



An
Bord
Pleanála

Inspector's Report ABP-320191-24

Development	Retention for temporary period of 2 years for structure as constructed. Permission for construction an extension to the original structure to replace the existing structure for use as a coffee shop sit-down area and all associated site works.
Location	Strand Road, Bray, Co. Wicklow.
Planning Authority	Wicklow County Council.
Planning Authority Reg. Ref.	2460254.
Applicant(s)	Dave Tew.
Type of Application	Retention and Permission.
Planning Authority Decision	Refusal.
Type of Appeal	Third Party.
Appellant(s)	Una O'Keeffe, Derek Whyte, Brendan Dillon.
Observer(s)	None.
Date of Site Inspection	20 November 2024
Inspector	Natalie de Róiste

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1.0 Site Location and Description

- 1.1.1. The site comprises an existing coffee shop located at the south end of Bray Promenade on the seafront, between Strand Road and the promenade. It has a serving counter located within a former boathouse, and an outdoor seating area to the front (south), wrapping around to the east side. The remaining two-thirds of the boathouse is the premises of a youth club. The former boathouse has been extended to the north with a single-storey rendered building, in use as a rowing club. To the north of this again the public toilets are adjoined.
- 1.1.2. The former boathouse appears to date from the Victorian/Edwardian period, shown on the 3rd edition Ordnance Survey map but not the 1st edition. It is a cut granite building with mild Romanesque revival features including buttresses, round-headed arches, loop windows, and a sawtooth string course.
- 1.1.3. The seating area has low walls, and contains a number of tables, chairs, picnic benches and umbrellas. The timber structure to be retained which was located in this area (as shown and described in the application documentation) had been removed on the date of the site visit.

2.0 Proposed Development

- 2.1.1. Retention for temporary period of 2 years for timber structure with corrugated roof, to south elevation of existing café. Permission for construction of an extension to the original structure to replace the existing structure for use as a coffee shop sit-down area and all associated site works.

3.0 Planning Authority Decision

3.1. Decision

Refuse permission and retention permission for two reasons as follows:

1. The applicant has failed to demonstrate sufficient legal interest in the site. The area on which the existing extension is located and proposed extension is to be located would appear to be public land. Article 22(2) of the Planning and Development Regulations, 2001, as amended, states- "A planning application

referred to in sub-article (1) shall be accompanied by - inter alia (g) "where the applicant is not the legal owner of the land or structure concerned, the written consent of the owner to make the application". The proposed development for retention and for permission would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to the nature, finish and location of the former boat house building it is considered that the extension proposed for retention by reason of its design and finish is not in keeping with the character of the existing granite former boathouse building or and is not consistent with the existing pattern of development along this section of Bray Seafront. The development proposed for retention is considered to be visually obtrusive, detracts from the visual amenity of the area and sets a precedent for similar type structures along the seafront area and its retention would be contrary to proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Report dated 13 June 2024

- Site is zoned Public Open Space, and private commercial use not typically acceptable, but planning history noted, including previous grant for outdoor seating under awning on the site
- Area for development is on public lands, outside control of applicant
- Proposed structure potentially more visually appropriate than the timber structure proposed for retention, but given lack of legal interest in the site a refusal is in order

3.2.2. Other Technical Reports

- Bray District Engineer – email dated 27 May 2024 – refusal recommended, this is public land, subject to legal dispute for extant development – area of development extends beyond the area where awning was previously permitted.
- Wicklow County Fire Service – email dated 6 June 2024 – conditions recommended.

3.3. Prescribed Bodies

No reports.

3.4. Third Party Observations

- 3.4.1. Twenty-two submissions were received in total. Twenty-one submissions were in support of the development, from Bray residents and patrons of the coffee shop, from Bray Tourism Ltd, Bray & District Chamber of Commerce, and from Star Leisure (a business on Strand Road), highlighting the importance of the café as a community resource and meeting place, particularly in inclement weather, and noting the benefits to be gained from a durable, permanent extension. One of these submissions was from Derek Whyte, the agent for the applicant, and consisted of a copy of a visitor's book with a large number of comments in support of the covered seating area for the café.
- 3.4.2. One submission expressed concerns regarding the structural integrity and visual impact of the structure for retention, and the risk of damage to the existing granite building, and stated that any new building should complement the existing structure, create a welcoming first impression, and have minimal signage.

