



An
Bord
Pleanála

Inspector's Report

ABP-309952-21

Development	Retain of (A) Ground Floor Extension to rear of existing dwelling house, (B) Workshop to rear of No. 6, (C) Ground floor extension to garage, (D) First floor residential unit above garage.
Location	No. 4 and No. 6 Upper William Street, Listowel, Co. Kerry.
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	2153
Applicant(s)	Steven O Donovan
Type of Application	Permission.
Planning Authority Decision	Split Decision
Type of Appeal	First Party
Appellant(s)	Steven O Donovan.
Observer(s)	None.
Date of Site Inspection	28 th June 2021.
Inspector	Bríd Maxwell

1.0 Site Location and Description

- 1.1. This appeal relates to an urban site 0.042 hectares located at No 4 and No 6 Upper William Street, Listowel Co Kerry. No 4 and 6 Upper William Street comprise two mid terraced dwellings. No 4 is occupied while no 6, a designated protected structure, is boarded up and unoccupied. Both units incorporate shopfronts at ground floor. Commercial uses (public houses) adjoin to north and south. The site extends westwards to the rear to a laneway known as Patrick street. A two-storey building of recent construction extends across the full frontage of the site on Patrick Street. The building comprises ground floor garage with residential unit overhead with a single storey extension to the rear. The building is stone clad to Patrick Street with slate pitched roof. A public car park is located opposite to the northwest onto Patrick Street.
- 1.2. Internally on the site a workshop is constructed adjacent to the rear wall of No 6 Upper William Street. To the rear of No 4 Upper William Street a single storey extension provides a kitchen and boiler house. There are no divisional boundaries on the two properties within the rear yard area. (I note that on the date of my site visit I was unable to gain access internally to the site however I note that plans and photographs provided on the appeal file provide sufficient detail to enable assessment of the development proposed for retention.)

2.0 Proposed Development

- 2.1. The application involves permission to retention of
- (a) ground floor extension to rear of existing dwelling house
 - (b) workshop to rear of No 6
 - (c) ground floor extension to garage
 - (d) First floor residential unit above garage.

3.0 Planning Authority Decision

3.1. Decision

By order dated 21st April 2021 Kerry County Council issued notification of a split decision to

Grant permission for retention of ground floor extension to rear of existing dwelling house at No 4 Upper William Street subject to two conditions as follows:

Condition 1. Retention in accordance with submitted plans and particulars.

Condition 2 Existing dwelling No 4 Upper William Street and proposed ground floor extension to the rear of this dwelling house shall remain as one integral unit under one ownership and neither property shall be disposed of as a separate entity.

Refuse Permission for retention permission to retain workshop to rear of no 6, ground floor extension to garage and first floor residential unit above garage for the following reasons:

1. The proposed retention of the building in use as a garage / utility store on the ground floor and residential unit on the first floor would contravene materially condition 6 attached to Planning Reg 17/549, "The garage, utility store shall be used for domestic storage purposes only and not for any commercial, habitation or agricultural uses." The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
2. The proposed retention of the residential unit located in the rear yard space of an existing dwelling house would constitute overdevelopment of the site and result in sub-standard residential development impacting the residential amenities of the occupants of the living units on site. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

3. The proposed retention of the workshop constructed to the rear of No 6 Upper William Street, a designated Protected Structure, RPS Ref No 44 would impact negatively on the character of No 6 and would contravene Objective BHUD 27 of the Listowel Town Development Plan 2009-2015 as amended, Variation No 3 to "Protect and enhance protected structures by ensuring:
 - a The maintenance, alteration extension replacement or insertion of any significant feature(s) or part(s) to the structure shall be appropriate to the architectural character and setting of the Protected Structure.
 - b Development adjacent to a protected structure shall not detract from the character of the structure or its setting and existing views to and from the e protected structure shall be protected from undue intrusion by new development. including structure, plant and equipment, signs or other devices.

4. The proposed retention of the workshop would impact negatively on the potential of this structure to be re-occupied and reused as a dwelling house. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planner's report considers the proposal for the residential unit to be unacceptable given that it contravenes the condition of permission 17/849 and would result in a substandard form of development with no private open space or parking. Workshop has a significant impact on the character of No 6 William Street a protected structure. No information provided on nature of workshop. Single storey extension to the rear of No 4 is considered acceptable. Refusal recommended for retention of workshop to rear of no 6, ground floor extension to garage and first floor residential unit above garage. Recommend permission for retention of ground floor extension to rear of existing dwelling.

