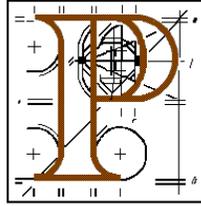


An Bord Pleanála



Development: Retention of takeaway facilities to existing diner, 74 Ozanam Street, Waterford City.

Planning Application

Planning Authority: Waterford City Council

Planning Authority Reg. Ref: 06/445

Applicant: Patricia Daly

Type of Application: Permission

Planning Authority Decision: Refuse

Planning Appeal

Appellant(s) Patricia Daly

Type of Appeal: 1st-v-Refusal

Date of Site Inspection: 05-04-07

Inspector Colin McBride

1. SITE LOCATION AND DESCRIPTION

- 1.1 The subject site which has a stated area of 0.004 hectares is located west of Waterford City centre. The subject site is part of a group of neighbourhood shops located at the intersection of Upper Yellow Road, Lower Yellow Road, Military Road, Morrisson's Road and Ozanam Street. The row of shops which includes a dry cleaners, bookmakers, bakery and a charity shop as well as some vacant premises is located on the western side of the intersection. The subject site is occupied by a single-storey building currently in use as a diner and is located on the corner of Ozanam Street and Military Road. The predominant type of use in the area is residential with terraced dwellings located adjacent the subject site on Ozanam Street. There are also similar types of residential development on the other streets radiating from the intersection. There are two commercial units to the south east on the opposite side Morrisson's Road. This includes a vacant unit, which according to information on the file had been operated as a takeaway as its last use (the Snack Shack). On the opposite side of Ozanam Road to the subject site is a school.

2. PROPOSED DEVELOPMENT

- 2.1 Permission is sought for retention of takeaway facilities to an existing diner. The existing diner has a floor area of 34.5 sq metres and features a kitchen, serving counter, seating area, toilets and a refuse store.

3. PLANNING HISTORY

- 3.1 **0/4550:** Permission granted for extension and change of use from hairdressers to diner and ancillary site works.
- 3.2 **PL221100:** Current appeal by Dermot Walsh against decision to grant permission for a change of use from kitchen and former shop/deli to fish and chip shop with commercial kitchen at 'The Marion', no. 68 Upper Yellow Road. This appeal concerns a vacant shop unit, which is part of the same terrace of retail/commercial units as the subject site.

4. DEVELOPMENT PLAN POLICY

- 4.1 The relevant development plan is the 2002 Waterford City Development Plan. The subject site is in an area zoned 'General Business' with a stated objective 'to provide and improve general business use'. Takeaway developments are noted as being a 'permitted' use within this zoning objective.
- 4.2 Section 3.2.2 headed 'Vibrancy & Vitality' deals with maintaining and enhancing the role of the city centre. In relation to takeaways the following is noted...

‘An undue proliferation of take-away outlets will not be permitted in any particular area. Regard will be had to the impact of such outlets on the amenities and civic dignity of the area. Freestanding takeaways not attached to restaurants will not normally be permitted’.

- 4.3 Section 3.6.11 outlines policy in relation to ‘Transitional Zonal Areas’ (development plan map attached). According to development plan policy ‘in dealing with development proposals in these contiguous transitional zonal areas it is necessary to avoid developments which would be detrimental to the amenities of the more environmentally sensitive zone’.

5. PLANNING AUTHORITY’S DECISION

- 5.1 Permission refused by the Planning Authority based on two reasons.

1. *Having regard to the proximity of the development to a proposed adjoining permitted takeaway and to policy 3.2.2 of the current Waterford City Development Plan to restrict the proliferation of take-away outlets it is considered that the proposed development would contravene this policy and would not be in the interests of the proper planning and sustainable development of the area.*
2. *Having regard to the prominent nature of this site on a busy junction within an area zoned for General Business purposes it is considered that the external box roller shutter detracts from the visual amenity of the area and to permit same would set an undesirable precedent for similar type developments in the area.*

6. LOCAL AUTHORITY REPORTS

- 6.1 a) Water Services Section (23/11/06). No objection subject to conditions.
- b) Roads and Transportation (no date) note no objection to the proposed development.
- b) Planning report (01/12/06). Notes that condition no. 2 of original permission for diner precludes use as a takeaway. Condition no. 7 of the permission also required the removal of roller shutters on the facade. Concerns raised about the size of the unit and that the takeaway use would become the main function and not be ancillary to the restaurant use. Notes that permission was recently granted for a takeaway on an adjoining site (current appeal, see planning history). In this regard the proposed development would result in a proliferation of takeaways in the area and be contrary development plan policy. Retention of roller shutter would not be acceptable due to its location on a prominent junction. Refusal recommended based on the reasons outlined above.

7. GROUNDS OF APPEAL

7.1 A first party appeal has been lodged by Anthony Whittle on behalf of Patricia Walsh, Piltown, Co. Kilkenny.

- The applicant suggests that the roller shutter on the doorway can be removed by erecting an internal shutter, which would mean the door would open outwards. The applicant notes that some level of security is needed to protect the premises.
- The applicant notes that most supermarkets, service stations and convenience shops provide hot and cold food for consumption off the premises and that condition no. 2 of the previous permission is unfair.
- The proposed development is located in land use zoning in which takeaways are permitted. It is not considered that the two takeaway developments at this location would constitute an undue proliferation of such uses.
- It is also noted that development plan policy looks more favourably on takeaways attached to existing restaurants rather than freestanding takeaways and therefore the current proposal is more in keeping with development policy than the recently approved takeaway on an adjoining site.

