



An
Bord
Pleanála

Inspector's Report

ABP-311720-21

Development	Convert dilapidated cap factory building into an apartment development comprising of 4 apartments and a live work unit with connection to public services and ancillary site works.
Location	Bridge Street /James Street Car Park Westport, Co.Mayo
Planning Authority	Mayo County Council
Planning Authority Reg. Ref.	2162
Applicant(s)	Brendan Power.
Type of Application	Permission.
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party v Refusal
Appellant(s)	Brendan Power.
Observer(s)	Joe O Malley, The Porterhouse, Westport Karen A O Malley & Co Solicitors on behalf of Marian O Malley, Rockfort Islandeady, Westport

Date of Site Inspection

23 June 2022.

Inspector

Bríd Maxwell

1.0 Site Location and Description

- 1.1. This appeal relates to a site of .0426 hectares located at Bridge Street / James Street Car Park in Westport Co Mayo. The appeal site is occupied by a stone warehouse building formerly in use as a cap / hat factory.
- 1.2. The building comprises two three no storey volumes which are set perpendicular to one another and connected at the north-western end of the site. The larger building volume faces onto James Street Car park to the north west while the shorter return faces onto the Neill O Neill lane to the northeast. The ground floor level of the northernmost volume is in third party ownership with the applicant owning the two upper storeys. The site also incorporates an open yard accessed via a laneway between Matt Molloy's pub and the Porterhouse from Bridge Street to the southeast (currently in use as a beer garden and storage area).
- 1.3. The building which is finished in exposed stone with plaster pointing in part has been unoccupied since around the early 1980s and is in a significant state of dereliction and disrepair with boarded up windows and ivy / vegetation on walls and gutters. Roof timbers and tiles appear to have been replaced in the recent past with a corrugated metal roof having been provided to the part of the building. I was unable to access the building internally on the date of my site visit however it is evident from photographs on the appeal file that the building is particularly dilapidated.

2.0 Proposed Development

- 2.1. The application involves permission for the conversion of the building into an apartment development. The initial application proposed three no apartments while this was revised to four apartments and a live work unit in response to the request for additional information from the local authority.
- 2.2. It is intended to remove plaster and expose the underlying stone retaining existing openings with new window and door opening to the western elevation to James Street car park. Windows which have to be blocked up due to fire regulations are intended to remain visible as original openings and finished with a painted timber or similar panelling. Metal sheeting to the northern return is to be replaced with slate

roof finish to match existing. Balconies were proposed as amenity space with a deck area at ground floor level to proposed apartment one.

- 2.3. In response to the request for additional information balcony design was revised from overhanging balconies to Juliet style balconies (balustrade) relocated to the northwestern elevation of the building. Other modifications included provision of rooflights and raised door heights to 2.1m. As outlined above the intended development was revised to provide for 2 no 1 bed apartments and 2 no 2 bed apartments with 1 no bedroom live/work unit on the ground floor.

3.0 Planning Authority Decision

3.1. Decision

By order dated 23 September 2021 Mayo County Council issued notification of the decision to refuse permission for two reasons as follows:

“The proposed development does not comply with the minimum standards as set out in the Sustainable Urban Housing Design Guidelines for New Apartments: Guidelines for Planning Authorities December 2020 due to the lack of private amenity space. Therefore, it is considered that the proposed development would result in a substandard level of development and would seriously injure the amenities and depreciate the value of the property in the vicinity and be contrary to the proper planning and sustainable development of the area.

The applicant has failed to demonstrate to the satisfaction of Mayo County Council that he has sufficient legal interest in the entire site to carry out the proposed works. Therefore, the proposed development is contrary to the proper planning and sustainable development of the area.”

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planner's initial report sought additional information in respect of a number of items including:

- Demonstration of sufficient legal interest to make the application and to carry out the proposed development.
- Right of way to be demonstrated in yellow in accordance with Article 22(2)(iii) of the Planning and Development Regulations 2001 as amended.
- Details of proposed car parking provision and an accurate survey of the James Street car park, spaces and access courtyard and route from Bridge street.
- Photographic and drawn building condition survey.
- A method statement for the repair and restoration of all stonework and notably lintels, archways, and sills.
- Details of alterations and landscaping to courtyard, paving railings etc.
- Outline construction drawings demonstrating that minimum floor areas and dimensions in in accordance with Design Standards for New Apartments can be achieved once sound proofing insulation and all other aspects of the building regulations are achieved.
- Roof plan.
- Advice note outlined concerns regarding open space provision and interaction with established adjacent use.
- Proposed subdivision of windows was considered not suitable and consideration to be given to the provision of bedrooms to car park elevation. The option of a non-residential use on ground floor also to be considered.

