



An
Bord
Pleanála

Inspector's Report

ABP-312677-22

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| Development | Retention of flat roof over an existing yard at ground floor level to provide a store for the shop and permission for construction of an extension above the store to be retained (referred to above) which will enclose a platform lift rising to first floor level |
| Location | Boyce's Centra, Station Road, Falcarragh, Co. Donegal. |
| Planning Authority | Donegal County Council |
| Planning Authority Reg. Ref. | 21/52246 |
| Applicant(s) | Boyce Brothers Ltd |
| Type of Application | Permission |
| Planning Authority Decision | Grant |
| Type of Appeal | Third Party vs. Grant |
| Appellant(s) | Joseph John Gallagher |
| Observer(s) | None |
| Date of Site Inspection | 9th April 2022 |
| Inspector | Stephen Ward |

1.0 Site Location and Description

- 1.1. The site is located along Station Road, close to its junction with Main Street in Falcarragh, northwest Donegal. It has a stated area of 460m² and is relatively flat. The development of the town has been concentrated along Main Street and Station Road, which largely consist of commercial units and supporting residential properties.
- 1.2. The appeal site contains a 2-storey 'Centra' convenience retail unit with shop floorspace on the ground floor and storage space at first floor level. The northern side of the premises contains a roller shutter door access off the street to the front, which provides a stairwell access to the first-floor level. To the rear of the premises a small yard area has been enclosed as a shop storage space with a flat roof. A lift shaft was previously installed within and above this space but has now been removed.
- 1.3. The site is bounded to the west by Station Road, and to the south by a similar 2-storey retail unit. To the north of the site is a vacant commercial building which fronts onto Main Street. It would appear to be vacant for several years and has boarded windows and evidence of damage. It was previously used as a public house and Bed & Breakfast. On the day of my inspection, the front of the building was being painted but there was no evidence of any significant refurbishment work. To the east of the site is a laneway which runs off Main Street to the rear of the appeal site and surrounding properties. This area is not within the ownership of the applicant and there is no direct access between the area and the shop premises.

2.0 Proposed Development

- 2.1. In summary, the development comprises the following:
 - Retention of the existing flat roof over yard area (14.63m²) to the rear as a store for the shop. The applicant states that this was a partially enclosed and roofed area until it was re-roofed and fully enclosed in 2001. The roof consists of a PVC membrane.
 - Permission to construct a new extension (4.7m²) above the store to enclose a lift platform to first floor level. This would replace a previous unauthorised lift

platform (now removed). The applicant states that the new lift platform is required to provide a goods and disabled access lift to comply with employers' regulations, insurance requirements and building regulations. External finishes would include a grey fibre cement board finish and a flat roof PVC membrane with white Upvc fascia, gutters and downpipe.

3.0 Planning Authority Decision

3.1. Decision

By order dated 13th January 2022, Donegal County Council (DCC) issued notification of the decision to grant retention permission and permission, subject to conditions. Condition no. 1 of the permission (i.e. Schedule B) clarifies the terms of the permission as follows:

The first floor lift shaft as it currently exists on site is not hereby permitted and shall be removed from the site within 3 months from the date of the Notification of Final Grant. The platform lift shaft hereby permitted shall be constructed strictly in accordance with plans and details submitted with the application on 15/11/2021.

Reason: To cater for orderly development.

3.2. Planning Authority Reports

The assessment contained in the Planner's Report can be summarised as follows:

- In response to a third-party submission from the owner of the building to the north, it is stated that:
 - The proposal will not negatively impact the adjoining public house. The previously constructed platform lift would not be permitted and a separation of 800mm would be provided between the proposed extension and the public house.
 - The rainwater pipe associated with the proposal will not negatively impact on the adjoining property.
 - The proposed separation distance of 800mm will facilitate adequate daylight and ventilation to the adjoining building.

