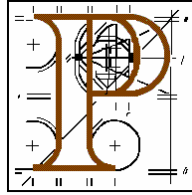


## An Bord Pleanála



### Inspector's Report

**Appeal Ref. No:** PL76.242590

**Proposed Development:** Change of use of part of existing off-licence and night club to restaurant with take-away. Reduce size of off-licence shop front and construct new shop front for off-licence and restaurant/takeaway.

**Location:** Gortnaclohy, Main Street, Skibbereen, County Cork.

**Applicants:** Denis Collins

**Planning Authority Reg. Ref:** 13/80

**Planning Authority:** Skibbereen Town Council

**P.A. Decision:** Grant Permission

**Appeal Type:** Third Party vs. Grant

**Appellants:** Noel O'Driscoll

**Observers:** None

**Date of Site Inspection:** January 2014

**Inspector:** Hugh Mannion

## **1. SITE AND SURROUNDINGS**

The site comprises an existing off-licence shop with a floor area of 94.7m<sup>2</sup> fronting onto a car parking/circulation area to the rear of Main Street in Skibbereen, County Cork. The off-licence is part of a larger site in the ownership of the applicant which fronts onto Main Street and to the rear addresses the car-park/circulation area which lies between the backlands of Main Street and the Caol stream which runs northwest to its confluence with the Ilen River.

The buildings on Main Street in the vicinity of the site are three storey; the applicant's property comprises a bookmakers and to the immediate west of that is an access archway which allows access to the other commercial uses in the ownership of the applicant. The bookmakers is followed to the east by a barber's shop, a drapery, a Supervalu/bakery/grocery and then a coffee shop. To the west after the bookmakers is the access archway, a vacant unit, a shoe shop, a ladies' clothes shop and a pharmacy. Immediately opposite the access archway on Main Street is a pharmacy, a public house, a mobile phone shop, a credit union's offices, a giftware shop and a building society's offices.

The carparking/circulation area onto which the subject premises faces has been developed as a commercial space accommodating the rear access to the Supervalu/bakery/grocery which fronts onto Main Street, a computer sales and repair shop, a covered outside seating area of the Paragon Bar and Restaurant which occupies most of the applicant's site between Main Street and this rear car parking/circulation area, the subject off licence and a pizza takeaway restaurant. Facing the off-licence and backing onto the Caol stream is a gallery/picture framers.

## **2. PROPOSED DEVELOPMENT**

The proposed development comprises the change of use of an existing off licence and night club to restaurant with takeaway, to reduce the size of the existing off licence shop front and construct a new shop front for the off licence and restaurant/takeaway facility at Gortnaclohy, Main Street, Sibbereen, County Cork.

### **3. HISTORY**

Under application reference 28/03 (PL76.204674) permission was granted with conditions on appeal for a change of use from bar and restaurant to bar, restaurant and nightclub of first floor of premises behind numbers 28 and 30 Main Street, a protected structure, Bernard's Bar, Main Street, Skibbereen, County Cork.

Application reference 06/57040 (PL76.220240) permission granted for demolition of existing ground floor store, partial change of use of ground floor bar/restaurant to retail unit, alterations to rear and side elevations and extensions to rear of licensed premises known as The Cellar Bar, Main Street, Gortnaclohy, Skibbereen. The extensions comprises (a) ground floor entrance lobby, lift shaft and bottle store and extension to proposed retail unit, (b) first floor extending over laneway and incorporating stairwell, lift, toilets and store and (c) second floor landing to existing stairwell, all at The Cellar Bar, Main Street, Skibbereen, County Cork.

### **4. PLANNING AUTHORITY DECISION**

The planning authority granted permission subject to 14 conditions.

Initially the planning authority sought further information in relation to;

- a) The proposed hours of operation.
- b) Air handling works.
- c) Clarify if the takeaway facility is subsidiary to the restaurant.
- d) Refuse storage.
- e) Litter management.
- f) Details of adjacent residential property.
- g) Clarification of the floor area of the dining area.
- h) Details of the proposed grease trap.

