



An
Bord
Pleanála

Inspector's Report ABP308909-20

Development	Demolition of dwelling and sheds and construction of new dwelling.
Location	Milebush, Castlebar, County Mayo.
Planning Authority	Mayo County Council.
Planning Authority Reg. Ref.	20/449.
Applicants	John and Kathleen Bourke.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	First Party -v- Condition.
Appellants	John and Kathleen Bourke.
Observers	None.
Date of Site Inspection	8 th March, 2021.
Inspector	Paul Caprani.

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1.0 Introduction

ABP308909-20 relates to a first party appeal against Condition No. 2 of Mayo County Council's notification to grant planning permission for the demolition of an existing dwellinghouse and associated sheds and the construction of a new dwellinghouse at Milebush on the south-eastern outskirts of Castlebar, County Mayo. Condition No. 2 of Mayo County Council's decision required that:

- (a) All window openings at first and ground floor level on the east elevation only shall be of obscure/opaque type glazing, and
- (b) the side door and window of the garage shall be on the west facing elevation with no openings onto the east elevation.

Reason: In the interest of visual amenity.

While the applicant agrees to obscure glazing on the eastern elevation in both windows on the first floor, it is argued that such a requirement on the ground floor is unnecessary.

2.0 Site Location and Description

- 2.1. The appeal site is located approximately 1.5 kilometres to the south-east of the town of Castlebar in the townland of Lisnakirka or Milebush. The road serving the subject site links up with the N84 (Castlebar to Galway National Secondary Route) approximately 1 kilometre to the north-west of the site. The access road serving the site is currently being upgraded as part of a new ring road currently under construction in the southern environs of Castlebar Town (N5 – Westport to Turlough Ring Road). The subject site is located to the immediate south-east of a proposed ring road. The area in the vicinity of the subject is characterised by largescale ribbon development along both sides of the road; most of the dwellings having been constructed between the 1950s and 1980s. The appeal site occupies an area of 0.1365 hectares and currently accommodates a single storey cottage type dwelling with extension to rear together with a rear yard and outbuildings. The existing house on site has a gross floor area of 135 square metres.

2.2. Lands to the north-east are currently undeveloped and accommodate construction compounds associated with the construction work being undertaken as part of the Castlebar Southern Ring Road. Lands to the south-east of the site incorporate a larger residential plot with a two-storey dwelling with a tennis court to the side of the house. The two-storey dwelling is located c.25 metres from the common boundary of the site. Lands directly opposite the site on the south-western side of the road accommodate a mixture of existing dwellings and outhouses. Lands to the rear (north-east) of the site are currently undeveloped.

3.0 Proposed Development

3.1. Planning permission is sought for the demolition of the existing dwelling which is located to the front of the site adjacent to the public road, together with associated outbuildings to the rear, and the construction of a new two-storey dwellinghouse which is located further back within the site approximately 25 metres from the public road. A new front garden area is to be provided between the house and the public road. The new dwellinghouse is to accommodate two bedrooms, living space, a storeroom and a 'secondary kitchen' at ground floor level. Further bedroom accommodation together with an additional guestroom and store is to be located at first floor level. The proposed dwellinghouse is large occupying a floor area of 196 square metres at ground floor level and 136 square metres at first floor level. Along the south-eastern elevation of the dwelling windows serving a secondary kitchen, utility room and wet room face onto the south-eastern boundary of the site. At first floor level two windows are proposed on the south-eastern elevation. One serving a bathroom with the other serving a storeroom. A balcony area serving the guestroom at first floor level was originally proposed on the front elevation of the dwelling facing onto the public road. It is also proposed as part of the planning application to retain the 2 metre high boundary wall which currently runs along the south-eastern boundary of the site. It is proposed to locate a single-storey garage to the rear of the house between 1.8 and 4.5 metres from the south-eastern boundary. The garage incorporates a right height of 4.4 metres and an area of 38.5 metres.

4.0 Planning Authority's Decision

4.1. In its decision dated 30th November, 2020 Mayo County Council issued notification to grant planning permission subject to 8 conditions.

4.2. *Condition No. 2 required the following:*

- (i) All window openings at first floor and ground floor on the east elevation only shall be of an obscure/opaque type glazing.*
- (ii) The side door and windows on the garage shall be on the west facing elevation with no openings onto the east elevation.*
- (iii) Revised plans and elevations showing compliance with this condition shall be submitted within two months of the grant of this permission for written agreement.*

Reason: *In the interest of residential amenity.*

4.3. A submission from Transport Infrastructure Ireland notes that the application is at variance with the official policy in relation to the control of development on/affecting national roads as outlined in the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities. It is further noted that the site of the proposed development is located in close proximity to the preferred and/or approved route of a national road scheme. The proposed development could prejudice plans for the delivery of this scheme. The Planning Authority should consult with the Mayo Project Office managing the construction of the N5 Westport to Turlough Scheme.

