



An
Bord
Pleanála

Inspector's Report ABP-319133-24

Development	Retain change of use from commercial unit (previously granted under planning permission no. P01/2216) to residential unit.		
Location	8, Market Road, Ballina, Co. Mayo.		
Planning Authority Ref.	23634.		
Applicant(s)	John Howley.		
Type of Application	Permission for Retention	PA Decision	Permission with conditions.
Type of Appeal	First Party v Condition	Appellant	John Howley
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 north-west side of Market Street. It is at first floor level of a three-storey residential/commercial block, with shops at ground floor level.

1.2 The appeal premises appeared to be unoccupied at the time of inspection, and was not viewed internally. There is a central access stairway to first floor level. To the rear there is access to a balcony at first floor level.

2. Description of development.

2.1 The proposal is for retention of change of use from commercial unit (previously granted under planning reference no. P01/2216) to residential unit.

2.2 The gross floor area to be retained is stated to be 65.2 sqm and the site area is 0.006ha.

2.3 Submitted drawings show a Roof Terrace Common Area to the rear and connected to the subject unit.

3. Planning History

3.1 Reference P99/2040 – permission granted subject to 26 conditions for the demolition of existing buildings and reconstruction of a new building to comprise of 18 no. apartments and 789 sqm commercial/retail space, and to connect to all public utilities together with all associated site works, at Market Road, Ballina.

3.2 Reference P01/2216 – permission granted, subject to 20 conditions, for change of use of first floor apartments (previously granted full P.P. under PD 2040) from residential use to commercial and office use at Market Road, Ballina.

4. Planning Policy

4.1 The site is zoned for Town Centre uses in the Draft Ballina Plan. Apartments are permissible under this zoning objective.

4.2 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. The minimum floor area for 2-bedroom apartment (4 persons) is 73 sq.m

Appendix 1 of the Guidelines sets out Required Minimum Floor Areas & Standards. Planning authorities may consider a two-bedroom apartment to accommodate 3 persons, with a minimum floor area of 63 sqm. No more than 10% of the total number of units in any private residential development may comprise this category of two-bedroom, 3 person apartment.

5. Natural Heritage Designations

5.1 The River Moy SAC is c. 300m to the south east of the appeal site. The qualifying interests for the SAC are Lowland Hay Meadows, Raised Bogs, Depressions on Peat Substrates, Alkaline Fens, Old Sessile Woods, Alluvial Forests, White Clawed Crayfish, Lamprey (sea and brook), Salmon, and Otter..

Development, Decision and Grounds of Appeal

6. PA Decision.

6.1 The planning authority decided to grant permission subject to 4 conditions.

6.2 Condition 1 relates to standard compliance, Condition 3 requires that any infrastructure upgrades be at the developer's expense, and Condition 4 relates to refuse areas. Condition 2 is under appeal, and reads as follows:

The design of the residential unit shall be modified to Mayo County Council's satisfaction in the following respects:

- (i) The proposal to be retained shall be for 1 no. bedroom only. The second bedroom shall be omitted. Internal storage provision of 3 sqm shall be provided for, and before development commences, a full set of drawings making provision for this shall be submitted to and agreed with Mayo County Council.*

Reason: *In the interest of visual and residential amenity.*

6.3 The Planner's report, dated 25th January 2023 states that the site is in a predominantly residential area. The proposed development is on the first floor of a 3-storey premises. The site is zoned 'Town Centre' in the draft Ballina Plan. There were no observations submitted. The two-bed apartment falls short of the minimum 73 sqm as per Apartment Guidelines 2022, and a condition should

require reduction to a 1 bed unit only, including a minimum 3 sqm for storage provision.

