposed Development

- 2.1. Permission is sought for the following;
 - Upgrading and refurbishment of the existing ground and first floor living accommodation to provide living room bathroom and playroom at ground floor with three bedrooms at first floor.
 - Demolition of the existing shed and rear boundary wall.

- Construction of a rear single storey extension and courtyard of contemporary design. The rear extension will consist of a kitchen larder and utility, within the existing overgrown rear garden space.
- Enclosing the open courtyard to the west it is proposed to construct two separate rooms comprising plant room and separate study/play room. The proposed extensions have a floor area of 72sq.m.
- New 2m high boundary walls are proposed to the rear boundary along the south and eastern site boundary, within the existing grassed area of open space to the rear of the mid terraced house.

Further information was received dated 10th April 2017 and refers to a land direct map and folio no. It refers to land registry and right of way details attached (but not on file), with updated Architectural Impact Assessment to include the existing shed and boundary walls, details in relation to the landscape feature proposed in the western section of the site and details of existing and proposed arrangements for water supply and drainage arrangements.

Unsolicited further information was received 12th April 2017 from Philip J. Egan and Co. Solicitors on behalf of the applicants and in response to a submission by James and Nuala Mason, the appellants in the current appeal, stating that they were unable to locate any right of way in favour of that party over the applicants site. Their instructions were that there is no such legal right of way in existence.

Unsolicited further information was received 2nd May 2017 which amended the site layout to show an alternative land holding boundary to both the existing and proposed site plan and a proposal to omit the boundary walls from the proposal.

2.2. The application was accompanied by an Architectural Heritage Impact Assessment.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission subject to 5 no. conditions which include;

Condition No. 2 – Works to the Protected Structure to be supervised by Conservation Architect.

Condition No. 3 – Requirements in relation to safety and stability of that part of the building to be exposed.

Condition No. 4 – Method Statement requirements.

3.2. Planning Authority Reports

3.2.1. Planning Reports (dated 5 January and 4 May 2017)

Basis for the planning authority decision.

Include:

- The proposed rear extension is a contemporary design of sympathetic form and scale. It will facilitate the survival of this building which has been unoccupied for a number of years by providing space required to comfortably accommodate a young family.
- The proposed works will not have a negative impact on the building both visually and in terms of material alteration
- Impact of proposed demolition of existing shed and boundary walls within the curtilage of the protected structure assessed in an updated the Architectural Impact Assessment acceptable.
- Details in relation to the circular feature in the western section of the site submitted by way of further information acceptable.
- Details in relation to water supply and drainage submitted by way of further information acceptable.

- The applicant proposes to construct a plant room/study/play room and courtyard with associated boundary walls on the right of way. Right of way across the rear of the site, not indicated on drawings.
- Unsolicited further information submitted to the planning authority on 2nd May 2017 includes an amended site layout, indicating a revised site boundary to both the existing and proposed site plan, and the proposal to omit the boundary walls from the proposal considered acceptable.

3.2.2. **Other Technical Reports**

None received.

3.3. **Prescribed Bodies**

None.

3.4. **Third Party Observations**

A submission was lodged by the appellants in the current appeal, James and Nuala Mason, owners/occupiers of the end of terrace house to the south. The issues raised can be summarised as follows;

- Objection to the construction of 2-metre-high wall across existing right of way which serves their property and others including that of the applicant.
- Request that no vehicles be allowed park across their right of way restricting access to their garden on the other side of the right of way.
- Suggest that the proposed wall or fence be moved back nearer the proposed extensions and at least 5 metres north of their northernmost boundary.
- Concern that construction traffic will use the laneway to the south, as the archway to the laneway to the north is low. This will increase traffic along the right of way and result in damage to the surface and a service pipe which runs across the laneway.
- Construction traffic will cause major traffic and problems on the adjoining N62, and safety for adjoining residents.

A further submission was received by the planning authority on receipt of the further information. The issues raised can be summarised as follows;

- Applicant has not submitted any other map showing a different right of way and has not redesigned the proposal so as to not encroach on their right of way.
- Submit a copy of a map from the Property Register Authority Ireland (PRAI) website, showing the right of way in yellow and a distinct triangular section (in their ownership) which negates the applicants' contention that this right of way only gives access to the terrace on the southern side of the laneway.
- Request that there would not be construction or parking across their right of way, restrict the use of the right of way during construction and ensure that any necessary repairs as a result of this development are undertaken before the signing of a completion certificate.

4.0 Planning History

There are no relevant applications associated with the subject site or in the immediate vicinity.

5.0 Policy Context

5.1. Development Plan

5.1.1. The Thurles and Environs Development Plan 2009 refers.

5.1.2. The existing terrace is within an area zoned 'RC' Retail and Commercial – the objective of which is 'To provide and improve retail and commercial activities.