8. RESPONSES

8.1 Response from Waterford City Council

- Retention of roller shutter is unacceptable with other ways available to secure the building.
- Planning authority considers that proposed development is primarily a takeaway and that this application was lodged in response to the proposals permitted on the adjoining site. Permitting the development in conjunction with adjoining proposal would result in an undue proliferation of takeaways and therefore be contrary development plan policy.

9. ASSESSMENT

Having inspected the site and examined the associated file documentation the following are the main issues in relation to this case.

Zoning objective, compliance with development plan policy.

Impact on residential amenity

Roller shutters

Traffic safety/congestion

Zoning objective, compliance with development plan policy: The zoning of the subject site and the adjoining commercial units is for ‘General Business’ use. Takeaway use is listed as a permitted use within this zoning and would therefore comply with the zoning objective under the City Development Plan.

Section 3.2.2 of the development plan headed 'Vibrancy & Vitality' deals with maintaining and enhancing the role of the city centre and notes the following in relation to takeaways...

'An undue proliferation of take-away outlets will not be permitted in any particular area. Regard will be had to the impact of such outlets on the amenities and civic dignity of the area. Freestanding takeaways not attached to restaurants will not normally be permitted'.

This section and policy would appear to be aimed at the city centre area with particular reference to the main retail areas of the city. I would consider that the location of the subject site although within the centre area (see development plan map denoting neighbourhood structure, attached) is on the periphery of the city centre and is transitional zone between the city centre and the residential development adjacent the city centre. On this basis I do not consider that the principle of a takeaway facility at this location is unreasonable. The decision of the planning authority to refuse is based on the fact that permission had been granted for a change of use from a shop to a takeaway in a unit adjoining the site at 68 Upper Yellow Road and to permit the proposed development would lead to an undue proliferation of takeaways at this location. I would agree that two takeaways at this location would be contrary development plan policy and would note that both proposals are subject to appeals at the present time.

The existing building is operated as a diner and is a use approved under ref no. 04/550. I would note that the premises is small in size with a limited amount of seating but is a permitted diner nonetheless. I would consider that the provision of takeaway facilities as part of this premise is more in keeping with development policy, which notes that 'Freestanding takeaways not attached to restaurants will not normally be permitted'.

Notwithstanding the above, the proliferation of takeaways in any given area is an important development plan consideration. In terms of the immediate area the nearest takeaway currently in operation is located on Lower Yellow Rd within 250 metres of the subject site. On opposite side of the public road (junction of Lower Yellow Road and Morrisson's Road) is a vacant unit (the Snack Shack), which had been operated as a takeaway. As a takeaway was its last use it is possible that it could be operated as a takeaway again (planning status not clear). Notwithstanding the fact that there are existing and possible permitted takeaway uses in the vicinity of the site I consider that the provision of takeaway facilities as part of the existing diner is consistent with development plan policy and is a more acceptable proposal due to the presence of seating within the premises.

Impact on residential amenity: The proposed development is part of a small arcade of shops consisting of 8 units. The subject site is located on the corner of Ozanam Street and Military Road. Immediately adjoining the subject site on Ozanam Street is a large commercial building (Boston Cleaners). On the other side are 7 retail/commercial units. The subject site does not immediately adjoin any residential property. Extraction from the kitchen is through the roof and is unlikely impact adversely on the residential amenity of properties in the area. There is a sufficient degree of separation between the adjoining

dwellings and the subject site. The subject site also has clearly defined refuse storage facilities in place. Anti-social behaviour and litter will not be issue if the proposed development is managed properly and I would recommend conditioning standard open hours for its operation.

Roller shutters: It was noted at the time of inspection that the roller shutters above the door and window have been removed and are therefore no longer an issue in this appeal.

Traffic safety/congestion: The planning authority's Roads Department indicated no objection to the proposed development. There is some off-street (public area) car parking serving the arcade of shops in the form of a lay-by to the west of the 8 shops including the subject site. Despite the busy nature of the area in relation to traffic the existing building has an established commercial use and is one of a number of commercial units at this location. On this basis I do not consider that the proposed development will generate significant traffic and is unlikely to have an adverse impact in relation to traffic safety or congestion. I would also note that the central location and proximity of the proposed development to residential development means the subject site is accessible without the need for vehicular transport. I am satisfied that the proposed development will have no adverse impact on traffic movement or result in a traffic hazard.

RECOMMENDATION:

I recommend a grant of permission based on the following reasons:

REASONS AND CONSIDERATIONS

Having regard to the zoning provisions of the Development Plan, and having regard to the nature of the proposed development, which is part of an existing and established diner, it is considered that, subject to the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, and would be acceptable in respect of development plan policy and would not conflict with proper planning and sustainable development of the area.

CONDITIONS

1. There shall be no works undertaken to the existing shop front and no signage, roller shutter, advertisement or advertisement structure shall be erected or displayed without the prior written agreement of the Planning Authority, or a grant of planning permission as appropriate.

Reason: In the interest of clarity and visual amenity.

2. All on site water and drainage arrangements including the disposal of surface water shall comply with the planning authority's requirements for same.

Reason: In the interests of public health and to provide a satisfactory standard of development.

3. The takeaway shall not be operational between the hours of 12:00am and 08:00am.

Reason: In the interest of residential amenity.

4. The development shall be so constructed and operated that there will be no emissions of malodours, fumes, gas, dust or other deleterious materials, no non-domestic effluent and no noise vibration or electrical interference generated on site such as would give reasonable cause for annoyance to any person in any residence or any public place in the vicinity.

Reason: To protect the amenities of the surrounding area and in the interest of proper planning and development of the area.

5. The developer shall provide litter bins in the vicinity of the premises in accordance with the requirements of the Planning Authority.

Reason: To safeguard the amenities of the area.

Colin McBride

01st May 2007