



An
Bord
Pleanála

Inspector's Report ABP-319119-24

Development	Change of use of existing pub and restaurant into 2 no. apartments to consist of one first floor, two bedroom apartment and one second floor one bedroom apartment.		
Location	Market Street., Gorteendrunagh, Castlebar, Co. Mayo.		
Planning Authority Ref.	23633.		
Applicant(s)	John Mulroy Mulroys Pub and Restaurant Ltd..		
Type of Application	Permission	PA Decision	Grant permission with conditions.
Type of Appeal	Third Party	Appellant	Barone Pension Fund.
Observer(s)	None		
Date of Site Inspection	21 st May 2024.	Inspector	Des Johnson

Context

1. Site Location/ and Description.

1.1 The site is located on the south east side of Market Street in the centre of Castlebar. The premises is a three-storey, terraced building, with a two-storey, flat roofed return to the rear, and appears to be currently vacant.

1.2 There is an archway, closed off by double doors, at ground floor level, shown as bin storage on the submitted drawings. This leads on to a long laneway beyond the site boundary, and used for the storage of bins, and motor mowers in need of repair. The laneway accesses on to a car parking area and Humbert Mall.

1.3 I did not gain access to the interior of the premises at the time of inspection.

2. Description of development.

2.1 The proposal is for the change of use of existing pub and restaurant into 2 no. apartments to consist of one first floor, two-bedroom apartment, and one second floor, one bedroom apartment.

2.2 The gross floor area of the proposed development is stated to be 172 sqm, and the site area is 0.013ha.

2.3 The two-bedroom apartment has a floor area of 108.6 sqm, and the one-bedroom studio apartment has a floor area of 44 sqm.

3. Planning History.

3.1 None on file.

4. Planning Policy

4.1 The Draft Castlebar Town & Environs Local Area Plan 2023-2029 zones the site for Town Centre uses. Residential use is permitted under the zoning.

4.2 Guidelines for Planning Authorities on Sustainable Residential and Compact Settlements (DHLGH) 2024. Section 4.4 (ii)(b) – In city and town centres, planning authorities should plan for a diverse range of uses including retail, cultural and residential uses and for the adaptation and reuse of the existing building stock (e.g. over the shop living).

4.3 Sustainable Urban Housing Design Standards for New Apartments Guidelines for Planning Authorities (2022). These guidelines were issued under Section 28 of

the Act. They contain Specific Planning Policy Requirements (SPPRs) which take precedence over any conflicting policies and objectives of the Development Plan. The Guidelines state that existing public transport nodes or locations where high frequency public transport can be provided, that are close to locations of employment and a range of urban amenities including parks/waterfronts, shopping and other services, are particularly suited to apartments.

SPPR 3 - Minimum Apartment Floor Areas:

- Studio apartment (1 person) 37 sq.m
- 1-bedroom apartment (2 persons) 45 sq.m
- 2-bedroom apartment (4 persons) 73 sq.m
- 3-bedroom apartment (5 persons) 90 sq.m

In the case of Central and/or Accessible Urban Locations, in larger scale and higher density developments, comprising wholly of apartments in more central locations that are well served by public transport, the default policy is for car parking provision to be minimised, substantially reduced, or wholly eliminated in certain circumstances.

For building refurbishment schemes on sites of any size or urban infill schemes on sites of up to 0.25ha, communal amenity space may be relaxed in part or whole, on a case-by-case basis, subject to overall design quality.

5. Natural Heritage Designations

5.1 The River Moy SAC is c.5.4km to the south east. There is no direct pathway between the appeal site and the SAC.

Development, Decision and Grounds of Appeal

6. PA Decision.

6.1 The planning authority decided to Grant Permission subject to 8 conditions. The conditions relate to standard compliance, external elevation details, surface

water discharge, odour and dust control, hours of operation, construction management plan, and financial contribution.

6.2 The Planner's Report, states that the site is zoned for Town Centre Use. One objection was received. The site is not within or immediately adjacent to any site designated for nature conservation. The proposal complies with the minimum floor areas and standards outlined in Appendix 1 of the Sustainable Urban Housing: Design Standards for New Apartments 2022, save for the provision of private amenity. The Guidelines allow for flexibility to be applied. The proposed development is in close proximity to a large public amenity area. Considerations in making the decision are the NPF, Apartment Guidelines 2022, Guidelines for Planning Authorities on Sustainable Residential and Compact Settlements 2024, and the draft Castlebar LAP.