5.1.3. The area to the west and rear is zoned 'R2' Low Density New Residential – the objective of which is 'To provide for new residential (low density) development.

The zoning matrix provides for an extensive range of uses which are permitted in principle and open for consideration.

5.1.4. Chapter 7 - Section 7.4 Protected Structures

Policy HIST 3: Protected Structures it states -

'It is the policy of the Councils to protect structures included in the Record of Protected Structures by encouraging:

- a) the continued viable use of protected structures, in whole or in part,*
- b) the retention of all features of architectural importance,*
- c) development that enhances the setting of a protected structure.*

5.1.5. Chapter 8 - Section 8.18 Protected Structures

'The provisions of the Planning and Development Act, 2000 will guide the assessment of development proposals affecting the character or appearance of a protected structure or the curtilage of such a structure, in addition to the same guidelines contained in Appendix 2.

5.1.6. The appeal site is identified as a protected structure RPS No. 136, (22312136) and is one of the three protected structures which form the terrace.

5.1.7. Appendix 4. Record of Protected Structures RPS No. 136 states -

'Corner-sited end-of-terrace three-bay two-storey house, built c. 1930, built as terrace of three with adjoining houses to south. Pitched artificial slate roof with rendered chimneystacks. Lined-and-ruled rendered walls to first floor with rusticated render quoins. Rusticated concrete walls to ground floor. Square-headed replacement uPVC windows with concrete sills, having concrete keystones to ground floor. Timber panelled door with leaded sidelights and overlights. Balustraded concrete wall with wrought-iron gate to site boundary.'

5.2. **Natural Heritage Designations**

The nearest European site is the Lower River Suir SAC Site Code (002137) located approx. 2.7km to the south west.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The appeal is lodged by James and Nuala Mason, owners/occupiers of the end of terrace house to the south. The main grounds can be summarised as follows:

- Decision of the planning authority is based on incorrect information in relation to rights of way to their rear garden. A copy of a Statutory Declaration dated 13th December 1993 is submitted.
- The planning authority has in their request for further information agreed that there was a right of way as shown on the official PRAI Mapping.
- The fact that their rights of way are not registered in the Land Registry does not in any way detract from the validity of or existence of or extent of same.

6.2. Applicant Response

None received.

6.3. Planning Authority Response

The planning authority's response can be summarised as follows:

- Having regard to the grounds of appeal as well as all observations/submissions, reports and plans and particulars on file is satisfied the decision to grant planning permission was appropriate and in the interest of the proper planning and sustainable development of the area.
- Satisfied that the issues raised were fully considered and responded to in the planners' report, it is further considered that the decision to grant was made having regard to the issues raised and the assessment of the proposal against all applicable guidance including the North Tipperary County Development Plan 2010.

6.4. Observations

None received.

7.0 Assessment

- 7.1. The main issues in this appeal are those raised in the grounds of appeal. I consider that the issue of architectural heritage also needs to be addressed, as does

Appropriate Assessment. I am satisfied that no other substantive issues arise. The issues are addressed under the following headings:

- Architectural Heritage
- Sufficient Legal Interest
- Construction Traffic
- Appropriate Assessment

7.2. Architectural Heritage

- 7.2.1. The proposed development comprises the upgrading and refurbishment of the existing house which is a protected structure. It is currently unoccupied and is in poor repair. The application was accompanied by an Architectural Heritage Impact Assessment which was updated to include the existing shed and boundary walls by way of a further information submission.
- 7.2.2. It is proposed to demolish the existing shed and rear boundary wall and construct a single storey extension and open courtyard enclosed by two separate rooms to the west. The new extensions to the rear is contemporary in design.
- 7.2.3. In my opinion the upgrading and refurbishment works are necessary and appropriate. I consider the extension to the rear to be of an acceptable scale and design that respects the existing house and terrace.
- 7.2.4. I am satisfied that the proposed development will not adversely impact on the integrity of the protected structure within the terrace.

7.3. Sufficient Legal Interest

- 7.3.1. At the outset I would note that issues to do with encroachment over property boundaries and rights of way are not matters which can be adjudicated on in this forum. They are a civil matter between affected parties.
- 7.3.2. However, the issue of land ownership and rights of way has been central to the dispute between the applicant and appellant and has given rise to this appeal.