The applicant responded as follows;

- a) Suggesting opening hours to 11.30pm on weekdays and 3.00 am Saturday and Sunday.
- b) Submitted a drawing of ventilation works.
- c) The premises are primarily a sit down facility.
- d) Refuse storage is illustrated on a floor plan.
- e) Litter bins will be provided.

- f) Residential uses are indicated on a submitted map – there are no residential uses close to the car parking area.
- g) The exact floor area for dining purposes is 52.2m<sup>2</sup>.
- h) Location/specification of the proposed grease interceptor is submitted.

The Wastewater Networks Engineering report recommended permission subject to conditions.

## **5. THIRD PARTY GROUNDS OF APPEAL**

The grounds of appeal may be summarised as follows.

- The Main Street/car park already attracts a surfeit of casual fast food traders. The proposed development will add to this over-supply of such fixed and mobile outlets in this area and cause permitted traders to close negatively impacting on the vitality and viability of the town. Unauthorised fast food trading has been allowed to go unchecked by the local authority. The proposed development is contrary to the policy of the Development Plan to protect the vitality and viability of the town.
- The application is misleading in not being clearly for a fast food take away which will provide food for consumption off the premises. Condition 2 of the planning authority's decision is inadequate to prevent the bulk of the business being for fast food takeaway. Condition 3 limits the opening hours to 11.30 Monday to Friday and 1.00am Saturday and Sunday – this limit is applicable only to fast-food takeaways, encourages dead frontage in the earlier part of the day, prevents cleaning up outside the conditioned times and will close before night clubs close thereby undermining one of the applicant's arguments for the development.
- The Development Plan is concerned that non-retail uses like fast food takeaways should not proliferate in the town centre.
- There is a deficiency in car parking in the area. The planning authority has in the past charged contributions for car parking but not provided any.
- The application should have included a flood risk assessment.

## **6. APPLICANT'S RESPONSE TO APPEAL**

The applicant commented on the appeal as follows.

- The premises are located in the 'town centre' where takeaways are consistent with the zoning objective.
- The development will be contained within the footprint of the existing premises, will serve a need for late night food and will serve a wide hinterland around Skibbereen.
- The proposed development will meet the changing commercial circumstances of the economic downturn and keep people in employment.
- The applicant is aware of the problems associated with takeaway restaurants and has cleaned/swept up litter the immediate area of his premises in the past. The proposed development will not give rise to anti-social behaviour. This permission should not be refused because other businesses have given rise to litter in the area. As in the case PL76.204674 which involved the same appellant this appeal is vexatious.
- The nightclub closes at 2.00am with a finishing up period of 30 minutes. The proposal is to close the restaurant at 3am to allow nightclub patrons to buy food and to compete with unregulated fast food outlets trading from vans.
- The applicant has previously paid circa €150k in development contributions; this application is subject to a contribution of about €50k. If the planning authority has not spent this money on public services – including car parking – it is they who should be held to account not the applicant in this case.
- The proposed development is located within the footprint of the existing building and will not give rise to flooding.

## **7. PLANNING AUTHORITY'S RESPONSE TO APPEAL**

The planning authority responded that the assessment made at application stage dealt with the issues raised by the appeal.

## **8. OBSERVATIONS**

There are no observations.

## **9. FURTHER SUBMISSIONS**

There are no further submissions.

## **10. PLANNING POLICY FRAMEWORK**

The proposed development is within the administrative area of Skibbereen Town Council and the Skibbereen Town Development Plan 2009 to 2015 is the relevant land use plan. The area is zoned town centre in Map 4 – Land Use Zoning Map attached to the Plan and is within the retail core as defined in figure 6.1 of the Town Plan.

## **11. ASSESSMENT**

**11.01** The issues in the present case are; development plan policy the area, applicability of the planning authority's conditions, parking provision and flooding.

