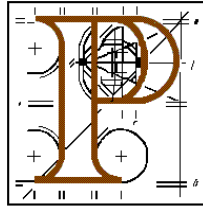


An Bord Pleanála



Inspector's Report

PL.10.244136.

DEVELOPMENT:-

Five year temporary permission for retention of ancillary surface car park and associated signage, lighting control barrier and ancillary works at Jacob Street (site previously known as Cleere's Builder's yard), Kilkenny.

PLANNING APPLICATION

Planning Authority: Kilkenny County Council.
Planning Authority Reg. No: P14/394.
Applicant: Kilkenny Pembroke Ltd.
Application Type: Temporary permission
Planning Authority Decision: Temporary permission with conditions.

APPEAL

Appellant: Q Park Ireland Ltd.
Type of Appeal: Third Party.
Observers: None.

DATE OF SITE INSPECTION: 26th March 2015.

Inspector: **Derek Daly.**

1.0 SITE LOCATION AND DESCRIPTION.

The appeal site is located on the north side of Jacob Street, a public road linking Patrick Street Upper and New Street Upper/ Ormonde Road on the southern fringe of the centre of the city of Kilkenny. The site was a formerly a builder's yard and is irregular in configuration, with a stated area of 1260 square metres (0.126 ha). On its south side, the site has a frontage of 45.124 metres onto Jacob Street and extends to the rear of premises on Ormonde Road and Patrick Street Upper.

The site is currently in use as a surface car park with a hardcore surface. Access into the site is via an opening in the boundary defined by a double inward opening gate at the eastern end of the road frontage. Inside of the gate there is a lifting barrier operated by a code which gives access to the car park. There is a sign at the site entrance indicating that the site is for parking for the Pembroke Hotel. This hotel is located on the eastern side of Patrick Street immediately to the north of the junction of Patrick Street and Ormonde Road. On the southern side of Jacob Street are established residential terraces two storied and single storied in height.

2.0 PROPOSED DEVELOPMENT.

The proposed development as submitted to the planning authority on the 29th of August 2014 was for temporary permission for a period of five years for the retention of a surface car park for the use the Kilkenny Pembroke Hotel as an overflow car park for guests and staff. It is not used or proposed to be used as a public car park. It is indicated that it is not seen as a long term use of the site. The site has provision for 41 car parking spaces.

3.0 PLANNING HISTORY.

ABP Reg.No.241739/ P.A. Reg. No. 12/10.

Permission refused for a five year permission for the retention of the ancillary hotel surface car park and associated signage, lighting, control barrier and ancillary site development works on the appeal site. The reason for refusal refers to "the development proposed to be retained is located on a suburban street that is otherwise characterised by residential development, and which is zoned residential under the Kilkenny City and Environs Development Plan 2008 - 2014. Having regard to its nature, it is considered that a surface car park would constitute an undesirable use in a town centre location and a residentially zoned area, and furthermore, its retention would conflict with the timely redevelopment of this brownfield site for a more appropriate use. The development proposed to be retained would, accordingly, contravene the residential zoning objective for this site, and would be contrary to the proper planning and sustainable development of the area".

ABP Reg.No.211451/ P.A. Reg. No. 04/134.

Permission granted for 84-bedroom hotel (modification to previously permitted hotel under Reg. Ref. P39/99 for 75-bed hotel). Condition no.4 permitted payment of a financial contribution in lieu of parking.

4.0 PLANNING AUTHORITY REPORTS.

The planning report of 21st of October 2014 refers to the planning history and to development plan provisions. Reference is made to the provision that a temporary car park is open for consideration. Reference is made to third party submissions received and also to the backland nature of the site and its relationship to adjoining properties. The report considers matters arising in the original permission on the site in particular issues relating to parking. It is considered that the proposal is transitional and noting the previous Board decision temporary permission was recommended.

