



An
Bord
Pleanála

Inspector's Report ABP-309957-21

Development	Retention of an existing extension to the rear of a dwelling.
Location	64 King Street Upper, Wexford, Co Wexford.
Planning Authority	Wexford County Council.
Planning Authority Reg. Ref.	20/210080.
Applicant(s)	Darius Sangari.
Type of Application	Permission.
Planning Authority Decision	Grant Permission with conditions.
Type of Appeal	Third Party.
Appellant(s)	Collette Ceillier Aiken.
Observer(s)	None.
Date of Site Inspection	06 June 2021.
Inspector	Stephen Rhys Thomas

1.0 Site Location and Description

1.1. The appeal site is located at 64 Upper King Street in the centre of Wexford Town. Upper King Street is a narrow throughfare with parking on one side. For the most part the houses that line the western side are all terrace dwellings, two storey in height and set to the back of the footpath. Houses on the eastern side are also terraced but set back from the street. The subject site is located on the western side of the street and comprises a narrow two storey double bay terraced house with a small rear garden/yard. The rear garden is built over with a single storey extension that takes up most of the open space and a narrow gap runs along the boundary to 64A to the north. Number 64 King Street Upper is currently for sale. There are a number of relatively new infill dwellings that have been constructed to replace former garages/stores in the immediate vicinity and hence the number system along King Street Upper is erratic.

2.0 Proposed Development

2.1. Permission is sought for the retention of an existing retention to the rear of a dwelling. The single storey extension extends across the rear garden/yard and comprises a flat roof, kitchen and bathroom.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant permission subject to 4 conditions of a standard and technical nature, two conditions concern the payment of contributions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The basis of the planning authority decision includes:

Presentation of the County Development Plan and Wexford Town and Environs Development Plan standards with regards to house extensions. Identification of the area of the site and that the proposed residential development is acceptable. The

development is described in detail and photographs show what is to be retained. Issues that concern water services are acknowledged but such issues are identified as a private matter between parties. The recommendation was to grant permission subject to 4 conditions.

3.2.2. Other Technical Reports

Area Engineer – noted that Irish Water have no responsibility in relation to pipework from a private property to the public main.

3.3. Prescribed Bodies

The file was referred by the planning authority to Irish Water, Heritage Council, Department of Housing, Planning and Local Government and An Taisce. No reports received.

3.4. Third Party Observations

A submission from Colette Ceillier Aiken, neighbouring property to the north, that refers to drain blockages and odour, similar in extent to the grounds of appeal.

4.0 Planning History

Appeal Site

None.

Sites in the vicinity

W0005670 - Permission to demolish disused garage and stores and erect a serviced dwelling house at 64A King Street, March 2002.

Condition 7 is of note and concerns the protection of piped services.

W0003100 – Permission for a bathroom and kitchen extension at 68 King Street August 1984

Condition 5 is of note and concerns the protection of piped services.

5.0 Policy Context

5.1. Development Plan

Wexford Town and Environs Development Plan 2009-2015 (as extended):

Pursuant to the provisions of Part 8 of the Electoral, Local Government and Planning and Development Act, 2013, the lifetime of the Wexford Town and Environs Development Plan, 2009-2015 has been extended and, therefore, the Plan will continue to have effect until 2019, or such time as a new County Development Plan is made. It should be read together with the Wexford County Development Plan, 2013-2019.

The site is zoned Town Centre zoning objective, residential is a permitted use.

Chapter 11: Development Management Standards

Section 11.08.11: House Extensions:

Extending existing dwelling houses to meet changing family needs is an acceptable form of development which is viewed positively by the Council. Development proposals should have regard to the following:

- The size of the extension should be suitably designed, having regard to the size of the existing house and houses in the vicinity.
- The design and use of external materials should be in harmony with that of the existing house and the general architectural character of the area.
- The development should not have an adverse impact on the amenities of adjoining properties.
- Site coverage should be carefully considered to avoid unacceptable loss of private open space or encroachment on wastewater treatment infrastructure.
- In urban areas the development should not result in the loss of any off-street parking.

