



An
Bord
Pleanála

Inspector's Report ABP-301025-18

Development	Window Installation at Gable wall of existing building
Location	Market Street, Ardee County Louth
Planning Authority	Louth County Council
Planning Authority Reg. Ref.	17/671
Applicant(s)	Colm & Majella Taaffe
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Brendan and Bridie Faulkner
Observer(s)	None
Date of Site Inspection	21 st of May 2018
Inspector	Angela Brereton

1.0 Site Location and Description

1.1. The application site is located on the western side of Market Street, in the town centre of Ardee, Co. Louth. It is located between the Railway Bar and 'Minscot' a toy shop and the Supervalu site. It is in use as a shop 'The E Cig Co.' on the ground floor and storage on first and second floor levels. The rear of the application site overlooks the main car park to the contemporary Supervalu building located on Ash Walk. There are a number of premises located to the rear of the application site, notably an outdoor seating area/smoking area to the rear of the Railway bar. There is currently a large banner sign on the rear of the subject premises 'T.Malone, Toys, Toys'. However, this does not refer to the subject premises. I also noted that there are blinds/curtains on the first floor windows and the dormer windows with frontage to the street.

2.0 Proposed Development

2.1. This is for the installation of new windows in the gable wall to the rear of the property located at first and second floor level.

3.0 Planning Authority Decision

3.1. Decision

On the 1st of February 2018 Louth County Council granted permission for the proposed development subject to 2no. conditions. Condition no.1 referred to adherence to the amended plans and particulars and no. 2 included that windows shall be timber frame and that details of the window panes be submitted.

3.2. Planning Authority Reports

3.2.1. Planner's Report

They had regard to the locational context of the site, the information submitted and to the submissions made and requested that Further Information be sought to include the following:

- Drawing CMT/17/01 shows that the windows at First Floor Level shall serve a storage area whilst the windows at Second Floor Level will serve a kitchen/living area. The applicant was requested to clarify the use of the existing building and submit floor plans/elevations showing same. In the event the existing building is to be used for residential purposes the applicant is requested to submit a revised application form and public notices.

3.2.2. Further Information response

This provides that the drawings have been amended as requested and the use of the upper floors are for storage use. They also provide that in the future they may be interested in obtaining permission for converting the space into apartment use.

3.2.3. Planner's response

They had regard to the F.I submitted and were satisfied that this permission pertains only to the additional windows at the rear of the building and provide that they have no objection to same.

3.3. **Third Party Observations**

3.3.1. Submissions have been made by Stephen Ward Town Planning & Development Consultants on behalf of Mr P Lanney, Supervalu, Ash Walk and Brendan and Bridie Faulkner, The Railway Bar, Market Street, Ardee. These include the following:

- Concern as to potential for overlooking and multiple occupancy.
- Lack of clarity of the future use of the upper floors.
- Adverse impact on privacy and adjacent amenities of the area.

Regard to these issues are discussed further in the context of the Third Party Appeal.

4.0 Planning History

There appears to be no recent planning history on record relevant to the subject site.

The following is referred to by the Third Party:

Reg.Ref.97/425 – Permission granted subject to conditions by the Council to raise the roof of the building to create additional third floor within and to extend to the rear against each floor.

The following relates to a recent permission for the adjoining property to the north of the subject site:

Reg.Ref.13/522 – Ref. PL15.243993 - Permission granted subject to conditions for the partial demolition of the former Lanney's SuperValu, a protected structure (LHS-017-019 'Lanneys') **at Market Street/Ash Walk, Ardee, Co. Louth.** The 'protected structure' was in fact demolished in c.1998 on foot of planning permission P.A. Ref. 97/509 and a new building constructed in its place. The partial demolition facilitates the creation of a new pedestrian link from Market Street through to Ash Walk.

The development also provided for the construction of a replacement extension to the ground floor, incorporating new stairway to serve upper floors and use of the ground floor for retail or Class 2 office use and use of upper floors to Class 2 or Class 3 office use. The development also provides for 4 no. satellite dishes ancillary to the Class 2 use.

The proposed development works formed part of the second phase of the redevelopment of the former SuperValu site (Phase 1 was granted planning permission under P.A. Ref. 13/320 and has been implemented). The pedestrian access to be partially covered by way of a glazed canopy that extends westwards from Market Street.

The development also provided for refurbishment of and alterations to the external façade including new shopfront, replacement windows at upper floor level, replacement roof, associated signage, 46 no. car parking spaces, landscaping and all site development works.

A copy of this Board decision is included in the Appendix to this Report.

