



An
Coimisiún
Pleanála

Inspector's Report

ABP 322705-25

Development

Alterations and additions to existing dwelling including the demolition of the rear annex and construction of a new rear extension, amendments to the existing roof and fenestration, change of use of part of the ground floor from commercial to residential and all associated site works.

Location

Main Street, Kinvara. Co. Galway.

Planning Authority

Galway Co. Council.

Planning Authority Reg. Ref.

2461643

Applicant(s)

Rory & Pamela MC Cann.

Type of Application

Permission.

Planning Authority Decision

To Grant Permission.

Type of Appeal

Third Party

Appellant(s)	Fran O'Reilly (Kinvara Heritage Group)
Observer(s)	None
Date of Site Inspection	July 25 th , 2025.
Inspector	Breda Gannon.

1.0 Site Location and Description

- 1.1. The site is located on Main Street, Kinvara. Co. Galway. The mid terrace site accommodates a three-storey building that is currently vacant. The front facade incorporates a shop front with double doors, with a separate door providing access to the residential accommodation overhead. The site is adjoined on both sides by similar three-storey buildings. These properties are primarily in residential use, with a coffee shop on the ground floor of the adjoining property to the east.
- 1.2. To the rear of the site there is a small enclosed garden which is overgrown. It is accessed from the first floor of the building and from there by a series of stone steps. Due to variations in site levels, the house has a two-storey presentation to the rear. The garden backs onto a side wall of St Coman's Church (Recorded Monument) which forms the rear site boundary. The side boundaries are formed by stone walls/fences with mature overgrown vegetation. The site is entirely landlocked.
- 1.3. The site lies the west of the harbour are in an area of mixed uses, with retail uses combined with residential and tourism focused activity which contribute to the overall vibrancy of the village.

2.0 Proposed Development

- 2.1. The proposal seeks the following:
 - the demolition of the existing rear annex (11.42 m²) and the construction of a new rear extension (61.33 m²),
 - amendments to the existing roof and fenestration,
 - the change of use of part of the ground floor from commercial to residential, and all associated site works.
- 2.2. The proposal would involve the incorporation of the area occupied by the old post office on the ground floor into the existing dwelling house. The ground floor would accommodate the utility area of the house, plant room, storage facilities and a study. Bedrooms would be provided on the first floor and the main living area would be provided at second floor level with access to a roof terrace. A new stairs extending

from the roof terrace would provide access to the garden area and also function as a fire escape.

3.0 Further Information

3.1. Further information on the application was sought on the application on February 4th, 2025, on the following matters:

1. Documentary evidence of applicants' legal interest in the site.
2. Bat Survey & Report to determine if bats or roost sites are present on the site.

3.2. The response of April 24th, 2025 was to the satisfaction of the planning authority.

4.0 Planning Authority Decision

4.1. Decision

The planning authority decided to grant permission for the development subject to 5 no. conditions which contains the following conditions of note:

Condition No 4: The mitigation measures set out in the Bay Survey shall be fully implemented.

Condition No 5: Archaeological monitoring.

4.2. Planning Authority Reports

4.2.1. Planning Reports

The Planning Officer's report following the receipt of further information raised no significant issues regarding the proposed development. It is noted that the registration of the site is currently ongoing with Tailte Eireann. The conclusions reached in the Bat Survey & Report are noted and its conclusion that negligible impacts are predicted subject to appropriate to the implementation of appropriate mitigation measures and best practice.

The site of the development is not within a fluvial, pluvial, coastal or groundwater vulnerable area and the applicant has indicated that the site has never flooded. A Floor Risk Assessment is not therefore required.

The planning authority undertook an appropriate assessment screening exercise. Based on the site inspection, it was noted that there is no apparent direct hydrological connectivity between the subject site and designated sites.

Other Technical Reports

None.

4.3. Prescribed Bodies

Department of Housing, Local Government and Heritage

The report from the Department of Housing, Local Government and Heritage notes the proximity of Recorded Monuments GA113-139 (St Coman's Church) and GA113-139001(Graveyard), which are subject to statutory protection. It is recommended that archaeological monitoring be included as part of any planning permission and that the condition aligns with Sample Condition C.4 as set out in the OPR Practice Note PN03: Planning Conditions (October 2022), with appropriate site-specific additions/adaptions based on the particular characteristics of the development.