4.0 Planning History

4.1.1. On site:

- ABP-302673-18 (18/821): Planning permission REFUSED to Helen O' Reilly for the Construction of a single-storey conservatory style extension to the south façade of the existing single storey coffee shop and all associated site works for 2 reasons; impact on the character of the cut-stone granite former boathouse, and failure to demonstrate sufficient legal interest in the site.
- 05/630052: Retention permission GRANTED to David Tew for 2 No. roller shutters, signage, CCTV cameras, lighting, planters, wind breaker and retractable awning/ canopy fixed to the façade of an existing café plus railings, cobble lock paving, stone kerbs and external lamp standards for an external open area adjacent to the Boathouse Café, at the southern end of Strand Road, Bray with additional fixed seating outside this area for general public use.

4.1.2. Nearby applications of interest:

- Bray Rowing Club, Strand Road (attached building to north)

23/739: Permission granted for replacement of existing single-storey rowing club boathouse with two-storey building with larger footprint.

- area to south of existing outdoor seating area

21/660: Section 254 Licence for 3 sherry barrels granted to Helen O'Reilly, until 31st December 2021, subject to the following condition:

1. *section 254 licence is hereby granted for the placement of 3 sherry barrels at The Boat House coffee Dock' Strand Road, Bray, co Wicklow subject to the covered structure over the existing outdoor seating area, already on public space, being removed or side panels removed to increase ventilation and allow outdoor seating under the canopy to be used.*

REASON: In the interest of pedestrian/traffic safety and proper planning and sustainable development.

- area to south of existing outdoor seating area

ABP ref 27.LC.2066 (16/807): Section 254 licence for tables and chairs
REFUSED to David Tew due to impact on pedestrian flow.

5.0 Policy Context

5.1. Development Management Guidelines for Planning Authorities (2007)

5.1.1. Section 5.13 of these Guidelines states:

5.1.2. *Under the Planning and Development Regulations, as amended, a planning applicant who is not the legal owner of the land or structure in question must submit a letter of consent from the owner in order to make the planning application. Where an applicant is not the owner and does not submit such a letter of consent, the application must be invalidated.*

and

- 5.1.3. *The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution by the courts*
- 5.1.4. *If, however, the terms of the application itself, or a submission made by a third party, or information which may otherwise reach the authority, raise doubts as to the sufficiency of the legal interest, further information may have to be sought under Article 33 of the Regulations. Only where it is clear from the response that the applicant does not have sufficient legal interest should permission be refused on that basis. If notwithstanding the further information some doubt still remains, the planning authority may decide to grant planning permission. However, such a grant of permission is subject to the provisions of Section 34(13) of the Act...*

5.2. Wicklow County Development Plan 2022-28

- 5.2.1. The County Development Plan (CDP) was adopted on the 12th of September 2022 and became effective on the 23rd of October 2022. *Section 1.2 Structure of the Plan* details that separate Local Area Plans (LAP) are in place for certain towns/areas including the Bray Municipal District, which will be reviewed after the adoption of the CDP.
- 5.2.2. Chapter 5 of the Plan deals with Placemaking for Town and Village Centres, and has the following Heritage Objective:
- CPO 5.17 To harness and integrate the special physical, social, economic and cultural value of built heritage assets through appropriate and sensitive reuse, recognising its important contribution to placemaking. New development should respect and complement the historic fabric of existing towns and villages – the traditional street patterns, plot sizes, mix of building types, distinctive paving and attractive street furniture.*
- CPO 5.18 To protect, integrate and enhance heritage assets, including attractive streetscapes and historic buildings, through appropriate reuse and regeneration and restrict inappropriate development that would undermine the settlement's identity, heritage and sense of place.*
- 5.2.3. Chapter 8 of the Plan deals with Built Heritage, and has the following Architectural Heritage Objective:

CPO 8.10 To protect, conserve and manage the built heritage of Wicklow and to encourage sensitive and sustainable development to ensure its preservation for future generations.