- The proposed separation distance between the mechanical AC unit and the adjoining building will adequately address noise nuisance.
- The principle of the proposed development is acceptable within the Settlement Framework of Falcarragh.
- Proposals are in accordance with pre-planning discussions. The previously constructed platform lift shaft would not be permitted, and the proposed extension allows an 800mm separation from the adjoining building.
- While the proposed extension may partially block daylight to an existing window in the adjoining building, it is the opinion of the planning authority that the location and size of this window would receive limited levels of natural light in this built-up area in any event. It is noted that the drawings submitted have not detailed fully the windows and openings on the adjoining building and the applicant will be requested to submit revised drawings to enable a full and informed decision.
- The ground floor store maintains the building line established by the existing shop.
- As the existing lift is unauthorised, the demolition of same does not need to be included in the development description.
- No changes are proposed to the existing access and public health arrangements.
- Screening for Appropriate Assessment is not required in this instance.
- A grant of retention permission and permission is recommended, subject to the conditions outlined in the DCC notification of decision.

The Building Control report has no objection to the proposal subject to conditions.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

One submission was received from the owner of the adjoining building to the north (i.e., the appellant). The issues raised are covered in the grounds of appeal.

4.0 Planning History

Appeal Site

P.A. Ref. 20/51570: Incomplete application for the retention of extension to the rear of convenience store to enclose a platform lift providing access to the first floor level.

P.A. Ref. 17/51524: Permission GRANTED (October 2018) for provision of roof mounted PV solar panels.

P.A. Ref. 16/51771: Permission GRANTED (October 2017) for a new shop front.

Other Sites

P.A. Ref. 09/30388: At the site of 'Biddy Jack's', permission was GRANTED (November 2009, now expired) for demolition of existing fire damaged public house / discotheque / b&b and to reconstruct a replacement building to include a public bar, function room, restaurant with all other auxiliary rooms.

5.0 Policy Context

5.1. County Donegal Development Plan 2018-2024

5.1.1. Falcarragh is identified as a Layer 2B settlement in the CDP, which are described as 'Strategic Towns due to their Special Economic Function' where the focus is to enhance the environment for economic activity and enable growth. The CDP outlines a Settlement Framework Boundary for Falcarragh, within which the appeal site is located within the defined 'Town Centre'. Otherwise, there are no prescribed zonings for the town of Falcarragh.

5.1.2. Relevant policies can be summarised as follows:

CS-P-4 states that applications within the boundaries of Layer 2B towns will be assessed in light of all relevant material planning considerations.

TV-P-3 seeks quality in proposals for new town centre development in order to contribute to place-making.

TV-P-4 outlines that town centre development should, where appropriate, respect the context of adjoining buildings and utilise adaptable and accessible design on the ground floor.

RS-O-4 promotes a high design quality in the form and layout of retail proposals that contributes to the physical quality of town centres.

RS-O-6 aims to consolidate retail developments within town centres.

5.2. **Natural Heritage Designations**

The site is located approximately 400 metres south of Falcarragh to Meenlaragh SPA (Site Code 004149).

5.3. **Environmental Impact Assessment Screening**

Having regard to the nature and scale of the proposed development, comprising an extension to a commercial premises in a serviced urban area, 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.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The decision of DCC to grant permission has been appealed by Joseph John Gallagher of Ballina, Falcarragh, who states that he is the owner of the adjoining property to the north known as 'Biddy Jack's'. The grounds of appeal can be summarised under the following headings:

Planning History

- The appellant objected to a previous 'incomplete' application (P.A. Reg. Ref. 20/51570) on the basis of poor and inconsiderate planning and severe

detrimental effects to his property. Little is done to address his concerns in the current application.

Existing Ground Level Store

- It has been constructed directly against the back wall of his property and blocks off ventilation points, which will result in dampness and deterioration of the property.
- The gaps and lack of proper weathering will harbour vermin.
- The rainwater pipe discharges directly to the ground, little more than 6 feet from the back of his property.
- It is built directly adjacent to a ground floor window (not shown on applicant's drawings) and significantly affects daylight levels.
- A metal railing in front of the appellant's window was removed to facilitate the unauthorised extension, without his consent.

