



Inspector's Report

Development: Internal alterations to café/takeaway, change of use from café/takeaway to restaurant/takeaway and all associated site works.
Castleisland, Ferns, Co. Wexford

Planning Application

Planning Authority: Wexford County Council
Planning Authority Reg. Ref.: 2010/0417
Applicant: Sean Lacey
Type of Application: Permission
Planning Authority Decision: Grant Permission + Conditions

Planning Appeal

Appellant(s): P.J. Bolger
Philip Ennis
Type of Appeal: 3rd v Grant
Observers: None on file
Date of Site Inspection: 10th September, 2010.

Inspector: Sarah Moran

1.0 SITE DESCRIPTION AND LOCATION

- 1.1 The site is located at the western end of the village centre of Ferns, on the southern side of the main street. There is a mix of uses in the immediate vicinity including residential, school, church and a variety of small scale commercial uses including retail, pubs, post office and service industries such as a hairdresser, betting office, take away and a café. The ruined remains of Ferns Castle (a Recorded Monument) and its associated grounds lie nearby to the south and the rear of the site is visible from the castle grounds. The site comprises two vacant units within a recent mixed use development, stated area 99.4 sq.m. The development fronts onto the main street. It contains several small commercial units at ground floor level and residential units on the first floor. A large archway from the main street leads to a courtyard to the rear where there is some surface car parking.

2.0 PROPOSED DEVELOPMENT

- 2.1 Permission is sought for internal alterations to amalgamate the two commercial units and for a change of use from permitted café/takeaway to restaurant/takeaway.

3.0 PLANNING HISTORY

- 3.1 According to the documentaion on file, there have been several previous planning applications on the site:

20033142 Permission granted for alterations to shop to form coffee shop/delicatessen.

20044199 Permission granted for the erection of buildings following demolition of sheds.

20081170 Permission refused for use as a takeaway for 1 no. reason:

The site located approximately 50 m from a school and therefore the proposed use would be contrary to policy 10.08.06 of the Wexford County Development Plan 2007 (in which a separation distance would be required), the amenities of the area and proper planning and sustainable development.

20081927 Permission granted to add a takeaway as an additional use to the café previously granted with changes to the internal layout and extension of opening hours.

4.0 DECISION OF PLANNING AUTHORITY

- 4.1 Permission was granted subject to 7 no. conditions. Condition no. 2 limited the sale of hot food for consumption off the premises to specific opening hours, i.e. 5.30-10.30 pm Monday to Friday; 9.00 am – 11 pm Saturday and 12 midday – 11 pm Sunday. All of the conditions imposed are standard for this type of development.

5.0 THIRD PARTY APPEALS

5.1 P.J. Bolger

5.1.1 The main points made may be summarised as follows:

- The site is located on a main tourist route. The proposed development is not in keeping with this location.
- The development contravenes the designation of Ferns as a Strategic Growth Area (SGA) in the County Development Plan.
- There is a growing proliferation of takeaway restaurants in the village (list provided, total of 8 existing premises. The village does not need an additional take away restaurant.
- Development would create demand for on street parking. There are only 3 no. car parking spaces available at this location. Development would generate a multiplicity of vehicular movements on Main Street and result in traffic hazard. Danger to pedestrians. Delivery and pick-up vehicles cannot stop on Main Street.
- Site is located c. 200 m from a school/church complex. Contravention of County Development Plan Policy 10.08.06. Children should not be encouraged to purchase food from a fast food take away.
- Adverse impacts on local amenities arising from odours, late night noise, litter, anti social behaviour, etc. Insufficient detail as to how these concerns would be addressed.
- Development would generate considerable waste, applicant has not submitted a waste management plan.
- Adverse impact on the image of Ferns.

5.2 Philip Ennis

5.2.1 The main points made may be summarised as follows:

- Development would result in an over concentration of food takeaway outlets. There were only 2 no. takeaway outlets in Ferns in the 1990s but there are now 9 such premises including the subject development.
- Ferns does not require an additional takeaway as the existing facilities are sufficient to cater for existing and proposed local need. The population of Ferns is unlikely to increase significantly in the medium term as the Ferns sewage treatment plant will not be upgraded.
- Contravention of Ferns LAP policy to encourage the provision of retail and commercial services and facilities to meet existing and proposed local needs.
- The appeal questions how the planning authority will enforce condition no.2 which specifies opening hours.
- Lack of on street parking to cater for the development. There are double yellow lines on the street in front of the site for at least 50 m in both directions.

