



An  
Bord  
Pleanála

## Inspector's Report

### ABP-320624-24

#### Development

Retention permission for development which consists of a reduction in the commercial development area and an increase in the residential development area in the form of a one-bedroomed ground floor apartment.

#### Location

Apartment 5, Flynn Complex,  
Roscommon Road, Bogganfin,  
Athlone, Co. Westmeath.

#### Planning Authority

Westmeath County Council

#### Planning Authority Reg. Ref.

2460199

#### Applicant(s)

Geraldine Gavin

#### Type of Application

Retention permission.

#### Planning Authority Decision

Refuse retention permission

#### Type of Appeal

First Party

#### Appellant(s)

Geraldine Gavin

#### Observer(s)

None.

**Date of Site Inspection**

15/1/25

**Inspector**

Ronan Murphy

## **1.0 Site Location and Description**

- 1.1. The appeal site has a stated area of 0.005ha and is located at ground floor level of an existing mixed-use development which comprises of commercial / office units at ground floor with residential above. The development is known as Flynn Complex.
- 1.2. The overall development is located c. 1km to the west of Athlone Town Centre and comprises of a two-storey terrace block of commercial units at ground floor and residential units at first floor.
- 1.3. The unit to which this retention application pertains is the ground floor unit at the eastern end of the terrace and this application seeks to retain the use of c.51.9m<sup>2</sup> of the ground floor as a one bed apartment. The balance of the permitted unit (c.16.153m<sup>2</sup>) is retained in the permitted office use. The residential unit for which retention is sought is a north facing, single aspect unit which faces towards the car park of the overall development. To the rear of the apartment the floor area is a commercial unit comprising of two offices and ancillary floor space (coffee / tea station).
- 1.4. An area of private open space for the apartment is provided to the rear of the building, comprising of a modified car parking space enclosed by 1.8m high fencing. The private open space is not accessible directly from the apartment and abuts car parking spaces and a waste storage area.

## **2.0 Proposed Development**

- 2.1 This application seeks retention planning permission for the change of use of part of the ground floor of a previously permitted office unit to residential use in the form of a one-bed ground floor unit. The balance of the ground floor would be retained as the previously permitted office use.
- 2.2 The apartment area for which retention is sought has an area of 51.9m<sup>2</sup> which comprises of 1 double bedroom, a kitchen / dining room, utility room and WC.
- 2.3 Private open space is provided by way of an enclosed space to the rear of the building of c.25.6m<sup>2</sup> and is enclosed by 1.8m high panels.

### 3.0 Planning Authority Decision

#### 3.1. Decision

3.1.1 The planning authority decided on 31st July 2024 to refuse planning permission for the following reason:

*1. The development proposed for retention, if permitted would contravene national guidelines 'Sustainable Urban Housing: Design Standards for New Apartments 2018' as the development does not meet minimum requirements for internal accommodation standards. In the absence of same coupled with the substandard provision of private open space and substandard daylight provision into this unit, it is considered that to permit the development would negatively impact on the residential amenities of its future occupiers, would be contrary to policy P-RLD7, P-RLD3, section 12.9.13 and section 12.9.14 of the Athlone Town Development Plan 2014-2020, would set an undesirable precedent for similar developments of this type in the future and would therefore be contrary to the proper planning and sustainable development of the area.*

3.1.2 The decision was in accordance with the planning officer's recommendation.

#### 3.2. Planning Authority Reports

##### 3.2.1. Planning Reports

3.2.2. There is one planning report on file, dated 26 July 2024. The report notes that notes that the subject site is zoned 'Commercial,' and that residential use is open for consideration in this zoning. The report highlights concern in relation to the private open space provision, which is considered to be substandard, as there is no direct access between the apartment and the private open space, and the private open space would be directly overlooked at ground floor level by commercial uses. The planning report notes that this arrangement is inappropriate and would adversely impact upon the privacy of future occupiers and users of the open space. In addition to this, the location of the private open space results in the loss of car parking spaces serving the mixed-use development.

