



An
Bord
Pleanála

Inspector's Report PL16.248825

Development	Retention of first floor balcony and stairs to the front and side of dwelling.
Location	24 Mulranny Holiday Village, Mulranny, Westport, Co. Mayo.
Planning Authority	Mayo County Council.
Planning Authority Reg. Ref.	16/738.
Applicant	Gerry Grealis.
Type of Application	Retention of Planning Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party -v- Refusal.
Appellant	Gerry Grealis.
Observers	MHVS Limited.
Date of Site Inspection	18 th September, 2017.
Inspector	Paul Caprani.

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1.0 Introduction

PL16.248825 relates to a first party appeal against the decision of Mayo County Council to issue notification to refusal planning permission for the retention of an external first floor balcony and stairs to the front and side of a holiday home in the village of Mulranny in West Mayo. Permission was refused for two reasons. The first reason stated that the balcony is out of character with adjoining properties and would create an undesirable precedent which could negatively impact on the visual character of the village. The second reason states that the applicant has failed to establish to the satisfaction of the Planning Authority, that he has sufficient legal interest to carry out the works for which retention of permission is sought.

2.0 Site Location and Description

- 2.1. The subject site is located in the north-western environs of Mulranny Village. Mulranny Village essentially comprises of a linear type settlement set along the N59 National Primary Route linking Westport and Bangor Erris in north west Mayo. The topography of the lands to the north of the N59 incorporate a pronounced upward slope whereby houses on the northern side of the road incorporates significantly higher ground levels than those adjacent to the roadway. The subject site forms part of a small holiday home development located in the northern side of the N59. The homes comprise of two-storey terraced semi-detached structures which face southwards towards the village and onward to Clew Bay. The holiday village comprises of approximately 24 homes.
- 2.2. The subject site is located at the eastern end of a row of dwellings facing southwards towards the village and onto Clew Bay (House No. 24). Along the eastern side of the dwelling the applicant has constructed a metal stairwell leading to a first floor balcony area which wraps around the eastern side and part of the northern side of the house. The balcony encloses an area of approximately 20.5 metres and at its widest is just under 3 metres in width adjacent to the eastern elevation. The balcony is enclosed by a metal handrail with glazed panels below. Wooden decking is provided on the floor area. The balcony is supported by metal columns. The floor

level is just over 2.5 metres above ground level while the handrail of the balcony rises to a height of 3.762 metres.

3.0 Proposed Development

Planning permission is sought for the retention of the balcony structure.

4.0 Planning Authority's Decision

4.1. Decision

Mayo County Council issued notification to refuse permission for two reasons which are set out in full below.

1. It is considered that the development it is proposed to retain, due to the scale and character of the structure and the nature of materials involved; render it out of character with adjoining properties and would create an undesirable precedent for similar type structures within the holiday village, which would impact negatively on the visual character of the village and thereby depreciate value of property in the vicinity. The development it is proposed to retain is therefore contrary to the proper planning and sustainable development of the area.
2. The applicant has failed to establish to the satisfaction of Mayo County Council that it has sufficient legal interest in the entire site to carry out works it is proposed to retain. The proposed development is therefore contrary to the proper planning and sustainable development of the area.

4.2. Documentation Submitted with the Application

The application was accompanied by a completed planning application form, public notices, drawings and fees etc.

A covering letter was submitted within the application and states that the balconies considered to be minor in scale and is not deemed to be visually obtrusive or out of character in the area. It is further stated that the balcony does not result in the overlooking of any adjoining properties and provides additional usable private open

space. Also attached are a number of letters from houses in the vicinity stating that there is no objection to the balcony as constructed.

4.3. Initial Assessment by the Planning Authority

A report from the Mayo National Roads Design Office states that it has no comments to make in relation to the application. Likewise, a report from Transport Infrastructure Ireland states that has no observations to make in relation to the application.

4.4. Observations

An observation was submitted to the Planning Authority by MHVS Limited. It states that the applicant has included within its site plan, an area of land which is under the ownership of MHVS, the management company for the development. For this reason, it is recommended that planning permission be refused.

4.5. Further Information Request

On foot of the observation submission, the initial planner's report notes the comments of the third party contesting ownership elements of the proposed site and for this reason the applicant is requested to submit a copy of a file plan and folio showing ownership of the entire area outlined in red on the site layout plan submitted.

