



An
Bord
Pleanála

Inspector's Report ABP-309729-21

Development	Retention of an adapted mobile vehicle for sale of hot drinks and snacks.
Location	Blackrock, Pollnarooma West Td., Salthill, Co. Galway.
Planning Authority	Galway City Council.
Planning Authority Reg. Ref.	20348
Applicant(s)	McHugh Property Holding Ltd.
Type of Application	Retention permission
Planning Authority Decision	Refuse.
Type of Appeal	First Party v Refusal
Appellant(s)	McHugh Property Holding Ltd.
Observer(s)	None.
Date of Site Inspection	8 th May 2021.
Inspector	Patricia Calleary.

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1.0 Site Location and Description

- 1.1. The appeal site has a stated area of 50 sq.m and is located at Blackrock, Pollnaroona West, just beyond/west of Salthill promenade and on the north inner shore of Galway Bay. It is part of a larger site comprising a derelict cottage, which has an area of 0.2 hectares. The site is located adjacent to the curved S-plan stepped seating area and north of the bathing shelter and iconic diving board at Blackrock. The public toilets are located to the northwest and Galway Golf Club is located to the west. The R336 regional road is located to the north with a number of three storey apartment developments opposite. The appeal site is open, adjoining the gable end of the cottage which forms part of the larger subject landholding.
- 1.2. Access to the site is from the north off the R336 via a tarmac public walkway bordering the eastern boundary of the subject landholding.

2.0 Proposed Development

- 2.1. The development proposed to be retained comprises an adapted mobile vehicle for the sale of hot drinks and snacks and all associated site works. On the day of my inspection, I noted that the development on site also comprised a small 'pop-up' type gazebo structure providing shelter and additional space for the sale of hot drinks and snacks. The site notice refers to a temporary retention permission, though no temporary period is specified. The cover letter that accompanied the application states that the temporary period sought is for the time taken for the construction of the newly permitted development of a café/restaurant under planning permission **ABP-304163-19** (Galway City Council reference **PI Ref: 19/11**) on the landholding and indicates a period of two years would be adequate. In the written appeal, it is stated that a temporary retention permission is sought for a period of two to three years.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority issued a decision to **refuse to grant retention permission** for four stated reasons summarised as follows:

Reason 1: The retention of the mobile van/retail/commercial outlet on lands zoned 'RA' for recreational and amenity uses does not fall within any of the zoning categories open for consideration and the proposal would be contrary to and contravene this zoning objective;

Reason 2: The development would be an incongruous feature and would adversely impact on the amenities of the area and would be contrary to policies of the Development Plan set out in Chapters 4 and 8;

Reason 3: The Planning Authority are not satisfied that the development would not have a negative impact on the conservation and preservation of a European site;

Reason 4: The development would impact on the value and functioning of the adjoining public amenity and would detract from the adjacent attractive, iconic recreational facilities.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The recommendation within the report of the planning officer (23rd February 2021) reflects the decision of the Planning Authority to refuse permission and noted the following:

- **Legal interest:** There is sufficient detail provided to progress a decision on this application. Refers to section 34(13) of the Planning and Development Act 2000, as amended;
- **Appropriate Assessment:** The site is directly adjacent to European designated sites, however no Appropriate Assessment screening has been submitted and the applicant has failed to demonstrate that the development would not adversely impact upon designated European sites;
- **Protected Views:** the site is located within a protected view, as indicated in Section 4.5.3, V4 referring to 'seascape views of Galway Bay from Grafton Road, Seapoint, the Salthill promenade and the coast road to the western boundary of the golf course'. The van is located to the south/southwest gable of the cottage and is somewhat blocked from direct southern and eastern views;

- **Visual:** It is considered that the commercial/retail van would be an incongruous feature, more associated with a car park than a coastal area of high amenity value and would be out of character with the area and contrary to the policies of the Development Plan outlined in Chapters 4 and 8.

3.2.2. Interdepartmental Reports

- **Climate Change and Environment (19th January 2021):** no objection subject to conditions;
- **Recreational and Amenity (14th January 2021):** no objection for temporary arrangement subject to agreeing details of safe public access;
- **Recreational and Amenity (23rd February 2021):** raised concerns regarding queuing and other long-term concerns regarding the impact of the temporary/transient nature of the facility on the quality of the adjacent public amenity which could be undermined in the long-term;
- **Waste Enforcement Officer (19th January 2021):** conditions recommended;
- **Waste Enforcement Officer (23rd February 2021):** conditions recommended;
- **Heritage Officer (5th January 2021):** states the development would detract from the existing structure.

3.3. Prescribed Bodies

- None

3.4. Third-Party Observations

- 3.4.1. During consideration of the application by the Planning Authority, observations were received from two third parties. Both parties, with the same addresses at Wellpark, Galway city, c.4km northeast of the appeal site, have raised the same single issue, which is that the applicant has not shown evidence of 'legal ownership of the property the subject matter of the application'.