Regarding nature conservation, the location of the European sites approximately 100m to the north is noted. Consideration should be given to the appropriate management of this development in relation to sensitive habitats and species, during and after the construction phase of the development.

Prior to granting consent, Galway County Council must be satisfied from their own determination that the proposed development would not have a significant impact on the adjacent European Site's Qi habitats and also on water quality. They should also be satisfied that the proposed development would not have a negative impact on downstream wetland habitats and Flora Protected Order species which would be contrary to Policy Objectives (NHB1 to NHB5) of the development plan

Bats may be present in the building proposed for demolition and it is recommended that a bat survey be carried out and a copy forwarded to the Department prior to a decision being made on the application.

It states that other conditions could be considered which may benefit biodiversity in the area including the provision of swift boxes, appropriate lighting, retention of

hedgerows and trees on the site, landscaping plans that adhere to the principles of All-Ireland Pollinator Plan.

Transport Infrastructure Ireland

Issued a standard type letter requiring the planning authority to have regard to official policy.

4.4. Third Party Observations

One observation was submitted from Fran O'Reilly on behalf of the Kinvara Heritage Group, which is summarised as follows:

- Boundary misrepresentation which shows the site boundary line running from the front of the building, across the graveyard and up to the wall of St Coman's Church. This boundary is incorrect, and the original footprint and/or curtilage must be properly verified.
- Contrary to the details provided on the planning application form, St Coman's graveyard dating back to the 13th century is located within an Architectural Conservation Area and includes a Recorded/Registered Monument (Church in ruins and graveyard).
- There is evidence to suggest past unauthorised clearances or alterations at the rear of the property may have extended or modified its curtilage, potentially encroaching on the graveyard. The proposed extension risks further disturbing or incorporating parts of the graveyard.
- The application proposes a 'garden access and fire escape' that terminates within the graveyard, in which Galway Co. Council has an interest.
- No details of how the rear of the building would be accessed during construction.
- Requests that any alterations to the property be limited to the original footprint/curtilage (if any) of the original property as it was built. Encroaching beyond this original boundary risks disturbing burials and damaging human or archaeological remains.

5.0 Planning History

No details of any relevant planning history has been forwarded by the planning authority.

6.0 Policy Context

6.1. Development Plan

The operative development plan is the **Galway County Development Plan 2022-2028**.

Under the settlement strategy Kinvara is identified as Small Growth Village and zoning objectives and policies are set out in Volume 2 of the plan.

The site is located within an area zoned 'Village Centre' with the following objective:

'To provide for the development and improvement of appropriate village centre uses including retail, commercial, office and civic/community uses and to provide for 'Living over the shop'

The aim is to develop and consolidate the existing village centre to improve its vibrancy and vitality with the densification of appropriate commercial and residential development ensuring a mix of commercial, recreational and civic uses.

Policy Objective SCV 3: Protect and enhance the vitality and viability of village centres by ensuring that they remain the primary retail, commercial and mixed-use centre and prohibit a proliferation of any individual use or other uses, which in the opinion of the Planning Authority do not contribute to the vitality and viability of the village centres.

Chapter 12: Architectural, Architectural and Cultural Heritage contains policies for the protection of built and cultural heritage. The site is located within an Architectural Conservation Area and proximate to 2 no. Recorded Monuments (St Conan's Church and Graveyard). Relevant policy objectives include:

Policy Objective AH 4: To protect, conserve and enhance the special character of The Architectural Conservation Areas included in the plan.

Policy Objective ARC 6: Protect the burial grounds identified in the Record of Monuments and Places, in co-operation with the National Monuments Service of the Department of Housing, Local Government and Heritage. Encourage the local community to manage burial grounds in accordance with best conservation and heritage principles.

Policy Objective ARC 9: Ensure that any development in the immediate vicinity of a Recorded Monument is sensitively designed and sited and does not detract from the monument or its visual amenity.

Chapter 15 of Volume 1 sets out Development Management Standards.

