



An
Bord
Pleanála

Inspector's Report ABP-302673-18

Development	Conservatory-style extension to coffee shop, and all associated site works
Location	The Coffee Dock, Bray Seafront, Bray, Co. Wicklow
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	18/821
Applicant(s)	Helen O'Reilly
Type of Application	Permission
Planning Authority Decision	Refuse permission
Type of Appeal	First Party
Appellant(s)	Helen O'Reilly
Observer(s)	Seamus Reynolds Cllr. Steven Matthews
Date of Site Inspection	8 th December 2018
Inspector	Michael Dillon

1.0 Site Location and Description

The site with a stated area of 0.0023ha, is located on Bray sea-front. The site comprises a coffee shop within an old, cut-stone, granite, former boathouse. The building is shared with a youth club, which occupies the other two thirds. The actual site for the proposed conservatory extension is a paved area to the side of the building – currently used as an outdoor seating area (provided with a temporary white marquee structure; a covering against the elements). The existing coffee shop on the site does not contain any sanitary facilities – such being provided by way of public lavatories within the same block. The boathouse has been extended to the northwest; a single-storey, plastered building in use as a rowing club: next again is the large, public lavatory block.

2.0 Proposed Development

Permission sought on 18th July 2018, to erect a 29m² conservatory to the side of the existing coffee shop. Access to the coffee shop will be through the conservatory. The height of the proposed structure is 3.6m.

3.0 Planning Authority Decision

By Order dated 4th September 2018, Wicklow County Council issued a Notification of decision to refuse planning permission for two reasons as follows-

1. Having regard to the nature, design and location of the original boatyard building, it is considered that the proposed extension would be out of keeping with the character of the existing building, its original use, and its position along the seafront. The proposed development would therefore be contrary to the amenities of the area and to proper planning and sustainable development.
2. Having regard to the location of the proposed development on public lands outside of the control of the applicant, it is considered that to permit this development would (notwithstanding Section 34(13) of the Planning and Development Act 2000 as amended) be contrary to the proper planning and sustainable development of the area.

4.0 Planning History

Ref. 16/807: A licence under Section 254 of the Planning and Development Act, 2000 (as amended), was refused by Wicklow County Council, to David Tew, for outdoor tables and chairs at this café (for a period of five years). On appeal to the Board by the 1st Party (**Ref. 27.LC2066**), the appeal was refused on 31st January 2017.

Ref. 05/630052: Retention permission granted to David Tew for 2 no. roller shutters, signage, CCTV cameras, lighting, planters, wind-breaker, and retractable awning/canopy fixed to the façade of an existing café, railings, paving for an external open area adjacent to the Boathouse Café.

5.0 Policy Context

5.1. Development Plan

The relevant document is the Bray Municipal District Local Area Plan 2018-2024. The site is zoned 'OS1 Open Space' – with an objective- "To protect and enhance existing and provide for recreational open space". Description – "To facilitate the further development and improvement of existing parks and casual play areas, to facilitate opportunities for the development of new high quality amenity open areas and to restrict developments / activities (such as the use or development of such lands for formal sports grounds for organisations that are not available for a broad range of the public) that would reduce the opportunities for use by the wider public". At Page 82 of the Plan it states- "Many uses exist where they do not conform to the designated zoning objective. When extensions to, or improvements of premises accommodating such uses are proposed, each shall be considered on its merits and permission may be granted where the development does not adversely affect the amenities of properties in the vicinity and does not prejudice the proper planning and development of the area".

5.2. Natural Heritage Designations

There are no such designations in the immediate vicinity of the site: the closest being Bray Head SAC (Site code 000714), located some 0.4km to the southeast.

6.0 The Appeal

6.1. Grounds of Appeal

The appeal from Derek Whyte, Planning Consultant, agent on behalf of the applicant, Helen O'Reilly, received by An Bord Pleanála on 1st October 2018, can be summarised in bullet point format as follows-

