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Bord  
Pleanála

## Inspector's Report

### ABP-312801-22

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<b>Development</b>	Amendments to the site boundary granted under PA. Ref. 18/775
<b>Location</b>	Pigott's Street, Loughrea, Co. Galway.
<b>Planning Authority</b>	Galway County Council
<b>Planning Authority Reg. Ref.</b>	211978
<b>Applicant</b>	Isobel Kenny
<b>Type of Application</b>	Retention Permission
<b>Planning Authority Decision</b>	Grant Retention Permission
<b>Type of Appeal</b>	Third Party
<b>Appellant</b>	Geraldine Leader
<b>Observer</b>	None
<b>Date of Site Inspection</b>	3 <sup>rd</sup> August 2022
<b>Inspector</b>	Ian Campbell

## 1.0 Site Location and Description

- 1.1. The appeal site is located on the eastern side of Pigott's Street, in the centre of Loughrea, Co. Galway. The appeal site has a stated area of 0.0039 ha/39 sqm and consists of a single storey derelict building. The structure is partially roofed with overgrowth protruding out of the unroofed section. There is a door opening on the front/western elevation.
- 1.2. The side yard of a dwelling bounds the appeal site to the immediate north. The appeal site is bound to the east by a single storey commercial building. To the immediate south of the appeal site is a fenced area accommodating a ramped access to a car park which serves units which front onto Main Street/Bridge Street.

## 2.0 Proposed Development

- 2.1. The proposed development comprises amendments to the site boundary granted under PA. Ref. 18/775.
- 2.2. There is ambiguity in relation to the nature of the proposal, specifically whether it is an application for permission or retention permission. This is addressed at paragraph 7.4.1. below.

## 3.0 Planning Authority Decision

### 3.1. Request for Further Information

Prior to the decision of the Planning Authority to GRANT retention permission for the proposed development, the Planning Authority requested Further Information.

#### 3.1.1. Further Information was requested as follows:

- Clarify the extent of the amendments sought, as upon cross reference there is no obvious difference between the site boundaries of the current proposal and the parent permission, PA. Ref. 18/775<sup>1</sup>.

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<sup>1</sup> I note that the site location map submitted with PA. Ref. 21/1978 did in fact indicate a different red line boundary compared to PA. Ref. 18/775 despite the comment of the Planning Authority that they could not determine any obvious difference between the red line boundary of the current proposal and that associated with PA. Ref. 18/775.

- Furnish details of the treatment along the rear and side boundaries of the site.

#### 3.1.2. Further Information submitted on 20/12/2021:

- Submission of site location map indicating more clearly the extent of the red line boundary of the current proposal versus that which was indicated under PA. Ref. 18/775.
- The applicant elaborated on the background to the proposal, noting that under PA. Ref. 18/775 the red line boundary depicted on the site location map did not correspond with the red line indicated on the site layout plan. The red line indicated on the site location map was incorrect, while the red line indicated on the site layout map was correct.
- The boundaries of the site will comprise the proposed building, and will be nap plaster.

### 3.2. Decision

The Planning Authority issued a Notification of Decision to Grant Retention Permission on the 24<sup>th</sup> January 2022, subject to 2 no. conditions.

**C1** – all other aspects of the development to be executed in accordance with PA. Ref. 18/775, save for the amendments submitted with this application.

**C2** – requires submission of construction methodology for groundworks and structural execution plan adjacent to party boundaries.

### 3.3. Planning Authority Reports

#### 3.3.1. Planning Reports

The first report of the Planning Officer includes the following comments;

- There is no obvious difference between the site boundaries of the current proposal compared to the parent permission, PA. Ref. 18/775.

The second report of the Planning Officer includes the following comments;

- The Planning Authority is satisfied with the applicant's response in relation to the issue of the site boundary.
- The application is for full permission<sup>2</sup> for amendments to the site boundary granted under PA. Ref. 18/775 as referenced in the newspaper notice, the site notice and the planning application form.
- The proposal is not considered to be injurious to the residential, visual or general amenity of the area, and would not represent a public health issue or a traffic hazard.

The report of the Planning Officer recommends a grant of permission. I note however that the Notification of Decision which issued was for a grant of retention permission.

### 3.3.2. Other Technical Reports

None received.