4.4. A report from Irish Water recommends that if permission is granted a number of conditions should be attached in respect of water connections.

4.5. On the 28th August Mayo County Council requested further information in respect of the proposed development. The further information request primarily related to revised drawings indicating floor levels, openings and other features along the site. The Planning Authority also requested a landscaping plan and minimum site area in accordance with development plan requirements. By way of an advice note Mayo County Council also requested alterations to the layout of the dwelling proposed. Further drawings were submitted on behalf of the applicant on the 25th September, 2020 whereby amendments were provided in terms of the house layout and design.

- 4.6. The applicant was also requested to readvertise the amendments submitted under Section 35 of the Planning and Development Regulations 2001 (as amended).
- 4.7. Mayo County Council granted planning permission for the revised drawings subject to Condition No. 2¹.

5.0 Planning History

- 5.1. There are no planning history files attached.
- 5.2. Reference to the Mayo County Council website indicates that there were no other planning applications on the appeal site.
- 5.3. It appears from the planning map that planning permission was granted on the adjoining site to the south-east for a garage under Reg. Ref. 9955. This garage was granted planning permission in March, 1999. It appears that the garage in question was never erected or no longer exists on site.

6.0 Grounds of Appeal

- 6.1. The decision of Mayo County Council to incorporate Condition No. 2 was appealed on behalf of the applicant.
- 6.2. It is noted that in the original order issued by Mayo County Council it is stated that Condition No. 2 required all window openings at first floor and ground floor level to be of obscure/opaque glazing. Clarification was sought in relation to this matter and Mayo County Council indicated that a clerical mistake was made and that the condition should have included the wording “on the eastern elevation only”. Mayo County Council advised that revised drawings can address compliance issues in wording of condition did not clearly specify the east elevation only.

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- 1.1. ¹ The Board will note that the Local Authority Planner’s Report is not contained on file. When requested from the Board, Mayo County Council inadvertently provided the Board with a planning report in respect of a different site and application which is not relevant to the subject application and appeal. (Reg. Ref. 20/44 as opposed to Reg. Ref. 20/444 was submitted to An Bord Pleanála). However, having regard to the nature of the appeal which relates to a condition only, I consider the Board can determine the current appeal in the absence of this report.

- 6.3. The grounds of appeal states that the applicant will be submitting drawings to comply with Condition 2(ii) inside the two month timeframe. However, the applicant is also requesting that the Board consider the severity of Condition 2(i) which instructs the applicant to have obscure/opaque glazing on all window openings on the eastern elevation. This would include obscure glazing on a window opening serving a kitchen/dining area at ground floor level (indicated as the secondary kitchen on the drawings submitted) and on the ground floor utility room and the rooflight to the stairs. This is considered unnecessary. The applicant agrees to obscure glazing on the eastern elevation in both windows at first floor level and on the ground floor windows servicing the wet room on the eastern elevation and request that the Board make a decision reflecting these fenestration arrangements.
- 6.4. The proposed dwelling is over 22 metres from the adjoining dwelling to the east and 3.24 metres from the exiting boundary wall.

7.0 Appeal Responses

Mayo County Council have not submitted a response to the grounds of appeal.

8.0 Observations

No observations have been submitted in respect of the proposed development.

8.1. Natural Heritage Designations

The site is not located within or adjacent to any Natura 2000 site. The nearest Natura 2000 site is the River Moy SAC (Site Code: 002298) which at its closest point is located 4.3 kilometres to the south-east of the subject site.

8.2. EIAR Requirement

Having regard to the nature of the development comprising of the replacement of a single dwellinghouse on the periphery of an urban area, it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for an environmental impact assessment can, therefore, be excluded by way of preliminary examination.

8.3. Development Plan Provision

8.4. The site is governed by the policies and provisions contained in the Castlebar Town and Environs Plan (2018 – 2014) incorporating Variation No. 1 of January, 2011, Variation No. 2 of October, 2011, Variation No. 3 of February, 2013, Variation No. 4 of January, 2017 and Variation No. 5 of July, 2017. In terms of land use zoning the subject site is located within the alignment of the N5 Westport to Turlough Road Project. Land contiguous to the site to the south-east and east are designated under the Land Use Zoning Objective C Residential (low density).

