



An
Bord
Pleanála

Inspector's Report

ABP-308869-20

Development

to (a) increase the ridge height of the existing building, (b) convert rear pitched roof to flat roof and (c) convert attic space to habitable master bedroom ancillary to 1st floor apartment and all associated site works

Location

John Street , Killaloe , Co Clare

Planning Authority

Clare County Council

Planning Authority Reg. Ref.

20475

Applicant(s)

Paul Ryan

Type of Application

Permission

Planning Authority Decision

Grant with Conditions

Type of Appeal

Third Party

Appellant(s)

Pierre Burler & Zuzana Jezikova

Observer(s)

None

Date of Site Inspection

2nd March 2021

Inspector

Mary Crowley

Contents

1.0 Site Location and Description	4
2.0 Proposed Development	4
3.0 Planning Authority Decision	5
3.1. Decision	5
3.2. Planning Authority Reports	5
3.3. Prescribed Bodies	6
3.4. Third Party Observations	6
4.0 Planning History.....	6
5.0 Policy Context.....	7
5.1. Development Plan.....	7
5.2. Natural Heritage Designations	8
5.3. EIA Screening	8
6.0 The Appeal	8
6.1. Grounds of Appeal	8
6.2. Applicant Response	9
6.3. Planning Authority Response	10
6.4. Observations	10
6.5. Further Responses.....	10
7.0 Assessment.....	10
7.3. Principle	11
7.4. Architectural Conservation Area Impact.....	11
7.5. Residential Amenity	12
7.6. Use of the Proposed Development	12

7.7. Killaloe / Ballina WWPT	12
7.8. Traffic Impact & Car Parking	13
7.9. Appropriate Assessment	13
7.10. Development Contribution	13
8.0 Recommendation.....	14
9.0 Reasons and Considerations.....	14
10.0 Conditions	14

1.0 Site Location and Description

1.1. The L-shaped appeal site with a stated area of 0.011ha is located on the southern end of John Street, close to the junction with Abbey Street and is the end unit in a small terrace of 3 houses. The southern elevation abuts the rear elevation of a dwelling which faces onto Abbey Street. The house directly adjoins the roadway with remnants of a footpath barely visible and with no front garden area or off street car parking. John Street is characterised as a narrow residential cross street in the town centre that provides pedestrian access to Convent National School to the north. The appeal is a reconstructed two storey structure with a higher ridge height than the adjoining terraced dwellings. The fenestration in the front façade also differs from the neighbouring dwellings. A set of photographs of the site and its environs taken during the course of my site inspection is attached. I also refer the Board to the photos available to view on the appeal file. These serve to describe the site and location in further detail.

2.0 Proposed Development

2.1. Planning permission was sought on the **13th July 2020** for the following:

- a) Increase the ridge height of the existing building (85 sqm)
- b) Convert rear pitched roof to flat roof and
- c) Convert attic space to habitable master bedroom ancillary to first floor apartment and all associated site works (28.2 sqm)

2.2. **Unsolicited Information** submitted on **24th August 2020** in response to the observations recorded on the planning file and summarised as follows:

- **Architectural Conservation Area** – Material will be consistent with the existing house and sympathetic to the surrounding buildings
- **Overlooking** – Windows on the side elevations are high level frosted glass
- **Overbearing / Overdevelopment** – New ridge height is lower than all but 3 buildings in its immediate context including the 2 either side and does not exceed the height of the next tallest building.

- **Overshadowing** – 3-dimensional volumetric shadow study submitted. The impact the proposed works have are minimal, mainly casting shadows on the roof of the adjoining dwelling and has no effect whatsoever on No 3.
- **Parking / Open Space** – The number of residents is not anticipated to change. The current application is for an additional bedroom not an additional apartment and as such there is no requirement to provide extra parking. This is also the case for opens space.
- **Airbnb Use** – The applicant is currently renting the 1st floor apartment as a long term and occupies the ground floor apartment himself. The application is fully compliant with planning regulation. Reference is made to Circular PL12/2016.
- **Wastewater** – The applicant has no knowledge of either neighbouring houses (No 2 & 3) having a connection through any part of his property.
- **Fire Safety** – This is not a planning matter.

2.3. **Further information** was submitted on the **19th October 2020** as follows:

- The rear flat roof is reverted to a pitched roof so the building profile remains unchanged and also further reduces the impact of daylight to the adjoining dwelling. 3D volumetric views provided.
- The rear surface water will be directed to existing gully's in the back yard which is already piped underground to the public drainage system.

