



An
Bord
Pleanála

Inspector's Report ABP-317927-23

Development	Retention of PVC windows to the front elevation which were fitted in lieu of timber sash windows and contrary to condition 3 (b) of planning reference P20-737
Location	Carmody Street, Ennis, Co. Clare.
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	23351
Applicant(s)	Patricia Collins
Type of Application	Retention permission
Planning Authority Decision	Refuse retention permission
Type of Appeal	Third Party
Appellant(s)	Deirdre Carney and Fiona Liddy
Observer(s)	None
Date of Site Inspection	18 April 2024
Inspector	Claire McVeigh

1.0 Site Location and Description

The subject site is located on the western side of Carmody Street, Ennis, Co. Clare. It comprises 2 no. recently constructed two storey dwellings forming a terrace with the corner building that faces onto Buttermarket Street.

The existing 2 no. buildings, subject of this application for retention, have a smooth render finish with uPVC windows and doors.

2.0 Proposed Development

Retention is sought for uPVC windows to the front elevation of two no. dwellings in lieu of timber sliding sash windows and contrary to Condition 3 (b) of planning reference P20-737.

3.0 Planning Authority Decision

Decision

The planning authority granted retention permission subject to standard condition that the development be retained in accordance with the drawings and particulars as received by the planning authority on the 16th June 2003.

3.1. Planning Authority Reports

Planning Reports

The planner's report sets out the following issues in the assessment of the application.

- Notes that the windows as installed are not in compliance with condition 3 (b) and (f) of the decision to grant permission under planning register reference 20/737.
- Having regard to the building in the immediate vicinity of the site and the use of uPVC windows at these locations, it is considered that the subject uPVC windows are not out of context with the character of these buildings.

- With respect to visual amenities and built heritage it is considered that the subject windows are not out of context with the prevailing character of the area, particularly as the subject building (in which the new windows have been installed) is a newly constructed pair of dwellings.
- The need for EIA excluded at preliminary examination and a screening determination is not required.
- The proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on the Natura 2000 network and appropriate assessment is not therefore required.

3.2. Other Technical Reports

None.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

One third party observation was received from Fiona Liddy and Deirdre Carey, the issues raised are covered in the grounds of appeal. See section 6.1.

Cllr. Paul Murphy made representations on this application.

4.0 Planning History

Planning register reference 20/737. Permission granted (April 2021) for the (a) demolition of 2 no. sub-standard single storey town houses, (b) to extend adjoining dwelling house and (c) to construct two no. two storey town houses together with all ancillary site development works and services.

Condition 3(b) All windows on the front elevation shall be of timber construction, sliding sash.

Condition 3(f) No changes are permitted to the agreed window sizes, materials or designs. All windows shall be of solid timber, shall be painted and shall be up and down sliding sashes.

5.0 Policy Context

5.1. Clare County Development Plan 2023-2029

The subject site is located within Ennis and within its Architectural Conservation Area. It is a strategic aim of the development plan to protect and enhance the character of the built environment by means of the Record of Protected Structures and Architectural Conservation Areas.

Section 16.3.4 Architectural Conservation Areas (ACAs)

Development Plan Objective: Architectural Conservation Areas (ACAs) CDP16.5 It is an objective of Clare County Council:

- a) To ensure that new developments within or adjacent to an ACA respect the established character context of the area and contribute positively to the ACA in terms of design, scale, setting and material finishes;
- b) To protect from demolition or removal and non-sympathetic alterations, existing buildings, structures, groups of structures, sites, landscapes and features such as street furniture and paving, which are considered to be intrinsic elements of the special character of the ACA;
- c) To ensure that all new signage, lighting, advertising and utilities to buildings within an ACA are designed, constructed and located in a manner that does not detract from and is complementary to the character of the ACA; and
- d) To ensure that external colour schemes in ACAs enhance the character and amenities of the area and reflect traditional colour schemes.

Nos. 9 (RPS 831), 3 (RPS 832) and 2 (RPS 833) Carmody Street are protected structures and all are within the street block directly south of the subject site.

The subject site is zoned Mixed Use.

Ennis Architectural Conservation Area (Excerpt)

Certain areas within the town of Ennis are designated as Architectural Conservation Areas.

These are outlined as follows:

(a) Ennis Town Centre

Ennis is a town which has steadily developed since the mid thirteenth century. Although many changes have occurred in the town since the medieval period, it still retains its ancient character to a great extent. This is indicated by its narrow streets, stone buildings, lane ways and bow-ways etc. As much of the centre of Ennis existed before the year 1700 it is designated as an Archaeological zone (No.CL033-082-, Historic Town) in the Record of Monuments and Places, published by Duchas, The Heritage Service.