4.0 Planning History

- An Bord Pleanála Ref: **ABP-304163-19** (Galway City Council planning ref: **PI Ref: 19/11**) – An Bord Pleanála granted permission (September 2019) for (a) the refurbishment of the existing derelict cottage and the construction of a single storey extension all for use as a café/restaurant, (b) the construction of a detached building for use as a bicycle rental and repair shop, the construction of an 18-space carpark and (d) ancillary, site work, modification to the boundary walls and landscape works.
- An Bord Pleanála Ref: **PL.61.221207** (Galway City Council planning ref: **06/261**) granted permission to construct a two-storey rear extension and to alter front elevational fenestration. This permission was extended to 09/05/2017 under Planning Ref: 06/261.

5.0 Policy and Context

5.1. Galway City Council Development Plan 2017-2023

- 5.1.1. The site is located in an area with a zoning objective 'RA', Natural Heritage, Recreational and Amenity Use. The zoning objective seeks 'To provide for and protect recreational uses, open space, amenities and natural heritage.'
- 5.1.2. The R336 fronting the site is designated as a panoramic protected view, identified as 'V4', referring to 'seascape views of Galway Bay from Grattan Road, Seapoint, the Salthill Promenade and the coast road to the western boundary of the Golf course.' Policy 4.5.3 applies, setting out that 'it is the objective of the Council to assess proposed developments, which are located within the foreground, middle ground or background of a protected view in the context of their scale, design and location.'
- 5.1.3. A coastal greenway 'GW' is shown on City Development Plan map running parallel to the roadside boundary of the landholding and to the west of the site and landholding;
- 5.1.4. Section 10.3 (Salthill) sets out the following:
 - The Salthill Promenade is a major recreational facility for city residents, a strong tourist attraction and key city landmark culminating with the iconic

Blackrock diving tower. It is an important active and passive amenity space with significant footfalls particularly during the summer season.

5.1.5. Policy 10.3 provides:

- enhance the role of Salthill as an urban village, a leisure, recreation and coastal amenity area for the city and service centre for the surrounding residential neighbourhoods.
- ensure high quality in the design of new developments, which has regard to the distinctive character of Salthill.
- continue to improve the amenity recreational quality of the area through the preparation of a strategy for the long-term management and enhancement of Salthill Promenade and by the implementation of environmental and coastal improvement schemes and measures included in the Galway Transport Strategy. This shall include for appropriate flood risk assessment and management measures.
- Salthill promenade which includes a number of structures noted as being of regional rating on the National Inventory of Architectural Heritage including the S-plan bathing area, 30409405, shelter 30409404 and diving platform. The appraisal notes that the assemblage creates a visual impact while providing a social aspect to the seafront area.

5.1.6. Section 4.7 sets out Specific Objectives (short term and medium-long term), including the following: Community Space: (medium to long term) - investigate the potential of providing public services for example kiosks or stalls, in or in close proximity to public parks and open spaces and along the coastal greenway.

5.2. European Designated Sites

5.2.1. The designated European sites to the appeal site considered to be within the potential zone of influence of the development are detailed in Table 1 below.

Table 1. European sites proximate to appeal site

Site Code	European Site Name	Distance to closest point	Direction
004031	Inner Galway Bay SPA	12m	southeast
000268	Galway Bay Complex SAC	10m	southeast
000297	Lough Corrib SAC	2.9km	northwest
004042	Lough Corrib SPA	4.9km	north
004142	Creganna Marsh SPA	10.5km	east
002034	Connemara Bog Complex SAC	10.8km	west/north west
001926	East Burren Complex SAC	12.45km	south
000054	Moneen Mountain SAC	13.4km	south
000606	Ross Lake and Woods SAC	14km	southeast
000010	Black Head Poulsallagh Complex SAC	14km	southwest
000606	Lough Fingall Complex SAC	14.7km	southeast
004181	Connemara Bog Complex SPA	14.7km	west/north west

5.3. Environmental Impact Assessment - Preliminary Examination

5.3.1. Notwithstanding the proximity of the proposed development to the Galway Bay Complex SAC (Site Code 000268) and Galway Bay SPA (Site Code 004031) European sites, the nature and scale of the development would not result in a real likelihood of significant effects on the environment. The need for environmental 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 grounds of appeal can be summarised as follows:

- the Planning Authority appear to have not considered the temporary nature of the application and suggests a two- or three-year term is permitted;