6.0 RESPONSE OF APPLICANT TO APPEALS

6.1 The main points made may be summarised as follows:

- Permission was granted on the site for a café and subsequently for the use of the café as a takeaway. The café was serviced by a kitchen (similar to the proposed). The application for use as a takeaway was never enacted and did not include the kitchen associated with the former café. This application proposes to use the permitted kitchen and the portion of the building permitted for use as a takeaway as a restaurant and takeaway. The restaurant and takeaway would have separate entrances off Main Street.
- The applicant/owner has no end user in mind at present. The development would be a restaurant with take away deliveries and not a fast food outlet. The primary use would be a restaurant.
- The internal alterations are minor and consist mainly of changes to the layout of the kitchen and toilet areas. The development does not involve alterations to the external appearance of the site, thus no adverse impact on the urban design of the area.
- The development would offer a restaurant service to cater for tourists and would not have a negative impact on Ferns as a tourist destination.
- The majority of takeaway premises listed by the appellants are not takeaways in the traditional sense. The list includes 2 no. 'greasy spoon' type eateries; a deli counter at a convenience store; a bar/pub selling food for consumption off the premises; a petrol station with a takeaway and a deli counter; an Italian restaurant similar to the proposed use and a traditional fish and chip shop owned by the appellant.
- There is a public car park in close proximity to the site. There are several off street parking spaces to the rear of the building. Deliveries to the premises would not cause any obstruction to traffic or pedestrian flows outside of accepted standards. Deliveries would be to the rear of the building via the rear courtyard.
- The development would not be aimed at school children as it would involve a sit down restaurant. It therefore would not conflict with County Development Plan policy 10.08.06.
- Issues of noise, smells, litter, opening times are all addressed by the conditions of permission. Development would not have a negative impact on the amenities of surrounding properties.
- A waste management plan would not be required for a development of this nature. Condition no. 3 of the permission requires a litter bin. Collection of waste from the premises would be similar to adjoining businesses.

7.0 RESPONSE OF PLANNING AUTHORITY TO APPEALS

7.1 The following main points are made:

- Details provided of County Development Plan Policy 10.08.06 relating to fast food takeaways.
- The site is located in the village centre. Although currently vacant it was previously used as a restaurant.
- It is not considered that there is an over concentration of take away uses in the vicinity of the site. It is not the remit of the planning authority to control competition.
- The site is located within 50 m of Scoil Naomh Maodhag to the east. A previous application (20081170) was refused for a reason relating to

Policy 10.08.06 which requires a 200 m separation. On the most recent application, ref. 20081927, a letter was submitted by the school principal stating that the school does not allow pupils to leave the premises at lunchtime unless with parental authority. The planning authority considered that with regard to the school principal's submission and to the location of the site in the village centre, permission could be granted subject to a condition preventing the lunchtime opening of the takeaway element. And as such the development would be in keeping with the spirit of the policy.

- A condition of permission limits the opening hours of the takeaway in order to comply with Policy 10.08.06.

8.0 POLICY PROVISIONS

8.1 Wexford County Development Plan 2007-2013

- 8.1.1 Ferns is designated as a Strategic Growth Area in the County Settlement Strategy, i.e. towns and settlements with good transport links. Section 2.3.3 states;

“Appropriate forms of development will be considered in these villages including medium to high density developments in the village core.”

- 8.1.2 Ferns Castle is noted as a Historic Site in the Plan. Section 9.3 deals with archaeological heritage and sets out policies for its protection.

- 8.1.3 Section 10.08.06 of the Plan relates to hot food takeaways. It states;

“Proposals for the development of these facilities will generally only be acceptable in areas of mixed use activity such as town or village centres. Fast food outlets will generally not be permitted within a 200m radius of educational establishments and only in exceptional circumstances will such development be considered in residential areas, having regard to the negative impacts including noise, litter, opening hours and general disturbance, to which it can give rise. Stringent controls will be applied with regard to litter collection and façade design. The latter may necessitate the alteration of corporate images in order to assimilate into the character of the area. The planning authority may impose restrictions on opening hours as a condition of planning permission.”

8.2 Ferns Local Area Plan 2009

- 8.2.1 The site is within the development boundary of the Local Area Plan (LAP) and has the village centre zoning objective;

“To protect and enhance the character of Ferns Village centre by providing for the development and improvement of appropriate village centre uses including residential, retail, commercial, office and civic uses.

