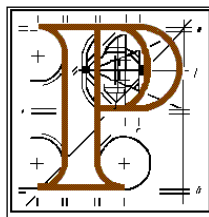


**An Bord Pleanála Ref.:** PL17.243890

**An Bord Pleanála**



### **Inspector's Report**

Development: Change of use of part of building to retail unit with a duplex apartment at 2 The Walk, Inse Bay, Laytown, Co. Meath

### **Planning Application**

Planning Authority: Meath County Council

Planning Authority Reg. Ref.: SA/130980

Applicant: Caroline Healy

Type of Application: Permission

Planning Authority Decision: Grant Permission

### **Planning Appeal**

Appellant(s): 1. Mark Birney Inse Bay Residents Association

2. Geraldine Connolly

Type of Appeal: Two number 3<sup>rd</sup> Party

Observers: 1. Tom Kelly

Date of Site Inspection: 4<sup>th</sup> December 2014

Inspector: Fiona Fair

Appendices: Photographs, Site location Map

## **1.0 SITE DESCRIPTION (see photographs and location map)**

The appeal site, which has a stated area of 0.2970 ha, is located within an existing residential development known as Inse Bay north of Laytown village centre. Laytown is a coastal settlement located to the south of Drogheda and north of Balbriggan. The Inse Bay development is accessed west off Strand Road / R150 and is located to the east of the Railway line.

The appeal site currently hosts a two storey structure which comprises a crèche at ground floor with 2 no. 2 bedroom apartments at first floor. The buildings face east / fronts onto 17 no. car parking spaces. A garden area which has a depth of 12m is located to the rear of the building. The appeal site backs onto the rear gardens of two number semidetached dwellings to the west. It is bounded to the north by two number semidetached dwellings and by a grass verge and access road to the south.

Planning permission was granted in 2008 to extend the crèche facility with single storey extensions to either side. This extension has not been constructed to date and an extension of duration of permission was granted in 2013 for same.

## **2.0 PROPOSAL:**

The appeal proposal comprises Permission for:

- Change of use to a retail unit with a duplex apartment and roof garden over, in place of part of extension to existing crèche/play-school for which planning permission was previously granted (reg. ref. no. SA800494) and extension of duration of planning permission was granted (SA130044).
- Also, internal alterations to the existing crèche/play-school and extension.

Significant further information/revised plans was submitted on this application

The stated GFA of the existing buildings is 296 sq. m

The stated GFA of proposed works is 188 sq. m

The stated GFA of the proposed retail unit is 110 sq. m of which 60 sq. m is stated as retail floor space

The stated GFA of the Duplex Apartment is 78 sq. m

The first party has submitted a letter with the planning application which sets out that while there is a demand for some extra childcare places in the vicinity, the applicant is now of the opinion that the numbers would not be great enough to warrant an extension of the size for which permission was originally obtained. It is considered that an extension of half the floor area for which permission was granted i.e. 110 sq. m would be adequate, providing a total of 50 childcare places instead of 65.

Permission is now sought to change the use of the permitted extension to the south west end of the building, to a retail unit, and to alter the layout of the existing crèche along with the permitted crèche extension to the north east.

### **3.0 PLANNING AUTHORITY'S DECISION**

Following further information which sought to clarify (i) redesign to omit the first and second floor element of the proposal (ii) no. of car parking spaces and layout (iii) the applicant was requested to respond to issues raised in objections submitted; (iv) further information was deemed significant, Meath County Council Granted planning permission subject to 16 no. conditions.

Conditions of note are summarised as follows:

Condition no. 2

*'The proposed apartment at first and second floor shall not be permitted. Revised elevations, plans and sections of the revised proposal (omission of first and second floor) shall be omitted for the written agreement of the planning authority prior to any development taking place on site.'*

Condition no. 12

*'Car parking spaces shall be provided in strict accordance with the plans and particulars submitted to the planning authority on 15/07/2014 unless otherwise agreed in writing with the Planning Authority.'*

Condition no. 14 refers to advertising signs –

No advertising signs, symbols, flags or logos shall be erected externally ...without a prior grant of planning permission.