### 3.4. Prescribed Bodies

Department of Housing, Local Government and Heritage (Development Applications Unit) – notes that Condition No. 5 of PA. Ref. 18/775 related to archaeological requirements and that this issue remains relevant and should continue to apply.

### 3.5. Third Party Observations

One observation was received by the Planning Authority. The following is a summary of the main issues raised in the third-party observation:

- Concerns raised from the owner of the property to the east, which abuts the subject property, in relation to construction on the party boundary. Specific concerns are noted in relation to the impact of lateral loadings on the adjoining structure, which is at a lower level compared to the subject property, impacts on side wall of the adjoining property which is a retaining wall and which has no

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<sup>2</sup> The second report of the Planning Authority, at further information stage, notes that the planning application is for permission. The applicant had indicated that the planning application for was retention permission in Section 2 of the planning application form however all other references in the planning application form and the public notices state the planning application as being for 'full permission'. The Notification of Decision issued by the Planning Authority was however for 'retention permission'.

supporting steel, and also potential impact on the roof of the neighbouring property.

- Ambiguity in relation to the construction methodology which will be used to carry out the proposed works, and the treatment of the common boundary, specifically the back wall of the proposed structure and concerns in relation to the possible erection of scaffolding on the roof of the third party's property in facilitating the construction of the back wall of the proposed structure.
- Concerns in relation to the absence of natural light and ventilation afforded to the proposed structure.

## 4.0 Planning History

Appeal Site:

**PA. Ref. 18/775** – Permission GRANTED for the demolition of a derelict retail unit and the construction of a two storey unit and ancillary site works.

## 5.0 Policy Context

### 5.1. Development Plan

5.1.1. The proposed development was considered by the Planning Authority under the Galway County Development Plan 2015-2021 however the Galway County Development Plan 2022-2028 came into effect on the 20<sup>th</sup> June 2022 and is now the relevant development plan.

5.1.2 The appeal site is not subject to any specific land-use zoning under the Galway County Development Plan 2022-2028.

5.1.3. The appeal site is located within an 'Urban Environs Landscape' for the purpose of landscape type. Urban Areas are described as having a low sensitivity to change.

5.1.4. The appeal site is located within the Loughrea Architectural Conservation Area (ACA).

5.1.5. The appeal site is located within the Galway County Transportation and Planning Study and the Urban Fringe of Loughrea.

5.1.6. The Loughrea Local Area Plan 2012 (which had previously been extended) expired on the 24<sup>th</sup> July 2022. The appeal site was zoned 'C1' Town Centre/Commercial under the Loughrea LAP.

## 5.2. **Natural Heritage Designations**

- Lough Rea SAC (Site Code 000304) - located c. 360 metres south.
- Lough Rea SPA (Site Code 004134) – located c. 360 metres south.
- Lough Rea pNHA (Site Code 000304) - located c. 360 metres south.

## 5.3. **EIA Screening**

Having regard to the limited nature and scale of the proposed development, 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**

This is a third-party appeal against the decision to grant retention permission. The grounds for appeal can be summarised as follows;

- The concerns raised in the third party observation have not been adequately addressed by the Planning Authority.
- Concerns raised from the owner of the property to the east, which abuts the appeal property, in relation to construction on the party boundary. Specific concerns are noted in relation to the impact of lateral loadings on the adjoining structure.
- Health and safety concerns in relation to how the proposed development is to be constructed, in particular how the back wall is going to be rendered.
- The proposed development is not served by a rear or side access, there is no bin storage, and no natural light or ventilation is provided.

## 6.2. **Planning Authority Response**

None received.

## 6.3. **Observations**

None.

## 7.0 **Assessment**

7.1. Having examined the application details and all other documentation on file, including the appeal, and having inspected the site, and having regard to the relevant national and local policy and guidance, I consider the main issues in relation to this appeal are as follows:

- Principle of Development
- Extent of Red Line
- Nature of Appeal
- Impact on Adjoining Property
- Appropriate Assessment

## 7.2. **Principle of Development**

7.2.1. The appeal site is not subject to any specific land use zoning in the Galway County Development Plan 2022 – 2028. I note that the Loughrea LAP 2012 expired on the 24<sup>th</sup> July 2022. Given the location of the appeal site within the centre of Loughrea I consider the principle of an alteration of a previously permitted commercial/retail development to be acceptable.