7.Third Party Appeal.

7.1 The grounds of appeal may be summarised as follows:

- The planning authority has not acknowledged an existing unauthorised structure, being a link corridor and stairway which is connected to, and which may be used as an ingress and egress to the property.
- The application form is incorrect. The appellants (Barone Pension Fund) claim ownership of the building, and no consent has been given to the leaseholder for the submission of the planning application.
- There is an existing defective foul drainage system from the existing building, resulting in public health nuisance. Foul effluent has flooded the appellants property at ground floor level, most recently in November 2023. There is no evidence that the planning authority has informed Uisce Eireann of the problem.
- The application is inadequate due to lack of clarity in the submitted documents and drawings. The proposed development is over a laneway, owned by the appellants. This is not clear from the documents submitted with the application. The appellants do not consent to the laneway as being part of any development. There is a right of way over the laneway

on which a 'bin' storage is shown in the application. This is a fire hazard obstructing the only access route for escape purposes and for access for Fire Services. The Planner's report does not refer to bin storage.

- There is an absence of principal dimensions shown on floor plans and elevations. The application should not have been validated as the application does not meet the requirements of the Planning & Development Regulations. An incorrect rear elevation is shown.

The grounds of appeal include a copy of the objection submitted to the planning authority, which raises similar issues. The original objection states that there is no issue, in principle, to the planning application.

The grounds of appeal submission includes a 'Photographic Schedule' and refers to 'Unauthorised link corridor and stair structure', effluent flooding November 2023, and receipt for clean up of effluent flooding. It also includes a letter from Dillon Eustace Solicitors, dated September 2022, instructing Mr Mulroy of the requirement to seek the landlords consent where there is a change of use of the premises, and requiring the removal of structures erected without the consent of the owner.

8. 1st Party Response

8.1 This may be summarised as follows:

- The 1st Party are leaseholders of the premises, and this should be sufficient for the making of an application for permission for development.
- The 'Link Corridor and Stairway' referenced by the appellants are outside the footprint of the application. The structure is attached but separate to the subject premises. It is of no relevance to the application. It is a matter to be dealt with between the parties, independent of the planning process. The application does not alter the structure save to 'blank off' the connecting doorway. Precedent cases which are relevant include PL16.317143 and PL03.236768.

- The lease on the property is a 900 year lease. The Planning Regulations do not distinguish between freehold and leasehold ownership. The 1st Party is the owner of the 'structure', despite not being the freehold owner. The terms of the lease are not planning considerations. Whether formal consent to implement any permitted change of use is required from the freeholder is a matter to be addressed independent of the planning process. Section 34 (13) of the Planning and Development Acts is relevant. Precedent cases involving the Board are references 311599-21.314455-22, and 308473-20.
- The 1st Party does not dispute the occurrence of drainage issues within the appellants demise, but the cause and extent of same are undetermined. The area of the application has been vacant for some time and has not been creating a volume of discharge to the drains on site. The previous use had a capacity of c.150 persons indicating that there is ample capacity to accommodate the proposed land use.
- Refuse storage on the laneway has been in use for a number of premises (including the bar and restaurant being replaced). If necessary, an alternative solution to refuse storage could be found. The Board must consider if this matter could be subject of an appropriate condition.
- The Board is requested to dismiss the appeal

Environmental Screening

9. EIA Screening

Having regard to the limited nature and scale of development and the absence of any significant environmental sensitivity in the vicinity of the site, 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.

10. AA Screening

Having regard to the nature and scale of development, location in an urban area, connection to existing services and absence of connectivity to European sites, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

2.0 Assessment

2.1 The proposal is for the change of use of existing pub and restaurant into 2 no. apartments to consist of one first floor, two-bedroom apartment, and one second floor, one bedroom apartment. The gross floor area of the proposed development is stated to be 172 sqm, and the site area is 0.013ha. The two-bedroom apartment has a floor area of 108.6 sqm, and the one-bedroom apartment has a floor area of 44 sqm.