4.6. Further Information Submission

Further information was submitted to the Planning Authority on 13th May, 2017. It includes a copy of property registration authority folio MY71408F. It states that the lands to the immediate east is part of the open space which (to the applicant's understanding) is owned jointly by all residents of the Mulranny Holiday Homes of which the applicant is a member. It is stated therefore that it is clear that the applicant has met the required/substantial significant interest threshold so as to be able to submit the application for retention of planning permission. The applicant has received the consent of a number of other members of the complex.

4.7. Further Observation

A further submission was received from MHVS Limited. It states that the area which the applicant understands to be jointly owned by all residents of Mulranny Holiday Homes, is in fact under the ownership of MHVS Limited and is not jointly owned by the occupiers of the holiday home as suggested. The applicant has no significant interest threshold with regards to lands which are in the ownership of MHVS. The development is unauthorised and encroaches upon the open space of the ownership of the management company.

A further submission was received on behalf of the applicant stating that the observers (MHVS) have produced no evidence in the form of a PRA document or map to substantiate their ownership claim.

4.8. Planner's Report

- 4.8.1. The report sets out details of the proposal as well as details of the various submissions contained on file. In terms of assessing the proposal, the report considers that the nature and the materials used in the construction of the balcony is inconsistent with the surrounding property and would create an undesirable precedent for similar type applications thereby directly impacting on the existing character of the holiday village.
- 4.8.2. Furthermore, it is considered that the applicant has not established to the satisfaction of Mayo County Council that he has sufficient legal interest to carry out works most specifically with regard to the area along the eastern gable of the property. It is therefore recommended that planning permission be refused for the two reasons set out above.

5.0 Planning History

- 5.1. One history file is attached PL 16.104141, this application and appeal relates to the parent permission where An Bord Pleanála granted planning permission for the Holiday Home development on March 27th 1998. Condition No. 11 of this grant of permission states

“A management scheme for the adequate future maintenance of private open spaces, roads and communal areas shall be submitted to the planning authority prior to the commencement of development.

Reason: To ensure the adequate future maintenance of this private development in the interests of residential amenity.”

The submission from MHVS states that the proposal was subject to a previous planning application under Reg. Ref. P15/750. The observation states that this application was subsequently withdrawn following a request for additional information regarding the ownership of the site. I have consulted the Council's website and while I can find reference to an application being made on the subject site under Reg. Ref. PL15/750 which relates to retention of the balcony in question, I can find no details in respect of the application lodged.

6.0 Grounds of Appeal

6.1. The decision of Mayo County Council to issue notification to refuse planning permission was the subject of a first party appeal on behalf of the applicant by McGinty Planning and Development Consultants. The grounds of appeal are outlined below:

- It is stated that a balcony at this location is acceptable given the presence of existing balconies within the same housing development and also the presence of substantial balconies recently permitted in the area. It is argued that the development complies with several aspects of the Mayo Rural Housing Guidelines including it does not result in any overlooking or overshadowing. It also stated that substantial balconies were recently granted by Mayo County Council in close proximity of the site (various applications are referred to in the grounds of appeal).
- It is stated that the existing balcony cannot be viewed from any point within the housing development within the exception of the adjoining green area to the east of the site. It is also stated that the balcony cannot be viewed from the external public realm.

- The planner's report is completely incorrect in stating that the development is situated in open space. It can be clearly seen that the lands surrounding the site are private landholdings that have remain unfenced.
- The balcony provides a very valuable and important means of external escape in the case of fire.
- In the absence of the balcony, it is stated that private open space surrounding the dwelling would be approximately 75 square metres, making it the smallest private garden within the housing development. It is submitted that the balcony helps provide a minimum acceptable level of private open space. Furthermore, the open space surrounding the dwelling is seriously compromised by the slope/gradient of the lands. Furthermore, the existing open space is seriously overlooked by properties to the west.
- The balcony as constructed, does to impact on the usability or functionality of the common open area to the east or the established pedestrian right of way located therein.
- The underside of the balcony provides importance and valuable shelter for the appellant for both storage and general use.
- It is stated that the proposed development does not contravene any conditions associated with the parent permission (Reg. Ref. PL97/741 – An Bord Pleanála Ref. 16/104141).
- In relation to ownership issues, it is stated that the applicant has a similar shareholding in the management company as the listed company directors and secretary. It is suggested that the observers have submitted no evidence or documentation to substantiate their claim that the balcony extends into the common area. The applicant is strongly of the opinion, based on both the established use and the use established under previous owner, that the balcony is located fully within his ownership. Reference is made to the Property Registration Authority (PRA) maps where it is stated that there are a number of irregularities in the map which makes it difficult to definitively determine landownership. It is suggested that the registry file identifies property as opposed to boundaries.