6.2. **Natural Heritage Designations**

6.3. The site is not located within a designated site. European sites close to the site include the following:

- Galway Bay Complex SAC (Site code: 000268) located c.100m to the north.
- Inner Galway Bay SPA (Site code: 004031), located c.100m to the north.

7.0 **EIA Screening**

7.1. The development is not of 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 (or Part V of the 1994 Roads Regulations). 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 this report.

8.0 **The Appeal**

8.1. **Grounds of Appeal**

The following summarises the grounds of appeal:

Inaccurate and misleading site boundary: The site map includes a red line boundary extending across the graveyard of St. Coman's Church and up to the church wall. This boundary is materially inaccurate and misleading.

Lack of defined site access: Condition 5 of the permission requires archaeological monitoring, however the application and the conditions fail to address how the required plant and machinery required for such a development will gain access to the rear of the property. The property (Fig 1) is part of a continuous terrace with the only access to the rear of the property being through the property, or over graves in the graveyard. Over time, access points to the graveyard have been closed off, making the graveyard fully enclosed and landlocked. There is no vehicular access available (Fig 3 and 4)

A number of supporting illustrations are included with the appeal. It is requested that permission be refused for the development or that a corrected site map be submitted which does not include any part of the graveyard as it does not form any part of the applicants legal title and a clear, and practical access plan be submitted showing how the rear of the property would be accessed by the required plant and machinery.

8.2. Applicant Response

The appeal by The Kinvara Heritage Group is based on two issues relating to the extent of the ownership of the application site and, the lack of defined access for construction works.

Regarding ownership, in response to further information a letter from the applicants' solicitor was provided outlining that the original stamped Deed together with an application for first registration was lodged with Tailte Eireann.

All machinery and material for the construction and renovation works will be from Main Street through the existing house. All excavation works will be overseen by an archaeologist as per the planning authority's conditions.

9.0 Assessment

9.1. Introduction

Having examined all 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

policies and guidance, I consider the substantive issues to be considered in this appeal relates to the following:

- Principle of the development
- Land ownership
- Built Heritage
- Other matters
- Appropriate Assessment

9.2. Principle of the development

- 9.2.1. The proposal will bring an existing vacant building back into active use. This is consistent with the overall strategic aim for the village (Section 16.3.5) to bring vacant and unused buildings within the village core back into productive use. The proposal is entirely consistent with the zoning objectives for the village centre which supports the development and improvement of appropriate village centre uses including residential. I consider that the proposal is, therefore acceptable in principle subject to the detailed considerations below

9.3. Land Ownership

- 9.3.1. The appellants dispute the applicants ownership of the site, stating that it encroaches across the graveyard of St Coman's Church and up to the church wall. Their submission to the planning authority states that there is evidence that there have been unauthorised clearances/alterations to the rear of the property which may have extended or modified its curtilage, potentially encroaching on the graveyard. This has not been substantiated either as part of the application or the appeal.
- 9.3.2. Historic maps submitted with the appeal show the church surrounded by a graveyard and a more limited curtilage to the houses facing onto Main Street. The appellants suggest that applicants site terminated at the retaining wall and existing steps, which provide access to the garden area at a higher elevation. I note that the proposal to remove the existing flat roofed rear annex and replace it with a new extension would increase the length of the existing built footprint by 1.4m. The footprint of the extended area would remain contained within the lower section of the site, with the garden area undeveloped.

- 9.3.3. There is nothing on the ground to suggest that the upper portion of the site is physically separate from the rest of the site. From my observations on site, it would appear that the site in its entirety has been part of the curtilage of the dwelling for a considerable time.
- 9.3.4. Section 34(13) of the Act provides that '*a person shall not be entitled solely by reason of a permission under this section to carry out any development*'. The Development Management Guidelines for Planning Authorities (June 2007) clarify that 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 in the Courts. The Guidelines make the point that where doubt arises as to the legal interest of the applicant that additional information may be sought by the planning authority to clarify the matter.
- 9.3.5. I noted from my inspection of the site that there is no circumstance on site which would prevent the carrying out of the development as shown within the red boundary line indicated on the submitted drawings. The solicitor's letter submitted in response to further information states that one of the applicants is the beneficial owner of the property on foot of a Deed of Conveyance dated January 19th, 2023. Having regard to section 34(13) of the Act and the submissions on file, I conclude that the applicant has demonstrated sufficient legal interest to make a valid planning application. I recommend that the Coimisiún should rely on the provisions of section 34(13) and not refuse permission for reasons relating to title to land.