3.2.3. The report highlights concerns that the applicant has not demonstrated that the apartment provides for an adequate level of natural sunlight for a residential unit.

However, the report does not state that the apartment does comply with Clause NA.2. of BS EN 17037:2018- Daylight in Buildings with respect to glass area to floor space ratio.

#### 3.2.4. Other Technical Reports

- **Engineering Department:** Report dated 9/7/24 outlining no objection and no conditions required.
- **Assistant Chief Fire Officer:** Report dated 17/6/24 outlining that regularisation of fire safety certificate required.

#### 3.3. Prescribed Bodies

**Transport Infrastructure Ireland:** Report dated 20/6/24 outlining that Transport Infrastructure Ireland rely on the Local Authority to abide by official policy in relation to development on / affecting national roads as outlined in DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (2012).

**Irish Rail:** Response dated 1/7/24 stating that there are no comments or submissions as this application does not affect the railway.

#### 3.4. Third Party Observations

There are no third-party observations on file.

#### 4.0 Planning History

- 4.1 **23/60301:** Retention permission refused for the change of use from a ground floor office to a ground floor one-bed apartment for two reasons:

1. *The subject site is zoned 'commercial' in the Athlone Town Development Plan 2014-2020. It is an objective (O-LZ5) of this zoning 'To provide for commercial development which does not need to be located in the town centre or retail warehousing zone'. Having regard to this and given that the subject retention application will remove a commercial use and replace with residential, it is considered that the development if permitted will materially contravene objective O-LZ5 and policy P-DU3 of the Athlone Town Development Plan*

2014-2020 and will therefore be contrary to the proper planning and sustainable development of the area.

2. *The development proposed for retention, if permitted would contravene national guidelines 'Sustainable Urban Housing: Design Standards for New Apartments 2018' as the internal floorspace does not meet minimum requirements for internal accommodation standards. In the absence of same coupled with the inadequate and poor arranged and accessed private open space provision and substandard daylight provision into this unit, it is considered that to permit the development would negatively impact on the residential amenities of its future occupiers, would be contrary to policy P-RLD7, P-RLD3, section 12.9.13 and section 12.9.14 of the Athlone Town Development Plan 2014-2020, would set an undesirable precedent for similar developments of this type in the future and would therefore be contrary to the proper planning and sustainable development of the area.*

**20/7123:** Retention planning history refused for the change of use from an office to a one bed apartment for the following reasons:

1. *The subject site is zoned 'commercial' in the Athlone Town Development Plan 2014-2020. It is an objective (O-LZ5) of this zoning 'To provide for commercial development which does not need to be located in the town centre or retail warehousing zone'. Having regard to this and given that the subject retention application will remove a commercial use and replace with residential, it is considered that the development if permitted will materially contravene objective O-LZ5 and policy P-DU3 of the Athlone Town Development Plan 2014-2020 and will therefore be contrary to the proper planning and sustainable development of the area. Z5*
2. *The development proposed for retention, if permitted would contravene national guidelines 'Sustainable Urban Housing: Design Standards for New Apartments 2018' as the internal floorspace does not meet minimum requirements for internal accommodation standards. In the absence of same coupled with no justification for the lack of private open space provision and substandard*

*daylight provision into this unit, it is considered that to permit the development by virtue of its proposed internal space and overall design would negatively impact on the residential amenities of its future occupiers, would be contrary to policy P-RLD7, P-RLD3, section 12.9.13 and section 12.9.14 of the Athlone Town Development Plan 2014-2020, would set an undesirable precedent for similar developments of this type in the future and would therefore be contrary to the proper planning and sustainable development of the area.*

**99/813860:** Planning permission granted for the construction of ground floor offices, 4 no. first floor apartments and associated site works.

- 4.3 I note the planning history on the appeal site. National policy in relation to apartment standards has been updated since the last decision was made in 2023 (Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2023). Therefore, this application must be considered on its merits. Notwithstanding this, the planning history would appear to provide direction in relation to the floor area / layout of the apartment, the amount of light entering the apartment and the layout and functionality of the private open space which the application material would have to demonstrate could be successfully mitigated.