- Furthermore, it is stated that the planning system is not designed as a mechanism for resolving disputes about title to land or rights of way over land. These are ultimately a matter for the Courts. Reference is made to Section 34(13) of the Planning and Development Act in this regard. The onus is on the observers MHVS to clearly establish their entitlement to ownership. It is suggested where some doubt still remains in relation to ownership the Planning Authority may decide to grant planning permission but subject to the provisions of Section 34(13) of the Act.
- It is therefore recommended that the Board overturn the decision of the Planning Authority and grant retention of planning permission for the development.

7.0 Appeal Responses

It appears that Mayo County Council have not submitted a response to the grounds of appeal.

8.0 Observation

8.1. An observation was submitted by MHVS Limited. It is summarised below.

- It is stated that MHVS Limited is the management company with the responsibility for common areas and shared services for Mulranny Holiday Village. This was established by the original developers in line with Condition No. 11 of An Bord Pleanála's parent permission PL16.104141. It is maintained that the full legal owner of the property is Angela Grealis and not Gerry Grealis as submitted on the application form to Mayo County Council.
- It is stated that Mr. Grealis failed to provide adequate information in relation to lands ownership despite being requested to do so by Mayo County Council by way of further information.
- The applicant also attempts to apply current residential development standards to a holiday home granted in 1998 as an argument to retain the unauthorised development. This, according to observers, is wholly inappropriate. The holiday village was constructed in accordance with

development plan policy as it related to the site when permission was sought. On the said balcony in June 2015 the Contractor was informed by the observer that the proposal was unauthorised but continued construction works nonetheless.

- Contrary to what is stated in the grounds of appeal, there are no properties within Mulranny Holiday Village that have an external balcony. The external unauthorised development is totally out of character with the design principles of the holiday village.
- Reference is made in the grounds of appeal to the provisions of the Rural Housing Guidelines. However, the subject site relates to a holiday village and therefore Rural Housing Guidelines are not relevant. It is reiterated that the area which the balcony is encroaching constitutes a common area of open space. The area of open space to the east of the site constitutes a common area and this area of open space was clearly defined in the original An Bord Pleanála decision relating to the site.
- It is not reasonable to argue that the proposal represents an additional means of fire escape. All properties in the scheme were designed in line with Fire Regulations. The proposal represents an attempt to privatise a common area and will not provide any useful shelter for users of the complex. The onus is on the appellant and not other property owners in the holiday scheme to prove legal title and the appellant in this instance has failed to do so. An Bord Pleanála are therefore requested to uphold the decision of the Planning Authority.

9.0 Development Plan Provision

- 9.1. There is no specific local area plan for Mulranny and as such the subject site is not governed by any land use zoning objectives.
- 9.2. There are general objectives in the development plan to encourage tourist related accommodation in suitable areas.
- 9.3. Furthermore, I can find no specific references in the development plan relating to the construction of balconies. There are however a number of general objectives in the

development plan which seeks to ensure that new development protects and maintains residential amenity (for example RH-02).

10.0 Planning Assessment

10.1. I have read the entire contents of the file, visited the site and its surroundings, have had particular regard to the reasons for refusal cited in the Planning Authority's decision and the issues raised in the grounds of appeal and the observations submitted. I consider that the substantive and pertinent issues in determining the current application and appeal before the Board relate to the issues raised in the Planning Authority's reasons for refusal namely:

- The Issues of Size and Scale of the Proposed Development,
- Undesirable Precedent and
- Impact on the Visual Amenities of the Area.
- Sufficient Legal Interest to Undertake the Development.

10.2. In relation to the first issue I will concur with the Planning Authority's concerns that the proposed development is of an excessive size and scale in the context of the existing holiday homes. The balcony in this instance is large, in excess of 20 metres and cannot be considered ancillary and subordinate to the existing holiday home. The fact that the balcony is also mounted on galvanised steel poles over 2.5 metres above ground level exacerbates and accentuates the size and scale of the structure.

10.3. I consider the balcony to be visually incongruous in the context of the adjoining holiday homes and represents a significant alteration to the front and side elevation of No. 24. I would also agree with the Planning Authority's conclusion that the materials in this instance are unsympathetic and particularly in the case of the supporting columns are not domestic in size and scale. Having inspected the site and its surrounding I found no evidence of structures of a comparable size and scale. The nature of the materials used are inconsistent with the domestic scale holiday homes situated on the site.