5.0 PLANNING AUTHORITY'S DECISION.

The Planning Authority decided to grant planning permission for the development subject to seven conditions. Among the conditions of note,

- Condition no. 2 relates to a development contribution.
- Condition no.3 grants a temporary permission for a period of 3 years.
- Condition no.4 limits the use of the car park and that it not be used as a public car park
- The Planning Authority granted permission for the proposed development subject to conditions as follows:

6.0 APPEAL SUBMISSIONS.

6.1 THIRD PARTY APPEAL.

The appellant in the grounds of appeal states,

- Reference is made to the previous permission on the site where retention permission was refused and the use of the site as a car park prior over a number of years.
- Reference is made to the parent permission and the arrangements in relation to parking.
- A temporary permission on the site cannot fulfil the need for permanent availability of parking spaces as required by the parent permission with reference to accessibility, effectiveness, suitability and permanent availability reference in previous decisions relating to parking for the hotel.
- The parking is too far removed from the hotel.
- The previous Board decision supports the residential zoning of the site.
- The planning report of the planning authority acknowledges that in the long run parking is not the appropriate use for the site.

- The unauthorised use of the site for parking dates back a number of years and operates in breach of an Enforcement Notice.
- The recent amendment of the provisions of the Kilkenny City and Environs Plan 2014-2020 that parking is open for consideration is on residential zoned lands is irrelevant in the context of the Board's reason for refusal as the use is undesirable and conflict with the timely redevelopment of the site for a more appropriate use.
- It is recommended that the development be refused on similar grounds.

7.0 RESPONSES TO APPEAL.

The applicant in a response dated the 16th of December 2014 refers to,

- The appeal is considered vexatious as the appellant operates a car park.
- The parent permission ABP Reg.No.211451/ P.A. Reg. No. 04/134 did provide for parking elsewhere to meet a deficiency in parking spaces.
- Reference is made to the changes in the development plan since the previous decision of the Board.
- The car park is as near to the hotel as parking is for other hotels in the city.
- The issue of the conditions relating to financial contributions are raised in the context of a temporary permission and as the Board consider the proposal *de novo*.
- The section 48 scheme has not been correctly applied and the applicant believes that the requirements of the scheme do not apply to non-commercially operated car parks.
- The charges are based on floorspace rather than site area the appropriate method of calculation.
- The scheme is based on a Borough Council Scheme and that Borough Council has ceased to exist since June 2014 and no new review of contributions has commenced as required by ministerial guidance.
- The applicant is not trying to abuse the enforcement process.
- The granting of a temporary permission does not preclude a future use of the site but there is no market at present for redevelopment of the site other than as a car park.
- The site although in a residential zoned area has a long history of use in commercial use.
- The use does not impact on the ACA.
- The use is open for consideration in the current development plan.

8.0 POLICY.

The current statutory Development Plan is the Kilkenny City and Environs Development Plan 2014-2020.

Chapter 3 of the plan relates to Core Strategy and Zoning. The site is located within an area zoned existing residential with the objective to protect, provide and improve residential amenities. Temporary car parking is open for consideration within this zoning and temporary is defined as no longer than 5

years from the date of permission granted unless a sustainable case can be put forward for a further extension.

Chapter 7 relates to heritage. The site is within the Patrick Street ACA and details relating to this ACA are outlined in section 7.4.7.5 of the plan. Within the ACA development management standards based on assessment of special character are outlined and PSACA 4 relates specifically to Jacob Street and indicates “to ensure any future developments along Jacob St. adhere to a formal building line and are predominantly residential in nature”. The site is also within a zone of archaeological potential.

Chapter 10 relates to transport and section 10.4.8 relates specifically to car parking. The provision of parking is considered in the context of overall transport management and sets out standards in assessing development proposals and where car parking provision on site is not possible, or desirable for other valid reasons, the Council may consider the payment of a financial contribution in lieu.

9.0 ASSESSMENT.

9.1 Reference is made by the applicant in the response to the appeal that the appeal should be dismissed as vexatious as the appellant operates a car park. The issues raised in the grounds of appeal do, however, relate to matters determined in previous decisions made by the planning authority and the Board.

9.2 The planning history is relevant to the current proposal as permission was granted for a hotel which was unable to provide the required provision of parking on site and condition no.4 of the parent permission for the hotel ABP Reg.No.211451/ P.A. Reg. No. 04/134 permitted payment of a financial contribution in lieu of parking. In lieu of payment of a contribution an arrangement was agreed for parking in a public car park at Ormonde Street. The nature of the current arrangement in relation to parking in this car park is unclear but the planning authority report does indicate that this arrangement agreed in October 2007 remains in place until officially varied and no variation has been agreed.