## 5.0 Policy Context

- 5.1 Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2023). These guidelines provide the following development management standards:

**Area:** 45m<sup>2</sup>

**Aggregate Floor area of Kitchen / Living / Dining Room:** 23m<sup>2</sup>

**Double Bedroom area:** 11.4m<sup>2</sup>

**Storage:** 3m<sup>2</sup>

**Private Amenity Space:** 5m<sup>2</sup>

## 5.2 Development Plan

- 5.2.1 The site was formerly zoned 'Commercial' in the *Athlone Town Development Plan 2014-2020* this has now expired. The current *Westmeath County Development Plan 2021-2027* does not contain zonings for Athlone. As there is no current Local Area

Plan applicable to the location of the appeal site, the subject site is currently unzoned.

### **5.3 EIA Screening**

5.3.1 Having regard to the nature and scale of the proposed development and the nature of the receiving environment, 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 stage, and a screening determination is not required.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

6.1.1 A first party appeal has been submitted by Gordon Dunne on behalf of Geraldine Gavin against the decision of Westmeath County Council to refuse retention permission. The grounds are summarised below:

- The applicant has made three applications to secure planning permission for this ground floor apartment. Westmeath County Council are being overly exhaustive and overly onerous in refusing this application.
- View onto the car park is shared by the existing 4 permitted residential units granted planning permission in the year 2000.
- The planning application highlights and includes drawings which demonstrate that the proposal complies with the Sustainable Urban Housing: Design Standards for New Apartments 2022.
- The planning report does not challenge the floorspace submitted in the application but references internal floor space as a point of refusal.
- The original application was granted with no provision for or access to private open space for the existing authorised apartments. The applicant has created a private open space for the ground floor apartment within the tarmac area to the rear of the existing building. Therefore, this apartment has access to private open space. This is not substandard and represents an improvement in residential amenities for future occupants.



- The private open space is overlooked by ground floor offices; however, the office is only open during business hours and not at all on weekends, thereby protecting the privacy of residents.
- Originally there were 6 car parking spaces located beside and behind this half of the building. However, the parking standards require 1 space per apartment and two spaces are required for an office of 54m<sup>2</sup>, is compliant with standards.
- The design meets the minimum standards set out in BE EN 17037-Daylight of Buildings.

## **6.2. Planning Authority Response**

- No response from the Planning Authority on file.

## **6.3. Observations**

- No observations on file.

## **6.4. Further Responses**

- No further responses on file.

## **7.0 Assessment**

7.1. Having inspected the site and reviewed the documents on the file, I consider that the appeal can be addressed under the following headings:

- Principle of development
- Residential amenity
- Daylight / Sunlight
- Appropriate Assessment

## **7.2 Principle of development**

**7.2.1** The site is located within a mixed-use development in an overall area which is predominantly residential. I am satisfied that the residential use consistent with nature of the site and the use is acceptable in principle.

### 7.3 Residential Amenity

- 7.2.1 A part of the reason for refusal states that the apartment for retention would contravene national guidelines as set out in the *Sustainable Urban Housing: Design Standards for Apartments 2018*, as the apartment does not meet minimum requirements for internal accommodation standards.
- 7.2.2 The apartment has a floor area of 51.9m<sup>2</sup>, this is in excess of the 45m<sup>2</sup> minimum floor area required under the *Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (2023)*. Appendix 1 of the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (2023) sets out minimum floor areas and standards (including widths) for apartments. The floor area and minimum width of the kitchen / dining / room is marginally below the minimum requirement, while the en-suite bedroom and storage areas are all above the minimum floor areas set out in Appendix 1. I acknowledge that the floor area and width of the kitchen / living / dining room is marginally below the requirements set out in the *Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (2023)*, however, this non-compliance is considered to be minor and is compensated for by way of the overall floor area of the apartment being in excess of the standards. I do not believe that refusal is warranted on this basis.
- 7.2.3 A part of the reason for refusal outlines that the development provides substandard private open space. The proposed development provides a private open space area of c. 25.6m<sup>2</sup>. Section 12.9.14 of the *Athlone Town Development Plan 2014-2020* requires that an area of 20m<sup>2</sup> of private open space be provided for 1-bedroom apartments in outer suburban area. In addition to this Appendix 1 of the *Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (2023)* requires an area of 5m<sup>2</sup> of private open space be provided per apartment. The private open space provided exceeds these standards and as such would comply in terms of area.
- 7.2.4 While, the area of private open space exceeds the standards, I share the concern of the Local Authority with regard to the location of the private open space. The private open space is located to the rear of the building in an area isolated from the apartment and within a car parking area associated with the overall building and directly abutting

