



An
Bord
Pleanála

Inspector's Report PL16.249181

Development	Change of use from shop to restaurant (a Protected Structure)
Location	Shop Street, Westport, Co. Mayo
Planning Authority	Mayo County Council
Planning Authority Reg. Ref.	17/148
Applicant(s)	Kavanagh Retailing (Irl) Ltd
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Hugh & Siobhan O'Donnell
Observer(s)	None
Date of Site Inspection	1st November 2017
Inspector	Una O'Neill

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1.0 Site Location and Description

- 1.1. The subject site is located on the southeastern side of Shop Street, southwest of the Carrowbeg River within the retail core of Westport town, in south County Mayo.
- 1.2. The site comprises a three-storey three-bay mid-terrace building, with a two storey and single storey return to the rear. The building comprises a drapery shop at ground floor level and the two floors above the shop were used for accommodation, although it appears to be in use as storage in recent years. There are two separate entrances from Shop Street, one to the shop and a separate one to the accommodation above. The building is listed as a protected structure and dates from the 19th century.
- 1.3. The site is bounded to the southeast by an arched laneway under the first floor of the adjoining building, which accommodates a framing shop. The laneway runs along the side of the building. The building to the northeast accommodates a book shop. To the rear of the building is a three-storey historic warehouse and beyond this is the boundary with the car park associated with the SuperValu supermarket.

2.0 Proposed Development

- 2.1. The proposed development comprises:
 - A change of use of the existing three storey building from a drapery shop to a restaurant, 321 sqm in area.
 - Extension and alteration of an existing 10m long single storey rear extension to accommodate a double height dining area with increased levels of natural light and insertion of extensive glazing.
 - Opening up of existing blocked-up opes on southeastern elevation onto existing laneway in addition to proposed new service door and on the rear elevation two new additional new service doors.
 - The proposed restaurant is to operate from 12 noon to 10.30pm for formal sit down meals and drinks. There will be no take-away element.

- 2.2. A conservation report by Consarc Conservation titled 'O'Connor's Drapery Shop Street, Report Assessing Historical and Architectural Significance' (February 2008) accompanies the application.

3.0 Planning Authority Decision

3.1. Decision

GRANTED, subject to 7 conditions, including the following:

- C2: Works to be in accordance with Architectural Heritage Protection Guidelines and Advice series.
- C5: Further agreement in relation to any hard landscaping of laneway.
- C7: Contributions.

3.2. Planning Authority Reports

3.2.1. Planning Report

The Planning Officer's report generally reflects the decision of the Planning Authority. The following is noted:

- Further information was requested and deemed significant.
- The further information request was in relation to ownership rights and rights of way, nature of the establishment proposed, and bin storage.

3.2.2. Other Technical Reports

- Engineering Report: A contribution toward 11 parking spaces is requested, the amount of which shall be determined by the Planning Authority.
- Internal report from Conservation Architect: No objection subject to condition.
- Mayo National Roads Design Office: No objection.

3.3. Prescribed Bodies

- Transport Infrastructure Ireland (TII) - No objection.

3.4. **Third Party Observations**

One objection was received from Hugh and Siobhan O'Donnell. The issues raised are covered in the grounds of appeal.

4.0 **Planning History**

No relevant history.

5.0 **Policy Context**

5.1. **Westport Town and Environs Development Plan 2010-2016 (as amended)**

- Zoning Objective B, Town Centre: to provide for and improve town centre activities and to preserve and enhance the civic and town centre character of the area.
- RP-01: It is the policy of the Council to stimulate business and commercial activity in the town centre.
- Westport Architectural Conservation Area applies to the town centre.
- The appeal site comprises a Protected Structure.
- TO-03: It is an objective of the Council to protect the protected structures and their settings on the Record of Protected Structures and to review the Record of Protected Structures from time to time as the need arises.
- TO-05: It is an objective of the Council to ensure that any alterations or interventions to protected structures shall be executed to a high conservation standard in order to protect their significance or value. Any applications for development of protected structures shall be accompanied by an assessment carried out in accordance with the Councils requirements by an accredited conservation architect.

