



An
Bord
Pleanála

**Board Direction
PL92.247444**

The submissions on this file and the Inspector's report were considered at a Board meeting held on February 27th 2017.

The Board decided to grant permission generally in accordance with the Inspector's recommendation, for the following reasons and considerations, and subject to the following conditions.

Reasons and Considerations

Having regard to the planning history of the subject site, to the established pattern of land use in the vicinity, and to the nature and scale of the proposed development, it is considered that, subject to the conditions set out below, the proposed development will not seriously injure the amenities of the area or of property in the vicinity, would not conflict with the provisions of the Clonmel and Environs Development Plan 2013, and would not undermine the vibrancy and vitality of Clonmel Town Centre. The proposed development would not, therefore, be contrary to 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 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 use of the premises shall be strictly in accordance with the details as submitted. No change of use from the use hereby permitted shall take place without a prior grant of planning permission notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001 and any statutory provision amending or replacing them.

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

3. The developer shall control odour emissions from the premises in accordance with measures 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.

4. 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. The scheme shall include the provision of litter bins and refuse storage facilities.

Reason: In the interest of visual amenity.

5. Water supply and drainage arrangements 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.

6. 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 the amenities of the area.

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

Reason: In the interest of visual amenity and orderly development and to permit the planning authority to assess any such development through the statutory planning process.

8. 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.

Note: The Board noted the wording of the Planning Authority's reason for refusal, which referred to the proposed development materially contravening the land use zoning objectives of the Development Plan. However, the Board noted that there were conflicting objectives in this Plan, in so far as the proposed development was concerned (as outlined by the Inspector in the related case PL92.247455), and accordingly determined that it was not precluded under Section 37 (2)(b) of the Act from granting planning permission in this instance. In addition, the Board noted that the proposed use was, as suggested by the planning authority, akin to use as a restaurant, having regard to the layout of the proposed development, and in this context had regard to its decisions under referrals RL3424, RL3425 and RL3426, all of which post-dated the referrals cited by the applicants in this case. In this context, it did not concur with the Inspector that the key element was the presence or absence of cooking facilities but rather the extensive customer seating area, which indicated that the proposed use as a coffee shop did not constitute use as a "shop", and noted that this was the basis for its decisions under these referral decisions.

[Please issue a copy of this Direction with the Board Order]

Board Member

Date: 27th February 2017

Philip Jones