



An
Bord
Pleanála

Inspector's Report ABP315913-23

Development	House with connection to site services and associated site works.
Location	Fr Angelus Park. Westport. Co. Mayo.
Planning Authority	Mayo Co. Council.
Planning Authority Reg. Ref.	22/643.
Applicant(s)	Gibbons Building & Civil Engineering Ltd.
Type of Application	Permission.
Planning Authority Decision	To Refuse Permission.
Type of Appeal	First Party
Appellant(s)	Gibbons Building & Civil Engineering Ltd.
Observer(s)	Cora Higgins & Others. Noel Mc Namara.
Date of Site Inspection	May 16 th , 2023.
Inspector	Breda Gannon.

1.0 Site Location and Description

- 1.1. The site is located on the east side of Westport in Co. Mayo and c500m from the town centre. It forms a vacant area of ground close to the entrance to Fr. Angelus Park, a residential estate which comprises terraces of two-storey dwellings arranged around an area of open space. Each dwelling has the benefit of a small front garden with roadside parking.
- 1.2. The site lies between the rear/side of No 4 Fr. Angelus Park which has been extended and an access road adjacent to the adjoining terrace of houses. It slopes gently in a generally north-south direction. The front and side boundary adjacent to the access road are formed by a timber fence. The rear boundary which forms a common boundary with the No 3 comprises trees/hedgerow and the boundary to the west with No. 4 is formed by a concrete wall.

2.0 Proposed Development

- 2.1. The proposal as described in the public notices submitted with the application is for a two-storey dwelling house with connections to existing site services and associated site works and landscaping.
- 2.2. The house would have a stated floor area of c.182m² and would be accommodated on a site which has a stated area of 0.04 ha. The house would be two-storey and connected to existing site services. It would be finished in a smooth plaster finish with rough cast plinth to match the existing houses in the estate. The roof would be slated.
- 2.3. There would be a landscaped garden to the front of the house and onsite parking space. A private amenity space (106m²) would be provided to the side and rear. New boundary treatment would include rendered block walls to the rear (1.8m) and front and east side (0.9m).

3.0 Further Information

- 3.1. Further information was sought on the application on September 21st, 2022 on the following matters:

- Planning statement indicating how the reasons for refusal (ABP 304415-19) have been addressed.
- Land registry folio showing all lands in the applicant's ownership at this address.
- Details of open space associated with the adjoining development to the southwest.
- Relationship of the site to the property at No 4, trading as Taim Lodge.

3.2. The planning authority noted that it had serious concerns with the proposal having regard to the planning history and that the proposed development would appear to facilitate and consolidate what appears to be an existing unauthorised development on the adjoining site.

3.3. A response was received from the applicant on October 18th, 2022, which was not to the satisfaction of the planning authority. Further clarity on the open space associated with the adjoining development to the southwest and on applicant's legal right to carry out the development were requested on November 10th, 2022.

3.4. The applicants' response of January 9th 2023, confirmed the following:

- The applicants are the registered owners of the lands the subject of the application.
- The house at No 4 was sold and a solicitor's letter confirms what has been sold and what has been retained by the applicants.
- The house at No 4 was renovated and extended in accordance with P17/95 and that the site was designed with 113m² of rear amenity space in accordance with the drawings submitted with P17/95. Copies of the relevant drawing attached.

4.0 **Planning Authority Decision**

4.1. **Decision**

The planning authority decided to refuse permission for the development for the following reason:

The proposed development would significantly reduce the private open space associated with the existing dwelling at No. 4 Father Angelus Park such that it would be seriously injurious to the residential amenity of that property and result in a poor standard of residential amenity for the occupants thereof. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

4.2. Planning Authority Reports

4.2.1. Planning Reports

The planning officer's report refers to the previous planning history relating to the site. Permission should be refused in line with the precedent set under Reg Ref No 19/104 (ABP 304415-19) as the issues raised have not been addressed.

4.2.2. Other Technical Reports

The Architect's Report raised no objection to the development subject to conditions.