The older part of Ennis which for the most part consists of narrow, winding streets and lanes following the pattern of the river Fergus predominantly dates from the 13th to the 18th centuries. This is confined to the area around Abbey, O'Connell and Parnell Streets while the later impressive public and private buildings of the 19th century are found toward the outer boundaries of the ACA.

5.2. National Guidance

The Architectural Heritage Protection- Guidelines for Planning Authorities, 2011

3.10.2 ...When it is proposed to demolish an undistinguished building in an ACA, the proposed replacement should not be of lesser quality or interest than the existing one and should not adversely affect the character of the area.

5.3. Natural Heritage Designations

The subject site is c. 120m from the Lower River Shannon SAC.

5.4. EIA Screening

The proposed retention of uPVC windows to the front elevation of existing buildings does not constitute a project listed in Schedule 5, Part 1 or Part 2 of the Planning

and Development Regulations 2001, as amended. As such, no EIAR or Preliminary Examination is required for this element of the project. See completed Form 1 attached.

6.0 The Appeal

6.1. Grounds of Appeal

- Breach of planning permission 20/737 conditions no. 1 and 3 (f) and the description of development is inadequate, these conditions should have been referred to in enforcement Warning Letter and statutory notices for the subject planning application.
- All windows in the development are uPVC and should be of solid timber, the applicant seeks retention only for those on the front elevation. Retention of all the windows should have been sought.
- Clare County Council have contradicted their own decision on planning permission ref: 20/737 by granting permission for the retention of the uPVC windows.
- Impact on the Architectural Conservation Area (ACA). The front elevation of the development as granted under P20/737 is poor and does not meet with the high standard of design required within the ACA. The appellant did not appeal the original decision to grant permission under 20/737 given the applicant had proposed timber sliding sash windows and timber doors to the full development which was reinforced through planning condition no. 1 and no. 3.
- The provision of timber sliding sash windows would enhance street façade to show some recognition of the subtle architectural details in the original buildings (which were demolished) that combine to enhance the character of this historic streetscape.
- Planning precedent decisions provided with conditions requiring the provision of windows onto Carmody street to be wooden sash windows.

6.2. Applicant Response

- The applicants have submitted a photographic survey of Carmody Street to demonstrate the existing context and the prevailing use of uPVC windows along the street.
- The example put forward by the appellants of no. 2 Carmody Street as one that has been well restored does in fact include uPVC windows and not timber sash windows.
- Issues with respect to the warning letter of the 5th January 2023 have been resolved as the window was re-located in accordance with the revised approved layout.
- Appendix P submitted to illustrate the difficulty to discern a major difference between the shape and design of the windows when viewing the original single storey buildings and the newly constructed two storey buildings.

6.3. Planning Authority Response

It was considered, as set out in the planning report on file, that given the particular sites location and the variety of building in the vicinity that the proposed windows would be acceptable.

6.4. Observations

None.

7.0 Assessment

Having examined the application details and all other documentation on file, including all the submissions received in relation to the appeal, the reports of the local authority and having inspected the site, and having regard to the relevant local, regional, national policies and guidance, I consider that the substantive issues in this appeal to be considered are as follows:

- Development contrary to a condition of parent permission, and
- Visual impact on the Architectural Conservation Area.

Given the potential for overlap and in the interests to reduce repetition I shall assess both these issues together.

Development contrary to a condition of parent permission and visual impact on the Architectural Conservation Area

An application can be legitimately made for development which is contrary to a condition of the parent permission. The appellant considers that no assessment has been given by Clare County Council to the requirement for all the windows in this development to be of painted solid timber up and down sliding sash as required under planning register reference 20/737.

I note the appellant's concerns that the statutory notices do not include condition 1 and condition 3 (f). However, I am of the opinion that the description sufficiently describes the development sought to be retained, noting it includes the parent planning register reference, to inform the public and alert them as to its nature and extent in accordance with the Planning and Development Regulations, 2001 (as amended) and the guidance provided in the Development Management 'Guidelines for Planning Authorities (2007)'. I agree with the appellants issue that the application seeks to retain only the front uPVC windows and that the windows to the rear of the buildings as also comprising uPVC are in contravention to condition no. 3. For clarity therefore, in my assessment of the application I am limited to assessing the retention of the windows to the front elevation. The matter of enforcement falls under the jurisdiction of the planning authority.