Condition no. 15

*'The maximum number of children that shall be accommodated at any one time shall not exceed thirty three (33) in the childcare facility'.*

Condition no. 16

*'No windows are permitted facing out onto the crèche outdoor play area.'*

## **4.0 TECHNICAL REPORTS**

**4.1 The Planners report** reflects the decision to grant planning permission, subject to conditions. The planners report recommends a grant of planning permission for the proposed retail unit and the proposed extension to the crèche. It is considered however that the first and second floor extension (duplex apartment) is inappropriate and should be omitted.

### **4.2 Road Design**

No objection subject to condition.

### **4.3 Pre- Planning Consultation**

The Planners report on file notes that the applicant did engage in pre-planning discussion

#### **4.4 Objections/Submissions**

A number of objections were submitted. Concerns raised are similar to those raised in the 3<sup>rd</sup> party appeals summarised in detail below.

#### **5.0 APPEAL GROUNDS**

**5.1** A third party appeal has been lodged by Geraldine Connolly. The grounds of appeal are summarised as follows:

- The proposed development contravenes the A1 zoning
- Over development and commercialisation of the appeal site
- Concern with respect to increase in traffic draw and commercial vehicles
- Negative impact upon existing residential amenity
- Car parking layout proposed is located on green space, outside of the control of the applicant
- Increase in traffic would give rise to safety hazard to children attending the crèche
- The proposed retail development is not focused in the core of the village and does not complement existing retail provision it is contrary to National Policy, County Development Plan Policy and in particular the Retail Strategy.
- Appeal accompanied with:
  - Site layout plan submitted with original application (Reg. Ref. SA/130980) and the revised site layout plan submitted with the significant further information. Red line boundary has been altered.
  - Aerial photo of the site

**5.2** A third party appeal has been lodged by Mark Birney, chairman of Inse Bay Residents Association. The grounds of appeal are summarised as follows:

- The site is unsuitable and inappropriate for the proposed development

- There are a number of vacant more suitable small retail units in the vicinity of the appeal site, closer to the village / town centre
- Queries the viability of the proposal
- The proposed development has no regard to sequential planning test and does not support the vitality and viability of the city and town centre sites
- There is a need for retail impact assessment, in particular sequential test, and traffic impact assessment of the proposed development
- Appeal accompanied with:
  - Copies of documentation contained on planning file, Reg. ref. SA/130980; including further information request, subsequent planners report and decision

## **6.0 RESPONSES**

**6.1** The planning authority response is summarised as follows:

- The planning authority have enclosed copies of two letters of objection (from Ian Casey and David Conroy) submitted to the planning authority and referred to in the planners report, in response to the Further Information submitted by the applicant on the 18.07.2014
- Issues raised are similar to those raised in the third party appeals and summarised above in section 5.0 of this report.

**6.2** A response to the appeal has been submitted by Florence Shields Architect on behalf of Caroline Healy. It is summarised as follows:

- The principle of retail development in particular local shop within the A1 zoning objective is open for consideration
- A local shop is defined as a retail unit of less than 200 sq. m
- The proposed retail unit has a GFA of 110 sq. m; of which 60 sq. m is retail floor space
- The proposed development aims to provide a small local outlet convenient to local residents, within walking distance of their homes.

- The proposal is sustainable. It will encourage people to walk instead of using the car.
- The nearest shop at present is located 1 Km away at Strand Road
- A small local shop within walking distance of 500 + homes is viable
- The crèche is a commercial enterprise therefore a precedent has been established on the site. The proposal would encourage linked trips with parents using the local shop at drop off and pick up times.
- It was always the plan for this site, from the outset, that a crèche facility would be provided thereon.
- The retail unit is in replacement of, not in addition to the crèche extension for which planning permission was already granted.
- 24 no. car parking spaces are proposed. This is the same no. and falls within the same boundaries as were shown in the original planning application for the crèche extension Reg. Ref. SA/800494 granted on the 16/05/2008.
- The applicant purchased the property with permission for the extension which included the car parking layout. The agreement with the Management Company shows these parking spaces / layout.
- Deliveries to the premises will be restricted to hours outside of crèche drop off and pick up.
- A small convenience store is proposed. It is envisaged that the majority of customers will arrive by foot and linked trips with the crèche would account for additional customers
- A small convenience store is not likely to present a threat to the established shops in the centre of Bettystown

