

An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2015

Cork City

Planning Register Reference Number: 15/36424

An Bord Pleanála Reference Number: PL 28.245776

APPEAL by Rory O'Hare care of John McCarthy and Partners of 16 Mary Street, Cork against the decision made on the 23rd day of October, 2015 by Cork City Council to grant subject to conditions a permission to Atlantic Enterprises Limited care of Niall Fitzsimons Consulting Engineers of Ocon House, Tivoli Gardens, Silversprings, Cork in accordance with plans and particulars lodged with the said Council.

PROPOSED DEVELOPMENT: Demolish adjoining existing dilapidated building (Number 1 Tivoli Gardens, Silversprings) and construct a two storey restaurant with a take-away element and drive thru (total floor area 44 square metres with infrastructure works including; access, car parking, footpaths, public lighting, internal totem signage, surface water attenuation system and all associated site development works with connection to existing services at Lower Glanmire Road, Tivoli, Montenotte Townland, Cork City.

DECISION

GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.

MATTERS CONSIDERED

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

REASONS AND CONSIDERATIONS

Having regard to the pattern of development in the area and the planning history of the site, and having regard to the nature and extent of the proposed development, as modified at further information stage, it is considered that the proposed development, subject to compliance with the conditions set out below, would not seriously injure the residential amenities of the area, would not adversely impact on the architectural heritage of the area, would be acceptable in terms of traffic safety and convenience and would not represent an unacceptable risk of flooding. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's recommendation to refuse permission, the Board had regard to the pattern of development in the vicinity of the site, including adjoining commercial uses, and also to the planning history of the subject site, including its former use as a petrol filling station, and considered that, in this particular context, the development could be allowed under the zoning provisions of the current Development Plan for the area.

CONDITIONS

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as modified by the further plans and particulars submitted to the planning authority on the 28th day of September 2015, 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. (a) The applicant shall employ a professionally qualified and registered architect, with conservation experience, to prepare a schedule of works and specifications for the conservation, repair and refurbishment of the retained house at Number 1 Tivoli Gardens. Such works and specifications shall be submitted to, and agreed in writing with, the planning authority prior to commencement of any development authorised by this permission.
- (b) The works for the conservation, repair and refurbishment of the retained house at Number 1 Tivoli Gardens, as agreed with the planning authority pursuant to condition 2(a) above, shall be carried out as part of the overall development works for the development of the proposed restaurant/takeaway/drive-thru facility, and shall be completed, to the written satisfaction of the planning authority, prior to the first use of the proposed restaurant/takeaway/drive-thru development.

Reason: To ensure that the proposed development is carried out in accordance with best conservation practice.

3. (a) The proposed signage, located on the front and side elevations of the proposed building above first floor level, shall be omitted. Signage of a similar type, but no more than 600 millimetres high, and no more than three metres long, shall be provided on the front and side elevations above ground floor level and below the first floor windows. Details of the exact type and design of this signage (which shall not exceed these stated dimensions), together with the proposed six metre high totem signage proposed, shall be agreed in writing with the planning authority prior to commencement of development.

- (b) 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, other than the signage specified in condition 3(a) of this permission, shall be displayed or erected on the buildings 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, and to allow the planning authority to assess any further signage or other elements through the statutory planning process.

- 4. The opening hours of the proposed restaurant with hot food take-away and drive-thru facility shall be between 0800 hours and 2200 hours from Monday to Sunday.

Reason: In the interest of residential amenity and to avoid nuisance outside these hours.

- 5. (a) The proposed entrance/exit, including the width of the entrance/exit shall be designed in accordance with the Design Manual for Urban Roads and Streets (DMURS). Exact details shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. These details shall include the provision, at the expense of the developer, of lane-division bollards along the public road centreline for the full length of the subject site.
- (b) All external lighting requirements associated with the proposed development including lighting associated with the construction stage shall be designed to optimise energy efficiency, incorporate glare control and shall be agreed with the planning authority prior to commencement of works on site. These works shall be undertaken by the applicant at their own expense.

- (c) All public lighting requirements associated with the proposed development shall be agreed with the planning authority prior to commencement of development on site. These works shall be undertaken by the applicant at their own expense.
- (d) There shall be at least one car parking space provided which is equipped with a functioning electrical vehicle (EV) charging point as well as the provision of ducting to allow for the future fit out of an electric vehicle charge point for at least 10 per cent of the car spaces. All electrical vehicle charging infrastructure shall be in accordance with the planning authority's detailed standards for Electrical Vehicle Charging Infrastructure. These works shall be undertaken by the applicant at their own expense.
- (e) There shall be at least one car parking space allocated for disabled drivers.
- (f) The applicant shall provide high-quality covered cycle parking facilities for at least six bicycles. The exact location of the bicycle parking facilities shall be agreed with the planning authority prior to commencement of development on site. These works shall be undertaken by the applicant at their own expense.

Reason: In the interest of traffic and pedestrian safety.

- 6. 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.

- 7. (a) During the operational phase of the proposed development, the noise level arising from the development, as measured at the nearest dwelling shall not exceed:-
 - (i) An L_{AeqT} value of 55 dB(A) during the period 0800 to 2200 hours from Monday to Saturday inclusive. [The T value shall be one hour.]

- (ii) An L_{AeqT} value of 45 dB(A) at any other time. [The T value shall be 15 minutes]. The noise at such time shall not contain a tonal component.

At no time shall the noise generated on site result in an increase in noise level of more than 10 dB(A) above background levels at the boundary of the site.

- (b) All sound measurement shall be carried out in accordance with ISO Recommendation R 1996 “Assessment of Noise with respect of Community Response” as amended by ISO Recommendations R 1996 1, or 2 “Description and Measurement of Environmental Noise” as applicable.

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

- 8. 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 commencement of development. This scheme shall include the provision of litter bins and refuse storage facilities.

Reason: In the interest of visual amenity.

- 9. Prior to commencement of development the developer shall submit, and obtain the written agreement of the planning authority to, 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.

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

10. Prior to commencement of development, a Construction Management Plan shall be submitted to, and agreed in writing with, the planning authority. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interest of amenities and public safety.

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, as amended. 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.

12. The developer shall pay to the planning authority a financial contribution in respect of the Cork Suburban Rail Project in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

**Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.**

Dated this day of 2016.