9.4. **Built Heritage**

- 9.4.1. Issues were raised in the submission to the planning authority regarding alleged encroachment of the subject site into the graveyard associated with St Coman's Church (in ruins). Both the church and the graveyard are listed as recorded monuments in the Record of Monuments and Places and are afforded protection under the National Monuments Acts.
- 9.4.2. The Department of Housing, Local Government and Heritage noted the proximity of the proposed development to the Recorded Monuments and the possibility for previously unrecorded features/materials, including archaeological human remains to be disturbed during the course of ground works. It is clear from the recommendations of the Department that significant impacts on the two Recorded

Monuments are not envisaged and that any potential impacts can be effectively mitigated by archaeological monitoring.

- 9.4.3. The site is located within an Architectural Conservation Area which is the policy of the planning authority to conserve and enhance and protect from inappropriate development. The main changes proposed to the front building façade include a marginal change in the roof ridge height and the provision of new windows at second floor level with an increased head height of 400mm. The configuration of the shop front will be retained.
- 9.4.4. The alterations proposed will be consistent with the established pattern of development on the street and the changes to the windows will result in greater vertical emphasis and improved symmetry to the front façade, which will have positive benefits in terms of the visual amenity of the Architecture Conservation Area.
- 9.4.5. The proposed extension to the rear of the building will not be visible from the public domain and will not result in any impacts on the visual amenities of the conservation area.

9.5. Other matters

- 9.5.1. No significant impacts on bats are predicted. I note that no bat species are recorded as Qualifying Interests of either of the designated sites close to the site. The bat survey conducted in response to further information revealed moderate bat activity on the site, but negligible roost potential associated with existing structures. Several measures are recommended to mitigate impacts on the local bat population including the installation of a bat box on a retained mature tree at the rear of the site, the implementation of sensitive lighting design and the retention of mature trees as part of the development to preserve the existing commuting routes for local populations. These measures are considered reasonable.
- 9.5.2. Issues regarding access to the rear of the site for both archaeological monitoring and for construction are raised in the appeal. As noted, the appeal site is a mid-terrace building and other than the double door to the former post office and the existing door to the dwelling, there is no other access available to the rear of the site. While this may prove onerous, it is not a planning consideration.

- 9.5.3. The proposed extension will not cause any significant adverse impacts on the amenities of adjoining properties. There are no windows in the side elevations and due to the low level of the rear windows and proposed boundary treatment. An opaque privacy screen (1.8m in height) is proposed to the roof terrace which will minimise the potential for overlooking and impacts on privacy.

9.6. Appropriate Assessment

AA Screening

Screening the need for Appropriate Assessment: Screening Determination (Stage 1, Article 6(3) of Habitats Directive)

I have considered the proposal for alterations and additions to existing dwelling including the demolition of the rear annex and construction of a new rear extension, amendments to the existing roof and fenestration, change of use of part of the ground floor from commercial to residential and all associated site works. alterations in light of the requirements S177U of the Planning and Development Act 2000 as amended.

The subject site is located within the village of Kinvara. Co Galway.

The proposed development comprises alterations to and extension of the existing dwelling, and associated works.

No nature conservation matters were raised in the planning appeal. CHECK

Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because it could not have any effect on a European Site.

The reason for this conclusion is as follows:

- The small scale and nature of the works proposed.
- The location of the development within the built up area of the village connected to public infrastructure
- The absence of hydrological links from the development site to European sites.

I conclude, 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 (under Section 177V of the Planning and Development Act 2000) is not required.

- 9.6.1. **Note:** The dates relating to the receipt of the planning application and further information received by the planning authority referred to in Condition N1 of the planning authority's decision are incorrect.

10.0 Recommendation

- 10.1. On the basis of the above assessment, I recommend that permission be granted for the development for the reasons and considerations set out below.