The Councils will consider on their merits, exemptions to the above policy in the case of adaptations required to provide accommodation for people with disabilities.

Wexford County Development Plan, 2013-2019 (as extended):

Chapter 18: Development Management Standards:

Section 11.08.11 Houses Extensions

The adaptation and extension of existing homes to meet changing circumstances, aspirations and technological requirements will, in general, be facilitated by the Council. Extensions to a dwelling house shall not be used, sold, let or otherwise transferred or conveyed separately to the main dwelling unless this was expressly authorised in the planning permission. Each planning application will be considered on its merits having regard to the site's context and having regard to the following:

- The proposed extension should be of a scale and position which would not be unduly incongruous with its context.
- The design and finish of the proposed extension need not necessarily replicate or imitate the design and finish of the existing dwelling. More contemporary designs and finishes often represent a more architecturally honest approach to the extension of a property and can better achieve other objectives, such as enhancing internal natural light.
- The proposed extension should not have an adverse impact on the amenities of adjoining properties through undue overlooking, undue overshadowing and/or an over dominant visual impact.
- The proposed extension should not impinge on the ability of adjoining properties to construct a similar extension.
- Site coverage should be carefully considered to avoid unacceptable loss of private open space.
- The degree to which the size, position and design of the extension is necessary to meet a specific family need, for example, adaptations to provide accommodation for people with disabilities.

The Council will consider exemptions to the above in the case of adaptations required to provide accommodation for people with disabilities. This will be assessed on a case-by-case basis.

5.2. Natural Heritage Designations

5.2.1. The following natural heritage designations are located in the general vicinity of the proposed development site:

- The Slaney River Valley Special Area of Conservation (Site Code: 000781), approximately 0.4 km northeast of the site.
- The Wexford Harbour and Slobbs Special Protection Area (Site Code: 004076), approximately 0.7 km east of the site.

6.0 Screening for Environmental Impact Assessment

6.1. Having regard to the minor nature and scale of the development proposed, the site location outside of any protected site and the nature of the receiving environment, the limited ecological value of the lands in question, the availability of public services, and the separation distance from the nearest sensitive location, 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.

7.0 The Appeal

7.1. Grounds of Appeal

7.1.1. The grounds of the third party appeal can be summarised as follows:

- Drains are incorrectly shown on drawings, actually sewer runs from the property (number 64) via an AJ (Access or Armstrong Junction) in the yard of 64A before passing under 64A into the sewer main in the street.
- There are two backfalls in the sewer, one between number 64 and the AJ and one from the AJ to the main sewer. Backfall 1 constantly gets blocked and waste from number 64 comes out onto to the yard of number 64A.
- To correct these problems, the sewer must be relayed from number 64 to the back wall of number 64A, and a condition attached to ensure that drains function properly.

The appeal is accompanied by an amended drawing that shows the true path of the sewer.

7.2. Planning Authority Response

The planning authority's response can be summarised as follows:

- The planning authority have no further comments and directs reference to the planner's report.

7.3. Appeal Response

7.3.1. An observation has been received from the first party, that reiterates issues already outlined when the application was made to the planning authority, but additional points can be summarised as follows:

- The dwelling extension preceded the applicant's ownership of the property.
- The sewer pipes are below ground and the applicant was not aware of the route of the foul sewer until recently.
- Retention permission was sought for the extension alone, not the sewerage pipes as this is not required by the Planning and Development Regulations 2001.
- It is accepted that the route of the pipes is not known and not accurately shown on plans.
- The applicant is in discussions with Ms Ceillier Aiken to resolve the matter of the sewage pipes
- The matter of the sewage pipes did not form a part of the planning application and cannot be considered by the Board, the pipes lie outside the application site and no planning condition can be attached if permission is granted by the Board.

8.0 **Assessment**

8.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- The Site
- Water Services
- Other Matters
- Appropriate Assessment.