4.3. Third Party Submissions

Submissions were received from 2 no. parties and the main issues relate to the following:

- The proposal is not in accordance with the Mayo Co. Development Plan or the Westport Town & Environs Development Plan
- The development is proposed on a site that formed an intrinsic area of open space within the existing housing estate. If permitted, it would create an undesirable precedent for similar proposals on other estates.
- The proposed development due to its design elements would spoil the aesthetics of this mature neighbourhood and be out of character with the existing terraced housing blocks within the estate.
- Impacts on the privacy and amenity of adjacent dwellings.
- Devaluation of adjacent properties.
- On site parking is not a feature of the existing houses within the estate.
- Ongoing planning compliance issues at No 4.

5.0 Planning History

5.1. 17/95 – Planning permission refused for the construction of two houses in the rear garden of No 4 Father Angelus Park, and a two-storey side and rear extension and off-street parking at No 4. The decision was subsequently appealed (PL16.248474) and the Board issued a split decision and decided to grant permission for the two-storey side and rear extensions to No 4, internal alterations and provision of two off-street parking spaces and to refuse permission for the two houses. The reasons for refusal are summarised as follows:

1. Having regard to the character and pattern of development in the vicinity, the proposal would represent overdevelopment of the site and would seriously injure the residential amenities of the area by reason of overlooking and loss of privacy for adjoining residents.
2. Substandard form of development due to the layout and design of the houses with inadequate provision of garden space.

5.2. 19/104 – Planning permission refused for a house on the site and the decision was upheld by the Board (ABP304415-19.) The reasons for refusal are summarised as follows:

1. The proposed development would significantly reduce the private open space associated with No 4 such that it would be seriously injurious to the residential amenities of that property and result in a poor standard of residential amenity for occupants.
2. Having regard to the constrained nature of the site, its prominent location within this residential development and the established pattern of development in the surrounding area, it is considered that the proposed development by reason of its bulk, form and height would constitute a visually obtrusive feature and be out of character with the area and infringe the established building line.
3. The site notwithstanding the fact that it is in private ownership, is considered integral to the existing layout and visual character of the estate. The proposed development would seriously detract from this character and would seriously injure the visual amenities of the area.

6.0 Policy and Context

6.1. Development Plan

The Westport Town and Environs Development Plan 2010-2016 remains the statutory plan for the area, pending the adoption of a new Local Area Plan. Under its provisions the site is zoned 'Residential Phase 1 (A1 – High Density)' with the following objective:

'To protect, improve and develop residential areas and to provide facilities and amenities incidental to those residential areas, where appropriate'

Section 7.10 provides standards for residential development including densities, layout and design and amenity space:

- Layouts shall be designed to minimise the degree of overlooking onto back and side garden from adjoining dwellings and gardens.
- Private Amenity Space should be not less than 100 m² for 3-5 bedroom houses, normally provided behind the front building line.

6.2. National Guidance

Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (Cities, Towns and Villages), May 2009.

Section 5.9 refers to Inner Suburban/Infill development. It states that in residential areas whose character is established by their density or architectural form, a balance has to be struck between the reasonable protection of the amenities and privacy of adjoining dwellings, the protection of established character and the need to provide residential infill.

6.3. Natural Heritage Designations

There are no designated sites in the vicinity of the appeal site.

6.4. EIA Screening

Having regard to the nature and modest scale of the proposed development, its location in a built-up urban area and the likely emissions therefrom it is possible to conclude that the proposed development is not likely to give rise to significant

environmental impacts and the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

7.0 The Appeal

7.1. Grounds of Appeal

7.1.1. The grounds of appeal are summarised as follows:

- The proposal addresses the previous reasons for refusal.
- The decision to refuse permission rested on a single reason relating to the significant reduction in the private open space associated with the existing dwelling at No 4, such that it would be seriously injurious to the amenities of that property and its occupants.
- Board Order ABP-304415-19 is in direct conflict with Board Order PL16.248474 specifically in relation to open space associated with No 4. The planning conditions make no mention of open space, other than landscaping associated with the submitted and approved drawings. This is the main factor in the planning authority's reason to refuse.
- No 4 and the associated curtilage have been constructed in compliance with the split decision PL16.248474 and a letter confirming compliance from the local authority is attached. Mayo Co. Council have issued compliance for the very reason they are refusing the current proposal.
- The overall folio has been split and re-drawn following the construction and completion of the approved renovations to No4.
- No 4 has been sold and the appellant has no legal entitlement over this property or the associated curtilage including open space provision and the site boundary.