3.0 **Planning Authority Decision**

3.1. **Decision**

- 3.1.1. Clare County Council issued notification of decision to grant permission subject to 5 no generally standard conditions.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

- The Case Planner in their first report requested further information in relation to (1) revised design proposal reducing the scale and bulk and (2) surface water proposals.

- The Case Planner in their first second report and having considered the further information recommended that permission be granted subject to conditions. The notification of decision to grant permission issued by Clare County Council reflects this recommendation.

3.2.2. Other Technical Reports

- None

3.3. Prescribed Bodies

- None

3.4. Third Party Observations

3.4.1. There are 2 observations recorded on the planning file summarised as follows:

- **Pierre Butler, No 3 Johns Street** – negative impact on residential amenity, overlooking from side windows, sewerage capacity, exacerbate issue of parking and traffic impact, no open space to serve apartment and fire safety issues
- **Zuzana Jezikova, No 2 Johns Street** – poor quality drawings, unavailability of same on the Councils website, located in an Architectural Conservation Area, overbearing and overdevelopment of the site, loss of natural light, use of property as Airbnb and associated anti-social behaviour and inadequate drainage.

4.0 Planning History

Reference is made to the following planning history in the planning application form:

- **Reg Ref P97/7654** – Permission granted to Paul Ryan to demolish ruin of derelict house and construct a new 3 bed two storey dwelling subject to 9 conditions.
- **Reg Ref P98/948** – Permission granted to Paul Ryan for a change of use from dwelling to 2 apartments and ancillary works using the existing front door to access both units subject to 8 no conditions.

4.1. Reference is made to the following decision in the appeal:

- **Reg Ref P20/644** – Planning permission refused to Acallam Properties Ltd for the
i) Demolition of 2 No. buildings and outbuildings, ii) Construction of 1 No.

replacement dwelling, iii) Construction of new entrance and 2 No. new dwellings and associated site works at New Street, Killaloe, Co Clare for the following 2 reasons (1) premature by reference to existing deficiencies in the Killaloe / Ballina WWPT and (2) design impact on integrity of the ACA.

5.0 Policy Context

5.1. Development Plan

5.1.1. The operative plan for the area is the **Clare County Development Plan 2017 – 2023**. The appeal site is located on lands zoned **Mixed Use** in the centre of Killaloe. The dwelling is also within an **Architectural Conservation Area**. The following objectives are of the most relevance in the assessment of this application.

- **Mixed Use** – *The use of land for ‘mixed use’ developments shall include the use of land for a range of uses, making provision, where appropriate, for primary and secondary uses e.g. commercial / retail development as the primary use with residential development as a secondary use. Secondary uses will be considered by the local authority having regard to the particular character of the given area. On lands that have been zoned ‘mixed-use’ in or near town or village centres, a diverse range of day and evening uses is encouraged and an over-concentration of any one use will not normally be permitted.*
- **CDP15.5** – *Development Plan Objective: Architectural Conservation Areas (ACAs). It is an objective of the Development Plan:*
 - a) *To ensure that new developments within or adjacent to an ACA respect the context of the area and contribute positively to the ACA in terms of design, scale, setting and material finishes;*
 - b) *To protect existing buildings, structures, groups of structures, sites, landscapes and features such as street furniture and paving, which are considered to be intrinsic elements of the special character of the ACA, from demolition or removal and non-sympathetic alterations;*
 - c) *To ensure that all new signage, lighting, advertising and utilities to buildings within an ACA are designed, constructed and located in a manner that is complementary to the character of the ACA;*

- d) *To ensure that external colour schemes in ACAs enhance the character and amenities of the area and reflect traditional colour schemes.*

5.2. Natural Heritage Designations

- 5.2.1. The site is not located within a designated Natura 2000 site. It is noted that the Lower River Shannon SAC is c0.19km to the east of the site.

5.3. EIA Screening

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

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The third-party appeal has been prepared and submitted by Pierre Burler, No 3 John Street and Zuzana Jezikova No 2 John Street, owners of adjoining properties and may be summarised as follows:

- The scheme should have been refused based on non-compliance with the relevant objectives and polices of the Clare County Plan for development within an ACA, in particular CDP 15.5 and because of insufficient capacity of the sewage system serving Killaloe. The Board is referred to a recent refusal by Clare County Council Reg Ref P20/644. The further information did not take account of the more general concerns raised.
- **Zoning** – The appeal site is within an “established residential” part of the Architectural Conservation Area. There is a presumption that the protection of the amenity of existing residents is inherent and paramount. Established residences, particularly ones such as the small houses on John Street are particularly vulnerable in terms of over development, residential amenity / traffic levels etc must be maintained and if possible improved, particularly for town houses with no front gardens on narrow side streets.