6.0 The Appeal

6.1. Grounds of Appeal

A third party appeal has been submitted by Hugh and Siobhan O'Donnell, who own and run the neighbouring two-storey property, 'Westport Framing and Treasure Gift Shop'. This building comprises an archway, under which the adjoining laneway runs and which the appeal site bounds. The grounds of appeal is summarised hereunder:

- Shared sewerage and water services run under the laneway for the building subject of the appeal and the appellant's building. The laneway comprises a locked gate. The gate and laneway are owned by Hugh and Siobhan O'Donnell. Kavanagh Retail Group and their predecessors have only had informal and limited right of passage on this laneway and have been given a key to the gate to allow occasional and very limited use of the access. The appellants' do not given permission to the applicant to use the laneway.
- A title map is submitted showing ownership of the laneway which is with Hugh and Siobhan O'Donnell.
- The development requires the digging up and interference with the laneway. Condition 5 relates to landscaping works to the laneway, which assumes the laneway is in the control and ownership of the applicant.
- The only available fire escape route is through the laneway, which is locked and not within ownership of the applicant.
- The sewer passing under the laneway is insufficient to cater for intensification proposed by the development. If the applicants do not get consent to upgrade the foul sewer there will be a severe effect on public health by the intensification of use and this can lead to nuisance.
- The laneway is not suited to the unloading of goods and therefore unloading of goods would have to be via the front door of shop street which would cause a traffic hazard and loss of amenity.
- This grant of permission is interfering with property rights of the owners of the laneway.

- There is no evidence of grease traps on the plan, location of extractor fans and air conditioning units, or bin storage.
- Concerns are raised in relation to security and break ins due to use of the laneway. The appellants' property has several windows and two doors which are accessed from the laneway.
- There is a potential liability to the owners of the laneway should the applicant use it.

6.2. Applicant Response

- The applicant disputes that the laneway is in the ownership of Hugh and Siobhan O'Donnell and claims the lane is in the ownership of M. Mulloy & Sons UC which is a sister company of the applicant.
- The map submitted is not clearly linked to a Deed of Conveyance as opposed to a lease map. It is stated that a member of the Mulloy family, senior to Hugh O'Donnell, said the Mulloys own the laneway.
- The gateway on the lane exists for both the benefit of the applicant and the appellant.
- The applicant uses the lane way for use associated with the business and also their property to the rear.
- The applicant is entitled to carry out works to the pipes and services running under the laneway.
- Enforcing property rights is a matter for the courts.
- The drapery shop has used the laneway for delivery of goods in the past.
- The applicant acknowledges the security issues raised. It is suggested that the gate could be designed to open outwards in the event of a fire or an alternative escape route to the rear of the laneway could be proposed which leads to the SuperValu car park which is also owned by the Kavanagh Group.
- There is another shop which avails of the shared laneway and has a right of way over the laneway.

6.3. **Planning Authority Response**

None.

6.4. **Observations**

None.

6.5. **Further Responses**

None.

7.0 **Assessment**

7.1. The subject site is located within Zoning Objective B, Town Centre: to provide for and improve town centre activities and to preserve and enhance the civic and town centre character of the area. Shops and restaurants generally permitted within this zoning objective. The appeal site comprises a Protected Structure. Westport Architectural Conservation Area applies to the town centre.

7.2. The primary issues for assessment include;

- Access Laneway
- Visual Amenity and Impact on Protected Structure and ACA

Access Laneway

7.3. The grounds of appeal raise issues in relation to the ownership of the laneway. The appellants do not give their consent for the applicant to use the laneway, which they claim ownership over, and which the applicant intends to use. It is indicated that the applicant will need to dig up the laneway to upgrade services under the laneway given the lack of capacity of the existing private sewer network, use of the laneway for deliveries, use of laneway as a fire escape route, proposed landscaping of laneway and generally security issues raised through increased use of the laneway.

7.4. The applicant claims ownership of the laneway. The applicant states that they have the right to upgrade their services under the laneway. The laneway has always been used for delivery of goods. The applicant stated in the further information response to the planning authority that the restaurant will primarily be accessed via Shop

Street, with deliveries, staff and maintenance personnel entering round the back of the restaurant via an archway in the same manner as the former drapery shop. It is stated that the locked entrance can be designed for fire escape purposes and still remain locked for security purposes or an alternative fire escape route can be accommodated through the rear of the property and the SuperValu car park which they own.

- 7.5. I note that the change of use of the building does not encroach on the laneway itself and is limited to the confines of the plot. The laneway is used at present by both parties for access/services and is required to support the operation of both businesses in this way. However, I am cognisant that the matter of consent and ownership/boundaries is not a planning matter but a civil issue. I note that Section 34 (13) of the Planning and Development Act, 2000, as amended, states that a person shall not be entitled solely by reason of a grant of planning permission to carry out development on land where they have no sufficient legal interest. I do not therefore consider that this matter would warrant a refusal of planning permission.