3.2.2 Final Planner's report notes concern regarding lack of private amenity space. Noting that consent has not been demonstrated with regard to works on lands owned by Mayo County Council. Given the location adjacent to a public car park and adjacent to two busy public houses, the proposed site is considered more suitable to office/commercial development possibly a digital working hub. Refusal was recommended as per subsequent decision.

3.2.2. Other Technical Reports

Architect's report notes that the existing stone warehouse is an important part of the industrial and commercial heritage of the town. Recent protective roof works detract from the building and are out of character. Artificial slates, metal cladding and eaves detail are inappropriate. Stonework is in poor condition. The attractive stone walls and courtyard are currently underutilised. Construction drawings submitted do not present good practice. Cement plaster should never be used and the insulation is inadequate for compliance with building regulation and will cause condensation and mould issues. Correct insulation methods will result in reduced floor areas. Method statement required for repair and restoration of stonework and notably lintels archways and sills. Given the lack of outdoor amenity it is debatable whether this building is suitable for residential use.

Email from Architects following further information notes that the use of the courtyard by the Porterhouse Pub as a beer garden.

- Engineer's report – No surface water to enter the public road / public ground. Applicant responsible for diversion / adjustment of services. Existing drainage to be maintained. Applicant responsible for management of surface water.
- Architectural Conservation Officer's report notes that as the site is within the Westport ACA and historic cartographic evidence confirms structures in this location it is important that a suitably qualified conservation professional assesses the existing structures and carried out an architectural heritage impact assessment prior to developing the proposed design.

3.3. Prescribed Bodies

No submissions

3.4. Third Party Observations

- 3.4.1 Submission from Marian O Malley. Rockfield, Westport contends that the site notices was erected on 15/2/2021 and not on the date of application 1/2/2021 or on stated date of erection 25/01/2021. Objects to the proposed development. No permission

given to make application. Balconies protrude into air space and screened deck and bin store are entirely within the observer's property.

- 3.4.2 Karen O Malley & Co Solicitors on behalf of Marian O Malley. Confirms that his client is owner of the yard, and it is not a common area as presented by the applicant. No entitlement to include the area in the application. Second submission encloses land registry folio and questions the applicant's legal entitlement with respect to the proposed development. Residential development is inappropriate.
- 3.4.3 Submission by Joe O Malley, Proprietor The Porter House Bar. Objects strenuously to the application. The Porterhouse a well-established premises with smoking area, storage to the rear of the premises and a rear entrance as well as occupying ground floor store within the footprint of the proposed development. Residential use inappropriate given established night time use. Viability of these businesses need to be protected in the town centre. If permission were granted for residential use, sound proofing would need to be installed with access from the car park to the rear.
- 3.4.4 Submission by Joe Queenan, Managing Director Belasa Weavers Ltd, TA Foxford Woolen Mills. Foxford Co Mayo. Submission expresses concern that access to the rear of Foxford Shop, Bridge Street Westport will be impeded. Concern regarding security.
- 3.4.5 Submission from Matt Molloy, Matt Molloy's Bar, Westport. Owner of the alleyway between Matt Molloy's Bar and the Porterhouse. A right of way included for four properties on Bridge Street, Porterhouse Bar. Foxford Woollen Mills Store, Golden's Pharmacy and premises formerly known as The Cap Factory. Site notices placed on observer's property without permission o 15/2/2021. Security issues as gate is normally locked after closing hours. Structural issues arise (bulge on the gable wall of Matt Molloy's), and alleyway is not suitable for heavy throughflow. Significant potential for conflict between established entertainment use and proposed residential use.