11.0 Reasons and Considerations

- 11.1. Having regard to the location of the site within the village of Kinvara, the policies of the development plan to consolidate such settlements and the established use of the site for residential purposes, it is considered that subject to compliance with the conditions set out below, the proposed development would not impact on the recorded monuments in the vicinity of the site, or on the visual or residential amenities of the area and would not, therefore, be contrary to the proper planning and sustainable development of the area.

12.0 Conditions

1.	The development shall be carried out in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars received by the planning authority on the 24th day of April, 2025 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 and the development shall be carried out and completed in accordance with the agreed particulars. Reason: In the interests of clarity
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2.	The proposed roof ridge line of the dwelling shall be in line with the ridge line of the adjoining property to the west as shown on Drawing No 294.PL 105 lodged with the planning application and shall not protrude above this level. Reason: In order to protect the visual amenities of the area.
3.	Details of the external finishes of the development, including details of materials, texture and colour shall be submitted to and agreed in writing with the planning authority prior to commencement of the development. Reason: In the interests of visual amenity
4.	All surface water generated within the site boundaries shall be collected of and disposed of within the curtilage of the site. No surface water from roofs, paved areas or otherwise shall discharge onto the public road or adjoining properties. Reason: To ensure adequate serving of the development and to prevent pollution.
5.	The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist on the site. In this regard the developer shall- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (site clearance works, topsoil stripping, groundworks, hydrological, geotechnical investigations) relating to the development. (b) employ a suitably qualified archaeologist to monitor under licence all site investigations and site clearance works. .Should archaeological remains be identified during the course of monitoring, all works shall cease pending a decision of the planning authority, in consultation with the National Monuments Service regarding appropriate mitigation. .The developer shall facilitate the archaeologist in recording any remains identified. Any further archaeological mitigation requirements specified by the planning authority following consultation with the National Monuments Service shall be complied with by the developer.

	Following the completion of all archaeological work on the site and any post-excavation specialist analysis, the planning authority and the National Monuments Service shall be furnished with a final archaeological report describing the results of the monitoring and any subsequent required archaeological investigative work/excavation required. All resulting and associated archaeological costs shall be borne by the developer. Reason: In order to conserve the archaeological heritage of the area and to secure the preservation and protection of any of any remains that may exist on the site.
6.	The mitigation measures outlined in the Bat Survey received by the planning authority on the 24th day of April shall be fully implemented to details to be submitted to and agreed in writing with the planning authority prior to commencement of any development on the site Reason: To ensure the protection of natural heritage on the site.
7.	The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with the planning authority, prior to commencement of development. This plan shall provide details of the intended construction practice for the development, including hours of working, noise and dust management measures and off-site disposal of construction/demolition waste. Reason: In the interests of public safety and residential amenity
8.	Site development and building works shall be carried out only between the hours of 08.00 to 19.00 00Mondays to Fridays including, between 08.00 to 14.00 on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority/ Reason: In order to safeguard the amenities of property in the vicinity.

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.

.Breda Gannon
Planning Inspector

29th August 2025

Appendix 1 - Form 1 EIA Pre-Screening

Case Reference	ABP 322705-25
Proposed Development Summary	Alterations and additions to existing dwelling including the demolition of the rear annex and construction of a new rear extension, amendments to the existing roof and fenestration, change of use of part of the ground floor from commercial to residential and all associated site works.
Development Address	Main Street, Kinvara Co. Galway.
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes, - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	☒ Yes, it is a 'Project'. Proceed to Q2. No further action required.
2. Is the proposed development of a CLASS specified in <u>Part 1</u>, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?	
☐ Yes, it is a Class specified in Part 1. EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.	State the Class here
☒ No, it is not a Class specified in Part 1. Proceed to Q3	

3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?

☒ No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road development under Article 8 of the Roads Regulations, 1994. No Screening required.	
☐ Yes, the proposed development is of a Class and meets/exceeds the threshold. EIA is Mandatory. No Screening Required	
☐ Yes, the proposed development is of a Class but is sub-threshold. Preliminary examination required. (Form 2) OR If Schedule 7A information submitted proceed to Q4. (Form 3 Required)	

4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?	
Yes ☐	Screening Determination required (Complete Form 3)
No ☒	Pre-screening determination conclusion remains as above (Q1 to Q3)

Inspector: _____

Date: _____