8.2. **The Site**

8.2.1. According to the public notices and most of the documentation that accompanies the planning application, the rear extension development it is proposed to retain is located at 64 King Street Upper. I can see from the planning authority's site photographs that the site notice was displayed in the window of the correct dwelling, that is to say number 64 King Street Upper. However, from my reading of the site location map and site layout drawing, the site outlined in red actually refers to number 66 King Street Upper. I must point out that the numbering system along King Street Upper is slightly confusing, not least because of permissions granted for infill housing where garages or stores used to be. With this point in mind, I note new dwellings at both 64A and 70A King Street Upper. I am certain that the drawings submitted by the applicant outline number 66 King Street Upper. The Board may wish to act on this error; however, it is worth noting that the description of development, the public notices and the planning application form all point to number 64 King Street upper. I am satisfied that any interested party would have had ample opportunity to involve themselves in the public participation process, and this is confirmed by the third party appeal before the Board. In the interest of clarity, I recommend the attachment of a condition to request accurate drawings to illustrate the actual site where it is sought to retain the development described.

8.3. **Water Services**

- 8.3.1. From the outset, there is no dispute about whether the proposal to retain the rear extension is appropriate or not. The planning authority and the third-party appellant raise no issues with the scale and extent of what is to be retained above ground. It should be noted that these terraced houses are of a particular time period and their plots are small, hence the provision of modern-day standard accommodation can sometimes compromise outdoor amenity space, and this is acceptable. I did not access the rear portion of the property and I rely on the photographs taken by the planning authority. Given the urban setting of the site, and the prevailing character of development immediately adjacent, I am satisfied with the planning authority's decision to grant permission. The single issue of concern to the appellant is that of underground wastewater services, and the occasional failure of this infrastructure to operate satisfactorily resulting in an unpleasant and potential risk to health and property.
- 8.3.2. To provide some background to the state of infrastructural services in the area, I am informed by the plans (accurate as they may be) provided by the applicant, apparently corrected plans and on-site experience provided by the appellant and observations made by the Area Engineer for Wexford County Council. I do not have the benefit of any Irish Water reports, but this is not unexpected as the responsibility of Irish water only becomes relevant up to the boundary of private property. I also make reference to permitted development in the immediate vicinity as this provides a good indication of who is responsible for what when carrying out development.
- 8.3.3. It is highly probable from the information on the file that piped wastewater services run to the rear of property before turning east and meeting Irish Water sewers in the public domain along King Street Upper. It is admitted by the applicant that they did not know the actual route of the piped waste services when making the application to retain the extension and assumed that the pipes ran through their own property to the street. The applicant's Site Layout drawing clearly shows the pipes running directly under their property to the street, however, I question the accuracy of this drawing, see section 8.2 above. Even though this mistake was made by the applicant, in a further submission to the appeal, they make the point that their description of development did not include the retention of piped services and furthermore that the actual route of pipes runs outside the red line boundary of the application site and so no conditions of planning can be attached.