- An Bord Pleanála have previously granted permission for a larger cottage restoration and extension for a café/restaurant use in which they considered it would be compatible with the 'RA' zoning objective;
- the smaller scale proposal for a temporary period would also be compatible with the same zoning objective;
- the previous permission granted was considered to be acceptable in terms of visual amenity and that it would not interfere with the protected view or character of the Salthill area. Similarly, the significantly smaller temporary converted vehicle would not negatively affect the visual character, natural environment, built heritage and urban and coastal environment of the area;
- on the previous application, no Appropriate Assessment issues arose, and it was also considered that there was no real likelihood of significant effects on the environment arising from the proposal. In the current proposal given the minimum scale and temporary nature no significant effects on European sites would arise;
- the use of the mobile vehicle for the sale of hot drinks and snacks is ancillary to and complementary to the public amenity and its use by the public. The presence of the public should not be seen as a visual distraction but rather demonstrates the popularity value and success of the amenity;
- requests the Board to overturn the decision of the Planning Authority and states that the proposal is not contrary to the proper planning and sustainable development of the area.

6.2. Planning Authority Response

6.2.1. The Planning Authority did not respond to the grounds of the appeal.

6.3. Observations

- none

7.0 Assessment

7.1. Introduction

- 7.1.1. This application is seeking temporary permission to retain an adapted mobile vehicle, a former camper, for the sale of hot drinks and snacks and associated site works on a site previously granted planning permission for a café/restaurant.
- 7.1.2. I consider the substantive planning issues arising from the grounds of appeal and the matters I have dealt with in the assessment of the application and appeal below, relate to the following:
- Development Plan Zoning
 - Visual Impact
 - Legal Interest
 - Appropriate Assessment

7.2. Development Plan Zoning

- 7.2.1. The site is zoned 'Natural Heritage, Recreation and Amenity', 'RA' with an objective 'to provide for and protect recreational uses, open space, amenity uses and natural heritage'. Policy 10.3 of the Galway City Development Plan 2017-2023 seeks 'to enhance the role of Salthill as an urban village, a leisure, recreation and coastal amenity area for the city and service centre for the surrounding residential neighbourhoods'. In the previous application for the refurbishment of the existing derelict cottage together with a café/restaurant and bike rental and repair use (ABP-304163-19), the Board considered the proposed development would be compatible with and would complement and support the 'RA' objective set out in the Galway City Development Plan.
- 7.2.2. The scale of the current proposal for retention is very small, comprising a modified camper vehicle and, as I noted on the day of my inspection, also included a temporary small scale gazebo type structure, for the running of a business serving takeaway hot drinks and snacks. The service is popular and a report from the Recreation & Amenity Department on file shows a photograph of a long queue for the facility during a weekend in February 2021. On the day and time of my inspection, Saturday the 8th May 2021 at 2pm, the queue was short and was not

causing any difficulty. The development is one which adds vibrancy to and complements the area in the coastal setting and provides an acceptable service to those visiting the area and those taking outdoor activity and recreation without impacting unduly on recreational uses, open space, amenity uses and/or natural heritage of the area.

- 7.2.3. Similar to the Board's consideration of the refurbishment of the existing cottage structure, together with a café/restaurant and bike rental and repair shop, I conclude that the development now before the Board is one which is compatible with the 'RA' zoning objective which seeks to 'provide for and protect recreational uses, open space, amenity uses and natural heritage' and is acceptable.
- 7.2.4. Section 4.7 sets out Specific Objectives (short term and medium-long term) including the following: Community Space: (medium to long term) - investigate the potential of providing public services for example kiosks or stalls, in or in close proximity to public parks and open spaces and along the coastal greenway. The development proposed to be retained is similar to a 'kiosk' and is located on private lands directly adjacent to open space and along the coastal greenway and would arguably serve this objective.
- 7.2.5. Issues raised by the Planning Authority around queuing on certain days and other measures of relevance such as waste management can be readily resolved through adopting good management practices. I note that the Waste Enforcement Officer did not object to the development.
- 7.2.6. Having regard to the above, I am satisfied that the development proposed to be retained for a temporary period is acceptable in terms of zoning considerations. I recommend that the Board attach a condition to allow the development to be retained for the two years sought.

7.3. **Visual Amenity**

- 7.3.1. The potential for impact of the development on designated View and Prospect V4 – 'Seascape views of Galway Bay from Grattan Road, Seapoint, the Salthill Promenade and the coast road to the western boundary of the Golf course' requires consideration. Under Section 4.5.3 (Special Amenity Value and Interest) of the current Galway City Development plan, it is stated that the enjoyment of protected views by the community and visitors is a key part of the experience of the city. It is

also acknowledged in Section 4.5.3 that views are not static and some changes in a view can be absorbed without visually depreciating the composition of protected views, while other changes can have a negative impact, reducing the experience of that view irreparably.