### **11.02 Proposed Development**

**11.03** The proposed development is described as a change of use of part of an off-licence and night club to a restaurant. The submitted drawings limit the works to the existing ground floor off-licence and two ground floor bottle stores. No changes are shown to the first floor night club area.

### **11.04 Development Plan Policy**

**11.05** The site is located in the retail core of the town and within an area zoned for Town Centre development. The Town Plan's "town centre" zoning objective seeks to "retain and enhance existing retail use within the retail core and to provide for residential, commercial, office, cultural and other uses appropriate to the centre of a developing town". The proposed development comprises a commercial use within a commercial building. This use and the re-arranged shopfronts onto the carpark/circulation area do not offend against the zoning objective of the area.

**11.06** The appeal makes the related points that (a) the Town Plan has an objective to limit ground floor non-retail uses in the town centre, (b) there is already an oversupply of takeaways in Skibbereen, (c) there is uncontrolled mobile fast food outlets operating in the town centre.

**11.07** Objective TC 2-3 of the Town Plan makes the point that non-retail uses at ground floor should be strictly controlled and lists a number of such non-retail uses including fast foot takeaways. Generally speaking these objectives in Development Plans reflect a desire on the part of planning authorities not to allow the dilution of the retail function of shopping areas by uses which do not attract daytime customers and have a tendency to lead to 'dead frontages'. I would note a number of features of the present application which should allay these fears; the proposed new restaurant/takeaway shopfront is 6.2m wide in an overall site under the applicant's control of almost 30m, the off-licence will remain a standard daytime retail use as will the existing "Paragon Bar and Restaurant" which is an 'early house' and the archway access is used to patrons of these uses to access the car park from Main Street.

**11.08** Another factor to consider in that this is not a standalone use on the Main Street but an amendment to a number of commercial/entertainment uses in a single block facing a parking/circulation area which can only be of secondary retail importance and where its impacts on the visual integrity of the streetscape will be minimal.

**11.09** In the immediate vicinity of the proposed development there is a pizzeria and a Chinese takeaway/restaurant just over the Caol stream and I did not identify a proliferation of takeaway uses on the Main Street in close proximity to the proposed development. Given that the proposal is not a pure takeaway but comprises a substantial restaurant seating area in a building which accommodates other permitted entertainment uses I do not consider that the proposed development would represent an unacceptable proliferation of take-away uses in the area.

**11.10** Finally the appeal is concerned that the planning authority has not adequately controlled the activities of mobile fast food outlets in the town. This is a matter for other codes and does not impact on the current application.

### **11.11 Planning Authority's Conditions 2 and 3**

**11.12** The appeal states that condition 2 is inadequate to control the takeaway element of the proposed development. Essentially the proposal is for a casual restaurant with a predominance of seating at high tables and seating at countertops in the allotted floor space. The planning authority has imposed condition 2 in what appears to be an attempt to limit the take-way

element of the business. This appears to be a reasonable aim and the only amendment I would suggest would be to reword the condition to ensure that the take-away use does not operate separately from the restaurant use particularly through the closure of the seating area but continuing to serve take-away food. Recommended draft condition 3 below is a rewording of the planning authority's condition.

**11.13** Condition 3 limits opening hours to 12 midnight from Monday to Friday and 1.00am Saturday and Sunday. It may be noted in this context that the application (see further information response submitted to the planning authority) sought an opening hours to 11.30 Monday to Friday and 3.00am Saturday and Sunday. The applicant did not appeal against the earlier closing hours imposed by condition 3.

**11.14** Under the permission for bar/restaurant/nightclub granted under PL76.204674 the Board imposed a condition (condition 2) that the first floor of the premises (that is where the nightclub is located) shall be open to the public only during the hours to be specified by the planning authority. It is unclear from the planning file if the hours were ever specified in that case by the planning authority.

**11.15** Having regard to:

- the location of the premises in an area zoned for town centre uses in the Town Development Plan,
- to the separation from residential uses and the preponderance of commercial uses in the area,
- the location of the premises within an existing commercial building which accommodates a number of commercial/entertainment uses,

I consider that the operating hours as conditioned by the planning authority are acceptable.