5.2.4. Chapter 10 deals with the retail strategy for the county, and *Table 10.1 Retail Hierarchy & Strategy for County Wicklow* sets out that Bray is a Level 2 centre, second only to Dublin City Centre. It refers to the seafront area as follows:

5.2.5. *‘Bray seafront area shall be a vibrant and attractive seafront area, which functions as the primary tourist, recreational and leisure centre of the town. It is a priority to rejuvenate the seafront area through the expansion of retail and non-retail services, particularly targeted at the visitor market and tourism products. The town centre is located some distance from the seafront area and does not benefit from spin-off associated with the uptake of leisure activities on the seafront. Taking account of this, it is of major importance that the centre carves out a significant role for itself in the provision of quality shopping facilities which act as a draw for people into the centre.’*

5.3. The Bray Municipal District Local Area Plan 2018-2024

5.3.1. The Bray Municipal District LAP was adopted on the 14th of May 2018 and became effective on the 10th of June 2018. Under this plan, the site was zoned ‘OS1: Open Space’ with the objective to ‘protect and enhance existing and provide for recreational open space’. The description of the zoning was as follows:

5.3.2. *‘To facilitate the further development and improvement of existing parks and casual play areas, to facilitate opportunities for the development of new high quality amenity open areas and to restrict developments / activities (such as the use or development of such lands for formal sports grounds for organisations that are not available for a broad range of the public) that would reduce the opportunities for use by the wider public.’*

5.3.3. This Local Area Plan has expired and not been extended. Pre-draft consultation on the preparation of a new plan commenced on 20 November 2024, to run until 18 December 2024.

5.4. Natural Heritage Designations

The closest European site is Bray Head SAC (site code 000714) – c. 350m to the south east. This is also a proposed Natural Heritage Area (pNHA: 000714).

5.5. EIA Screening

The proposed development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended. No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination. Refer to Form 1 in Appendix 1 of report.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. Three third party appeals have been received, all appealing against the decision to refuse permission:

6.1.2. The third party appeal from Una O'Keeffe raised the following issues.

- Ownership has been addressed
- The temporary wooden structure is an improvement over the marquee which was there previously since 2015, and would be supported by customers

6.1.3. The third party appeal from Brendan Dillon raised the following issues:

- Decision to refuse is incorrect and should be reconsidered in light of the popular support for the proposal

6.1.4. The third party appeal from Derek Whyte (the agent for the applicant) clarified that the appeal was a third party appeal, following his third party submission on the original application, and raised the following issues:

- The Boathouse Coffee shop is long-established, delivering a positive and successful use, and the development epitomises the principle of 'proper planning and sustainable development', with no negative impacts that would warrant its removal.

- The inspector is invited to visit the boathouse anonymously to experience it
- The applicant has sufficient legal interest to lodge the application, a letter is supplied from the applicant's solicitor. The council raised no concerns in 2005 (in granting 05/630052) or in validating the current application. Case law (Frescati Estates Ltd v Walker, McCabe v Harding Investments Ltd) and statute (Article 22(2)(g) and Article 34(13) of the Planning and Development Regulations) support this.
- Regarding the second reason for refusal, which refers to the existing structure, a two-year temporary permission would allow the applicant to raise finance for the permanent extension; however, the Inspector may consider a one-year duration more appropriate
- The Local Authority appears supportive of the proposed permanent extension, which is of an appropriate scale (especially given the recently permitted first floor extension to the adjoining Bray Rowing Club.
- The speed of the decision (2 weeks before the end of the statutory deadline) indicates a hasty decision rather than a fair, reasonable and balanced assessment.

6.2. Applicant Response

None received.

6.3. Planning Authority Response

None received.

6.4. Observations

None received.

7.0 Assessment

Having examined the application details and all other documentation on file, including all of 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:

- Compliance with Development Plan policies and guidance (new issue)
- Removal of structure to be retained
- Visual amenity and impact on the existing structure
- Land ownership and legal interest

7.1. Compliance with Development Plan policies and guidance (new issue)

- 7.1.1. The application was assessed against the Bray Municipal District LAP, which has since lapsed. The relevant plan is the Wicklow County Development Plan, which was not considered in the Local Authority's planning report. The Board may wish to seek the views of the Local Authority on this issue. In my view, the proposed development complies with the relevant objectives and strategy listed above, and I found no policies, objectives, or standards that would preclude a grant of permission.
- 7.1.2. I note Wicklow County Retail Strategy's aspirations for a vibrant and attract seafront area in Bray, and its priority to rejuvenate the seafront through the expansion of retail and non-retail services. I consider the support for the development expressed in the third party submissions and third party appeals particularly relevant in this regard, with many third parties noting the benefits of covered seating in attracting patrons to the seafront in inclement weather, and I consider it likely the proposal would contribute to the vibrancy and rejuvenation of the seafront.

