



An
Bord
Pleanála

Inspector's Report ABP-308902-20.

Development	Retention of works to the rear of building including a roof garden.
Location	Main St., Kinnegad, Co. Westmeath.
Planning Authority	Westmeath County Council.
Planning Authority Reg. Ref.	206202.
Applicant(s)	Bob Wiley.
Type of Application	Permission.
Planning Authority Decision	Refusal.
Type of Appeal	First Party
Appellant	Bob Wiley
Observer	Mary Coyne.
Date of Site Inspection	18 th February 2021.
Inspector	Philip Davis.

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1.0 Introduction

This appeal is for the retention of works and alterations to a first-floor rooftop to the rear of a commercial/residential premises on the Main Street of Kinnegad in County Westmeath. It is a revised version of a scheme recently refused permission by the Board on appeal (**ABP-306906-20**).

2.0 Site Location and Description

- 2.1. Kinnegad is a market town in Westmeath, formerly an important stop on the N4 west from Dublin, now bypassed by the M5 and M6 at a junction to the south. The population at the 2016 census was 2,745 people. The town is aligned along a Main Street (the Mullingar Road) over 1km long, with a scattering of commercial and residential buildings along this street, with residential areas mostly to the south and north-east. There are some large retail developments to the south of the site, close to the junction with the M4. The town centre is mostly characterised by terraces of one and two storey buildings in a variety of styles. The most prominent structure is the neo-Gothic Church of the Assumption on the north side of the Main Street.
- 2.2. The appeal site is located in a mixed residential/commercial terrace opposite the Church of the Assumption, where the wide Main Street is lined with car parking on each side. The site is a detached structure with lanes on each side, of relatively modern date, with two retail units at ground floor with residential above. To the east is a restaurant with several dwellings to the rear accessed via the laneway, while to the west is a large dwelling. The site area is given as 0.35 hectares, the gross floor space of the buildings (the upper apartment) is given as 136 square metres.

3.0 Proposed Development

The proposed development is described as for the retention of a change from a glazed window to a glazed door, permission for change of use of the flat roof area to a private roof garden area, and permission to replace the safety railing with a 1.8 metres high screening fence with zinc finish and false windows.

4.0 Planning Authority Decision

4.1. Decision

The planning authority decided to refuse permission for the single reason that (in summary) it would result in an unacceptable form of development out of character with the area and would seriously injure the residential amenities of neighbouring properties by reason of noise and disturbance and overbearing appearance and would be contrary to Section 14.3.2 of the CDP.

4.2. Planning Authority Reports

4.2.1. Planning Reports

- The site is zoned 'mixed use'.
- A long planning history is noted, including a retention grant for the ground and first floor and roof profile on the site, with a later refusal upheld by the Board for alterations to the rear. It was also determined that the change of use of a window to glass door at first floor year was development and not exempted development. There was also an enforcement action recently regarding the roof as a balcony.
- The difference between the proposal and that previously refused are summarised, the most notable changes being the provision of a 1.8 metre high perimeter screen fence and the change of use of the flat roof to a private roof garden.
- The main planning issues are considered to be the effects on residential amenity and appearance.
- A refusal was recommended.

4.2.2. Other Technical Reports

Engineer: No objections subject to conditions.

Chief Fire Officer: No objection provided adequate water supply provided.

4.3. Prescribed Bodies

None on file.

4.4. Third Party Observations

On observation from a third part was received, objecting to the proposed development on mostly amenity grounds.

5.0 Planning History

In a previous appeal (**ABP-306906-20**) on application **19-6352**, the Board refused permission for the retention of a change from a glazed window to a glazed door and to retain safety rails. It was refused for the following reasons:

The door proposed for retention provides access to a first floor area where overlooking of neighbouring properties and overlooking from neighbouring properties would occur, and the railings proposed for retention would not provide for the safe and secure use of the area or protect the privacy of users of the space or of the adjoining residential properties, accordingly to permit the retention of the door and railings would seriously injure the residential amenities of neighbouring properties by reason of overlooking and loss of privacy, and would therefore, be contrary to the proper planning and sustainable development of the area.

In another appeal, dated 16th September 2014, the Board amended a financial contribution condition relating to car parking provision (**PL25.243288**).

In 2019 planning permission was granted for a single storey extension to the rear of the property (**19-6053**).

08-5033 permission granted for change of use of existing real estate office to betting shop office.

01-368 planning permission granted for conversion of existing retail units to two retail units and 2 apartments.

S21-19 determination that the change of part of a window to a glass door at first floor level with an access onto a flat roof single storey extension was development and not exempted development.

Enf 19065 – enforcement file regarding use of the roof as a balcony and change of window to door.

6.0 Policy Context

6.1. Development Plan

The site is zoned mixed use in the Westmeath County Development Plan 2014-2020. This appears to be still the operative development plan for the area. The relevant policy quoted in the reason for refusal is in paragraph 14.23.2:

Extensions and alterations to dwellings - extensions to existing dwellings will be assessed in terms of the degree of impact on existing adjacent residential amenity and the design approach adopted. Impact on residential amenity can result from over-shadowing, loss of light and loss of outlook or from loss of privacy resulting from overlooking. Extensions will not be permitted where they result in an unacceptable negative impact to adjacent residential amenity.