9.0 Planning Assessment

- 9.1. I have read the entire contents of the file, visited the subject site and its surroundings and have had particular regard to the issue raised in the grounds of appeal namely the appropriateness of Condition 2(i) which requires all windows on the eastern elevation of the proposed dwelling to incorporate opaque or obscure glazing.
- 9.2. The proposal in this instance involves the demolition of an existing house and its replacement with a new dwelling on the same site. It is my considered opinion having regard to the established use on site that the principle of a residential use on the subject site is acceptable. Furthermore, I consider the proposed design and layout of the proposed development is generally acceptable. On this basis I would recommend that the Board do not consider the entirety of the application de novo and treat the appeal under the provisions of Section 139 of the Act therefore restricting its deliberations to the condition appealed.
- 9.3. It is clear from the information contained on file, that the original grant of planning permission incorporated Condition No. 2 which required all windows serving the dwelling to incorporate opaque glazing. On foot of clarification on this matter a Chief Executive Order (dated 30th November, 2020) altered the schedule of conditions in respect of Condition 2(i) where it is stated that all window openings at first and ground floor level, on the east elevation only shall be of obscure/opaque type glazing. Notwithstanding the amendment, the grounds of appeal request that the Board reconsider this condition. The grounds of appeal request that the Board

consider permitting normal glazing at ground floor level and restricting the obscure glazing to first floor level.

9.4. I consider such a request to be reasonable on the basis of the following:

- (a) The separation distance between the windows on the proposed dwellinghouse and the windows on the existing dwellinghouse is, according to the drawings submitted, 29.56 metres which is a generous separation distance and is in excess of the general applicable standard of 22 metres between opposing windows between two dwellings.
- (b) The proposed development includes the retention of the 2 metre high boundary wall along the south-eastern boundary of the site. The height of the wall will therefore mitigate against any potential direct overlooking between the ground floor windows of the proposed dwelling and the adjoining dwelling to the south-east.
- (c) Two windows are proposed at ground floor level. One small window to serve a wet room. It is appropriate and in the interest of privacy that obscure glazing is incorporated into this window. The second larger window at 1.32 metres in width is proposed to serve a secondary kitchen. A kitchen area is considered a habitable room and for this reason it would be appropriate that the window in question incorporate clear rather than obscure glazing in order to provide an extra level of amenity for the occupants of the room. On this basis, and having regard to the screening offered by the boundary wall and the separation distances between the dwellings in question, there is no potential for overlooking and therefore it is considered appropriate that the condition would be amended accordingly.
- (d) The Board could also consider removing the condition requiring obscure glazing at first floor level also. However, I note that the windows on the eastern elevation serving the rooms at first floor level serve a bathroom associated with the guestroom and therefore because of the nature of the room in question it is appropriate that obscure glazing be retained for this window. Furthermore, the other window merely serves a store area, and this store area has the benefit of windows on both the east and rear elevation. Therefore the removal of obscure glazing is not so critical having regard to the

dual aspect nature of the room and the proposed use of the room. For this reason, I consider it appropriate that opaque glazing be retained on the east elevation at first floor level.

10.0 Conclusions and Recommendation

Arising from my assessment above therefore I consider that the Board amend the condition as requested in the grounds of appeal.

11.0 Appropriate Assessment

11.1. Having regard to the nature and scale of the proposed development and nature of the receiving environment together with the proximity 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.

12.0 Decision

Having regard to the nature of the condition the subject of the appeal, the Board is satisfied that the determination of the Board of the relevant application as if it had been made to it in the first instance would not be warranted and based on the reasons and considerations set out below directs the said Council under subsection (1) of Section 139 of the Planning and Development Act to alter Condition No. 2 as follows:

2. The following shall be incorporated into the house design and garage.
 - (i) All window openings at first floor level on the east elevation of the proposed dwellinghouse shall be of an obscure/opaque type glazing. For the purposes of clarity the window at ground floor level on the eastern elevation serving the wet room shall also incorporate obscure glazing.
 - (ii) The side door and windows on the garage shall be on the west facing elevation with no openings onto the east elevation.

Revised plans and elevations showing compliance with this condition shall be submitted within two months of the grant of planning permission for the written agreement of the planning authority.

Reason: In the interest of protecting residential amenity.

Paul Caprani,
Senior Planning Inspector.

28th April, 2021.