7.2. Removal of structure to be retained

- 7.2.1. As noted above, I undertook a site visit and found that the structure to be retained has been removed. As a result, in my view, it is not possible to grant permission for its retention, and a refusal of this element of the application is in order.

7.3. Visual amenity and impact on the existing structure

- 7.3.1. The site is not highly visible from the promenade or from Strand Road to the north, as it is largely obscured behind the rowing club and public toilets, but it is visible in long views of the town from the approach to Bray Head and from the beach, and as such a high standard of visual amenity is required. The building is not a protected structure or located within an Architectural Conservation Area, but it is a well-designed and well-built structure of some age on the seafront. Objective CPO 8.10 of the Development Plan is noted. As a result, the Architectural Heritage Protection Guidelines for Planning Authorities are of interest. Section 6.8.2 of these guidelines advise:
- 7.3.2. *If planning permission is to be granted for an extension, the new work should involve the smallest possible loss of historic fabric and ensure that important features are not obscured, damaged or destroyed. In general, principal elevations of a protected structure (not necessarily just the façade) should not be adversely affected by new extensions. The design of symmetrical buildings or elevations should not be compromised by additions that would disrupt the symmetry or be detrimental to the design of the protected structure.*
- 7.3.3. No changes are proposed to the existing openings or elevations, and therefore there would be minimal loss of historic fabric. The proposed extension has large glazed areas to allow views from Strand Road to the beach, which also allow for views of the entrance elevation. The proposed extension does not disrupt the symmetry of the elevation. A slight reduction in the width of the proposed extension, to ensure the distinctive corner buttresses and the carved stones above them (as well as the sawtooth string course) are not obscured, would be in order in the event of a grant of permission. Subject to these small amendments, and appropriate quality materials, the extension would have no negative impacts on the existing heritage structure, or on the wider area, being of appropriate scale and simple form. An additional sketch has been submitted with the appeal, showing the modest scale of the extension relative to the existing and permitted adjacent buildings.
- 7.3.4. In the interests of clarity and completeness, having considered the photographs in the planner's report of the log cabin style extension it was proposed to retain, I do

not find that structure to be of an appropriate character or scale, having regard to visual amenity in general, and to Objective CPO 8.10 of the Development Plan.

7.4. Land Ownership and Legal Interest

- 7.4.1. As noted above, the first reason for refusal was failure to demonstrate sufficient legal interest in the site, with the Bray Municipal District Engineer asserting in internal correspondence that the development is on public land, and is subject to a legal dispute for the development that has taken place (email of 27 May 2024). The appeal from Derek Whyte attaches a letter from the applicant's solicitor, asserting that the applicant is the legal owner of the premises known as The Boathouse. A map is appended to this letter, prepared by Derek Whyte, which delineates the outdoor seating area (but excludes the interior, where the coffee counter is located). Evidence of commercial rates being paid on the premises is also enclosed, with a map showing the indoor and outdoor area. The appellant states that Wicklow County Council raised no issue in terms of ownership in 2005.
- 7.4.2. I note that the particulars submitted by the applicant in 2005 for application 05/630052 for retention of outdoor seating clearly indicate that the outdoor area was then in public ownership (Drawing P-002 and letter dated 18 May 2005 from the applicant, as well as letter dated 17 June 2005 issuing with the decision). I note the information on file with appeals ABP-302673-18 and 27.LC2066 also demonstrate that the Local Authority has consistently asserted ownership of the outdoor seating area as public land.
- 7.4.3. As noted in Section 5.13 of the Ministerial Guidelines for Planning Authorities on Development Management (June 2007), the planning system is not designed as a mechanism for resolving disputes about title to land or premises; these are ultimately matters for the courts. The guidelines note that further information should be sought by planning authorities as necessary. Only where it is clear that the applicant does not have sufficient legal interest, should permission be refused on that basis – in the event that some doubt still remains, permission may be granted, subject to the provisions of section 34(13) of the Act (which states that a person shall not be entitled solely by reason of a permission under this section to carry out any development).