Proposed Platform Lift

- The initially constructed structure blocked 3 windows (1st and 2nd floor) and ventilation points in his property, none of which are shown on the drawings submitted.
- The lack of detail in the drawings submitted is noticeable and gives the impression of minimising the impact on his property.
- There are concerns about the proximity of the mechanical AC unit and noise nuisance impacts. This is an unauthorised development and should be subject to regularisation. The appellant was not consulted about its installation in close proximity to his property, particularly where bedroom accommodation is to be located.

The Appellant's Property

- References to the building as a 'derelict public house' are inaccurate and disrespectful, although it may be disused and in a poor state of repair since fire damage in 2009.

- In 2009 the appellant was granted planning permission for extensive renovation works, which have not been progressed due to economic/financial circumstances.
- The appeal case, if permitted, will severely limit the potential future use of the appellant's property due to daylight, ventilation, and dampness concerns. The mechanical ventilation openings at the ground floor bar area are now unusable and any future project would require extensive redesign of the system. The proposal also severely impacts on the value of his property.

6.2. Applicant Response

The applicant's response to the appeal can be summarised under the following headings:

Existing Ground Level Store

- This was a partially enclosed and roofed yard area which abutted the appellant's property (historical OSI maps are included). It included a timber roof structure with corrugated metal pitched roof and was used as storage for the shop. The applicant re-roofed and fully enclosed the area in 2001 under the assumption that it was 'exempted development.
- The vents referenced by the appellant were inappropriately located given the historical context whereby air was discharged into the applicant's yard area. Given the small size of the store enclosure, it should be easily possible to provide ventilation to the appellant's property as part of the necessary future refurbishment works. The applicant would co-operate with the appellant as far as reasonably possible.
- The applicant is not aware of any weathering issues but would naturally seek to address any such issues.
- Regarding vermin concerns, the store as constructed is certainly much better than the covered and only partially enclosed yard.
- The applicant is not aware of any storm drainage issues. Rainwater from the flat roof is collected in a down pipe which discharges to a storm drain and the public drainage network.

- A revised section drawing is included to show the windows referenced by the appellant. It is contended that there would be no effect on daylight to these windows given that there already was a roof structure over the former yard.
- The alleged removal of the metal railing may have been a function of dilapidation. In any case, this does not seem like an insurmountable issue and the applicant would reinstate a rail to the appellant's satisfaction.

Proposed Platform Lift

- The enclosure as it currently exists is unauthorised development. It was required to provide a goods and disabled access lift to comply with employers' regulations, insurance requirements and building regulations. It was installed at the same time as the roof enclosure under the assumption that it was 'exempted development'.
- The applicant sought permission to retain the existing lift enclosure in October 2020 (P.A. Reg. Ref. 20/51570) and sought consent (including compensation) from the appellant given that it overlapped and blocked a small window. Consent was not forthcoming, and the applicant subsequently liaised with the DCC planning office regarding a solution, which forms the basis of the current application.
- Amended drawings are included showing the windows to the rear (south) of the appellant's property. The proposed enclosure will be c. 1 metre from these windows, which are already in close proximity to the walls in the existing recess to the rear of the applicant's building.
- The AC units and Electrical Heat Pack have been in place since c. 1998 when permission was granted for the supermarket (and prior to the appellant acquiring the adjoining property). These are common in urban settings and do not generate significant noise above background levels.

Other Issues

- It is accepted that the appellant's property should have been described as 'disused' rather than 'derelict'. This is not of material concern in the assessment.