This raises the issue of what exactly is the purpose of the car park at Jacob Street which is the subject of this appeal. It is indicated in the applicant’s response that “the car park acts as an overflow car park to facilitate hotel patrons when the main car park at the Pembroke Hotel is at capacity. In the event that the hotel’s primary car park is full, hotel guests are provided with directions and a secure code to enable them to open the entrance barrier and access the car park on Jacob Street”. The response also indicates that the agreement in place for the Ormonde Street car park was never terminated and is still in place.

9.3 In many respects the current proposal is, I consider, of a similar nature to the development considered under ABP Reg.No.241739/ P.A. Reg. No. 12/10.

- 9.4 In section 8 of this report I have outlined relevant provisions in relation to the current County Development Plan, the Kilkenny City and Environs Development Plan 2014-2020.

In relation to the current plan I would note that the site is located within an area zoned existing residential with the objective to protect, provide and improve residential amenities. Within this zoning the plan indicates that the provision of temporary car parking is open for consideration and that temporary is defined as no longer than 5 years from the date of permission granted unless a sustainable case can be put forward for a further extension. The provision relating to open for consideration is different to what was stated in the Kilkenny City and Environs Development Plan 2008-2014, which was the statutory plan when ABP Reg.No.241739/ P.A. Reg. No. 12/10 was determined where there was no such provision.

This provision in the current plan has been referred to by the applicant as a basis for permitted a temporary permission and is also referred to as a change/consideration by the planning authority since determining the previous appeal. It is therefore open for consideration to consider temporary parking within the zoning for a period of up to 5 years if deemed appropriate and in this regard as an arrangement was deemed by the planning authority to be transitional pending a long term more efficient use of the site. In this regard I would note that the planning authority have indicated that the current use of the site for car parking is not seen as appropriate in the long term.

The site is located within an area zoned residential and within an Architectural Conservation Area. In terms of promoting the sustainable development of the site and wider area, the long term redevelopment of the site for residential purposes or other appropriate use, is I consider a more desirable approach in relation to the site rather than its use as a surface car park as it would infill the frontage of the northern side of Jacob Street and achieve the objectives set put in the development plan.

The provision of open for consideration is not in itself an inference that a use provided for in the category open for consideration should be permitted but a use considered on its merits. In this regard it is difficult to see how granting a temporary permission for a surface cark would advance the objectives of the development plan both in relation to the redevelopment of the site and providing for a more coherent streetscape in keeping with the ACA designation. In addition it is hard to envisage that permitting a temporary permission on the appeal site is a satisfactory solution to the provision of parking for the hotel short or long term and in meeting the need for a more permanent availability of parking. This matter should also be addressed in the context of amending the provisions of condition no.4 of the parent permission for the hotel ABP Reg.No.211451/ P.A. Reg. No. 04/134 and any agreement arising. On this basis I do not consider that a grant of temporary permission is appropriate.

I note that the applicant has referred to the relative distance from the appeal site to the hotel vis a vis the distance from the hotel to the car park which was part of the agreement to meet the shortfall in parking but in both instances patrons will have to walk a similar distance to the parking areas and this is not a material consideration and this is also a relatively normal occurrence in town/city centre areas. I would also note in this regard that the hotel has a provision for patrons to temporarily park at the hotel entrance to load and unload luggage.

- 9.5 I note that in the response to the grounds of appeal that the applicant has requested that the Board consider the proposal *de novo* and in this regard refers to condition no.2 relating to a financial contribution and that the section 48 scheme has not been correctly applied. Section 48(10) permits an appeal to the Board against Financial Contributions in certain instances and the applicant could have made a formal appeal in this regard as provided for the Planning and Development Act 2000 as amended. Raising the matter in the response to the grounds of appeal is not the appropriate manner to raise the issue.

10.0 CONCLUSION AND RECOMMENDATION.

Having regard to the foregoing, I recommend that permission be refused for this development for the reasons and considerations set out below.

REASONS AND CONSIDERATIONS.

The development proposed to be retained is located on a street that is otherwise characterised by residential development, and which is zoned residential under the Kilkenny City and Environs Development Plan 2014 - 2020. Having regard to its nature, it is considered that a surface car park would constitute an undesirable use in a town centre location and a residentially zoned area, and furthermore, its retention would conflict with the timely redevelopment of this brownfield site for a more appropriate use. The development proposed to be retained would, accordingly, contravene the residential zoning objective for this site, and would be contrary to the proper planning and sustainable development of the area.

Derek Daly

25th March 2015

Inspectorate.