



An
Bord
Pleanála

Inspector's Report ABP 302005-18

Development	Change of use of former gym to residential building consisting of 4 apartments with private terracing.
Location	Seafront, Wicklow Town, Wicklow.
Planning Authority	Wicklow County Council.
Planning Authority Reg. Ref.	18/425.
Applicant(s)	Maurice Sheehy.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party v Refusal.
Appellant(s)	Maurice Sheehy.
Observer(s)	None.
Date of Site Inspection	23 November 2018.
Inspector	Des Johnson.

1.0 Site Location and Description

- 1.1. The site is located on the seafront north east of Wicklow Town centre. It adjoins Wicklow Harbour. The site is occupied by an irregular shaped single storey building, now vacant but formerly used as a gym. Immediately to the north is a single storey clubhouse in use by a rowing club. Adjacent to the west across a public road is a three-storey apartment block called the Anchorage. To the south is a strip marked out for public car parking. To the east and on the sea side is a pebble beach and the vacant building on the subject site is elevated above this.
- 1.2. I attach photographs taken at the time of inspection

2.0 Proposed Development

- 2.1. Change of use of a building previously used as a gym to residential consisting of 4 apartments at ground floor level with private terracing. (Permission was previously granted for 2 apartments at first floor level together with changes to roof profile and alterations to external facades).
- 2.2. The site area is stated to be 0.059 hectares and the gross floor area of the proposed development is stated to be 352m².

3.0 Planning Authority Decision

3.1. Decision

Permission refused for 2 reasons.

The first reason relates to contravention of the overall objectives/vision for this area as set out in the Wicklow Town – Rathnew Development Plan 2013-2019 and the Town Centre zoning.

The second reason relates to the absence of a flood risk assessment contrary to Flood Risk Management Guidelines.

3.2. **Planning Authority Reports**

- 3.2.1. There are two planning reports on the file. The first prepared by the Assistant Planner recommends Further Information in relation to flood risk assessment, but is generally favourable to the principle of the proposed development.
- 3.2.2. The Senior Executive Planners report (which supersedes to first report) recommends refusal. The site is identified in the Wicklow Port and Harbour Strategy as an 'opportunity site' for development. This is an important local recreation and amenity area, and has the potential to be an important tourist area. The existing structure has historic usage as a community facility and an important relationship to the shore and harbour area. The conversion of the building should support the Harbour Strategy but the current proposal does not do so. The Town Centre zoning envisages a mix of uses contrary to what is proposed. In the absence of a flood risk assessment the provision of residential use would be unacceptable at this point.
- 3.2.3. **Roads report** – no objection.

Environment report – states that Storm Emma flooded properties with similar ground levels as proposed apartments 1, 2, 3 & 4 and a Flood Risk Assessment should be carried out. The storm also damaged rock armour/footpaths around the Rowing Club.

4.0 Planning History

Under reference PL27.248178, dated 2 August 2017, the Board granted permission for a change of use to mixed use development consisting restaurant/café, toilets, storage, shop with takeaway facility, function room, 2 apartments and alterations to facades at this site.

The reasons and considerations for the Board's decision referenced the town centre zoning objective, the pattern of development in the area, and the nature and scale of the proposed development, and concluded that the design is satisfactory and the proposal would be acceptable in terms of traffic safety and convenience and the proper planning and sustainable development of the area.

5.0 Policy Context

5.1. Development Plan

The Wicklow Town-Rathnew Development Plan 2013-2019 - the site is zoned 'Town Centre' with the objective 'to preserve, improve and provide for town centre uses'. Residential is a permitted use within this zoning in the context of an overall mix of uses.

The strategy for the Port, Harbour and Quays is to facilitate the future sustainable development of the Port and associated activity, whilst allowing for the expansion and improvement of amenity and recreational opportunities, for the development of a wider mix of uses including residential, retail/commercial and community uses, and providing the highest level of protection of sensitive/vulnerable environmental/ecological assets such as the beach, river and sea.

It is an objective of the Plan (Hbr 3) to facilitate appropriate tourism and leisure development in the harbour area including the provision of new clubhouses, pontoons/marinas, shops, cafes and other leisure and tourism related developments subject to a higher quality of design, having regard to the protection of Natura 2000

sites, as well as the existing environmental, visual and residential amenities of the area.

6.0 The Appeal

6.1. Grounds of Appeal

1. Research undertaken over the past year indicated that a restaurant is not economically viable at this location, peripheral to the main core of the town.
2. The site is zoned for 'Town Centre' purposes in the relevant Development Plan. Residential is typically permitted within this zoning. The Development Plan recognises the role of infill developments in addressing housing need.
3. This area is characterised by established housing and it is impossible to conclude that four apartments would be out of character with the area or contrary to the proper planning and sustainable development of the area.
4. While the Town Centre zoning seeks to achieve mixed development in general, it does not require mixed use development in any one location or any one site.
5. There are no third party objections to the proposal, unlike the previous application on this site (ABP ref. PL.248187). Apartments occupied on a year-round basis would offer greater vitality to the area than a seasonal café/shop.
6. There is a greater public need for apartments than a seasonal restaurant as permitted at this location.
7. The Port objectives referred to in the final planner's report are more relevant to a working port. It is not clear how the provision of 4 much needed apartments would result in the dilution of the tourist potential of the waterfront area for outdoor recreational purposes.
8. This premises has been in private ownership for over 30 years. The Planning Authority has not taken any steps to facilitate public usage of this land.