- 8.3.4. There are a number of technical and administrative points to the applicant's case. Firstly, that their initial site survey was wrong, and they show piped water services running within their site (red line boundary). Secondly, that only development that is shown within their red line boundary can be taken into account if planning conditions are to be attached. The applicant is partly correct, the Board cannot compel by condition things to happen outside the site boundary even if the development sought to be retained appears to be creating problems. However, it is entirely appropriate for the Board to consider conditions as they relate to the drawings submitted. In that context I note that the applicant clearly shows all piped services connecting to Irish Water services in the public road underneath their dwelling and within the red line boundary of the site. However and without labouring the point, the site outlined by the applicant may not actually represent number 64 King Street Upper. In addition, the veracity of the drawings is called into question by the appellant and the applicant themselves.
- 8.3.5. By way of additional background, I note that permission was granted for the demolition of a garage/stores and the erection of a house at 64A, the address of the appellant, PA reference number W0005670 refers. A condition of that permission was that piped services should be adequately protected and built to a correct standard. The dwelling house was constructed, and the owner/occupier 64A is now the appellant to the matter in hand. The applicant's property, now the subject of this appeal, is for sale. The applicant makes the point that they have entered into and continue discussions to resolve the problematic drains. This seems to be the best course of action given all of the circumstances I have highlighted above.
- 8.3.6. I had considered that it may be possible to attach a condition to retain and complete the development as described by the drawings submitted and this would include the route of the pipes as detailed by the applicant. But given my uncertainty regarding the site and its outline, the acceptance by the applicant that they had made a mistake and that in fact the wastewater leaves the site via connections to 64A, such a condition would be disproportionate, unreasonable, and difficult to enforce. It is likely that problems really began to surface when the dwelling was constructed at 64A. In this context I note that condition number 7 of permission W0005670 required the developer, in relation to service pipes, that they be re-routed or protected by a 150mm concrete surround or other agreed method. I cannot be certain that these

works were carried out with respect to how the new house was constructed and serviced but it is probably something that the planning authority are aware of. Irrespective, in most circumstances where there are problems concerning piped services in private property it is a matter that can only be settled by agreement between parties and not in the planning sphere. This is of course assuming that all permitted development were carried out to the appropriate standard and in accordance with conditions, in this instance I am specifically referring to 64A King Street Upper.

- 8.3.7. To be blunt, the wastewater pipes are already in place, the applicant does not disagree with the route the pipes take or that problems occur. Discussions to fix the problem are ongoing and this is really the best and only course of action. To focus minds and in the interests of clarity, I suggest that a condition be attached that requires the applicant to properly and accurately survey the site. The accurate and up to date drawings shall then be submitted to the planning authority for agreement within six months of the date of this decision. These revised and agreed drawings shall be the basis upon which permission to retain the development shall be based and whether remedial works are necessary.

8.4. **Other Matters**

- 8.4.1. As I have outlined above, the applicant has stated that they are in ongoing discussions with the appellant with regards to the problem pipes and how the matter can be resolved. In reality, the matter at the heart of this appeal is a civil matter between two parties. At some time in the past the owners of 64 and 64A King Street Upper agreed for works to be carried out and ultimately a foul sewer to run between properties before out-falling to the public sewer in the street. Whether the infrastructure already in place is performing or not, a refusal of permission to retain the rear extension will not in itself solve the problem. The existing house will still be served by the piped sewers already in place. The only meaningful course of action is to require the preparation of accurate survey drawings in order to clarify exactly what is to be retained.

8.5. **Appropriate Assessment**

- 8.5.1. Having regard to the nature and scale of the proposed development and nature of the receiving environment, 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.

9.0 Recommendation

- 9.1. Having regard to the foregoing, I recommend that permission be granted for the development it is proposed to retain for the reasons and considerations and subject to the conditions set out below.

10.0 Reasons and Considerations

- 10.1. Having regard to the provisions of the Wexford Town & Environs Development Plan, 2009-2015 (as extended), and to the scale, form and design of the development it is proposed to retain, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual amenities of the area or the residential amenities of property in the vicinity, and would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be retained and 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 retained, carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Within six months of the date of grant of this permission, unless otherwise agreed in writing with the planning authority, the developer shall submit revised drawings showing the following:

(a) A detailed 'as-constructed' site survey to include all underground services, the route of all underground services, all connection points/junctions, all levels including invert levels and final outfall to the public sewer or property boundary.

(b) Should defects be found as a result of the findings at (a) above, said defects shall be resolved to the satisfaction of the planning authority within twelve months of the grant of this permission.

Reason: In the interests of clarity and public health.

3. Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

4. Site development and building works shall be carried out only between the hours of 0800 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.

Reason: In order to safeguard the residential amenities of property in the vicinity.

5. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefitting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the

application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Stephen Rhys Thomas
Senior Planning Inspector

9 June 2021