7. First Party Appeal.

7.1 This is a First party appeal against Condition 2 of the permission granted and may be summarised as follows:

- The Board is requested to limit its consideration to the condition under appeal.
- The Board is requested to omit the condition. Alternatively, if deemed necessary, the Board is requested to replace the condition to one specifying that the subject apartment be a three-person, two bedroom apartment.
- The core issue arising is the formal regularisation of a long established, and previously permitted, residential use of the unit with the application of current Design Standards for New Apartments, which were not intended to have retrospective application.
- The condition is disproportionate and unnecessary. The planning authority did not apply any discretion in relation to bedroom and storage elements of the proposal.
- The site is part of an urban mixed use block in the centre of Ballina town core. The block was the subject of permission under reference no. P99/2040. Under this permission, the subject apartment was permitted for use as a two-bedroom apartment. A subsequent permission under reference no. P01/2216 permitted a change of use of first floor apartments to commercial and office use. The applicant maintains that the subject apartment has always remained in residential use. As such, the permitted use is residential and specifically a two bedroom apartment.
- Bedroom sizes are c. 11.4 sqm and c. 9.3 sqm, or a cumulative of almost 21 sqm, which accords with the requirements of the Design Standards for 3 person two-bedroom apartments. The Design Standards have built in relaxations to allow for site context to be taken into account. In any event, the Design Standards are not applicable to the subject apartment.

- Objectives of the NPF (NPO 11 & NPO 13) are supportive of the proposed development.
- The reason for the condition is *“in the interest of visual and residential amenity”*. There are no visual amenity issues, and the condition will disimprove residential amenity.

8. PA Response

8.1 None on file.

Environmental Screening

9. EIA Screening

Having regard to the 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 proposed development is for the retention of change of use from commercial unit (previously granted under planning reference no. P01/2216) to residential use. The gross floor area to be retained is stated to be 65.2 sqm. The planning authority granted permission subject to 4 conditions. This is a first party appeal against Condition 2 of the permission granted.
- 2.2. The appeal premises is at first floor level in a commercial/residential block, centrally located in Ballina. The block was originally granted permission comprising 18 no.

apartments and 789 sqm of commercial/retail space. A later planning permission was granted for the change of use of first floor apartments from residential use to commercial and office use. The site is in an area zoned for Town Centre uses, and apartments are permissible under this zoning. In these circumstances I consider that the proposed development is acceptable in principle, and that the Board's consideration should be confined in accordance with Section 37 of the Planning & Development Act 2000, as amended, to Condition 2 of the permission granted.

Condition 2.

- 2.3. The condition, as attached by the planning authority, requires the design of the unit to be modified to a 1 no. bedroom unit only, and for the provision of 3 sqm internal storage provision. The reason for the condition is stated to be 'in the interest of visual and residential amenity'. The appellants contend that there are no visual amenity issues arising, and I agree with this contention. In assessing residential issues, I consider that it is appropriate to refer to national policy as detailed in the Sustainable Urban Housing Design Standards for New Apartments Guidelines for Planning Authorities (2022). These Guidelines contain standards for minimum apartment floor areas. The minimum floor area for a two-bedroom apartment (4 persons) is 73 sqm. The proposed development for retention at 65.2 sqm floor area does not meet that standard. The Guidelines state that planning authorities may consider a two-bedroom apartment to accommodate 3 persons, with a minimum floor area of 63 sqm. I submit that, in the interests of residential amenity, the Condition 2 should be amended to meet the requirements of the Guidelines.

Environmental Assessments

- 2.3.1. Having regard to the 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.
- 2.4. 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

- 3.1. I recommend that the Board confines its consideration to Condition 2 of under appeal. I recommend that condition 2 of retention permission granted under Register Reference P23/634 be amended to read as follows:

The unit shall be restricted to use as a two-bedroom, three-person residential unit.

Reason: *In order to comply with the Sustainable Urban Housing Design Standards for New Apartments Guidelines for Planning Authorities (2022), and in the interests of residential amenity.*

4.0 Reasons & Considerations

Having regard to the central location of the appeal premises, the planning history relating to the property, and to the Sustainable Urban Housing Design Standards for New Apartments Guidelines for Planning Authorities (2022), it is considered that the residential use of the unit is acceptable in principle and that, subject to the revised Condition 2 of Register reference P23/634, the development would be in accordance with the proper planning and sustainable development of the area.

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.