### **11.16 Parking Provision**

**11.17** The appeal is concerned that there is a deficiency of car parking in the town and that the planning authority, while collecting development contributions, has not moved to remedy this problem.



There are two points to be made in relation to this issue;

- If the planning authority has imposed contribution conditions in relation to the provision of facilities which have not been subsequently provided the appellant is free to raise this with the planning authority.
- The proposed development is located in the town centre in close proximity to public paid parking. I consider that the capacity of the proposed development to generate single use parking demand is very limited and that customers will be much more likely to avail of the restaurant as part of a multipurpose trip or use other forms of transport.

In short I do not consider that the proposed development, in itself, will materially add to parking demand in the town centre.

### **11.18 Flooding**

**11.19** The appeal makes the case that a flood risk assessment should have been submitted with the application. The applicant comments that the proposed development is minor development for the purposes of the Flood Risk Management Guidelines and that the planning authority's engineering report did not recommend refusal on the basis of flood risk.

**11.20** The applicant makes a fair point here. The central purpose of the Flood Risk Management Guidelines is to ensure that proposed development is subject to assessment of the flood risk which would arise both to the new development and that arising from the new development for other areas and existing developments. In the present case there is no additional hard surface being created which would generate additional run-off which could increase the flood risk for other development. Likewise the proposed development does not change the vulnerability of the existing building to flood risk. I conclude that there is no need for an exhaustive flood risk assessment beyond the foregoing.

## **12. RECOMMENDATION**

Having regard to the location of the proposed development in the town centre as zoned in the Skibbereen Town Development Plan 2009 to 2015, to the pattern of commercial development in the area, to the existing use of the site for commercial purposes, to the existing and permitted bar/restaurant/nightclub use within the overall building of which the site forms part, to the availability of paid public parking in the vicinity of the site I recommend that permission be granted for the proposed development.

## Reasons and Considerations

Having regard to the location of the proposed development in the town centre as zoned in the Skibbereen Town Development Plan 2009 to 2015, to the pattern of commercial development in the area, to the existing use of the site for commercial purposes, to the availability of paid public parking in the vicinity of the site and subject to the conditions set out below it is considered that the proposed development would be in accordance with the development plan objective for the area and 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 as amended by the further plans and particulars submitted on the 27<sup>th</sup> August 2013 except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. The hours of operation shall be between 1200 hours (noon) and 2330 hours Monday to Friday and between 1200 hours (noon) and 100 hours on Saturday, Sunday and public holidays.

**Reason:** In the interest of amenity.

3. The restaurant and takeaway use permitted by this grant of permission shall operate as a single use and the hours set out in Condition 2 shall apply to the provision of both restaurant and takeaway services.

**Reason:** In the interest of clarity.

4. Details of the proposed amended shopfronts and signage shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

**Reason:** In the interest of the amenities of the area.

5. No advertisement or advertisement structure, the exhibition or erection of which would otherwise constitute exempted development under the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, shall be displayed or erected within the curtilage of the site unless authorised by a further grant of planning permission.

**Reason:** In the interest of visual amenity.

6. Security roller shutters, if installed, shall be recessed behind the perimeter glazing and shall be factory finished in a single colour to match the colour scheme of the building. Such shutters shall be of the 'open lattice' type and shall not be used for any form of advertising, unless authorised by a further grant of planning permission.

**Reason:** In the interest of visual amenity.

7. 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.

8. A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

**Reason:** To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

9. Prior to commencement of development the location of all ventilation fans and smoke extractors which may be located on the public street façade of the building shall be submitted to and agreed in writing with the planning authority.

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

10. Water supply and drainage arrangements, including the provision of grease traps, shall comply with the requirements of the planning authority for such works.

**Reason:** In the interest of public health.

11. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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Hugh Mannion,  
Planning Inspector  
4<sup>th</sup> February 2014