- Land Registry maps are included showing the legal divide between the properties and a new store front drawings for the building as approved in 2017.
- In the context of this L-shaped urban terrace, the retained or proposed developments would not impact on daylight levels which would adversely affect the use or valuation of a town centre property.
- Ventilation at 1st and 2nd floor levels will not be affected.
- The works do not create / exacerbate any issues in relation to dampness in the appellant's property.
- The applicant is trying to comply with the ever-changing requirements of running a retail business. The appellant was not willing to engage in discussions regarding a mutually acceptable resolution and the obstruction of the current case would jeopardize the viability of their business.

6.3. **Planning Authority Response**

The response of the planning authority largely reiterates the contents of the Planner's report and respectfully requests that the Board upholds their decision in this case.

6.4. **Observations**

None.

7.0 **Assessment**

7.1. **Introduction**

- 7.1.1. Having regard to the documentation submitted in connection with the application and the appeal, and having inspected the site, I consider that the main issues for assessment relate to the principle of the development and its impact on the property to the north known as 'Biddy Jack's'.
- 7.1.2. At the outset, I wish to clarify that the previously unauthorised lift platform and enclosure has now been removed. This would appear to have occurred since the

making of the original application to Donegal County Council. The appeal also refers to an AC unit being unauthorised development and raises concerns about noise nuisance impacts. Ultimately, these elements are not to be retained as part of this application and I do not propose to discuss the matters any further. Any issues with regard to unauthorised development are a matter for investigation by the planning authority.

- 7.1.3. I also note that revised drawings have been submitted by the applicant in response to the appeal. These drawings do not alter the nature or extent of the proposed development but simply seek to accurately reflect the rear of 'Biddy Jack's'. Having inspected the site, I am satisfied that the drawings on the appeal file satisfactorily reflect the rear elevation.

7.2. The Principle of the Development

- 7.2.1. The case relates to a proposal to improve the operational requirements of an established town centre convenience retail store. I acknowledge that the existing premises already involved almost complete site coverage, which has severely restricted opportunities for stock delivery and storage. The vast majority of storage occurs at first floor level, which is currently accessed via a shopfront door and internal stairwell. There is currently no alternative access available to the sides or rear of the property.
- 7.2.2. I would accept that the existing delivery and storage arrangements are unsatisfactory and that it is reasonable and appropriate to seek improvements in this regard. It is important that town centre retail stores such as this are supported in accordance with local and national policies for retail development and town centres in general. It is accepted that such locations commonly experience challenges with confined sites and access, and I consider that proposals for reasonable solutions should be supported in preference to such stores being relocated to larger out-of-town sites.
- 7.2.3. The existing ground level store provides improved and enclosed storage space, and the proposed lift enclosure extension would facilitate a more accessible and efficient arrangement for stock delivery and storage. I consider that the proposal would improve the viability of this town centre store and would help to consolidate the town centre. This would be in accordance with local and national policy and the principle of the development should, therefore, be firmly supported.

7.3. Impacts on the property to the north

- 7.3.1. It would appear that the adjoining property has been vacant since being damaged by fire some time before 2009. It has clearly suffered further damage since that time due to its disused state. And while cosmetic external painting was taking place at the time of my inspection, there was no indication of any significant works that would render the building usable at this time.
- 7.3.2. I note the appellant's claims regarding the removal of railings and the blocking of ventilation points at ground floor level causing dampness and damage. However, given that these works have already taken place, it is not possible to confirm the veracity of the claims after the event. The applicant would appear to accept that the ground floor vents existed, but I also note the applicant's contention that the vents inappropriately discharged into the applicant's property in the first instance. Ultimately, I consider that these are property boundary issues which should be resolved between the relevant parties, and I do not consider that the Board is in a position to draw any conclusions in relation to the matters raised. Accordingly, I do not consider that a refusal of permission would be warranted on these grounds.
- 7.3.3. The appeal also raises concerns about the impact of the existing and proposed development on the windows to the rear Biddy Jack's. It should be noted that the majority of windows in the rear elevation of the appellant's property enjoy a relatively unobstructed south-facing aspect, particularly those windows to the rear (east) of the appeal site. Therefore, despite the proximity of the windows to the existing and proposed extensions, I am satisfied that the majority of rear elevation windows would continue to avail of adequate daylight and sunlight.
- 7.3.4. It has also been demonstrated by the applicant that the rear (east) boundary of the ground floor yard space was already enclosed by a high wall and partial roof. A flat roof has simply been affixed to fully cover that space, which has not resulted in any significant height increase or obstruction of daylight/sunlight to surrounding windows. Accordingly, I am satisfied that the ground floor store element has not impacted on daylight/sunlight to the adjoining property.
- 7.3.5. I acknowledge that the appellant's building contains 3 windows above the ground floor store, consisting of 1 no. 1st floor window and 2 no. 2nd floor windows. The 1st floor window is of limited size and would not offer significant levels of light to the