Amenity and Impact on Protected Structure and ACA

- 7.6. The appeal site comprises a Protected Structure and is located within Westport Architectural Conservation Area. I note the conservation report submitted with the application comments on a development, which differs from what is currently proposed. The exact details of the works to the protected structure internally are not listed in the application and therefore I am assessing only what has been applied for and indicated on the application drawings. I note that the Council's Conservation Architect conducted a site inspection and submitted a report stating no objection and recommending conditions in relation to Architectural Heritage Protection Guidelines and Advice and also in relation rainwater goods and windows to be retained. It was also recommended that the rear slope of the roof should be replaced with the traditional blue bangor slates. However, I note no condition was attached in relation to this and given the applicant does not propose works to the roof I consider this reasonable.
- 7.7. It is stated the front façade is to be retained and repaired only where necessary. The shopfront proposes to maintain the two entrances to the building and it appears the traditional shopfront proportions and finish are to be maintained. However, given the

lack of detail on the elevations submitted in particular in relation to fascia signage, a condition is recommended on any grant of permission in relation to shopfront design and signage.

- 7.8. The applicant is proposing to raise the roof of the existing single storey return to the rear of the building which adjoins an existing two storey return. I note the conservation report notes this extension is a later addition to the building. The proposed increase in height of this section of the building to create internally a double height space will not impact negatively on the architectural character of the main body of the building or be visible from Shop Street.
- 7.9. I am satisfied the proposed development will not impact negatively on the existing protected structure and will continue to contribute positively to the ACA.

Other Matters

- 7.10. The applicant addressed the issues raised in relation to bin storage and ventilation in the further information request received. These issues have been satisfactorily dealt with.
- 7.11. I note the existing opes onto the laneway were already in existence and it is reasonable that the applicant should bring these back into use with the development. The opposing ground floor opes in the laneway of the neighbouring building appear to serve the shop. I do not anticipate negative impacts on the amenity of the adjoining building.

Appropriate Assessment

- 7.12. Having regard to the nature of the development for a change of use and the separation distance to any 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.

8.0 Recommendation

- 8.1. It is recommended that permission for a change of use and extension to existing building be granted, subject to the following conditions.

9.0 Reasons and Considerations

Having regard to the location of the site within the town centre of Westport, the B zoning objective of the site, and the existing pattern of development in the area, it is considered that the proposed development is in keeping with the character of the area and would not seriously injure the character or appearance of the protected structure or ACA and the amenities of the area or of properties 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, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority 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. A schedule and appropriate samples of all materials to be used in the external treatment of the development, to include shopfront materials, rainwater goods, and windows, shall be submitted to and agreed in writing with, the planning authority prior to commencement of development.

Reason: To ensure an appropriate standard of development/conservation.

3. Details of all proposed amendments to the external shopfront and fascia signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of the visual amenities of the area.

4. The shopfront shall be in accordance with the following requirements:-
 - (a) Signs shall be restricted to a single fascia sign using sign writing or comprising either hand-painted lettering or individually mounted lettering,
 - (b) no additional awnings, canopies or projecting signs or other signs shall be erected on the premises without a prior grant of planning permission,
 - (c) external roller shutter shall not be erected. Any internal shutter shall be only of the perforated type, coloured to match the shopfront colour,
 - (d) no adhesive material shall be affixed to the windows or the shopfront.

Reason: In the interest of visual amenity.

5. Notwithstanding the provisions of the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, no further advertisement signs (including any signs installed to be visible through the windows), advertisement structures, banners, canopies, flags, or other projecting elements shall be displayed or erected on the buildings or within the curtilage of the site, unless authorised by a further grant of planning permission.

Reason: To protect the visual amenities of the area.

6. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

7. The site development works and construction works shall be carried out in such a manner as to ensure that the adjoining streets are kept clear of debris, soil and other material and if the need arises for cleaning works to be carried out on the adjoining public roads, the said cleaning works shall be carried out at the developer's expense.

Reason: To ensure that the adjoining roadways are kept in a clean and safe condition during construction works in the interest of orderly development.

8. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting 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 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 developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála 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.

Una O'Neill
Senior Planning Inspector

6th December 2017