- 7.3.2. As outlined above, the development on site is small scale, comprising a mobile vehicle and a pop-up small gazebo structure. It would not interfere with or cause a visual depreciation of the protected view. Having regard to the minor nature of the development, I am also satisfied that the development proposed to be retained would not adversely affect the visual character or qualities of the Salthill area.

7.4. Legal Interest

- 7.4.1. Both third parties raised one specific concern that the applicant has not shown evidence of its legal ownership of the property. The Board will be aware that in order to make an application for planning permission, or retention permission, under Article 22(2)(g) of the Planning and Development Regulations 2001-2021, where the applicant is not the legal owner of the land or structure, a written consent from the owner is required. I note the contents of the planning application form in which it is stated (Question 8) that the applicant is the owner of the site and the Planning Authority have deemed the application to be valid. The Planning Authority or An Bord Pleanála are not required to go behind the contents of the application to verify legal interest. Any disputes around legal interest are civil matters and parties have recourse to the courts to settle any such questions.
- 7.4.2. It is also of relevance to note that Section 34(13) of the Planning and Development Act 2000, as amended, provides that 'a person shall not be entitled to solely by reason of a permission under this section to carry out any development'. Therefore, the issue of legal interest should not form a reason for refusal.

7.5. Appropriate Assessment Screening

- 7.5.1. The site location is described in section one of this report above and a description of the proposed development is provided in section two. The European sites considered to be within the zone of influence for the purposes of screening for appropriate assessment are identified in section 5.2 above. A screening report for appropriate assessment was not submitted with the application.

- 7.5.2. The nearest European sites to the appeal site are the Galway Bay Complex SAC (Site Code 000268) located c.10 metres southeast of the site and the Inner Galway Bay SPA (Site Code 004031), which is located c.12 metres southeast of the site.
- 7.5.3. Having regard to the minor nature of the development proposed to be retained, where there is real likelihood of pollutants arising and to the absence of any hydrological/hydrogeological pathway to any European sites, there is no complete source-pathway-receptor chain between the site and any European sites and in this regard, significant effects on Galway Bay Complex SAC (Site Code 000268), Galway Bay SPA (Site Code 004031) or any other European site, in view of the conservation objectives of these sites can be ruled out. Neither is there any real likelihood of significant effects on any European site as a result of noise, human disturbance or dust emissions arising from the development. When taken in combination with other plans and projects no potential for cumulative or in combination effects are likely.
- 7.5.4. Conclusion on Appropriate Assessment Screening
- Having regard to the minor nature and scale of the development and the nature of the receiving environment, I consider that it is reasonable to conclude, on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the development, either individually or in combination with other plans or projects would not be likely to have a significant effect on Galway Bay Complex SAC (Site Code 000268) or Galway Bay SPA (Site Code 004031) or any other European site, in view of the conservation objectives of these sites and that a Stage 2 Appropriate Assessment and the submission of a Natura Impact Statement for the development is not, therefore, required.
- 7.5.5. In reaching this conclusion, I took no account of mitigation measures intended to avoid or reduce the potentially harmful effects of the development on any European Sites.

8.0 Recommendation

- 8.1. I recommend that the development should be granted retention permission, subject to conditions, for the reasons and considerations set out below.

9.0 Reasons and Considerations

1. Having regard to the location, nature and scale of the development proposed to be retained for a temporary period, to the 'RA' (Natural Heritage, Recreation and Amenity) zoning provision of the Galway City Development Plan 2017-2023 with an objective 'to provide for and protect recreational uses, open space, amenity uses and natural heritage' and to supporting policy and objectives outlined in the Plan, the Board considered, subject to compliance with the conditions set out below, that the proposed development would be compatible with the 'RA' zoning objective, would be acceptable in terms of visual amenity, would not interfere with the protected view or the character of Salthill, would not prevent the delivery of the wider coastal greenway (GW), would enhance the tourist resource for the Salthill promenade and environs. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	The development shall be retained 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.	(a) This retention permission shall apply for a period of two years from the date of this Order. The mobile structure for the sale of hot drinks and snacks and any related ancillary structures shall then be removed unless, prior to the end of the period, planning permission shall have been granted for their retention for a further period.

	<p>(b) The site shall be reinstated on removal of the mobile structure and ancillary structures. Details relating to the removal and reinstatement shall be submitted to, and agreed in writing with, the Planning Authority at least one month before the date of expiry of this permission.</p> <p>Reason: In the interest of clarity and having regard to the temporary duration sought.</p>
3.	<p>(a) The business shall be limited to hot drinks and snacks and shall not function for the sale of hot food.</p> <p>(b) The hours of opening of the structure shall be between 0800 hours and 2100 hours from Monday to Sunday.</p> <p>Reason: In the interest of the amenities of property in the vicinity.</p>
4.	<p>A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.</p> <p>Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.</p>

Patricia Calleary
Senior Planning Inspector

09th May 2021