2.2 I consider that the key issues for consideration in this case are as follows:

- Principle of development
- Legal issues
- Foul drainage
- Other issues
- Environmental assessments

Principle of development

2.3 The site is located in the centre of Castlebar in an area zoned for Town Centre uses. Residential is a permitted use in this zoning category. The premises was formerly used as a public house and restaurant, and appears to be currently vacant. The proposal is consistent with the Section 28 Guidelines referenced above in this report. I submit that the proposed change of use is acceptable in principle.

Legal issues

2.4 The Third Party grounds of appeal raise a number of legal issues. It is contended that there is an existing unauthorised link corridor and stairway which is connected to, and may be used as an ingress and egress to the appeal property. The 1st Party state that the link corridor and stairway are outside the footprint of the application, and that a

connecting doorway would be blanked off. I submit that the submitted drawings do not show any connection to or from a link corridor and stairway outside the footprint of the application, and I conclude that the proposed development is not dependent on any such connection for ingress or egress. The planning status of the connection is a matter for the planning authority.

The appellants claim ownership of the property and state that no consent has been given to the leaseholder (1st Party) for the submission of the planning application. The 1st Party state that there is a 900 year lease on the property, and that this is sufficient for the making of the application. I submit that the interpretation of the terms of a lease is not a matter for the Board to determine, and may ultimately be a matter to be resolved in the Courts. On this matter I refer the Board to Section 34(13) of the Planning & Development Act 2000, as amended, which states that “a person shall not be entitled solely by reason of a permission under this section to carry out any development”.

The appellants contend that they own the laneway under the archway at ground floor level, that this is a right of way, and that bin storage as proposed should not be permitted. The 1st Party contend that a number of premises use the laneway for refuse storage, including the bar and restaurant to be replaced. Based on observations made at the time of inspection, this appears to be the case. I submit that the status of the laneway as a right of way is not impacted by the proposed development. The issue of bin storage could be addressed by way of condition to any permission granted.

Foul drainage

2.5 The 3rd Party appellants contend that there is an existing defective foul drainage system from the existing building, resulting in a public health nuisance. Flooding of their property occurred most recently in November 2023. The 1st Party does not dispute that there are drainage issues, but contend that the cause and extent of these drainage issues remain undetermined. They state that the area of the application has been vacant for some time and has not been creating a volume of discharge to the drains on the site, and that the previous use had a capacity of c. 150 persons indicating ample capacity for the proposed use. I submit that this is an issue that can be addressed by way of condition of any permission granted.

Environmental assessments

2.6 Having regard to the limited nature and scale of development and the absence of any significant environmental sensitivity in the vicinity of the site, 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.

2.7 Having regard to the nature and scale of development, location in an urban area, connection to existing services and absence of connectivity to European sites, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

3.0 Recommendation

I recommend that permission for the development be granted.

4.0 Reasons & Considerations

Having regard to the nature and scale of the proposal, the central urban location, and National policy as outlined in Section 28 Guidelines relating to Sustainable Residential and Compact Settlements 2024, and Sustainable Urban Housing Design Standards for New Apartments 2022, it is considered that, subject to compliance with the following conditions, the proposed development would provide for an acceptable form of development, and would be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be carried out in accordance with the plans and particulars submitted to the planning authority on 28th November 2023, except as may be amended by the following conditions.

Reason: In the interests of clarity.

2. Prior to the commencement of development, the developer shall submit the following for the written agreement of the planning authority:
- Details of all external finishes, including first and second floor windows, guttering, and fascia,
 - Details of proposed bin storage arrangements on property within the control of the developer,
 - Details of wastewater discharge arrangements, including confirmation from Irish Water regarding the adequacy and capacity of the existing infrastructure.

The development shall be carried out in accordance with the agreed written details.

Reason: In the interests of visual amenity, orderly development, and public health.

3. Surface water discharge from the development shall comply with the requirements of the planning authority for such services and works.

Reason: In the interest of public health.

4. 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. The contribution shall be paid prior to the 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 Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 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.

Des Johnson

Planning Inspector

7th June 2024.

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.