## **7.0 OBSERVATION**

**7.1** AN Observation was received from Tom Kelly. It is summarised as follows:

- Queries whether the applicant Caroline Healy is the registered owner of the property subject to planning permission. Ownership has not been proven and no letter of authorisation on file.
- The planning notice was not properly displayed on the appeal site and was not legible from the public road
- There are no disabled parking spaces available
- The car parking area is not within the control of the applicant
- Hours of operation are not stated
- Sale / storage of fuel or other combustible goods are not suitable within this development

## **8.0 PLANNING HISTORY**

**8.1 Reg. Ref. SA/130044** Extension of duration of planning permission Reg. Ref. SA/800494 was granted for proposed extension to crèche.

**8.2 Reg. Ref. SA/800494** Permission Granted for extension (221 sq. m) to existing crèche permitted under Reg. Ref. 01/4030

**8.3 Reg. Ref. 01/4030** Permission Granted for 239 dwelling units including 2 no. apartments over crèche and all associated site works.  
(Appeal – Ref. No. PL.17.125995 – was withdrawn)

## **9.0 DEVELOPMENT PLAN**

The current statutory Development Plan for the area is the Meath County Development Plan 2013 – 2019.



The East Meath Local Area Plan 2014 – 2020 is also of relevance to the subject appeal.

The site is located on land zoned 'A1', residential, in the East Meath Local Area Plan – with the objective: *'to protect and enhance the amenity of developed residential communities'*.

## **10.0 ASSESSMENT**

In my judgement the principle factors for consideration in this appeal relate to:

### **10.1 Principle of the Proposed Development and Compliance with Policy**

#### **10.2 Impact Upon Residential Amenity**

#### **10.3 Impact Upon Vitality and Viability**

#### **10.4 Transportation and Car Parking**

#### **10.5 Appropriate Assessment (AA)**

#### **10.6 Other Issues**

### **10.1 Principle of the Proposed Development**

The appeal site is located within an existing residential development known as Inse Bay, Laytown and an existing crèche is operational on the site with two number apartments over at first floor. Planning permission (reg. ref. no. SA800494) was granted in 2008 to extend the crèche facility with single storey extensions to either side. This extension has not been constructed to date and an extension of duration of permission was granted in 2013 for same, see planning history section 7.0 above.

Planning permission is currently being sought for change of use to a retail unit with a duplex apartment and roof garden over, in place of part of extension to existing crèche/play-school for which planning permission was previously granted.

The site is located on land zoned 'A1', residential, in the East Meath Local Area Plan 2014 – 2020 – with the objective: *'to protect and enhance the amenity of developed residential communities'*.

The principle of residential development within the zoning objective is considered acceptable. The principle of a 'convenience outlet' is 'Open for Consideration' under 'A1' zoning. I note that a local shop is defined as a convenience retail unit of not more than 200 sq. m in GFA. The stated GFA of the proposed retail unit is 110 sq. m of which 60 sq. m is stated as retail floor space.

I note that policy HD POL 9 of the Local Area Plan Bettystown-Laytown-Mornington East-Donacarney-Mornington 2014-2020 states:

*'To require as part of all new residential and commercial developments, and in existing developments, where appropriate, provision to be made for facilities including local/neighbourhood shops, childcare facilities, schools and recreational facilities and to seek their provision concurrent with development'*.

Impact upon vitality and viability is discussed below however it is my opinion that the scale of the convenience retail / neighborhood shop proposed would be acceptable in principle under the 'A1' zoning objective and is in line with Development Plan policy.

This is a third party appeal made against the planning authority's decision to grant planning permission for change of use and amendments to provide for a single storey retail unit, only. The duplex apartment at first floor was omitted by reason of negative impact upon the crèche outdoor play area and negative impact upon the adjacent dwellings rear private amenity space. From my observations on the ground, consideration of all matters raised and perusal of the plans and drawings submitted I tend to agree with this conclusion.