building. The proposed extension would be setback 900mm from this window and would only partially oppose the window directly. Given the limited scale of the proposed extension and the limited size of the window, I do not consider that any unacceptable daylight/sunlight effects would occur.

- 7.3.6. Of the 2 existing 2nd floor windows, I note the eastern window would not be opposed by the proposed lift enclosure extension and, therefore, daylight and sunlight availability are unlikely to be significantly obstructed. The western 2nd floor window occurs at the perpendicular junction of the shop building and Bidly Jack's. It would appear to be already largely overshadowed by the east and north-facing walls of the shop building. And while the proposed extension would directly oppose this window, I note that highest point of the extension would be below the existing angle of obstruction between the window and the opposite north-facing wall/roof of the shop building. Accordingly, I do not consider that the proposed extension would exacerbate any daylight or sunlight impacts on this window.
- 7.3.7. I note the appellant's concerns about surface water drainage and dampness problems. In this regard the applicant has confirmed that the roof water drains to the storm water drainage network at this location. I am satisfied that this matter can be addressed by condition in accordance with the requirements of the planning authority.
- 7.3.8. Having regard to the above, I do not consider that the existing and proposed development would result in any unacceptable impacts on the adjoining property to the north. It is acknowledged that the appeal site is confined and that there is a challenging relationship with the property to the north. However, given the town centre location of these properties, it is important that flexibility is applied to facilitate and support the commercial viability of the centre.
- 7.3.9. Having regard to the above assessment, I do not consider that the proposal would have effects to the extent that adversely affect the value of adjoining property. With regard to future development potential, I acknowledge that the property to the north had the benefit of planning permission for a new public house, restaurant, function room etc., which has since expired. For the information of the Board, I would highlight that the permitted proposal did not include any significant windows or other sensitive elements in the vicinity of the existing and proposed extensions. Similarly, I

am satisfied that any future redevelopment proposal could easily address any concerns that may exist in relation to the current appeal case.

8.0 **Appropriate Assessment**

Having regard to the nature and limited scale of the proposed works, and the separation distance between the appeal site and the nearest European Site, it is considered that the proposed development, individually, or in combination with other plans or projects, would not be likely to give rise to significant effects on any European Sites in view of the sites' conservation objectives, and Appropriate Assessment including the submission of a Natura Impact Statement is not, therefore, required.

9.0 **Recommendation**

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

10.0 **Reasons and Considerations**

Having regard to the town centre location of the site and the pattern and character of development in the area, the design and scale of the proposed development, and the provisions of the County Donegal Development Plan 2018-2024, it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable in accordance with the development plan policies for town centres, would not seriously injure the visual amenities of the area or the amenity value of surrounding properties, and would not endanger public safety or convenience by reason of traffic generation. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

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

Reason: In the interest of clarity.

2. The remains of the previously installed lift enclosure above the ground floor store shall be removed within three months of the date of this order.

Reason: In the interest of orderly development.

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

Reason: In the interest of public health and to ensure a proper standard of development.

4. Details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

5. 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 or public holidays. Deviation from these times shall 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.

6. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting 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 the 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 Ward
Senior Planning Inspector

10th April 2022