9. Any flood assessment should be proportionate to the type and scale of development proposed and recognise that the premises could continue as a gym or be converted to a restaurant as permitted. There appears to be a conflict between the map under subheading 5 of Appendix A of the Plan, which places the site within Flood Zone A (highest probability), and map 10.1 of the principal text which shows the land located within Flood Zone B (likelihood of flooding is moderate).
10. The planning authority did not object to the previous proposal (PL27.248178) on flood prone grounds. The Board did not raise any flooding issues in its decision. The premises have never flooded. The planning authority has raised the issue now on the basis of the perceived effects of Storm Emma on other properties in the area. The subject premises was inspected on a number of occasions during this storm event and there was no evidence found of water penetration. It is open to the Board to request a Flood Risk Assessment.

6.2. Planning Authority Response

1. The proposed development would enclose areas that have been historically open to, and in use by the public on a continuous basis for many years. The applicant has not provided documentation to support legal entitlement to enclose these areas.
2. There is no objection to the provision of residential development on the site but the provision of residential at ground floor level would not be compatible with this location and would not support the stated objectives of the Council as they relate to this area.

7.0 Assessment

- 7.1. The proposal is for the conversion of the ground floor of a former gym to provide for 4 apartments. The building adjoins Wicklow Harbour in a predominantly residential area peripheral to the town centre. In August 2017, the Board granted permission

for change of use on this premises from gym to a mixed development consisting of licenced restaurant/café, beach shop with take-away facility, and function room, all at ground floor level, and two one-bedroom apartments at first floor level, and alterations to external facades.

7.2. I submit that the key issues to be addressed are as follows:

- Development Plan provisions and compatibility with the pattern of development in the area
- Public amenity
- Flood Risk

7.3. The site is zoned Town Centre with the objective to preserve, improve and provide for Town Centre uses. Residential is an acceptable use in the context of a mix of uses. The site is identified as an 'opportunity site' in the Plan. The Strategy for the Port, Harbour and Quays is to facilitate the existing and future sustainable economic development of the Port and associated activity, whilst allowing for expansion and improvement of amenity and recreational opportunities, for the development of a wider mix of uses including residential, retail/commercial and community uses, and providing the highest level of protection of sensitive/vulnerable environmental/ecological assets such as the beach, river and sea. As such, the vision/strategy for the harbour area is for the provision of a mix of uses within which residential use is acceptable. Can this be interpreted as requiring a mix of uses on individual sites or at particular locations within the town centre zoning? I consider that it should not be considered in this way. The Plan, while identifying this site as an 'opportunity site' does not include specific requirements in relation to the use of the site. The predominant pattern of development in the surrounding area is residential and the Board has previously permitted residential use on the site in the context of a mixed use development. Having regard to the Town Centre zoning objective and the existing pattern of development in the area, I consider that the proposed development would not contravene the provisions of the Development Plan and would be compatible with the pattern of development in the area.

7.4. The Planning Authority state that the proposed development encloses areas that have been historically open to and in use by the public on a continuous basis for many years. The 1st Party states that the premises have been in private ownership

for over 30 years. I submit that any dispute regarding ownership would be a matter for resolution in the Courts. In addition, I refer the Board to section 34(13) of the Planning and Development Act 2000, as amended, which states that “a person shall not be entitled solely by reason of a permission under this section to carry out any development”.

7.5. The issue of a Flood Risk Assessment is raised. This was not an issue at the time of the granting of the previous Board permission in August 2017. It arises in this case following comments contained in the Environment Report as follows: “Storm Emma flooded properties with similar ground floor levels as proposed apartments 1, 2, 3 and 4 – flood risk assessment should be carried out”. The First Party states that the appeal premises was not subject to water encroachment at the time of Storm Emma and has never been flooded. The original planners report states that the site is located in an area designated Flood Zone A – High Flood Risk, whereas the second planners report states that the site appears to adjoin the line of Flood Zone A. In these circumstances, I consider that it would be reasonable to require the carrying out of a Flood Risk Assessment by way of a condition attached to any permission granted. Alternatively, the Board could require a Flood Risk Assessment before making a decision on this appeal.

7.6. **Environmental Impact Assessment – Screening**

The proposed development does not constitute a class of development for which EIAR is required.

7.7. **Appropriate Assessment**

Having regard to the nature and scale of the proposed development and nature of the receiving environment, no Appropriate Assessment issues arise. The proposed development would not 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 is Granted

9.0 Reasons and Considerations

Having regard to the Town Centre zoning objective for the area, the existing pattern of development in the vicinity and recent planning history relating to the site, it is considered that, subject to compliance with the conditions set out below, the proposed development would not contravene the provisions of the Wicklow Town – Rathnew Development Plan 2013-2019, would be compatible with the existing pattern of development in the vicinity and would be in accordance with the proper planning and 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 on 24 April 2018, except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity.

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

Reason: To ensure adequate servicing of the development, and to prevent pollution.

3. Before any development commences under this permission, the developer shall engage a suitably qualified engineer to carry out a Flood Risk Assessment on the appeal premises having regard to the nature of the development to be carried out. The developer shall submit to the planning authority a report containing the findings of the assessment and any proposed mitigation measures to be carried out as part of the development. The written agreement of the planning authority shall be obtained prior to the commencement of development and any agreed mitigation measures shall be completed prior to the first occupation of any of the apartments permitted under this permission.

Reason: In the interest of the proper planning and sustainable development of the area.

4. Financial Contribution – S.48 Unspecified.
5. The developer shall pay to the planning authority a financial contribution in respect of the Wicklow Port Relief Road. 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 Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

Des Johnson
Planning Inspector

18 December 2018