



An
Bord
Pleanála

Inspector's Report PL16. 249260

Development	Extension to authorised pub
Location	Bridge Street, Westport. Mayo
Planning Authority	Mayo County Council
Planning Authority Reg. Ref.	17/157
Applicant	Manus Bray
Type of Application	Permission
Planning Authority Decision	Grant permission
Type of Appeal	Third Party
Appellant	Brendan Kealy
Observer(s)	None
Date of Site Inspection	15 th November 2017
Inspector	Stephen J. O'Sullivan

1.0 Site Location and Description

- 1.1. The site is the curtilage of a two-storey terraced building in the centre of Westport. The building is a protected structure. The stated floor area of the building on the site is 129m². It is currently vacant, but has a traditional shopfront. A single storey flat-roofed extension covers nearly all of the area to the rear of the original building on the street frontage. The space above the extension is bounded by the side walls of extensions to the buildings on either side along Bridge Street, and by that of a late-20th century infill scheme to the rear. The wall to the north of this space includes a window at first floor level. The adjoining premises to the south on Bridge Street is in retail use. The building to the north has an empty shop on the ground floor with a restaurant above.

2.0 Planning History

- 2.1. P15/803 – In April 2016 the planning authority granted permission to change the use of the building to a pub and to build a first floor extension to the rear with a stated floor area of 53m². The authorised extension would have a pitched roof whose apex would be slightly lower than that over the original building on Bridge Street. The joining of the two structures would require some alterations to the rear slope of the main roof.

3.0 Proposed Development

- 3.1. The proposed development is described as an amendment to the permission granted under P15/803. It would provide the rear extension with a second storey and an additional 75m². The resulting floor area of the building on the site would be 256m². The submitted plans show the second storey as a canteen/kitchen or storage. The part of the extension beside the original building would have a flat roof. A pitched roof would be built over its rear element at a height somewhat above that of the roof ridge over the original building. This roof was amended by further information to avoid it being visible from Bridge Street. The submitted plans also show a basement under the original building along Bridge Street to provide a keg store.

3.2. Further information was requested from the applicant, which was a section showing the proposed basement store. The request also advised that the roof on the extension be lowered so that it was not visible from Bridge Street. The submitted information was considered significant and the application was advertised again.

4.0 **Planning Authority Decision**

4.1. **Decision**

The planning authority granted permission subject to 4 conditions. Condition no. 2 stated that the appropriate period would expire on the same date as that of the permission granted under P15/803, which is the 26th April 2021. Condition no. 3 stated that all other relevant conditions of P15/803 would continue to apply.

4.2. **Planning Authority Reports**

4.2.1. Planning Reports

The report referred to the submissions from the appellant. It states that the window on his property would be blocked by the development already authorised and the matter cannot be revisited at this stage. The notices of the application were sufficient. The current and previous development was discussed with the council's conservation architect who expressed no concerns. The use of the upper floors as residential has long since lapsed. The proposed development was discussed with the conservation officer who considered it to be acceptable. A grant of permission was recommended.

4.2.2. Third party submissions

The appellant made submissions objecting to the development on grounds similar to those raised in the subsequent appeal.

5.0 Policy Context

5.1. Development Plan

The Westport Town and Environs Development Plan 2010-2016 still applies. The site is zoned as part of the town centre under objective B. The town centre is also designated as an Architectural Conservation Area. The building on the site is a protected structure. Objectives TO-03, 04 and 05 of the plan are to protect protected structures. Objective TO-09 is to encourage residential use on upper floor of commercial premises in the town centre. Policy ODP-01 is to identify and secure the development and renewal of obsolete areas, derelict sites and derelict buildings and to develop and improve them in a manner appropriate to the area.

5.2. Natural Heritage Designations

None

6.0 The Appeal

6.1. Grounds of Appeal

- The development would result in the loss of the use of a window serving the property to the north that has been there since 1994, depriving the appellant's property of an easement that has been established for light and ventilation due to its long term use. The proposed development would impinge on a party wall, the construction implications of which have not been adequately considered. So doubts about the sufficiency of legal interest arise which the planning authority did not pursue, as required under the 2007 Development Management Guidelines. A refusal of permission is warranted in the absence of legal clarity
- A basement is shown on the plans that was not specified in the notices. It is a fundamental element of the proposed development and so the validity of the application should be reviewed accordingly. If permission is granted than it should exclude the basement. The changes submitted at further information stage would have a fundamental effect on the status of the building as a

protected structure in an ACA. The basement would also be a significant intervention in the protected shopfront, so neither could be legally permitted.