Generally two and three storey buildings will be preferred, depending on the character of the surrounding buildings, Retail, commercial and office based industry will be encouraged in the village centre. Warehousing and other industrial uses will not be permitted in the village centre.”

Most of the village centre is included in this land use zone, including the adjacent castle and grounds. The uses ‘take away’ and ‘restaurant’ are permitted in principle under this zoning objective.

- 8.2.2 Section 5.4 of the Plan sets out policy for retail and commercial development. The plan generally aims to strengthen and consolidate the village centre, stating;

“Ferns has a good array of services for a village of its size e.g. hairdressers, video shop, butchers, restaurants, pharmacy to name but a few. The focus of this Plan is to encourage the expansion and diversification of the village centre.”

To this end, Objective RC1 states;

“Facilitate the expansion & diversification of the village’s commercial core, having regard to the protection of the scale and character of these streetscapes in terms of plot width, height and roof pitch upon conversion of residential premises to commercial uses.”

The plan notes the conflict between the role of Ferns village centre as part of a local service centre and its location on an important primary national and regional route.

- 8.2.3 The plan notes that this part of Ferns is dominated by the Castle, which occupies the highest point in the village. Views towards Ferns Castle from the R745 to the west are protected in the LAP, ref. map no. 5.
- 8.2.4 The site is within a Zone of Archaeological Importance associated with the historic centre of Ferns. Ferns Castle is listed as National Monument Sites & Monument Record (SMR) ref. WX015:00301, classified as “*Anglo-Norman Masonry Castle*”.

9.0 ASSESSMENT

- 9.1 In my judgement, the principle factors for consideration in this appeal relate primarily to:
- Principle of development with regard to County Development Plan and Local Area (LAP) policy and the planning history of the site.
 - Impacts on the setting of Ferns Castle.
 - Impacts on local amenities.
 - Traffic and parking issues.
- These issues may be considered separately as follows.

9.2 Principle of Development

- 9.2.1 The proposed take away use is acceptable in principle with regard to the village centre zoning objective of the site under the Ferns LAP. Other LAP objectives for the village centre aim to encourage a diversity of uses. The appellants submit that the development would result in an over concentration of takeaways in Ferns and list a total of 8 such existing uses. However, the applicant's response notes that only one of those existing premises is a traditional hot food takeaway, which is located across the road from the site. The remaining premises are 2 no. 'greasy spoon' type eateries, a deli counter at a convenience store, a bar/pub selling food for consumption off the premises, a petrol station with a takeaway and a deli counter and an Italian restaurant similar to the proposed use. This point is accepted. With regard to the land uses in the immediate vicinity of the site, it is not considered that the development would result in an over concentration of takeaways to the detriment of village centre development and local amenities. While there is an existing takeaway across the road, I do not accept that two such premises in close proximity amounts to an excessive concentration and I presume that any future planning applications for other takeaways in the vicinity would be considered on their merits. In any case, the applicant submits that the development would primarily involve a restaurant use with a subsidiary take away element. This point is confirmed by the proposed floor plan, which is mainly taken up by a seating area with a separate, small serving area for take away food.
- 9.2.2 Permission was previously refused for a takeaway on the site under Reg. Ref. 20081170. The refusal reason related to County Development Plan policy 10.08.06, which specifies that hot food takeaways will generally not be permitted within a 200m radius of educational establishments. The site is located within 50 m of Scoil Naomh Maodhag which is situated nearby to the east on Main Street. The response of the planning authority notes that permission was subsequently granted for a takeaway use at the site under Ref. Ref. 20081927 on foot of a letter from the school principal, which stated that school does not allow pupils to leave the premises at lunchtime unless with parental authority. The planning authority considered that with regard to the school principal's submission and to the location of the site in the village centre, permission could be granted subject to a condition preventing the lunchtime opening of the takeaway element. In its response to the appeal, the planning authority considers that the proposed development would be in keeping with the spirit of policy 10.08.06 on this basis. On balance, the proposed use is considered acceptable notwithstanding Policy 10.08.06 with regard to the following:
- The previous permission under 20081927.
 - The use of a condition omitting lunch time sales.
 - The statement that the premises would be primarily used as a restaurant, as confirmed by the proposed floor plan.