3.2.2. Other Technical Reports

None

3.3. Prescribed Bodies

No submissions

3.4. Third Party Observations

3.4.1 Submission by Michael Casey Chartered Building Engineer on behalf of Edward Walsh owner of Tankers Bar, 8 Upper William Street.

- No site notice erected on the property of no 6 therefore application should be invalidated.
- Workshop is constructed on the property of estate of Lil Mai O Sullivan, No 6 Upper William Street and built on the boundary wall of No 8 Upper William Street.
- Flue from boiler provided on boundary wall from No 8 altered without permission or consent prohibiting means to service or maintain the flue.
- Construction of workshop to the rear of no 6 cuts off rear access thereby compromising the property.
- Ground floor extension to garage is not an extension as it was built during the construction of the domestic garage and unauthorised residential apartment. Use is as boiler house for the apartment.
- Windows of apartment unit overlook No 8 Upper William Street.
- Apartment does not comply with Sustainable Urban Housing Design Standards for New Apartments. (Living room too narrow, no private open space, No Part M wheelchair access, means of escape. No internal storage car parking or refuse storage.)
- Non compliance with conditions of 17/549.

- Disregard for planning legislation and property boundaries.

3.4.2 Submission of Marina Cahill, Tenant of Tanker's bar, objects to the proposed retention on basis of failure to provide for access to flue for central heating for the bar. Concerns regarding carbon monoxide seeping into the building. Concerns regarding heavy oil fumes from the workshop of No 6. First floor residential unit results in overlooking of No 8.

4.0 Planning History

17/549 Permission granted to erect a domestic garage, utility store and all associated ancillary site works. Condition 6 restricted use of garage utility store for domestic storage purposes only and not for any commercial habitation or agricultural uses.

11/404020 Permission granted for a two-storey shed 127.3 sq.m

5.0 Policy Context

5.1. **Architectural Heritage Protection Guidelines for Planning Authorities**
Department of the Environment Heritage and Local Government 2004.

5.2. **Development Plan**

The Kerry County Development Plan 2015-2021 and Listowel Town Plan 2009-2015 as extended and varied refer. The site is zoned Town Centre which caters for a mix of uses.

No 6 Upper William Street is a Protected Structure No 44 described as follows:
"Terraced two-bay two-storey house, built c. 1860, as part of a terrace of five, retaining early fenestration. Renovated, c. 1935, with timber pilaster shopfront

inserted to ground floor having moulded cornice and decorative consoles with Celtic motifs. Now vacant. Pitched slate roof with rendered chimneystack and cast-iron gutter. Painted ruled-and-lined rendered walls. Painted stone sills to timber two-over-two pane sliding sash windows at first floor. Timber double-leaf door with overlight and limestone threshold. Display window boarded up. Timber panelled shutters to interior of first floor windows.”

The site is also within the Town Centre Architectural Conservation Area.

Built Heritage and Urban Design is dealt with in Chapter 9 and includes Objective BHUD 27 as follows:

Protect and enhance protected structures by ensuring the following: BHUD 27

- a. The maintenance, alteration, extension, replacement or insertion of any significant feature(s) or part(s) to the structure shall be appropriate to the architectural character and setting of the Protected Structure
- b. Development adjacent to a protected structure shall not detract from the character of the structure or its setting, and existing views to and from the protected structure shall be protected from undue intrusion by new development, including structures, plant and equipment, signs or other devices.
- c. Require planning permission for any alteration, change of use, or the replacement of any element of a Protected Structures where the character of the structure is affected.
- d. Grant planning permission for the demolition of a protected structure only in exceptional circumstances in accordance with Section 57(10)(b) of the Planning and Development Act, 2000

Architectural Heritage and Conservation Objectives are set out at Chapter 11 Built and Cultural Heritage of the Kerry County Development Plan and include

H-38 Ensure that any development, modification, alteration, or extension affecting a protected structure and/or its setting:-

- *Is appropriate in terms of the proposed materials, scale, density and layout,*
- *Addresses the issue of reversibility,*
- *Respects the original design plan and form,*
- *Demonstrates an understanding of the historical importance of the building and its setting and does not detract from the special character / interest of the*

protected structure,

- *Deal sensitively with historically important features and fittings,*
- *Takes account of any protected species that may utilise the structure and accordingly mitigate any impacts on the species.”*

5.3. Natural Heritage Designations

The Lower River Shannon SAC occurs within 240m to the southwest of the site.