- **Use of the Proposed Development** – The proposed intensification of use of this development is unacceptable in terms of the available infrastructure, parking, sewage, open space etc. The current use of this property, providing short term lets, has not been addressed. Reference is made to the applicants page on Airbnb showing the availability proposed and suggests parking is available.
- **Design** – The design of the front elevation is unacceptable in an ACA, the proportions are incongruous and will impact negatively on this narrow street. The rear development is overbearing in terms of massing and overlooks the rear gardens of private houses on Abbey Street. The proposed window on the south elevation of the proposed second floor should not have been permitted. It is not possible to comply with the current Building Regulations in terms of means of escape in case of fire.
- **Traffic** – The Planning Authority did not query the additional movements which the proposed development would generate on this narrow street, particularly as a busy national school is located on this street or for that matter the lack of parking on this street.

6.2. Applicant Response

6.2.1. The first party response to the appeal was prepared and submitted by Niklas Weissbrich on behalf of the applicant and may be summarised as follows:

- The design was addressed in accordance with the Councils request. There were no changes made to the front elevation as this was not requested. The amount the roof was raised is the minimum required to create a useable space.
- While the area is part of the ACA there is nothing of significance in the immediate surrounds. There are 2 recorded monuments behind the buildings to the east, but no protected structure or monument are within site of the development.
- The Case Planner deals with the points of concern raised in the appeal in relation to design, traffic and parking issues and sewerage capacity.
- The drawing submitted are of the highest standard. Reminded that they are planning drawings and not construction or even tender drawings.

- The applicant is fully within his right and planning laws to operate his property as an Airbnb for a maximum of 6 months per year.
- There is free public on street car parking not 20m form the property on Abbey Street.
- The internal layout has not been finalised and is not subject to planning. The proposal is to upgrade the first-floor apartment and the entire building.
- The added bedroom space would increase the value and usefulness of the building as a whole as well as providing a two-bedroom apartment in a town desperately in need of this type of rental property.
- The appeal was vexatious and an attempt to delay the construction process

6.3. Planning Authority Response

6.3.1. No further comment.

6.4. Observations

6.4.1. None

6.5. Further Responses

6.5.1. None

7.0 Assessment

7.1. The assessment is based on the plans and particulars submitted to Clare County Council on 13th July 2020 as amended by further plans and particulars submitted on 19th October 2020. Concerns raised with regard to the quality of drawings submitted are noted. Taken together with my site inspection I am satisfied that there is adequate information on the appeal file to consider the proposal.

7.2. Having regard to the information presented by the parties to the appeal and in the course of the planning application and my inspection of the appeal site, I consider the key planning issues relating to the assessment of the appeal can be considered under the following general headings:

- Principle
- Architectural Conservation Area Impact
- Residential Amenity
- Use of the Proposed Development
- Killaloe / Ballina WWPT
- Traffic Impact & Car Parking
- Appropriate Assessment
- Development Contribution

7.3. Principle

7.3.1. The appeal site is wholly contained within an area zoned Mixed Use where residential extensions and alterations to an existing dwelling for residential purposes is considered a permissible use. Accordingly, I am satisfied that that the principle of the development proposed is acceptable subject to the acceptance or otherwise of site specifics / other policies.

7.4. Architectural Conservation Area Impact

7.4.1. Concern is raised throughout the appeal that the design of the front elevation is unacceptable in this designated Architectural Conservation Area (ACA).

7.4.2. The appeal site is part of a small terrace of 3 houses at this location. Even though one of the existing houses has remained unchanged and a second house has remained relatively unchanged save for the increase in the roof height, it is evident that the original character of appeal site was lost when the site was redeveloped over 20 years ago (Reg Ref P97/7654 & Reg Ref P98/948 refers).

7.4.3. While the scheme proposes increasing the ridge height of the existing building and inserting 2 no velux style windows to the front whereby the building profile remains unchanged no other elevational changes are proposed. Having regard to the existing house on site together with its immediate context I do not consider that to permit the scheme as amended would detract from the ACA in terms of design, scale, setting or material finishes. Accordingly there is no objection to the proposed scheme in terms of impact to the ACA.