9.3 Impact on Ferns Castle

- 9.3.1 Ferns Castle is listed as a Historic Site in the County Development Plan and is listed as National Monument Sites & Monument Record (SMR) ref. WX015:00301. The stated policy of the LAP is to;

“Control development in the vicinity of a Recorded Monument to ensure that it does not detract from the monument’s setting or seriously injure its cultural or educational value. In all such cases the Council shall consult with the National Monuments Section of the Department of Environment, Heritage and Local Government.”

The site is also located within a Zone of Archaeological Importance associated with the historic centre of Ferns. It is noted that the planning authority referred the application to the relevant Prescribed Bodies but that no response was received.

- 9.3.2 The development would be located within the envelope of an existing building. It would not involve any ground works, excavation or even any significant external changes to the existing structure. It is therefore considered that the development would not have any impact on the setting of Ferns Castle or any archaeological consequences.

9.4 Impacts on Local Amenities

- 9.4.1 The appeals state concerns about potential impacts on local amenities relating to noise, litter, anti social activity, odours and waste management. These issues all relate to the proper management of the premises. The planning authority granted permission subject to conditions relating to opening hours, litter bin, noise levels, signage and the emission of odours. It is recommended that such conditions should also be imposed if the Board is minded to grant permission. In addition, the site is already a commercial premises in a village centre location where there is a mix of residential and commercial uses. Subject to compliance with conditions and proper management, it is considered that the development would not have any undue additional adverse impact on residential amenities. The development would not involve any substantial changes to the exterior of the building and thus visual amenities would not be affected.

9.5 Traffic and Parking Impacts

- 9.5.1 The appellants submit that the development would generate on street parking, also that a traffic hazard would result from deliveries to the premises. The site is an existing commercial premises and it is not considered that the proposed takeaway use would generate a significant amount of additional parking demand or traffic movements associated with deliveries. On street parking is available nearby to the west of the site and there is some parking in the courtyard to the rear. There is a double yellow line along the street frontage of the site, which should prevent the creation of a traffic hazard by cars pulling in at this location.

10.0 CONCLUSION AND RECOMMENDATION

10.1 The development is acceptable in principle with regard to the village centre location of the site and to County Development Plan and Local Area Plan policies. The development would not have any adverse impact on the setting of Ferns Castle or on the associated Area of Archaeological Importance. The development would not have any undue impact on visual or residential amenities. The development would not result in a traffic hazard. Accordingly, permission is recommended subject to the conditions set out below.

10.2 It is noted that the planning authority did not impose a condition requiring a development contribution in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. Given that the proposed development involves a change of use only, would not result in a more intensive use of the premises and does not involve any additional floor area, this omission is considered appropriate.

REASONS AND CONSIDERATIONS

It is considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with the proper planning and sustainable development of the area.

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 points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Use of the proposed development for the sale of hot food for consumption off the premises shall not take place outside of the following hours:

Monday to Friday:	5.30pm to 10.30 pm.
Saturdays:	9.00am to 11 pm
Sundays:	12 midday to 11pm

Reason: In the interests of residential amenities and the proper planning and sustainable development of the area.

3. Litter in the vicinity of the premises shall be controlled in accordance with a scheme of litter control which shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development. This scheme shall include the provision of litter bins and refuse storage facilities.

Reason: In the interest of visual amenity.

4. The noise level from this development shall not exceed 55 dB(A) rated sound level (i.e. corrected sound level for a tonal or impulsive component) when measured at the boundaries of the site between 0800 and 2000 hours, Monday to Friday inclusive, and shall not exceed 45 dB(A) at any other time. Procedures for the purpose of determining compliance with this limit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To protect the amenities of property in the vicinity of the site.

5. Details of all external signage shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

Reason: In the interest of visual amenity.

6. Notwithstanding the provisions of the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, no advertisement signs (including any signs installed to be visible through the windows), advertisement structures, banners, canopies, flags, or other projecting elements shall be displayed or erected on the building or within the curtilage of the site, unless authorised by a further grant of planning permission.

Reason: To protect the visual amenities of the area.

7. The developer shall control odour emissions from the premises in accordance with measures including extract duct details which shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

Reason: In the interest of public health and to protect the amenities of the area.

8. A grease trap shall be retained on all outlets from the kitchen area prior to discharge to the public water sewer.

Reason: In the interests of public health and the proper planning and sustainable development of the area.

Sarah Moran
Senior Planning Inspector
22nd November, 2010