6.0 The Appeal

6.1. Grounds of Appeal

The appeal submission by Ger O Keeffe Consulting Engineers on behalf of the first party is summarised as follows:

- Appeal relates to the decision to refuse retention permission for the ground floor extension to garage and first floor residential unit above garage at 4 and No 6 Upper William Street.
- No issue with refusal for retention of workshop.
- Ground floor extension to rear of house constructed circa 1995 consisting of kitchen, toilet, boiler house with floor area of circa 28sq.m. Applicant was mistakenly advised that permission was not required.
- Permission 11/404030 and 177/549 relate to proposal for two storey building with ground floor garage / utility. This was erected in 2018.
- In Summer 2020 use of upper level was considered for development for residential use by the applicant's son.
- Residential unit complies with standards of Sustainable Urban Housing for Apartments.
- History of residential development along the laneway.

- Rural Development Policy 2021-2025 supports the regeneration repopulation and development of rural towns and villages.
- Proposal provides an opportunity for housing for the applicant's son while completing his studies and maintaining independence.
- Ground floor extension to the garage constricted as an extension at a later stage (mid 2019) is used as a kennel for dogs and not as a boiler house as is suggested.
- Proposal does not increase the overall volume or footprint of the building over and above what was granted permission
- It is good planning practice to encourage redevelopment of back laneways.
- Residential unit is to be used only as ancillary to the use of the dwellinghouse for use by the applicant's family only.

6.2. Planning Authority Response

6.2.1 Submission from Kerry County Council notes a number of unauthorised developments on site. The most of concern is the unauthorised workshop to the rear of the protected structure, The applicant should in the first instance address this matter and engage in pre planning in relation to further development on the site. A clear definition of site curtilages for each dwelling/living unit on the site should be outlined. Proposal for habitable space over the garage not containing a kitchen could be considered for a member of the applicant's family however proposal should be put in place after the removal of the unauthorised structure behind the protected structure. It is considered that the decision of Kerry County Council was the most appropriate approach having regard to the serious matter of unauthorised development to the rear of a protected structure.

6.3. Observations

6.3.1 Observation received from Michael Casey and Associates Architecture Engineering Surveying on behalf of Mr Edward Walsh No 8 Upper William Street were received without the required fee for submission of observation and therefore returned.

6.4. Further Responses

6.4.1 Submission from Ger O Keefe Consulting Engineers Ltd in response to the planning authority response to the appeal. Notes that at the time of the construction of the workshop the applicant did not know that the building was a protected structure. Applicant has no issue with refusal of retention of workshop and will remove same once permitted to do so. Applicant does not wish to carry out any further development on the site once the planning situation for first floor residential unit above the garage and ground floor extension to the garage for the purpose of providing shelter for the applicant's dogs has been regularised. Residential unit is to be used as ancillary to the use of the dwellinghouse.

7.0 Assessment

7.1 I note that the first party appeal refers to the refusal of permission to retain the first-floor apartment over garage and ground floor extension to garage. The first party within the grounds of appeal accepts the refusal of permission for the workshop to Upper William Street. I consider that the nature and detail of application and the development proposed for retention requires a holistic assessment therefore I consider that it is appropriate that the development proposed for retention is assessed de novo. The relevant matters can in my view be assessed under the following broad headings.

Ownership / Legal and Procedural Issues

Architectural Heritage

Residential Amenity

Appropriate Assessment.

7.2 Ownership / Legal and Procedural Issues

7.2.1 On the issue of ownership and legal issues I note that the third-party submissions to the local authority questioned the applicant's legal interest in the overall site, in particular No 6 Upper William Street, which is incorporated within the red line site boundary. This matter has not been addressed by the first party and therefore the question arises as to whether the applicant has sufficient legal interest in the site to make the application. This matter should be addressed in any future application.

7.2.2 Regarding the validity of the application and procedural matters, I note that while the proposal incorporates a protected structure (No 6 Upper William Street) within the site boundary and involves works within the curtilage of the protected structure, the newspaper notice fails to indicate that the proposal involves works to a protected structure as required by Article 18. 1(d)(iii) of the Planning and Development Regulations 2001, as amended. On this basis the application is deficient and does not meet the requirements of the Planning and Development Regulations.