Having regard to the foregoing while I consider that the principle of change of use of part of an existing / permitted crèche for a neighbourhood shop is

acceptable issues of traffic, car parking and impact upon residential amenity need to be considered.

## **10.2 Impact Upon Residential Amenity**

The existing two storey crèche building was purpose built as a crèche, granted permission on foot of Reg. Ref. 01/4030 it is somewhat detached from adjoining dwellings to the north and is served by a car parking area (currently 17 car spaces) to its east.

The appellants are concerned with respect to the retail nature of the proposal within a quiet residential estate, opening hours, anti-social behaviour, loitering and litter, storage of fuel on site and traffic impact.

It is my opinion that subject to the size of the retail unit / neighbourhood shop being strictly controlled and conditions being attached to limit opening hours, delivery times and adequate car parking being put in place that the proposal would not impact unduly upon the residential amenity of adjoining residences.

I consider that the retail unit is unlikely to attract large numbers of late night customers and is most likely to attract mainly crèche users, local and passing business, which is unlikely to impact adversely on the residential amenities of the area.

I recommend that a closing time of 10 pm should be attached by way of condition should planning permission be forthcoming. Also no deliveries should be taken at or dispatched from the premises between the hours of 20.00 and 8.00 on any day, Monday to Saturday, nor at any time on Sundays or public holidays.

The appeal premises is located in an open and visible location and I do not anticipate that the environment is such that patrons would loiter in the immediate vicinity, thus impacting upon the residential amenity of houses located adjacent. It is my opinion that the development, subject to condition,

would not generate any significant adverse impacts to residential amenity of dwellings located close by.

### **10.3 Impact Upon Vitality and Viability**

Laytown/Bettystown is identified as a Level 3 Town Centre in the County Retail Strategy. It is also identified as a Small Town in the Core Strategy and has strong links with Dublin and Drogheda being on the same multi-modal corridor.

The Retail Planning Guidelines for Planning Authorities 2012 set out that the threshold at which an RIA will be required will be determined in the context of the development plan policies and objectives for retailing or may be raised by the planning authority in pre-application discussions or in the course of determining the planning application.

It is my opinion that the proposed development is consistent with development plan objectives, in particular zoning objectives, current land use activity in the vicinity of the site (crèche use), size, capacity to accommodate development, traffic and transportation. Traffic and car parking is dealt with below in the subsequent section of this report.

I agree with the applicant that a retail unit would provide a valuable service to a neighbourhood of in excess of 230 households within easy walking distance. I note the submission that at present the nearest convenience store is nearly 1Km away from the entrance to the estate.

I do not consider that the scale and nature of the neighbourhood shop proposed would have a negative impact on vitality and viability of retail units within Laytown / Bettystown. I therefore have no objection in principle to a limited convenience shop, as proposed, at this location.

## **10.4 Transportation and Car Parking**

24 no. car parking spaces are proposed. It is submitted that this is the same no. and falls within the same boundaries as were shown in the original planning application for the crèche extension Reg. Ref. SA/800494 granted on the 16/05/2008 and the extension of duration of planning permission granted on foot of Reg. ref. SA/130044. From my assessment of the planning history attached to the file this appears to be accurate. I note that the site boundary was amended (enlarged car parking area) by way of, what was deemed, significant further information.

The retail unit is a convenience store located within easy walking distance for the residents of the area. The number of parking spaces proposed to serve the facility is in compliance with standards set out in the County Development Plan.

It is submitted that deliveries to the retail unit will be restricted to the hours outside the times that the children are being dropped off at and collected from the crèche.

I agree with the first party that the proposed development, a small convenience store, given its location is likely to encourage use of cycling and walking, as the majority of customers will be from the surrounding residential area. As stated above it is my opinion that the development will mainly attract local and passing business which is unlikely to impact adversely on traffic in the area. I also agree that linked trips with the crèche would account for additional customers.

The Road Design Office of Meath County Council has no objection to the proposal. I consider that the proposed development would not exacerbate traffic congestion in the area and that opening hours should be subject to condition.

Given the foregoing I consider the proposal is acceptable on traffic and parking grounds.