5.0 Policy Context

5.1. Louth County Development Plan 2015-2021

This Plan provides the strategic planning policies and objectives for the County.

Section 1.3.1 includes that the Council will prepare a LAP for Ardee. Table 2.2 provides that Ardee is a Moderate Sustainable Growth Town. Section 2.9.2 recognises the importance of Ardee as the third largest settlement in the county after Dundalk and Drogheda. *The Plan and the Core Strategy promote the development of Ardee as a medium size town for urban strengthening to serve the needs of the local community and drive development within the locality.* Section 2.11 provides: *Outside of the Level 1 centres of Dundalk & Drogheda, the Level 2 centres of Ardee and Dunleer are promoted as the principle centres of employment and investment -Policy CS5 relates.* Section 2.11.4 refers to the Louth Retail Strategy which includes reference to Ardee. Section 2.16.5 supports Ardee's function as a local service centre and employment centre within the mid Louth area which should be protected and enhanced. This also provides: *The current **Ardee Local Area Plan 2010-2016** seeks to promote consolidation and achieve a more balanced growth towards the northern section of the town. It is envisaged that this Local Area Plan will be reviewed following the adoption of the **Louth County Development Plan 2015-2021**.* This is reiterated in Section 11.2 Local Area Plans.

Policy SS7 of the Louth County Development Plan 2015-2021 seeks: *To promote the town of Ardee as a prosperous and thriving local development and service town for Mid- Louth and bordering areas of Monaghan and Meath, where no individual or social group is excluded from the benefits of development and where the principles of environmental, economic and social sustainability including protection of the town's heritage and the natural and built environment are enshrined and to review the Ardee Local Area Plan following the adoption of the Louth County Development Plan 2015-2021.*

Table 5.11 includes Ardee town centre (AR1) in the Areas of Special Archaeological Interest. Section 5.9.2 notes that it was a former Walled Town.

Section 5.11 notes that it is within the Architectural Conservation Area. Policies HER 45 -50, 53 relate. Development Management Guidelines for ACA's are included in Appendix 4. The Ardee Character Appraisal is included in Appendix 7.

Policy EDE9 seeks: *To protect and enhance the status of Dundalk, Drogheda, Ardee and Dunleer as the principle centres of employment, industrial and commercial activity within the County.*

Section 6.7 refers to the importance of Retail and Table 6.4 includes the town of Ardee in Level 3. Policies EDE32-EDE38 refer.

Section 6.7.2 supports living over the shop – Policy EDE 39 refers.

Section 6.7.7 relates to criteria for developments in ACA's and to Protected Structures.

5.2. Ardee Local Area Plan 2010-2016

This is set within the context of the Louth CDP which sets out an over-all strategy for the proper planning and sustainable development and as noted in the CDP Section above the Ardee LAP remains enforce to date. The provision of sufficient land, communications, infrastructure and public transport links to accommodate increased economic and employment activity and the promotion and facilitation of Ardee as a local development and service centre, are key objectives of this Plan.

Section 5.4 refers to the Retail Strategy and notes that Ardee provides a wide range of services and facilities for large areas of mid and west Louth and north Meath. Policies EE6 -8 seek to preserve and strengthen the retail role of the town.

Section 6.8 refers to Policies NBE16/17 which seek to protect the historic integrity of the wall town of Ardee. Section 6.9 refers to the criteria for development within the ACA and includes Policy NBE19 which seeks: *To require that any development within or affecting the conservation area preserves or enhances the character and appearance of the architectural conservation area, respecting the character of the existing architecture in scale, design and materials.* Section 6.13 and Policy NBE29 seek to ensure that any development protects the zone of archaeological interest.

Chapter 7 refers specifically to Ardee Town Centre. Policies ATC1-4 refer.

Section 7.4 refers to Future Town Centre Development and this includes regard to the SuperValu site. Policies ATC11- 18 relate to the Town Centre.

Table 8.1 provides the Character Area Objectives including for the Town Centre. Policies DEV1/2 seek to promote the sustainable development in order to improve the quality of life of the inhabitants in Ardee.

Chapter 9 provides the Design Principles and Development Management Standards for Ardee. Section 9.5 refers specifically to the Historic Core, and ACA in the Town Centre. Section 10.3 refers to Appropriate Assessment.