- 3.4.6 Submission by O Donnell Waters Solicitors on behalf of Matt Molloy. Having investigated title to the public house known as Matt Molloy's bar, Mr Molloy is the sole registered owner of the laneway and has not consented to the use of the laneway for the proposed development.

4.0 Planning History

P04/05 Application to demolish existing hat factory and construct 8 no apartments and 3 commercial units was granted permission by Westport Town Council in May 2004.

5.0 Policy Context

5.1. Development Plan

- 5.1.1 The Westport Town and Environs Development Plan 2010-2016 (incorporating Variations 1-4 as extended refers. The site is zoned for town centre use. - The objective of the Town Centre land use is to provide for and improve commercial and other town centre activities and to preserve and enhance the civic and town centre character of the town.

- 5.1.2 The site is within the Westport Town Centre Architectural Conservation Area.

Proposals for development in any ACA that involve a new building, reuse, or change of use and extensions will be required to:

- Conserve and enhance the character and appearance of the ACA
- Respect the scale, massing, proportions, design, and materials of existing Structures
- Retain important exterior architectural features that contribute to the character and appearance of the ACA
- Developers/applicants should engage in pre-planning consultation with Westport Town Council prior to the submission of any planning applications in the ACA.

Residential Development Standards are set out at 7.10.

5.2. Natural Heritage Designations

The site is not within a designated area. The nearest such site the Clew Bay Complex SAC occurs within 1.5km to the west.

5.3. EIA Screening

Having regard to the nature and scale of the proposed development, its location on a brownfield site in a built-up serviced urban area it is possible to exclude the requirement for submission of an EIAR at a preliminary stage.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 The appeal is submitted by Keith Connell on behalf of the first party Mr Brendan Power. The grounds of appeal are summarised as follows:

- Proposed development is a scaled back version of development permitted by Westport Town Council under P04/35
- Regarding amenity space following pre planning meetings it was understood that as the apartments had above minimum floor space juliet style balconies would be acceptable.
- Applicant complied with request for additional information.
- Alternative proposals for commercial building / digital hub never mentioned in pre planning meetings and only arose following third party submissions
- Applicant is amenable to mixed commercial / residential use. Alternative option position the bedrooms away from entertainment uses while another alternative would be for a commercial use.
- Applicant is keen to push on with the development and has recently obtained interest from an international digital company for office space in Westport.

- Regarding legal interest the issue of agreement regarding works to car park was not raised during the application. It was anticipated that a levy for the potential loss of parking spaces would arise.
- Under the original permission 04/35 granted by Westport Town Council the developer had proposed steps down from the public car park. The current proposal was for level access provided. If this is not agreeable to Mayo County Council the same can be provided from Bridge Street Access.

6.2. Planning Authority Response

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

6.3. Observations

6.3.1 Observations are submitted by Joe O Malley, Proprietor The Porterhouse, Westport Co Mayo

- The applicant has not demonstrated sufficient legal interest to make the application. Works proposed outside redline boundary.
- Not procedurally possible to introduce commercial use proposal at appeal stage. Such use likely to result in increased intensification on third party lands for access delivery.
- Regarding lack of private open space, the revised option 2 for recessed balconies would require the removal of significant amount of original stonework original fabric at first and second floor level and is inappropriate. Proposal would adversely affect the external character of the building.
- Recessed balconies would substantially reduce the width of the kitchen living dining area of 2 no apartments to 2.775m where the minimum requirement is 3.3m and would not comply with the Sustainable Urban Housing Design Guidelines for new Apartments 2020.
- Option 2 cannot be considered as part of the appeal as it is a fundamental departure from the development applied for.

- Deficiency of communal open space provision is significant.

6.3.2 Submission from Karen A O Malley and Co Solicitors on behalf of Marian O Malley, Rockfort Islandeady, Westport.

- Folio MY7925)F is registered in the name of Manus Bray. Note that a search of Land Direct on 12th November 2021 the applicant has not lodged an application for ownership and has no title to the area which he is applying for permission on.
- Inclusion of clients property is interference with property rights
- The appeal ignores the complex legal issues outlined in submission of 10th September 2021.
- Right of Way via Bridge Street is limited to as described in the Deed of Conveyance dated June 1949 to business owners with “premises situate at Bridge Street in the town of Westport”
- Construction would be detrimental to observer and running of her business.
- Mixed commercial residential development cannot form part of the appeal and warrants a new application.