### **10.5 Appropriate Assessment (AA)**

The planners report states that the proposed development is located 700m north of the Boyne Coast and Estuary SAC, however given that the proposed development is for an extension within an established housing development with public services, it is not considered that the applicant should carry out an AA screening in this instance.

It is considered that the proposed development would not give rise to any significant adverse direct, indirect or secondary impacts on the integrity of any nearby Natura 2000 sites having regard to the nature and scale of the proposed development, the existing environment and separation distances involved to adjoining Natura 2000 sites. It is also not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European Site.

### **10.6 Other Issues**

The appellants have raised issues with respect to site boundary amendments and legibility and display of the site notice. I note for the attention of the Board that issues of validation of a planning application are matters solely within the remit for the planning authority and are not a matter for An Bord Pleanála. The further information submitted (incl. the site boundary amendments) was deemed significant and the proposed development were re-advertised therefore the public were given opportunity to make submission and third party rights were not impacted.

The issue of ownership of lands and the applicants control over lands has been raised by third parties. In this regard I note that the applicant, Caroline Healy, has stated she is the 'owner' of the lands in the planning application form submitted. It also appears that similar boundaries as were shown in the

original planning application for the crèche extension Reg. Ref. SA/800494 granted on the 16/05/2008 and the extension of duration of planning permission granted on foot of Reg. ref. SA/130044 are adhered to. The previous permission was in favour of Woodgreen Builders Ltd.

It is my opinion that given the information contained on the file the applicant has established sufficient interest over the lands outlined in red for planning permission purposes.

I highlight that Planning Legislation is not intended to address legal civil disputes and the right to develop in accordance with a planning application does not override civil ownership. Section 34(13) of the Planning and Development Act 2000, as amended, sets out that '*a person shall not be entitled solely by reason of a permission under this section to carry out any development*'. It is the responsibility of the developer to ensure that there is no encroachment or interference with lands not under the control of the applicant.

## **11.0 CONCLUSION**

Accordingly, having regard to the existing development on site, the pattern of development in the area and the design of the proposed development I consider that the proposed development, subject to omission of the duplex apartment and subject to condition, would be acceptable and in accordance with the proper planning and sustainable development of the area.

## **12.0 REASONS AND CONSIDERATIONS**

Having regard to the zoning objective for the site '*to protect and enhance the amenity of developed residential communities*' and to the pattern of development in the immediately surrounding area it is considered that, subject to compliance with conditions below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would be acceptable in terms of traffic safety and would accord with the proper planning and sustainable development of the area.

## 13.0 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 15.07.2014 and the 05.08.2014, 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 development shall be amended as follows:

- (i) The duplex apartment at first and second floor over the retail unit shall not be permitted.

Revised elevations, plans and sections of the revised proposal (omission of first and second floor) shall be omitted for the written agreement of the planning authority prior to commencement of any development on site.

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

3. Car parking spaces shall be provided in strict accordance with the plans and particulars submitted to the planning authority on 15/07/2014.

**Reason:** In the interest of public safety

4. The maximum number of children that shall be accommodated at any one time shall not exceed thirty three (33) in the childcare facility.

**Reason:** In the interest of orderly development



5. No windows are permitted facing out onto the crèche outdoor play area.

**Reason:** In the interest of orderly development

6. The shop / retail use shall not operate between the hours of 22:00 and 07:30, on any day, save with a prior grant of planning permission.

**Reason:** In the interests of residential amenities of property in the vicinity.

7. No deliveries shall be taken at or dispatched from the premises between the hours of 20:00 and 8:00, on any day, Monday to Saturdays, nor at any time on Sundays or public holidays.

**Reason:** To protect the residential amenities of the area.

8. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health and to ensure a proper standard of development.

9. Details of signage shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development. No internally illuminated or neon signage shall be permitted.

**Reason:** In the interest of the amenities of the area/visual amenity.

10. No external security shutters shall be erected on the premises unless authorised by a further grant of planning permission. Details of all internal shutters shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

11. 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.

12. 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 on-going 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.

13. 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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Fiona Fair  
Planning Inspector  
10.12.14