- Little real consideration has been given to construction and heritage impacts despite potentially detrimental effects on the street and adjoining properties. The amended development would bring the total floor area on the site to 256m², an increase of c50%. The protected structure is surrounded on three sides by private property with the only access for construction through the protected shopfront. Significant demolition and construction would be involved, so permission should not be granted without comprehensive details on the constructability of the proposals.
- The proposed development would not comply with objective TC-09 of the development plan to encourage residential use on upper floors of town centre commercial properties where appropriate. Permission was refused in similar circumstances under Reg. Ref. P15/182. The original use on the first floor appears to have been residential. The development may also conflict with objectives TO-03, TO-04 and TO-05 which relate to protecting and preserving protected structures

6.2. Applicant Response

- Extensive alterations have taken place to the interior and little remains of the original structure, as is evident from submitted photographs. The proposed development provides for balanced development that reinforces the existing strong urban structure to facilitate a kitchen and keg store for an authorised public house. Policy ODP-01 of the development plan is to identify and secure the renewal of obsolete area and derelict sites and buildings. The applicant's maintenance of a traditional shopfront on a vacant premises is not a sustainable approach. The proposed development was designed in consultation with the council's conservation officer, as stated in attached emails. The proposed works at ground and first floor are almost to those authorised under P15/803 with only minor alterations to provide a keg store and a second floor.

- The appeal could be regarded as vexatious and without substance or merit. Its essence relates to civil matters regarding a window. The board should consider dismissing it under section 138(1) of the planning act. The window in question is unauthorised. It would have been unusual for a planning authority to grant permission for a window in a party wall in a town because of its implications for neighbouring properties. The presence of such a window should not prevent development on the site. In any event the works at first floor level are already authorised, and the question of the window is not relevant to the current application. It would not undermine the validity of the application due to questions about the applicant's legal interest to carry out the development. A legal opinion is quoted to this effect. Section 5.13 of the development management guidelines states that the planning system is not design to resolve disputes about rights over land.
- The planning authority was satisfied that the notices properly described the proposed development. The question of the validity of the applicaiton is outside the scope of An Bord Pleanála.
- The proposed development would not be much more intensive than the permitted one. The latter would require considerable underpinning and structural work. As the buildings on either side extend to the second floor level, the current proposal is essentially for infill development. The location of the basement has been selected to respect the character of the buildings which was at one stage a car repair shop with a pit in the same place. Sufficient details have been submitted for a planning appraisal of the development. Construction details are not required at this stage. Proper planning and development requires older buildings in ACAs to evolve over time and develop new uses to avoid dereliction. The modest infill development would make the best possible use of this urban site to ensure the continued viability and vibrancy of Westport town centre.
- The site has not been used for residential purposes for decades and the development would not conflict with objective TO-09 of the development plan. Its circumstances differ from those of P15/182 where the change of use was from residential. The principle of development on this site has been established by the grant of permission under P15/803. The current

amendment would simply bring the level of the rear extension up to that of the surrounding properties. There will not be significant changes to the front of the building and so there is no conflict with objectives TO-03, -04 or -05 of the development plan. Several site meetings occurred between the applicant's agent and the council's conservation officer. Little original fabric remains inside the building, with extensive alterations occurring before the applicant bought it.

6.3. Planning Authority Response

The planning authority did not respond to the appeal.

7.0 Assessment

- 7.1. Following the High Court judgment in *McCallig vs. An Bord Pleanála*, the validity of an application on appeal is a matter for the board. Article 17 of the planning regulations requires to provide a 'brief description of the nature and extent of the proposed development' not an exhaustive one. The proposed keg store is an incidental element of the proposed development. Established planning practice would not require it to be specifically mentioned in the published description of the proposed development. The grounds of the appeal alleging invalidity of the application on this basis are not well founded. If the board were minded to grant permission there would be no legal bar on including the basement in the authorised development.
- 7.2. The applicant is the owner of the site and there is no requirement upon him to secure another's permission before making an application for permission for development there. Article 34(13) of the act makes it clear that a grant of permission does not entitle a person to carry out a development if he is not otherwise entitled to do so. Section 5.13 of the development management guidelines issued in 2007 advises that the planning system is not designed to resolve disputes about rights over land. Section 34(2) of the act requires decision on planning applications to be based on the proper planning and sustainable development of the area. Reliance on a window in the side of an extension to terraced building that lies on the boundary of the plot on which that building stands to provide natural light and ventilation would