7.5. Residential Amenity

- 7.5.1. Concern is raised that the scheme is overbearing in terms of massing and overlooks the rear gardens of private houses on Abbey Street. Having regard to the scheme as amended I am satisfied that the design, scale, form and positioning of the proposed extension strikes a reasonable balance between the protection of the amenities and privacy of the adjoining dwellings, that it will not result in any significant over shadowing of adjoining properties and that it will not result in any unreasonable loss of natural light or overlooking to neighbouring residential properties. Accordingly, there is no objection to the proposed scheme in terms of impact to residential amenities.

7.6. Use of the Proposed Development

- 7.6.1. Concern is raised that the property is providing short term lets. The applicant states that they are currently renting the first-floor apartment as a long term and that they themselves occupy the ground floor apartment. With regard to the use of the property for Airbnb that applicant states that they are fully compliant with planning regulation. Reference is made to Circular PL12/2016.
- 7.6.2. The use of the property for Airbnb and compliance with the relevant planning code is a matter for Clare County Council. Having regard to the plans and particulars submitted with the application (as amended) I am concerned that the proposed attic master bedroom may be used as a separate residential unit. Any such sub-division should be the subject of a further application. To ensure clarity it is recommended that should the Board be minded to grant permission that a condition be attached requiring that the existing apartment at first floor and the proposed attic master bedroom be jointly occupied as a single residential unit.

7.7. Killaloe / Ballina WWPT

- 7.7.1. I note the concerns raised with regard to the capacity of the sewage system serving Killaloe. The deficiencies in the public sewerage system are well documented and is particularly noted in the development of new residential schemes and the inability to facilitate new connections at present.

7.7.2. The scheme before the Board proposes an increase in the occupancy capacity of the property in the conversion of the attic space to a habitable master bedroom. This is an existing property and therefore it would be wholly unreasonable to refuse permission for an additional bedroom given the small scale of the development and the existing permitted 2 apartments on site. However as discussed above the use of this additional bedroom as a separate apartment or self-contained residential unit would be wholly unacceptable and require further detailed consideration. Therefore, it is reiterated that should the Board be minded to grant permission that a condition be attached restricting the use of the this additional bedroom as a separate apartment.

7.8. Traffic Impact & Car Parking

7.8.1. In terms of traffic impact I am satisfied that that the vehicular movements generated by the addition of a single bedroom would not have a significant material impact on the current capacity of the road network in the vicinity of the site or conflict with traffic or pedestrian movements in the immediate area. With regards to car parking, it is noted that there is no off streetcar parking available with the site. While the additional car parking requirements for this single bedroom may be negligible I am satisfied that given the urban setting of the site that there is adequate provision for on street parking in the immediate vicinity of the site to accommodate any additional requirements.

7.9. Appropriate Assessment

7.9.1. Having regard to the nature and scale of the proposed development, within an established urban area, and its 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

7.10. Development Contribution

7.10.1. I refer to the Clare County Council Development Contribution Scheme 2017-2023. Section D - Reductions & Exemptions is applicable in this case. Therefore, the payment of a Section 48 Development Contribution in accordance with the Planning and Development Act 2000 is not required in this instance.

8.0 Recommendation

8.1. It is recommended that permission be **GRANTED** subject to the reasons and considerations set out below

9.0 Reasons and Considerations

9.1. Having regard to the “mixed use” zoning objective for the site as set out in the Clare County Development Plan 2017 – 2023, it is considered that, subject to compliance with the conditions set out below, the proposed development would be accordance with the development objectives for the area, , would not adversely affect the visual or residential amenities of properties in the vicinity or the designated Architectural Conservation Area and would be acceptable in terms of traffic and public safety and would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on 13th day of July 2020 as amended by the further plans and particulars submitted on the 19th day of October 2020 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.</p> <p>Reason: In the interest of clarity</p>
2.	<p>The existing apartment at first floor and the proposed attic master bedroom shall be jointly occupied as a single residential unit and the attic master bedroom shall not be sold, let or otherwise transferred or conveyed, save as part of the apartment at first floor.</p>

	<p>Reason: To restrict the use of the extension in the interest of residential amenity.</p>
3.	<p>All external finishes shall harmonise with the existing finishes of the house in respect of materials and colour</p> <p>Reason: In order to protect the character and integrity of these important protected structures</p>
4.	<p>Drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services. No surface water shall be allowed to discharge onto the public road or adjoining properties.</p> <p>Reason: In the interest of orderly development and public health</p>
5.	<p>Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
6.	<p>The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.</p> <p>Reason: In the interests of public safety and residential amenity</p>

Mary Crowley

Senior Planning Inspector

26th April 2021