- There has been a coffee shop at this location since before 1962.
- Reference to original use as a boatyard is irrelevant.
- Permission was granted in 1999 (ref. 94/99), to alter shop layout at Boathouse, Strand Road, Bray.
- Retention permission was granted in 2005 (ref. 05/52) for elements, which included a retractable awning/canopy, with additional fixed seating. This refers to the existing and permitted seating area directly outside the original structure. This permission authorised the applicant to extend his business into the public area.
- The applicant is, in effect, providing a more solid, permanent structure over the existing outdoor seating area.
- Whilst the zoning may be for 'open space', the café is a non-conforming use. At page 82 of the LAP, it states- "Many uses exist where they do not conform to the designated zoning objective. When extensions to, or improvements of premises accommodating such uses are proposed, each shall be considered on its merits and permission may be granted where the development does not adversely affect the amenities of properties in the vicinity and does not prejudice the proper planning and sustainable development of the area".
- The amenities of the area are, clearly, not negatively impacted.
- Local people who use the amenity, clearly appreciate the positive elements.
- The Planning Officer did not consider that the proposal contravened the zoning objective.
- The appellant has regularised the position on this site since 2005. The proposed development does not encroach the current permitted site

boundaries granted in 2005. The appellant recognises the application of section 34(13). Permission can be granted for this development.

- The benefits of this development outweigh any potential negative elements.

6.2. Planning Authority Response

None received.

6.3. Observations

6.3.1. The observation of Seamus Reynolds, received on 26th October 2018, can be summarised in bullet point format as follows-

- This application is unequivocally supported. The decision to refuse permission is disappointing.
- Retention permission had previously been granted for a more obtrusive development on this site.
- The development would greatly enhance the sparse amenities of the seafront.
- The location of this facility in relation to the Bray to Greystones cliff walk, should be taken into consideration by the Board.

6.3.2. The observation of Cllr. Steven Matthews, received on 26th October 2018, can be summarised in bullet point format as follows-

- The decision of the Council should be supported.
- This is public land on which the applicant has placed a tent-like structure in various forms over the past three years.
- The applicant does not own the land, and the application should be invalidated.
- Planning application 05/630052 to Bray Town Council contains a drawing which outlines the area owned by D. Tew. The ownership is limited to a section of the old boathouse building, and does not show the lands to the east and south in his ownership. The decision of Bray Town Council states- “the

permission is for planning purposes only and it does not tie Bray Town Council into having to sell or lease or otherwise to use this public land”.

- There is no record of transfer of ownership of this piece of land.
- The application is an attempt to acquire public land by making a planning application on it. This application cannot be permitted without consent to apply a lease or disposal of this land. To permit such development would deprive the public of a valuable and much-enjoyed public amenity space in the prime recreational area of Bray.
- The boathouse is a fine historic building of significant architectural heritage and merit. The addition of a conservatory would not be in keeping with the Victorian nature of the promenade area and would negatively impact the boathouse building itself.
- The observer has submitted an unauthorised development complaint to WCC in relation to the tent-like structure on this site.
- The application appears to contain incorrect information on ownership, and yet it was validated by WCC; and a decision issued.

6.4. Further Responses

6.4.1. The appeal was referred by An Bord Pleanála to the following Prescribed Bodies; inviting comment on or before 5th December 2018-

- An Chomhairle Ealaíon.
- An Taisce.
- Fáilte Ireland.
- The Heritage Council.
- Development Applications Unit of the Department of Culture, Heritage and the Gaeltacht.

6.4.2. There were no responses received.

6.4.3. The observation of Cllr. Steven Matthews was referred to Wicklow County Council for comment, on or before the 5th December 2018.

6.4.4. There was no response received.

7.0 **Assessment**

The principal issues of this appeal relate to visual amenity and sufficient legal interest in the site.

7.1. **Development Plan**

7.1.1. The site is zoned for open space use – the entire grassed area of the promenade at Bray being so zoned. In this instance, where there is an existing coffee shop/café on the site, it would be difficult to argue that the development contravenes the zoning objectives of the Plan. The applicant states that there has been a café use on this site since before 1962: there is no evidence submitted to support this contention. However, there is some planning history attaching to this use. Notwithstanding this, I do not consider that the issue of use, even if it may be non-conforming, is central to this appeal. The applicant draws attention to page 82 of the Development Plan, which deals with extensions to non-conforming uses. The issue of the proper planning and development of the area is something considered elsewhere in this report.

7.2. **Layout & Design**

7.2.1. The café unit is one of two uses within an old stone boathouse: the other being a youth club. This old boathouse contains three equal-sized chambers. Of note is the extension to the northwest of the boathouse building – at the opposite end from the café. This series of extensions accommodates a rowing club and public lavatories. The extensions dwarf the original granite boathouse. That portion of the extension closest to the boathouse reproduces the parapet and maintains the height of the structure. The plaster has been scoured to represent large stone blocks, but the painting of the exterior somewhat mars the attempt to blend the extension with the old boathouse. The public lavatories building is in a different style altogether, and makes no reference to the older boathouse building.