not be in accordance with the proper planning and sustainable development of the area because of its impact on the neighbouring property or its development potential. So it would not be in keeping with the proper planning and sustainable development of the area to prevent a proposal that is otherwise acceptable on the basis of such a window, even if the window could not be subject to enforcement action. The window on the appellant's property could also be blocked by the implementation of a the valid permission under Reg. Ref. 15/803. The grounds of the appeal relating to the window on the side of the appellant's property would not, therefore, justify refusing permission or significantly altering the proposed development. The site and the adjoining lands are fully covered by buildings and rely on municipal drainage. This would be the case whether or not the proposed development is carried out. Detailed construction issues regarding party walls or rainwater goods to the rear of the property on the extension would not, therefore, be required before a decision on this planning application.

- 7.3. The proposed use would be in keeping with the town centre zoning of the site under the development plan. Residential use is not established on the site. Objective TO-03 of the development plan to 'encourage' residential use in upper floors in the town centre would not, therefore, justify refusing permission or significantly altering the proposed development.
- 7.4. The building on the site is a protected structure and is within an Architectural Conservation Area. The maintenance of its contribution to the historic and architectural character of the area is therefore a prime consideration in this appeal. The application was accompanied by rather less detail than would normally be the case for a substantial alteration to the protected structure, particularly with regard to materials, construction methods, internal alterations and physical interventions that would affect the original building along Bridge Street, and the external and internal dimensions of the proposed extension. The scale of the proposed extension would be large relative to the original building. In these circumstances the grounds of appeal that relate to architectural heritage have some merit. The board should consider whether the details submitted with the application are sufficient to ensure compliance with article 23(d) of the planning regulations and whether the scale of the proposed extension would be consistent with the character of the protected structure. In the particular circumstances of this case I would advise the board that

the submitted proposals are acceptable in these regards. The importance of the protected structure lies mainly in the contribution that its form and scale of the make to the historic and urban character of Bridge Street and Westport town centre, rather than on than the particular features of the building itself. The front elevation of the building would not be altered by the proposed development. The revised plans submitted to the planning authority as further information indicate that the proposed extension would not be visible from the street. The rear of the site is already enclosed by higher development on three sides, including 20th century development to the north and east. The traditional shopfront is not an integral part of the structure of the original building, and it could be preserved during reconstruction and reinstated on its completion. The proposed development would not, therefore, be likely to seriously injure the historic and architectural character of the original building in a manner that was inconsistent with its status as a protected structure in an Architectural Conservation Area.

8.0 Recommendation

8.1. I recommend that permission be granted subject to the conditions set out below.

9.0 Reasons and Considerations

Having regard to the location of the site in the town centre of Westport and its zoning under objective 'B' of the Westport and Environs Development Plan 2010-2016, to the pattern of development in its vicinity and to the scale and characteristics of the proposed development, in particular its maintenance of the front elevation and traditional shopfront along Bridge Street, it is considered that the proposed development would not seriously injure the amenities of neighbouring property or the character of the protected structure and the Architectural Conservation Area in which it stands. The proposed development would therefore be in keeping 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 on the 2nd day of August 2017, 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. An architectural impact statement and conservation plan for the original structure on Bridge Street and its shopfront shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The development shall be carried out in accordance with this plan, and the relevant works shall be restricted to conservation, consolidation and presentation works.

Reason: To ensure that these elements of the historic structure are maintained and protected from unnecessary damage or loss of fabric

3. The appropriate period for this permission shall expire on the same day as that for the permission granted under Reg. Ref. P15/803, which is the 26th day of April 2021.

Reason: In the interests of clarity

4. All other relevant conditions of the grant of permission made under Reg. Ref. P15/803 shall continue to apply.

Reason: To ensure a proper standard of development

5. 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

Stephen J. O'Sullivan
Planning Inspector

3rd January 2018