6.0 The Appeal

6.1. Grounds of Appeal

Stephen Ward Town Planning & Development Consultants has submitted a Third Party Appeal on behalf of Brendan and Bridie Faulkner, The Railway Bar, Market Street, Ardee. This has regard to the locational context and planning history of the site and includes the following:

- The subject property was last used as a commercial premises, with a shop on the ground floor and storage on first and second levels. They are instructed by their Clients that the first and second floors are currently being used for multiple occupation and not for storage use.
- The formation of these windows is to facilitate unauthorised residential development and is contrary to condition no.2 of the Council's decision.
- The appellants are extremely concerned regarding potential impact on their business caused by the insertion of these windows on the rear gable wall and/or the use of the upper floors for residential development.
- They have concerns regarding the residential amenity and compliance with standards such as fire safety of such apartment development.
- The application is invalid and would facilitate unauthorised residential development of the first and second floors of the premises.
- They consider that the Planner's Report has not taken the history of the site and unauthorised development into account.

- The extension as built is larger than that permitted under Reg.Ref.97/425 (they include a copy of this permission) and constitutes unauthorised development. The proposed development would sanction unauthorised use of an unauthorised structure and to permit this would be to condone unauthorised development.
- The insertion of these windows would have a negative impact on the amenities of the Railway Bar and in particular their outdoor seating area at the rear.
- There is no need for storage rooms to have windows, this is an attempt to gain permission for residential use. The applicant should apply for permission for residential use and retention of the existing extension.

6.2. Applicant Response

A1 Design Services Architectural & Surveying Practice response on behalf of the applicants includes the following:

- The applicants are seeking permission for windows at the rear. They refer to the planning history including Reg.Ref.97/425 and note that permission for windows was omitted due an overlooking problem that no longer exists due to subsequent demolition works.
- As these overlooking problems no longer exist permission should now be granted for the insertion of these windows.
- Their building overlooks SuperValu store and it is noted they have not objected to the development.
- The rear of the public house is not directly overlooked by the subject property as can be established by their photographs.
- The rear of the public house is used as a parking space, a keg storage area and also a smoking area, for which there does not appear to be planning permission. It is a place where customers of the p/h congregate on a daily basis and is not a private amenity open space. The space is surrounded by a 2.4m screen wall which also does not appear to have planning permission.

- The precedent has already been set for the provision of windows at first and second floor level by the appellant's property. They include photographs.

6.3. Planning Authority Response

Louth County Council comment as follows:

- All other matters which have been raised in the appeal statement are fully addressed in the Planner's Report dated 05/11/17 and the Planner's Report on Further Information dated 13/02/18.

7.0 Assessment

7.1. Principle of Development and Planning Policy

- 7.1.1. It is noted in the Policy Section above that the Louth County Development Plan 2015-2021 provides the strategic policies and objectives for the County including regard to the importance of Ardee town as a Level 3 tier in the retails hierarchy. As noted in the CDP the Ardee LAP 2010-2016 is still enforce. The site is within the Town Centre land use zoning. The Objective for the Town Centre seeks: *To provide, protect and enhance town centre facilities and consolidate and strengthen the existing role of the town centre and continue to protect and enhance the built environment, particularly views, the architectural conservation area, the historic town core and protected structures.* The Town Centre of Ardee is designated as an Architectural Conservation Area (ACA) which includes the subject site at Market Street/Ash Street. The building while in the ACA is not a Protected Structure.
- 7.1.2. It is of note that the general principle of Living over the Shop is supported in Section 6.7.2 of the Louth CDP 2015-2021. This includes Policy EDE39 which seeks: *To promote the provision and modernisation of residential accommodation over commercial premises in towns and villages in order to improve the vibrancy of their centres.* This is reiterated in Policy ATC3 of the LAP which seeks: *To resist the loss of residential uses in the town centre and to encourage new residential uses in the centre, particularly underused or vacant space above shops and in mixed use schemes.*
- 7.1.3. However, in this case a change of use from commercial storage to residential has not been applied for, and is not the subject of this application. The subject property is

currently in retail use on ground floor and the applicants provide it is in use for storage on the first and second floors. The third party dispute this and are concerned that the development is unauthorised. Regard is had to the application submitted relative to the insertion of the 3no. windows in the rear elevation and to the issues raised in the documentation submitted and by the Third Party in this Assessment below.