7.4.4. I have significant doubt regarding the applicant's legal interest in the site; no contract, lease, or statutory declaration has been provided indicating any change in the status of the outdoor part of the site since 2005. The payment of commercial rates and the extant grant of planning permission do not confer the necessary legal interest. However, the Local Authority has not responded to the assertion from the applicant's solicitor that they are the owner of the Boat House (with the accompanying map outlining the outdoor area), and did not invalidate the application for lack of a letter of consent from the owner. The Local Authority has introduced further doubt by stating in their refusal that the area 'would appear to be public land', rather than stating that it is public land, indicating a lack of certainty on their own part. As such, it is not entirely clear to me that the applicant does not have sufficient legal interest, and as a result, in line with the Ministerial Guidelines, I am not recommending a refusal on these grounds.

7.5. Other matters

7.5.1. Regarding the speed of the decision, the planning authority's decision was made six weeks after the application was submitted. The planner's report was dated 4 days after the closing date for submissions, included site visit photographs, and took account of third party submissions and internal reports. There is no indication that this was a hasty decision.

8.0 AA Screening

Having regard to the nature and small scale of the proposed development and the distance from the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect, individually, or in combination with other plans or projects, on any European site.

9.0 Recommendation

9.1.1. I am recommending a split decision, that planning permission be REFUSED for the retention of the existing structure for the reasons and considerations set out in Schedule 1 below, and that planning permission be GRANTED for the proposed

structure subject to the provisions of section 34(13), for the reasons and considerations set out in Schedule 2 below and subject to the attached conditions.

- 9.1.2. The applicant (or any eventual developer) should be certain under civil law that they have all necessary rights to execute the grant of permission, prior to any development.

10.0 Reasons and Considerations

Schedule 1 Reasons and Considerations

The structure proposed for retention has since been removed, and cannot be retained.

Schedule 2 Reasons and Considerations

Having regard to the provisions of the Wicklow County Development Plan 2022-2028, the nature, scale, and character of the development, and the provisions of Section 34(13) of the Planning and Development Act 2001 (as amended), it is considered that the proposed development, subject to compliance with the conditions set out below, would not seriously injure the visual amenities of the area, and would be in accordance with the proper planning and sustainable development of the area, subject to the below conditions.

11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.
Reason: In the interest of clarity.
2. The proposed development shall be amended as follows:

The proposed extension shall be reduced in width to avoid obscuring the carved stone features (the corner buttresses and the carved stones above them) at the ends of the front elevation, and the roof shall be set below the sawtooth string course.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: so as not to obscure the features of the existing building, in the interests of the protection of architectural heritage.

3. All external signage shall be in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to the provision of such signage. Where agreement cannot be reached between the applicant/developer and the local authority the matter shall be referred to An Bord Pleanála for determination.

Reason: In the interest of visual amenity.

4. Details of the materials, colours and textures of all the external finishes to the proposed extension shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity and to ensure an appropriate high standard of development.

5. Site development and building works shall be carried out between the hours of 8 a.m to 6 p.m. Mondays to Fridays inclusive, between 8 a.m. and 2 p.m. on Saturdays and not at all on Sundays and public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written agreement has been received from the planning authority.

Reason: To safeguard the amenity of property in the vicinity.

6. The disposal of surface water shall comply with the requirements of the planning authority for such works and services.

Reason: To prevent flooding and in the interests of sustainable drainage.

7. 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, as amended. The contribution shall be paid prior to 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

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

Note: The applicant is advised of the provision under Section 34(13) of the Planning and Development Act, 2000 which stipulates that a person shall not be entitled solely by reason of a planning permission to carry out any development.

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.

Natalie de Róiste
Planning Inspector

5 December 2024

Appendix 1 Form 1

EIA Pre-Screening

An Bord Pleanála Case Reference	320191-24		
Proposed Development Summary	Retention for temporary period of 2 years for structure as constructed. Permission for construction an extension to the original structure to replace the existing structure for use as a coffee shop sit-down area and all associated site works.		
Development Address	Strand Road, Bray, Co. Wicklow		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)	Yes	<input checked="" type="checkbox"/>	
	No	Tick if relevant. No further action required	
2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?			
Yes		Class/Threshold	EIA Mandatory EIAR required
No	<input checked="" type="checkbox"/>		No further action required
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes		Threshold	EIA Mandatory EIAR required
No			Proceed to Q4
4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
Yes		Size/Threshold	Preliminary examination required (Form 2)
5. Has Schedule 7A information been submitted?			
No	<input checked="" type="checkbox"/>	Screening determination remains as above (Q1 to Q4)	
Yes		Screening Determination required	

Inspector: _____

Date: _____