7.3 Architectural Heritage Impact.

7.3.1 As regards impact on architectural heritage I note that the proposal involves work within the curtilage of a protected Structure (No 6 Upper William Street) and fails to outline any proposals with respect to No 6. It is merely referred to as "Existing vacant building @ No 6 Upper William Street". The workshop to the rear proposed for retention within this application clearly detracts from the building, cutting off rear access and eliminating any rear amenity space associated with the building. I consider that in the interest of proper planning and particularly in light of the protected structure status of No 6 it is imperative that any development on the site would restore and safeguard the residential or other use of No 6 and detailed proposals and methods with regard to same should be outlined as part of any

application on the site. In the absence of same I consider that the piecemeal retrospective application as outlined is not inappropriate and in this regard, I consider that notwithstanding the fact that the ground floor kitchen extension to the rear of No 4 may be acceptable, a split decision is not appropriate.

7.4 Residential Amenity

7.4.1 As regards the principle of a residential use over the garage I concur with the first party that this is to be welcomed in terms of densification and repopulation within the town centre. As regards the residential amenity of the proposed dwelling unit over the garage, I note that in terms of floor area the internal layout meets the general minimum floor area standards of Sustainable Urban Housing Development Standards for New Apartment Guidelines 2020. While the kitchen dining living room width is 3.2m (short of the minimum standard 3.3m, the aggregate floor area 24.3sq.m exceeds the minimum standard 23sq.m. Given the infill nature of the proposal a degree of flexibility would apply however I note that the application provides no details in terms of open space provision with regard to the dwelling units and this would have to be addressed as part of a comprehensive proposal for the overall site. I consider that the provision for additional on-site car parking is unnecessary given the town centre location of the site and proximity to car parking facilities.

7.4.2 As regards impact on established residential amenity I note that the third-party submissions to the local authority object on grounds of overlooking. I consider that given the urban infill nature of the site a degree of overlooking would be expected. I note that the main kitchen living area of the apartment overlooks onto Patrick Street.

7.5 Appropriate Assessment

7.5.1 On the issue of appropriate assessment I note that the development is located within the serviceable urban area of Listowel within an established mixed residential and commercial area. The location which is separated from the Lower River Shannon SAC by buildings, infrastructure and other developments. Having regard to the nature, scale, and location of the proposed development, the serviced nature of the development, the nature of the receiving environment, and the separation distance to the nearest European sites, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

8.1. Refuse Permission for retention for the following reasons

Reasons and Considerations

1. Having regard to the configuration of the site which incorporates established residential properties No's 4 and No 6 Upper William Street, it is considered that the proposed development would constitute piecemeal development of the overall site which could potentially prejudice the re-occupation and use of No 6 Upper William Street and would accordingly be contrary to the proper planning and sustainable development of the area.
2. The proposed development would deprive the occupants of No 6 Upper William Street of an adequate amount of useable private open space, provides no designated private open space for the residential unit over garage and would therefore seriously detract from the residential amenity of future occupants. The proposed development would constitute substandard development, give rise to a

poor standard of residential amenity and would set an undesirable precedent for similar such development. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

3. The proposed retention of the workshop constructed to the rear of No 6 Upper William Street, a protected structure (Ref RPS Ref No 44) of architectural and historical importance, would disrupt the relationship between the building and its rear amenity space and would negatively impact on the character of the building. The proposed development would, therefore, seriously injure the setting and character of a protected structure in a manner that would be contrary to the advice given in section 13.5 of the Architectural Heritage Protection Guidelines for Planning Authorities issued by the Department of the Environment Heritage and Local Government in December, 2004, and contrary to objective H-38 of the Kerry County Development Plan 2015-2021, and BHUD 27 of the Listowel Town Plan 2009-2015, as extended and varied, would seriously injure the amenities of the area and would, therefore, be contrary to the proper planning and sustainable development of the area.

4. The application is deficient in that the public notices fail to comply with Article 18. 1(d)(iii) of the Planning and Development Regulations 2001, as amended. As the application does not meet the requirements of the Planning and Development Regulations the Board is therefore precluded from granting planning permission.

Bríd Maxwell
Planning Inspector
30th June 2021