10.4. I do acknowledge that there are a number of large balconies in the wider area but these are associated with individual homes on individual sites and as far as I could ascertain, they did not involve substantial balcony structures mounted on columns

but rather served as more modest seating areas associated with a first floor French doors etc. I could find no evidence of similar type balconies on the size and scale of that constructed under the current application. The fact that the balcony may provide an additional means of fire escape would not in my view constitute reasonable grounds for retaining the structure. The observation on file points out that the development has been designed to comply with Fire regulations. Likewise, the suggestion that the balcony area would provide a shelter for the residents of the holiday village would not constitute reasonable grounds for retention either.

- 10.5. I do acknowledge that the position and orientation of the balcony would not result in significant overlooking of adjoining residences. However, I do not accept the appellant's argument that the balcony is not visible from the public realm. I attach to my report photographs taken from the N59 (Photograph No. 1) which clearly shows that the balcony is visible from this main thoroughfare running through the village of Mulranny.
- 10.6. I do not consider that either party (the appellant or MHVS Limited) have provided sufficient evidence in support of their arguments in relation to legal interest. The applicant appears to rely on folio maps which by his own acknowledgement appear to be inaccurate in that boundaries do not accord accurately with the actual boundaries on the ground. The Board will note Figure 5.2.2 which is an extract map from the Property Registration Authority which is contained on page 9 of the grounds of appeal. In relation to the application site it appears that the eastern boundary coincides with the eastern building line of the holiday home. The boundary also indicates that the area to the front (south) of the holiday home is within the confines of the boundary of the site and therefore is under the ownership of the applicant. However, the extract map submitted suggests that the proposed balcony area along the eastern side of the house is located outside the confines of the boundary. Based on the information contained on file, I would consider it impossible to definitively ascertain and determine issues in relation to ownership. I note that during the course of the planning application with Mayo County Council both the applicant and the observer submitted what appears to be the same property portfolio map in order to justify and support their alternate stances.

10.7. While the appellant in this instance argues that the Planning Authority should exercise its discretion to grant planning permission under the provisions of section 34(13) of the Planning Act, I consider that the Board should adopt a more precautionary approach particularly as the works have already been undertaken on site. A grant of retention of planning permission in this instance would confer a planning status in relation to the structure which could only serve to complicate and confound issues in relation to landownership.

Having inspected the site and its surrounding it appears that the land to the east of the existing dwelling forms part of a communal open space area which surrounds all the holiday homes. None of the holiday homes incorporate demarcated boundaries defining private open space within the curtilage of the holiday homes. Thus, the prima facie evidence would suggest that the balcony area extending beyond the building line of the holiday home is encroaching on communal open space.

I consider that where a dispute arises in relation to landownership, the onus to prove sufficient legal interest in the lands in question lies with the applicant. I further consider that in this instance the applicant has not demonstrated that the lands in question are within his ownership. In fact, the only map submitted as part of the grounds of appeal in support of the appellant's contention clearly indicates that the landownership boundary runs along the eastern gable of No. 24 and does not extend beyond the gable. Thus, in the absence of compelling evidence which indicates the applicant is the owner of lands to the immediate east of No. 24, I consider that the Board should uphold the second reason cited by the Planning Authority namely that the applicant has not demonstrated sufficient interest in the lands in question to retain the structure under the current application for retention.

11.0 **Appropriate Assessment**

Having regard to the nature and scale of the proposed development and the nature of the receiving environment together with the proximity to the nearest European site, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

12.0 **Decision**

Refuse retention of planning permission based on the reasons and considerations set out below.

13.0 **Reasons and Considerations**

1. Having regard to the pattern of development in the area and the scale of the development for which retention of planning permission is sought, it is considered that the balcony as constructed by reason of its scale, bulk and materials used would depreciate the value of adjoining properties by reason of the adverse impact on the visual amenities of the area. Furthermore, it is considered that the retention of the balcony in question would set an undesirable precedent for similar type developments and would therefore be contrary to the proper planning and sustainable development of the area.

2. On the basis of the submission made in connection with the planning application and appeal, the Board is not satisfied that the application has been made by a person who has sufficient legal estate or interest in the land the subject of the application for retention or the approval of the person who may have such a sufficient legal estate or interest. In these circumstances it is considered that the Board is precluded from giving further consideration to the granting of retention of planning permission for the development which is the subject of the application.

Paul Caprani,
Senior Planning Inspector.

18th October, 2017.