a service area (including bulk gas storage and wheelie bin storage). The private open space has no functional relationship with the apartment and requires occupants to leave the apartment and walk around the side and rear of the building to access.

7.2.5 In addition to this, the private open space area is directly overlooked by windows serving an office. I note the appellants statement that the office will only be in use during office hours and that during the evenings and weekends the office would be empty and therefore the residential amenity of the occupants would be protected at time that they are most likely to use the private open space. In my opinion, this is not a satisfactory outcome for the occupants of the apartment. Private open space should be functionally located to the apartment which it serves, useable and free from undue overlooking at any time for occupants of the apartment. Therefore, in my opinion, the private open space associated with the apartment is substandard and as such would have an undue impact on the residential amenity of the occupiers. This matter could not be mitigated by way of condition and therefore refusal is recommended.

#### **7.4 Daylight / Sunlight**

7.4.1 The reason for refusal states that the development for retention provides substandard daylight provision into this unit.

7.4.2 The apartment comprises of a single, northern facing unit. It is noted that north facing, single aspect apartments at ground floor level are not ideal in terms of natural light penetration. However, in this case, having considered the application material on file and having been on site, I am satisfied that all habitable rooms have adequate access to natural light. The apartment faces onto an open car park and the room depths are relatively narrow.

#### **7.5 AA Screening**

7.5.1 I have considered the application for retention planning permission in light of the requirements of S177U the Planning and Development Act 2000 as amended. The proposed development is within the town area of Athlone. The proposal comprises of retention permission for a ground floor apartment within an existing mixed use residential and commercial development.

- 7.5.2 The subject land is not directly adjacent to a European site. The closest such site to the appeal site is the Lough Rea SPA which is located c.559m to the northeast of the site. The Lough Rea SAC is located 684m to the northeast of the site. it is noted that there is no hydrological connection between the site and either the Lough Rea SPA or Lough Rea SAC.
- 7.5.3 Having considered the nature, scale, and location of the Development I am satisfied that it can be eliminated from further assessment because it could not have any appreciable effect on a European Site. The reason for this conclusion is as follows:
- The relatively small scale of the proposal for which retention planning permission is requested and
  - The location of the development and its distance from the closest European Site.
- 7.5.4 I consider that the proposed development would not have a significant effect individually, or in-combination with other plans and projects, on a European Site and appropriate assessment is therefore not required.

## **8 Recommendation**

- 8.1 I recommend that retention planning permission be refused for the reasons outlined below.

### **9.1 Reasons and Considerations**

The development to be retained includes a private open space area that is physically separate from and does not have a functional relationship with the apartment. The private open space provided is substandard in terms of quality and layout, is directly overlooked at ground floor level by commercial development, is substandard in terms of quality and layout and fails to provide an adequate level of amenity for the residents of the development. 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.