- 7.3.3. The application as lodged indicated the development site boundary outlined in red which included the house and laneway to the north and a large L shaped area of open space to the rear. A larger land holding outlined in blue extended to include the property to the north of the appeal site and laneway to the south and an area of open space to the rear of the other two houses within the terrace over which the applicant indicated a shared right of way.
- 7.3.4. As part of the proposed development it was proposed to construct a 2m high wall to enclose the open space to the rear. The submission from the appellant raised concerns in relation to the construction of this wall across an existing right of way.
- 7.3.5. The planning authority sought to clarify the details of the right of way across the rear of the site and requested the applicant to submit land registry and right of way details for the subject site / landholding.
- 7.3.6. The applicant responded by submitting a land registry map and right of way details (not on file). However, the right of way details were further disputed by the appellants.
- 7.3.7. The planning authority subsequently accepted two items of unsolicited further information. The first from the applicants' solicitors stating that they were unable to locate any right of way in respect of the appellants and that their instructions were that there is no such legal right of way in existence.
- 7.3.8. The second item included an amended site layout with a revised site boundary outlined in red to both the existing and proposed site plan and, importantly, a revised proposal omitting the proposed 2m high boundary walls located across the purported right of way. In my opinion the revision to the site boundary was material and warranted revised public notices. The planning authority in their grant of permission refer to both items of unsolicited additional information in condition no. 1 of their decision to grant permission.
- 7.3.9. While this might resolve the issue in dispute between the parties it does, however, raise a question in planning terms. It would result in a somewhat odd layout in terms of the relationship between the proposed development and the area of open space to the rear of the terrace and from which access is gained to each house.
- 7.3.10. However, I consider that there are architectural solutions that could be employed to provide for a level of rear screening to the open space so as to ensure a reasonable

level of amenity for the applicants and I consider that this could be addressed by way of condition. In this context I would bring to the Boards attention the fact that no objection was received from the owners/occupiers of the mid terrace house and that both it and the end terrace house have rear boundary walls to their rear gardens.

7.3.11. Should the Board be disposed to a grant of permission the applicant should be advised of Section 34 (13) of the Planning and Development Act 2000 as amended which states 'A person shall not be entitled solely by reason of a permission under this section to carry out any development'.

7.3.12. I am satisfied that in order to align the amended drawings submitted by way of unsolicited further information with a satisfactory outcome for the appellant, and future occupants of the appeal site, a condition should be attached that explicitly omits the walls originally proposed to the rear.

7.4. Construction Traffic

7.4.1. The issue of construction traffic was raised in a submission by the third party in the course of the application. I note that vehicular access to the site is possible via two existing entrances, one from the arched laneway to the north, which is included within the red line boundary, and the second from the tarmacked laneway to the south.

7.4.2. The third party has raised concern that construction traffic will use the laneway to the south, as the archway to the laneway to the north is too low. This will increase traffic along the right of way and result in damage to the surface of the laneway. They also raise concern in relation to construction traffic which they contend will cause major traffic problems on the adjoining N62, and safety issues for adjoining residents.

7.4.3. Notwithstanding the site constraints, in a built up area, I consider the construction works, which will be temporary in nature, can be accommodated. I do not consider that the proposed works will give rise to a traffic hazard. I consider the repair to the surface of the laneway as a matter between affected parties.

7.4.4. I conclude that there is no substantive basis to this ground of appeal and that the decision of the planning authority should be upheld.

7.5. **Appropriate Assessment**

7.6. Having regard to the nature and scale of development proposed and to the nature of the receiving environment, namely an urban and fully serviced location, 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.

8.0 **Recommendation**

8.1. I recommend that permission be granted subject to conditions and for the following reasons and considerations.

9.0 **Reasons and Considerations**

Having regard to the location of the site on zoned lands in the Thurles and Environs Development Plan and to compliance with the development standards in the South Tipperary County Development Plan 2009 -2015, it is considered that subject to compliance with conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area or of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 **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 the 10th April 2017 except as may be otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed 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. All works to the protected structure, shall be carried out under the supervision of a qualified professional with specialised conservation expertise.

Reason: To secure the authentic preservation of this protected structure and to ensure that the proposed works are carried out in accordance with best conservation practice.

3. A revised site layout drawing indicating the omission of the proposed 2m high walls to the rear of the terrace and an alternative non-permanent proposal for screening shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interests of clarity.

4. Prior to commencement of development, a construction method statement indicating the means proposed to ensure the structural stability of the retained elements of the protected structure and details of proposed service installation (plumbing/heating/electrical) shall be submitted to and agreed in writing with the planning authority.

Reason: In the interest of preserving the architectural integrity and heritage value of the retained structures.

5. The developer shall pay to the planning authority a financial contribution respect of public infrastructure and facilities benefitting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developers or, in default of such agreement, the

matter shall be referred to An Bord Pleanala to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Susan McHugh
Planning Inspectorate

13th September 2017