7.0 **Assessment**

7.1. From my assessment of the file and inspection of the site, it is my view that the key planning issues for this appeal relate to the matters raised within the grounds of refusal regarding question of the quality of the proposed design and the issue of legal interest. The issue of appropriate assessment also needs to be addressed.

7.2. I note that within the grounds of appeal the first party has suggested that an alternative proposal to provide a mix of commercial and residential units within the development and suggests a third option of solely commercial units. I would concur with the third parties that such proposals are significantly materially different from

that as applied for and procedurally it is not feasible to fundamentally vary the nature of the development at appeal stage as such development would require a new planning application. Thus, it is appropriate to assess the proposal for primarily residential use as submitted and as revised in response to the request for additional information.

- 7.3. As regards the issue of legal interest the Planning Authority second reason to refuse permission was on the basis that the applicant had not demonstrated sufficient legal interest in the entire site to carry out the proposed works. The question of legal interest arises with respect to the lands to both building frontages namely lands to the northwest of the building being the public car park and to the courtyard area to the southeast of the building.
- 7.4 In relation to the courtyard area to the southeast of the building, this is included within the red line boundary as is the access from Bridge, noted as a right of way. The initial proposal provided for overhanging balconies over the courtyard and a deck area to the ground floor unit within this courtyard area. Notably these were removed following third party objections and alternative Juliet style balconies / balustrades were provided to the western facade.
- 7.5 The submission by O Connor Johnson Solicitors on behalf of the applicant, in response to the request for additional information, sought to confirm that the applicant “enjoys a historical registered right of way via the passageway between the buildings currently occupied as the Porterhouse and Matt Molloy’s Public Houses” and “a further right to use the yard to the front of the Cap Factory property in common with all other occupiers”. The submission maintains that “this would permit our client to undertake works to his buildings from the yard.”
- 7.6 I note the submissions of the third party in particular that of Karen O Malley and Co Solicitors on behalf of Marian O Malley, received by the planning authority on 10th September 2021 which outlines that Marian O Malley is the registered owner of the

courtyard area and does not consent to inclusion within the application site. The submission also states that right of way is limited (as detailed in Deed of Conveyance dated June 1949) to business owns with “premises situate at Bridge Street in the town of Westport.” The submission of O Donnell Waters Solicitors on behalf of Mr Matt Molloy received by Mayo County Council on 13 September 2021 asserts that Mr Molloy is the sole registered owner of the laneway adjacent to Matt Molloy’s Bar and confirms that he has not consented to its use for the proposed development. Submissions by Mr Molloy also concur with assertions regarding the limitations of the right of way. The application relies heavily on the courtyard and access, and I consider that the first party has failed to provide evidence to demonstrate sufficient legal interest in these lands to carry out the development.

- 7.7 The revisions to the proposal in response to the request for additional information include provision of an access ramp outside the boundaries of the appeal site within the public car park on lands owned by Mayo County Council. No consent with regard to same has been provided in accordance with the requirements of Article 22(2) (g) of the Planning and Development Regulations 2001.
- 7.8 The resolution of issues of ownership and the extent of any rights of way over the lands are matters for resolution through the legal system however in the case of the current application the proposal relies heavily on the courtyard area in terms of access and amenity and on lands owned by Mayo County Council with regard to access and in the absence of final resolution on the matters with regard to legal interest or consent and the extent to which any rights of way over the lands there is a question regarding the likelihood of whether such development subject of a grant of permission would or would not be feasible or implementable due to insufficient legal interest or consent. Reliance on the provisions of section 34 (13) of the Act, with a view to post planning resolution in this regard would be inappropriate.
- 7.9 It would be unlawful to grant permission in the absence of resolution of the issue of title and confirmation as to adequacy the legal beneficiary claims, consent, and legal

interest in respect of the lands. It is therefore considered that the planning authority decision to refuse permission on grounds of insufficient legal interest is reasonable.