7.2. Planning Authority Response

The planning authority did not respond to the grounds of appeal.

7.3. Observations

Observations were received from 2 no. parties who also made submissions to the planning authority. Some of the issues raised are similar and are not repeated here.

- The appellants makes much of what is deemed a conflict between Board Order ABP 304415-19 and PL16.248474 in relation to the provision of open space, stating that ‘the planning conditions make no mention of open space’. It is not a requirement for the planning authority to set this out in planning conditions for a development.
- The appellant states that No.4 and associated curtilage have been constructed in accordance with the split decision of PL16.248474. The letter from Mayo Co. Council refers only to compliance with respect to the plans and elevations submitted by applicant’s agent and do not show any site layout or boundary details. The issue of compliance of the site boundaries or the adequacy of the provision of private amenity space at No 4 is not addressed. The letter dated 12th September 2022 raises additional issues with respect to appellants approach to planning compliance, including the use of the building for solely commercial use.
- The redrawn folio does not comply with the development plan open space requirements and Housing Design Guidelines. The onus is on the appellant when splitting the folio to ensure that adequate rear open space is provided at No 4. The improper truncation of the rear garden is clearly a planning tactic to facilitate further development. The revised folio offers inadequate, inappropriate and unusable space at No 4.
- The appellant’s agent states in a letter that the site was designed with 113m² of rear amenity space, but does not state what was actually provided. It is clear from the drawings that open space provision is wholly inadequate. This is also raised in the Planning Officer’s report.
- The reasons and considerations cited in previous Board’s Orders are relevant to the current proposal in terms of the established character and pattern of development in the area, the design, scale and massing of the proposed house and overdevelopment of the site.

- The design of the development is unsuitable.

8.0 Assessment

8.1. Introduction

8.1.1. Having examined all the application and appeal documentation on file and having regard to relevant local and national policy and guidance, I consider that the main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. Appropriate Assessment also needs to be considered.

8.1.2. I would therefore consider that the main issues arising for determination by the Board in this appeal relate to the following;

- Principle of the development.
- Impacts on the character and amenities of the area.
- Appropriate Assessment.

8.2. Principle of the development

8.2.1. It would appear that the rear part of the appeal site was originally part of the back garden of the adjacent house at No 4 and the front part, from which it was separated by a stepped wall, comprised a green area which was maintained as open space within the existing estate. The original green area extended along the edge of the footpath along the side elevation of No 4 to the access road adjacent to No 5. A photograph of the original green area is shown in the planning officer's report dated 27th January 2022.

8.2.2. An extension to the side and rear of No 4 was permitted (PL16.248474) and part of the green area now forms part of the curtilage of the extended dwelling. A wall has been constructed along its rear boundary and the remaining former garden area and green area have been incorporated into the appeal site.

8.2.3. The reporting Inspector on the original appeal noted that the entire site (which included the green area used as open space) was zoned for Residential A1 and concluded that the residential development was acceptable. There have been no changes to the zoning objective for the site and I would therefore accept that the

proposed development is acceptable in principle subject to compliance with the development management standards of the development plan and good planning practice.

8.3. Residential Amenity

- 8.3.1. The Planning Authority's reason for refusal concludes that the proposed development would result in a reduction of private open space associated with No. 4, resulting in a poor standard of residential amenity for its occupants. While it is argued in the grounds of appeal that the development of No 4 progressed in accordance with the Board's appealed decision (PL16.248474), I note the following from the Inspector's report on a subsequent appeal for a single house on the appeal site (ABP 304415):
- 8.3.2. *'The permission granted under PL16.248474 provided for a residential extension to No. 4, while two houses proposed as part of the development was refused permission. The permission granted did not provide for the subdivision of the site of No 4, nor for the severance of private open space from that dwelling and as such the site remains part of the private amenity space associated with No 4.'*
- 8.3.3. The Board's decided to refuse permission for the house on similar grounds relating to the reduction of private amenity space associated with No 4. The site which is the subject of the current appeal is identical to that considered by the Board under ABP 304415 and there are no changes to warrant a change in the Board's decision on this matter.
- 8.3.4. The appellants contend that the Board's Order ABP 304415 is in direct conflict with Board Order PL16.248474 but provide no clarity on how that conclusion was reached, other than to state that there is no mention of private open space in the conditions attached to the latter.
- 8.3.5. Condition No 1 of the permission requires that the extension to the house be carried out and completed in accordance with the plans and particulars submitted with the application. It was not anticipated in the original decision, despite the refusal of permission for the 2 no. dwellings that the rear garden would be segregated from the extended house resulting in a diminution of the private amenity space associated with the dwelling. This is borne out by the Board's subsequent Order (ABP 304415)