## 7.3. **Extent of Red Line**

7.3.1. Permission was granted under PA. Ref. 18/775 for the construction of a two storey building. The red line boundary of the site location map and the site layout plan submitted with the planning application were not commensurate<sup>3</sup> with one another and

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<sup>3</sup> From comparing the site location map submitted under PA. Ref. 18/755 and the site location map submitted under the current planning application, I note that the former included an area north which appears to be part

the applicant is now seeking to rectify this through the current planning application/appeal which is for 'amendments to the site boundary granted under PA. Ref. 18/775'.

- 7.3.2. The proposal seeks to change the extent of a red line boundary of a previously permitted planning permission, PA. Ref. 18/775, through a subsequent and separate planning application with a different red line boundary, in essence it is proposed to swap out the previous red line boundary with a different one. Having regard to the development description contained in the public notices, I consider what is proposed to be an amendment to a previous permission, that being PA. Ref. 18/775. In my opinion, this approach is illogical and unimplementable as the red line boundary associated with the amendment permission must in the first instance relate back to the same red line boundary of the parent permission as the extent of the parent planning permission is defined by the red line boundary. I do not therefore consider that it is possible to amend to the red line boundary of a previous permitted development through a new planning application which has a different red line boundary.

#### **7.4. Nature of Appeal**

- 7.4.1. The applicant indicated that the planning application for was retention permission in Section 2 of the planning application form submitted to the Planning Authority, however elsewhere in the planning application form it was stated that the planning application was for 'full permission'. I note that the public notices submitted with the planning application referred to the planning application as being for 'full permission'. I note that the report of the Planning Officer considered the proposal to be for permission, and not retention permission, and the proposed development was assessed on this basis. However the Notification of Decision issued by the Planning Authority was for 'retention permission'.
- 7.4.2. Having inspected the site I note that the proposed development has not commenced. It appears that reference to retention permission at Section 2 of the planning

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of a neighbouring property. The current site as indicated on the site location map encompasses the footprint of the derelict building, which it is proposed to demolish.



application form was a typographical error. Notwithstanding the Notification of Decision issued by the Planning Authority, which refers to 'retention', having regard to the status of development on the appeal site, references elsewhere in the planning application to 'full permission', including the public notices, I consider that the Board has discretion in this instance to determine the proposed development as being an application for permission, and not retention permission.

- 7.4.3. The third party raise concerns in relation to amenity standards, in particular the provision of bin storage, the absence of rear and side access, and the absence of natural light and ventilation. Having regard to the nature of the proposal, that being alteration to the site boundary of a previously permitted development, and noting that the principle of the unit has been established under PA. Ref. 18/775, I do not consider it necessary to reassess these issues in this appeal.

#### **7.5. Impact on Adjoining Property**

- 7.5.1. The primary issue raised in the third party appeal relates to the potential for structural impacts on the adjoining property during the construction of the proposed development. Should the Board be minded to grant permission for the proposed development I note that this issue is a civil issue, to be resolved between the applicant and appellant having regard to the provisions of Section 34 (13) of the Planning and Development Act 2000, as amended, and as such are outside the scope of this appeal. In the event that the Board do consider permitting the proposed development, a planning condition requiring the submission of a construction methodology, and the carrying out of pre and post construction surveys of third party property should be included.

#### **7.6. Appropriate Assessment**

- 7.6.1. Having regard to the nature and limited scale of the proposed development and the lack of a hydrological or other pathway between the site and European sites, it is considered that no Appropriate Assessment issues arise and that the proposed development would not be likely to have a significant effect either individually or in combination with other plans or projects on any European site.

## 8.0 Recommendation

- 8.1. Having regard to the above it is recommended that planning permission be refused for the proposed development based on the following reasons and considerations.

## 9.0 Reasons and Considerations

1. The proposed development seeks to change the extent of a red line boundary of a previously permitted planning permission, PA. Ref. 18/775, through a subsequent and separate planning application for amendments with a different red line boundary. This approach is unimplementable as the red line boundary associated with the amendment permission must in the first instance relate back to the same red line boundary of the parent permission. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

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Ian Campbell  
Planning Inspector

25<sup>th</sup> October 2022