7.2.2. The proposed conservatory will have napped plaster plinth walls. These walls would not be visually incongruous, when juxtaposed with the old stone walls of the

boathouse, providing that they were not painted, and the colour of the plaster matched the colour of the granite of the old boathouse. The glazing bar construction of the conservatory is to be uPVC. This will not accord with the timber doors on other units of the boathouse, and would appear incongruous. Whilst the boathouse is not a Protected Structure, it is nonetheless a building of note on the promenade – arising from its fine, solid, cut-stone construction, with attractive buttressing and simple cornice detailing. The green uPVC, glazed element would be visually incongruous, and permission should be refused for this reason.

- 7.2.3. The construction of a permanent structure, such as that proposed in the current application, is quite a different matter to granting retention permission of non-fixed elements such as a wind-breaker and retractable awning, which elements I would note, appear to have been replaced by the white, uPVC marquee structure in place at present. I further note that the Board has previously disallowed an Section 254 licence appeal for outdoor seating on the promenade, just to the southeast of this now proposed extension, on grounds of impeding pedestrian traffic flow along the seafront.

7.3. Site Ownership

- 7.3.1. The drawings submitted with the application indicate a red line around the existing café, and an area to the southeast of the building – 23m² and 29m² respectively. The application form indicates that the applicant is the ‘owner of the site’. This is disputed by Wicklow County Council, and by one of the two observers. I would not consider that a grant of planning permission comprises confirmation of ownership. The second reason for refusal related to lands being outside the control of the applicant. The question before the Board would appear to be whether the applicant has sufficient legal interest in the site. Wicklow County Council did not invalidate the application, and went on to make a decision on the application – albeit a refusal of planning permission. The applicant has not submitted any evidence of property ownership, notwithstanding the reason for refusal on this ground. The applicant relies on a previous grant of retention permission in 2005, for claim to sufficient legal interest in the site.
- 7.3.2. Ownership of land, or rights to land, is not something which is capable of resolution in a planning appeal – and may be something for resolution by the courts. The

second reason for refusal quoted section 34(13) of the Planning and Development Act, 2000, as amended, which states- “A person shall not be entitled solely by reason of a permission under this section to carry out any development”. Article 22(2) of the Planning and Development Regulations, 2001, as amended, states- “A planning application referred to in sub-article (1) shall be accompanied by – *inter alia* (g) “where the applicant is not the legal owner of the land or structure concerned, the written consent of the owner to make the application”. The applicant would not appear to have the consent of the land owner to make this planning application. Planning permission should be refused for this reason.

7.4. Other Issues

7.4.1. Water

The proposed development will not have any impact on the water regime in the area. A glass roof will replace a paved area, in terms of surface water disposal. There are no toilets within the café.

7.4.2. Parking

There is adequate parking in a public car-park immediately to the southeast of the site.

7.4.3. Development Contribution

As permission was refused for this development, there is no record of what development contribution might have been levied. The Wicklow County Council Development Contribution Scheme 2015, indicates that commercial developments are levied at the rate of €44 per sq.m. If the Board is minded to grant permission, a condition should be attached requiring the developer to pay a contribution in accordance with the Wicklow County Council Development Contribution Scheme.

7.4.4. Environmental Impact Assessment

Having regard to the nature and scale of the proposed development and the nature of the receiving environment, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination stage, and a screening determination is not required.

7.4.5. Appropriate Assessment

The closest European site is the Bray Head SAC – located some 400m to the southeast, as the crow flies. There are no surface water connections with this site. Having regard to limited nature of the proposed development, and to the fact that it will be connected to the public sewer network, 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 an European site.

8.0 **Recommendation**

I recommend that permission be refused for the Reasons and Considerations set out below.

9.0 **Reasons and Considerations**

1. The proposed green, uPVC conservatory-type extension would be out-of-character with the cut-stone, granite former boathouse building to which it is to be attached. The proposed development would, therefore, be detrimental to the visual amenities of the promenade.

2. The applicant has failed to demonstrate sufficient legal interest in the site. The area on which the proposed extension is to be constructed would appear to be public land. Article 22(2) of the Planning and Development Regulations, 2001, as amended, states- “A planning application referred to in sub-article (1) shall be accompanied by – *inter alia* (g) “where the applicant is not the legal owner of the land or structure concerned, the written consent of the owner to make the application”. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

**Michael Dillon,
Planning Inspectorate.**

10th December 2018.