- 7.10 As regards the Quality of design and layout and standard of residential amenity I note that the Council's second reason for refusal was as follows:

"The proposed development does not comply with the minimum standards as set out in the Sustainable Urban Housing Design Guidelines for New Apartments, Guidelines for Planning Authorities December 2020 due to the lack of private amenity space." Within the grounds of appeal and to overcome this issue the first party proposes to substitute a mixed commercial residential scheme with two apartments with internalised balcony space. As noted above given that the mixed commercial residential use represents a fundamental departure and material change from the original application this cannot be considered as part of the appeal and would require a further application. The assessment is therefore focussed on the scheme as submitted in response to the request for additional information which provides for one no 1-bed live work unit, 2 no 2-bed 4 person units, and 2 no 1-bed units.

- 7.11 I note that given in terms of the key provisions and Specific Planning Policy Requirements of the Sustainable Urban Housing Design Standard for New Apartments, Guidelines for Planning Authorities by the Department of Housing, Planning and Local Government December 2020, the proposal provides for a mix of 1 and 2 bed apartments (SPPR 1 and SPPR2). In relation to floor areas all units exceed minimum overall floor area requirements. (SPPR3). All units save for ground floor live work units are dual aspect. The live work unit faces southeast. Floor to ceiling heights are in accordance with recommended minimum standards (SPPR5). As regards internal storage standards the minimum space requirements are met. The significant inadequacy in terms of residential facilities arises as there are clear deficiencies with regard to the absence of private amenity space and the privacy and amenity for the ground floor unit. Waste storage and collection is an issue as well as an absence of bike parking and communal amenity space. I note with regard to the question of proximity to established entertainment uses this issue has not been

adequately addressed by the first party and it is clear that there is a significant potential for conflict in terms of these divergent uses in close proximity. The proposal as set out would be entirely inappropriate development contrary to good practice and to guidance.

- 7.12 I consider that whilst a degree of flexibility and a relaxation of standards would be reasonable in the context of the historic character of the building within an ACA, and the desire to encourage its restoration, however the deficiency in terms of residential standards is significant and in my view the proposal would give rise to a poor standard of residential amenity for future occupants. Based on the foregoing I consider that the proposal demonstrates a failure to meet the functional needs of future residents and would give rise to a substandard level of residential amenity.
- 7.13 On the basis of the foregoing, I consider that a revised approach to the regeneration of this building in terms of the configuration, nature, design and layout is required. I consider that in light of the location within the Architectural Conservation Area and having regard to historical character of the building and significance in terms of the industrial heritage of the town the proposal should be informed by a detailed architectural heritage impact assessment by a suitably qualified conservation professional. I note that this was raised by the County Council Architectural Conservation Officer however it is a new issue in terms of the Appeal.
- 7.14 I also note that the third parties raised a number of concerns with regard to impact on established use, security issues and structural and construction concerns given the particular constraints of the site. I consider that the application is deficient in relation to detail on these and other matters which would need to be addressed in full in terms of any future application. Given the location and character of the area a detailed construction management plan and detailed method statements would be required.
- 7.15 As regards Appropriate assessment having regard to the nature of the proposed development and fully serviced location within the built-up area and separation

distance from Natura 2000 sites, significant effects are not likely to arise alone or in combination with other plans or projects that would result in significant effects to the integrity of the Natura 2000 network.

8.0 Recommendation

- 8.1 I recommend that the decision of the planning authority is upheld and planning permission refused for the following reasons.

Reasons and Considerations

Having regard to the Standards for apartment development as set out in the Westport Town and Environs Development Plan and to the Sustainable Urban Housing: Design Standards for New Apartments Guidelines, as published in 2020 by the Department of Housing Planning and Local Government, it is considered that the proposed development by reason of its nature, design and configuration together with proximity to established entertainment uses, the lack of private or communal amenity space and residential facilities would fail to provide a satisfactory standard of amenity for future residents. The proposed development would set an undesirable precedent for similar such development and would be contrary to the proper planning and sustainable development of the area.

On the basis of the submissions made in connection with the application and the appeal, it is considered that the applicant has failed to provide evidence of consent, or demonstrate sufficient legal interest for the inclusion of the lands forming part of the proposed development and which are essential to enable the development to be implemented. It would, therefore, be inappropriate for the Board to consider a grant of permission for the proposed development in these circumstances.

Bríd Maxwell
Planning Inspector

14th September 2022