I am of the view that the reason for the condition 3(b) and 3(f) in respect to the windows is a material consideration in the assessment of the proposal to retain the uPVC windows to the front elevation of these two buildings within the ACA. The reason for attaching condition no. 3 is stated as 'to protect the character of the Architectural Conservation Area'. Therefore, in considering the character of the ACA I also have had regard to the planner's report in planning register reference 20/737 which placed emphasis on the timber sliding sash windows proposed in the revised front elevation, considered that same as required having regard to the location of the site within the ACA and recommended a grant to demolish the original vernacular buildings on this basis. The planner considers in their report under 20/737, based on the revised elevations (Drawing 2010 (p) 03) received on the 8 February 2021 which

specifies timber sliding sash to match the existing window removed, that the applicant had sufficiently addressed their concerns relating to the front elevation and that the revised proposal reflected the front elevation of the existing pair of dwellings proposed to be demolished in that application.

I note the applicant's response to the appeal and the photographs submitted illustrating the window types in the immediate context, of which a significant number are uPVC. In this respect I acknowledge that both the planner's report in the subject application and applicant agree that given the particular sites' location and the variety of buildings in the vicinity that the proposed windows to be retained would be acceptable.

The Architectural Heritage Protection Guidelines in section (3.10.2) recommends that when it is proposed to demolish an undistinguished building in an ACA, the proposed replacement should not be of lesser quality or interest than the existing one and should not adversely affect the character of the area. Having regard to these guidelines I am of the view that the decision to grant permission for the demolition of 2 no. vernacular houses (under planning reg. ref. 20/737), on the basis of the provision of a revised front elevation incorporating timber sliding sash windows, was an attempt by the planning authority to require the materials of the new building not to be of lesser quality than that of the existing buildings proposed to be demolished in the parent application. On the facts of the case, the retention of permission for the uPVC windows, which I consider to be of a lesser quality than the timber windows of the original now demolished buildings, would not accord with the guidance provided in the Architectural Heritage Protection Guidelines.

Notwithstanding, given there are no specific policies/objectives relating to uPVC windows within the Ennis Town Centre ACA and taking in account the particular character of this section of street block and other permitted buildings within the immediate vicinity I am of the opinion that, on balance, the retention of the uPVC windows in this instance would not materially nor adversely affect the character of the designated ACA.

I note the submission by the applicant on the planning application file providing an explanation that the window openings as designed and approved (under 20/737) would not comply with Part B of the Building regulations with respect to fire escape.

It is stated in letter dated 4/6/2023 that: “The openings would have to be made wider which would have compromised the lintels (reduced the bearing) and the head of the window would have to be risen. Because of the small distance between the top of the opening and the soffit, this was not possible as the whole roof would have to be lifted.” No further documentary evidence has been submitted to support this statement, as such, I do not consider that sufficient justification has been provided in this respect and, for clarity this issue does not form part of my considerations.

In conclusion, I consider that the retention of the uPVC windows in this instance would not materially nor would adversely affect the character of the designated ACA.

8.0 AA Screening

I have considered the proposed retention of uPVC windows to the front elevation of buildings, recently constructed, on Carmody Street in light of the requirements S177U of the Planning and Development Act 2000 as amended. The subject site is located c. 120m from the Lower River Shannon SAC (Site Code 002165).

The proposed development comprises refer to section 2.0. No nature conservation concerns were raised in the planning appeal.

Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion is as follows:

- Nature of works, including the small scale and nature of the development

I conclude that on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects. Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

9.0 Recommendation

I recommend that retention permission is granted for the reason and considerations set out below:

10.0 Reasons and Considerations

Given there are no specific policies/objectives relating to uPVC windows within the Ennis Town Centre Architectural Conservation Area (ACA) and taking in account the existing character of this street block and other permitted buildings within the immediate vicinity, on balance the retention of the uPVC windows in this instance would not materially nor adversely affect the character of the designated ACA.

11.0 Conditions

The development shall be retained in accordance with the plans and particulars as received by the planning authority on the 16th June 2023.

Reason: To define the permission.

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.

Claire McVeigh

16 July 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	317927-23		
Proposed Development Summary	Retention is sought for uPVC windows to the front elevation of two no. dwellings in lieu of timber sliding sash windows and contrary to Condition 3 (b) of planning reference P20-737.		
Development Address	Carmody Street, Ennis, Co. Clare.		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? <small>(that is involving construction works, demolition, or interventions in the natural surroundings)</small>		Yes	✓
		No	
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes			
No	✓		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
No	✓	N/A	No EIAR or Preliminary Examination required
Yes			

4. Has Schedule 7A information been submitted?

No	√	Preliminary Examination required
Yes		Screening Determination required

Inspector: _____

Date: _____