which, in the first reason for refusal, referred to the reduction in private open space associated with the original house.

- 8.3.6. The letter of compliance issued by Mayo Co. Council, a copy of which is attached to the appeal, is in respect to minor alterations to the plans/elevations and cannot be relied upon to justify the alterations to the site boundary and the depletion of private amenity space associated with No 4.
- 8.3.7. Similarly, reliance cannot be placed on changes to ownership of No 4, changes to folio's etc to circumvent the concerns raised in previous refusals by both the planning authority and An Bord Pleanala.

8.4. Impacts on the character and amenities of the area

- 8.4.1. The previous refusal for a single house (ABP 304415) on the site raised specific issues regarding the bulk, form and height of the house, stating that it would constitute a visually obtrusive feature in a prominent location within the estate. There were also concerns regarding infringement of the established building line. It is appellant's contention that the reasons for refusal have been addressed in the current application. A Design Statement setting out the architectural design process accompanies the application.
- 8.4.2. The site is located adjacent to a strong terrace of houses which has experienced minimal intervention. The proposal seeks to respect the existing site context by setting the house back in line with the established building line, replicating existing building depth, external finishes, maintaining roof ridge/eave heights and providing a front garden.
- 8.4.3. The design of the house which incorporates opaque glass windows at first floor level to the rear and no first windows in the gables on either side addresses previous concerns regarding potential overlooking of adjacent properties with impacts on privacy. Private amenity space is provided to the side of the house and behind the front building line in accordance with the standards of the development plan.
- 8.4.4. The site is constrained and located at a prominent location at the entrance to the estate. Notwithstanding the efforts made by the applicant to address the previous reasons for refusal, I consider that the scale, bulk and design of the house incorporating an elongated plan (15m) and large window openings, results in a development which is visually obtrusive in this location and out of character with the

surrounding area. I consider that the proposed development would, therefore, detract from the visual amenities of the area.

8.5. Appropriate Assessment Screening

- 8.5.1. Having regard to the nature and scale of the proposed development, the nature of the foreseeable emissions therefrom, the nature of receiving environment as a built-up urban area and the distance from any European site and the absence of a pathway between the application site and any European site it is possible to screen out the requirement for the submission of an NIS and carrying out of an EIA at an initial stage.

9.0 Conclusion

- 9.1. I do not consider that the proposed development addresses the previous reasons for refusal on the site to warrant a reversal of the Board previous decision on the appeal site.

10.0 Recommendation

- 10.1. On the basis of the above assessment, I recommend that permission for the development be refused for the reasons and considerations set out below.

11.0 Reasons and Considerations

1. The proposed development would significantly reduce the private open space associated with the existing dwelling at No 4 Fr Angelus Park such that it would be seriously injurious to the residential amenities of that property and result in a poor standard of residential amenity to the occupants thereof. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to the constrained nature of the site, its prominent location within the residential development and established pattern of development in the surrounding area, it is considered that the proposed development, by reason of its design, bulk, scale and form, would constitute a visually obtrusive feature on the streetscape and would be out of character with the

area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

3. The site of the proposed development, due to its prominent location at the entrance to the Fr Angelus Park housing estate, and notwithstanding the fact that it is in private ownership, is considered integral to the existing layout and visual character of the estate. The development of this site would seriously detract from this character and would seriously injure the visual amenities of the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Breda Gannon
Planning Inspector

12th June 2023