7.2. Regard to Planning History

- 7.2.1. The documentation submitted on behalf of the applicants provides that they were previously granted permission for extensions to this part of the building under Reg.Ref.97/425. That application included some rear window proposals but these were omitted following objections of overlooking from a local residence. That residence has since been demolished to make way for the SuperValu supermarket. The latter which is a new contemporary build is now in situ. The subject building can be seen from the SuperValu carpark to the rear of the site. Condition no.1 of that permission omitted all windows on the northern and southern elevations, condition no.3 omitted the proposed verandas. This also then stated: *the extension, including that for the ground floor and all relevant developments shall not be more than 6 metres from the rear wall of the existing building. The area on the ground floor between this 6m extension and the rear of the property shall be cleared and retained as an open area for bins/paper storage and such.*
- 7.2.2. It is submitted that the planning application and public notices do not accurately describe the nature and extent of the development in place, in terms of the physical structure and use. It is of note that the Third Party request the Board to refuse permission on the grounds, that the proposed development would sanction the unauthorised use of an unauthorised structure. They provide that it is apparent when making a comparison between the floor plans and taking the conditions of Reg.Ref.97/425 into account that the extension as constructed is larger than that previously permitted. This is difficult to assess in that full floor plans have not been submitted with the current application. However, the photographs taken on site show that the rear extension i.e the rear gable is very close to the rear boundary wall. It is of note that pursuing unauthorised development and taking enforcement proceedings are within the remit of the Council and not within the remit of the Board.

7.2.3. In view of the time period the issue of taking enforcement proceedings has lapsed. However, this extension to a commercial property is not exempted development and having regard to the scale of development, appears to be unauthorised. Article 9(1)(a)(viii) of the Planning and Development Regulations 2001 (as amended), which provides a restriction on exemption is of note i.e: *consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use*. Therefore, having regard to this issue of an element of unauthorised development and to Section 10.1 (Enforcement) of the Development Management Guidelines 2007, it is considered that the extension to the structure as stands would need to be regularised and requires retention permission. It would not be appropriate to allow the insertion of new windows into an unauthorised structure.

7.3. **Design and Layout and Impact on the Character and Amenities of the Area**

- 7.3.1. This proposal is for the installation of 3 windows in the rear gable wall of the existing building. Two windows are proposed at first floor level and one at second floor level. The plans as originally submitted indicated a kitchen/living room on the second floor. However, in response to the Council's query at F.I stage the applicants confirmed that the use of the upper floors would be for storage use, and revised plans were submitted showing this. They also provide that they may be interested in converting the space to apartment use as soon as the funds become available.
- 7.3.2. It is considered that the design of the proposed windows is acceptable and having regard to the location of the site within an ACA, it is recommended that if the Board decide to permit that a condition relative to the external finishes similar to Condition no.2 of the Council's permission be included.
- 7.3.3. Concern has been expressed that the northern elevation of the subject property directly abuts the southern boundary of the old Supervalu premises. Also, that in the event windows were inserted into this elevation of the application premises they would serve to undermine the development proposals relative to the old Supervalu premises. It is noted that a number of premises are located to the rear of the application site, notably an outside seating area/smoking area to the Railway Bar. There is concern that if this development is permitted that it has potential for negative impact on local business and potential future development proposals.

- 7.3.4. There is concern that the upper floors of the application property are presently used for multi-occupancy residential accommodation and that there is no planning permission in place for such an unauthorised use. The Third Party requested clarification on this issue. It is considered that the need for such windows to the storage area has not been justified. In the event of permission being granted they requested a condition requiring that there be no doors or windows on the northern elevation of the application premises where it abuts or adjoins the Supervalu property to the north.
- 7.3.5. However, having regard to the documentation submitted and viewed the property on site, I would consider that there are too many anomalies in this application and having regard to the unauthorised development issue and the need to regularise the development, I would recommend that this proposal as currently submitted be refused and that a new retention application be submitted. This could if so desired allow for all aspects to be considered in the interests of proper planning and sustainable development, including a change of use from storage to residential on the first and second floor of the property.

7.4. Screening for Appropriate Assessment

- 7.4.1. Section 10.3 of the Ardee LAP 2010-2016 refers to AA and notes: *There are three designated sites within this distance of Ardee, namely Stabannon and Braganstown Special Protection Area (site 004091), Dundalk Bay Special Protection Area (site 004026) and Dundalk Bay Special Area of Conservation(000455).*
- 7.4.2. However, having regard to nature and scale of the proposed development and the nature of the receiving environment and the distance 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.

8.0 Recommendation

- 8.1.1. I recommend that permission be refused for the reasons and considerations below.

9.0 Reasons and Considerations

1. Having regard to the nature and extent of the existing development on the subject site, the Board is not satisfied that sufficient information has been submitted to demonstrate that the existing development is authorised and in compliance with permission Register Reference: 97/425 which pertains to the subject site. In the absence of any proposal to regularise the overall development on site, the development for which permission has now been sought would not represent the consolidation of existing development on the site which has not been proven to be authorised. Accordingly, it is considered that the proposed development lacks justification and clarity and would be contrary to the proper planning and sustainable development of the area.

Angela Brereton
Planning Inspector

29th of May 2018