6.2. Natural Heritage Designations

The closest designated habitat is the Mount Hevey Bog SAC, site code 002342, approximately 5 km to the north.

7.0 The Appeal

7.1. Grounds of Appeal

- It is argued that the County Council did not take account the previous decision by the Board which indicated in the report that if the area was enclosed it could be utilised.

- It is argued that if there was a 2-storey extension there would be no significant difference from the use intended.
- It is stated that the applicant is elderly and cannot maintain the flat roof section as it is and needs access due to his age.
- It is stated that access would only be required very occasionally for maintenance.
- It is requested that if retention is not granted that the Board permits a long window (with no access), as it is argued that this would not interfere with the neighbour's property.

7.2. Planning Authority Response

The planning authority did not respond to the grounds of appeal.

7.3. Observations

Mary Coyne of Main Street

- Objects to the change of use to a private roof garden and to the construction of the zinc fence and for the emergency escape. It is argued that the same grounds of refusal as previously should apply.
- It is argued that it is unsightly and would result in a loss of privacy.
- It is claimed that the boundary wall has not been built in accordance with the permission.

7.4. Further Responses

None on file

8.0 Assessment

Principle of development and residential amenity

8.1. The proposed development is for the retention and alteration to an existing extension to the rear of a building within an area zoned for mixed use. I consider that the residential/commercial use is established and consistent with the zoning designation and location within a town centre. The primary issue in this appeal is the impact on residential amenity to the adjoining neighbours, in particular the residential units immediately east of the site, accessed via a laneway between the appeal site and a restaurant. These units mostly face west, towards the site.

8.2. The Board previously refused permission for the retention of the railings and other elements on the first floor level. In the previous report the Inspector stated:

In my opinion an outdoor space could be developed on this roof, if it was provided with a perimeter which secured the safety of the area and the privacy of both users and neighbours. I am not satisfied that the two bar railings provide a safe perimeter for users of the roof as an amenity space. Nor am I satisfied that there has been any attempt to protect the privacy of either adjoining properties or the subject property. In my opinion the residential amenities of all parties would be compromised by the retention.

8.3. The Board did not alter the inspector's recommendation, and made no comment in the Direction, so I assume that the Board at that time agreed with the general argument of the inspector.

8.4. I would consider that providing access to the roof as an amenity space is reasonable having regard to the nature of the area, if it can be done by facilitating the protection of the amenities of the neighbours, in particular those to the west of the site. There are at least three units facing this narrow yard, two facing toward the appeal site, the other facing towards Main Street.

8.5. If granted, the total height of the wall to the laneway would be approximately 5.3 metres. The width of the laneway (i.e. from the boundary of the appeal site to the facing residential units) is approximately 7 metres. By my calculation, this result in a vertical angle from a mid point of the adjoining window to the top of such a fence of around 25 degrees. Due to the orientation (slightly facing north-west), it is therefore

likely if the proposed 1.8 metres fence is erected to reduce directly sunlight only slightly, generally late in the evening. The provision of a fence of this height should prevent any unreasonable loss of privacy.

- 8.6. There would additionally be a small loss of light from direct sunlight on the property to the west of the appeal site in the morning at most times of the year, but due to the separation distance I do not consider that this would be serious.
- 8.7. In terms of reduction in direct sunlight and privacy, I therefore consider the proposals acceptable. The question therefore arises as to whether it would be generally overbearing on the residential properties, which is more of a subjective judgement. On balance, having regard to the mixed-use zoning and the nature of such areas, I would consider that it falls within the bounds of acceptability, so I would conclude that it would not significantly impact on amenities and would be in accordance with the guidelines set out in section 14.3.2 of the Development Plan.
- 8.8. I would therefore conclude that the proposed development is acceptable in terms of plan policy and amenity.

Other issues

- 8.9. I do not consider that there are any other significant planning issues raised in this appeal.

Appropriate Assessment

- 8.10. The nearest closest designated habitat is the Mount Hevey Bog SAC, site code 002342, which is about 5 km north of Kinnegad. Having regard to the nature and small scale of the proposed development and the planning history, I am satisfied that 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.

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- 8.11. Having regard to the limited nature and small scale of the proposed development, the planning history of the site, and the absence of any significant environmental sensitivity in the vicinity and the absence of any connectivity to any sensitive location around the town, 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 and a screening determination is not required.

9.0 Recommendation

I recommend that the proposed development be granted planning permission for the following reasons and considerations, subject to the conditions set out in section 11 below.

10.0 Reasons and Considerations

Having regard to the mixed-use zoning designation of the area, the planning history of the site, and the general orientation of the building relative to adjoining residential properties, it is considered that the proposed works would not seriously injure residential amenities and would otherwise be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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. Details of the materials, colours and textures of all the external finishes to the proposed external fence at first floor level, in addition to the rendering of the existing wall facing the east, shall be submitted to, and agreed in

writing with, the planning authority prior to the commencement of development.

Reason: In the interest of visual amenity.

Philip Davis
Planning Inspector

4th March 2021