Ronan Murphy

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**Ronan Murphy**

Planning Inspector

20 January 2025

# Form 1

## EIA Pre-Screening

<b>An Bord Pleanála</b> <b>Case Reference</b>	<b>320624-24</b>		
<b>Proposed Development Summary</b>	Retention permission for development which consists of a reduction in the commercial development area and an increase in the residential development area in the form of a one-bedroomed ground floor apartment.		
<b>Development Address</b>	Apartment 5, Flynn Complex, Roscommon Road, Bogganfin, Athlone, Co. Westmeath.		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	<b>X</b>
		<b>No</b>	
<b>2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?</b>			
<b>Yes</b>		Schedule 5 Part 2 Class 10 (b) (i)	Proceed to Q3.
<b>No</b>	<b>X</b>		
<b>3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?</b>			
<b>Yes</b>		State the relevant threshold here for the Class of development.	EIA Mandatory EIAR required

<b>No</b>	<b>X</b>		Proceed to Q4
<b>4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?</b>			
<b>Yes</b>	<b>X</b>	Schedule 5 Part 2 Class 10 (b) (i) Construction of more than 500 dwelling units.  The proposal comprises of the retention of 1 apartment which is below the threshold	Preliminary examination required (Form 2)

<b>5. Has Schedule 7A information been submitted?</b>		
<b>No</b>	Tick/or leave blank	<b>Screening determination remains as above (Q1 to Q4)</b>
<b>Yes</b>	Tick/or leave blank	<b>Screening Determination required</b>

## Form 2

### EIA Preliminary Examination

<b>An Bord Pleanála Case Reference Number</b>	<b>ABP- 320624-24</b>
<b>Proposed Development Summary</b>	Retention of a ground floor apartment
<b>Development Address</b>	Apartment 5, Flynn Complex, Roscommon Road, Bogganfin, Athlone, Co. Westmeath.
<p><b>The Board carried out a preliminary examination [ref. Art. 109(2)(a), Planning and Development regulations 2001, as amended] of at least the nature, size, or location of the proposed development, having regard to the criteria set out in Schedule 7 of the Regulations.</b></p> <p><b>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</b></p>	
<p><b>Characteristics of proposed development</b></p> <p>(In particular, the size, design, cumulation with existing/proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health).</p>	<p><b>Briefly comment on the key characteristics of the development, having regard to the criteria listed.</b></p> <p>The development is for the retention of a ground floor apartment within an existing mixed use-residential and commercial building in a built-up residential area and comes forward as a standalone project.</p> <p>The development does not require demolition works, does not require the use of substantial natural resources, or give rise to significant risk of pollution or nuisance. The development, by virtue of its type, does not pose a risk of major accident and/or disaster, or is vulnerable to climate change. It presents no risks to human health.</p>
<p><b>Location of development</b></p> <p>(The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved land use, abundance/capacity of natural resources, absorption capacity of natural environment e.g., wetland, coastal zones, nature reserves, European sites, densely populated areas, landscapes, sites of historic, cultural, or archaeological significance).</p>	<p><b>Briefly comment on the location of the development, having regard to the criteria listed.</b></p> <p>The development is situated in a town settlement. The apartment is within an existing mixed use residential and commercial building that is removed from sensitive natural habitats and designated sites and landscapes of identified significance in the Athlone Town Development Plan.</p>
<p><b>Types and characteristics of potential impacts</b></p>	<p><b>Having regard to the characteristics of the development and the sensitivity of</b></p>



(Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects, and opportunities for mitigation).	its location, consider the potential for <b>SIGNIFICANT effects, not just effects.</b> Having regard to the nature of the development, its location removed from sensitive habitats/features, likely limited magnitude and spatial extent of effects, and absence of in combination effects, there is no potential for significant effects on the environmental factors listed in section 171A of the Act.
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<b>Conclusion</b>		
<b>Likelihood of Significant Effects</b>	<b>Conclusion in respect of EIA</b>	<b>Yes or No</b>
There is no real likelihood of significant effects on the environment.	EIA is not required.	Yes
There is significant and realistic doubt regarding the likelihood of significant effects on the environment.	Schedule 7A Information required to enable a Screening Determination to be carried out.	No
There is a real likelihood of significant effects on the environment.	EIAR required.	No

Inspector: \_\_\_\_\_

Date: 20/1/24