



Planning and Development Acts 2000 to 2018

Planning Authority: Carlow County Council

Planning Register Reference Number: 17/190

Appeal by Patrick Dowdall of 13 The Orchards, Tullow Road, Carlow and by Figtree Limited care of Larkin Associates of 1a Saint Canice's Court, Dean Street, Kilkenny against the decision made on the 1st day of November, 2017 by Carlow County Council to grant permission to the said Figtree Limited for development comprising retention of a 28.85 square metre single storey extension (a 4.33 square metre dessert bar, a 19.02 square metre store and a 5.50 square metre smoking area) to the existing Mimosa Wine and Tapas Bar (a Protected Structure, Reference 100000440 and RPS Number CT79), construction of a 21.77 square metre extension to the permitted kitchen, a 32.60 square metre gazebo and change of use of 160.31 square metres from residential to a restaurant use. This is further to granted permissions, planning register reference numbers 11/6421 and 16/139, all at College Street, Carlow, County Carlow in accordance with the plans and particulars lodged with the said Council. Further public notices were received by the planning authority on the 31st day of August, 2017.

Decision

GRANT permission for the said retention of a 28.85 square metre single storey extension (a 4.33 square metre dessert bar, a 19.02 square metre store and a 5.50 square metre smoking area) to the existing Mimosa Wine and Tapas Bar (a protected structure, Reference 100000440 and RPS Number CT79) and permission for construction of a 32.60 square metre gazebo in accordance with the said plans and particulars based on the reasons and considerations marked (1) under and subject to the conditions set out below. REFUSE permission for the said construction of a 21.77 square metre extension to the permitted kitchen and change of use of 160.31 square metres from residential to a restaurant use, as amended by the revised plans and particulars lodged as significant further information with the planning authority on the 31st day of August, 2017 based on the reasons and considerations marked (2) under.

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 (1)

Having regard to the location of the site in Carlow town centre, the nature and scale of the development proposed to be retained and carried out, the pattern of development in the area, and the planning history and existing use of the site, it is considered that, subject to compliance with the conditions set out below, the proposed development and the development for which retention is sought would not seriously injure the amenities of the area or of property in the vicinity, would not adversely affect the character or setting of a protected structure or Architectural Conservation Area, would be acceptable in terms of pedestrian and traffic safety and convenience and would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be carried out, completed and retained in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 31st day of August, 2017 and the 11th day of October, 2017, 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 recommencement of development and the development shall be carried out, completed and retained in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. 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.

3. 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 within three months of the date of this Order 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 Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Reasons and Considerations (2)

The public notices submitted in connection with the planning application include reference to an application for 'permission' to 'change the use of 160.31 square metres from residential to a restaurant use' whilst the application documents submitted to the planning authority similarly refer to the application as including for "permission" for this change of use. However, elements of the proposed development, including the change of use from residential to restaurant, have already been carried out on site and, therefore, the public notices of the development and the application documents do not properly describe the nature of the application, which should be in respect of an application for the retention of the development that has already been carried out. Accordingly, the application does not accord with the provisions of Articles 18(1)(c), 22 and 23 of the Planning and Development Regulations, 2001, as amended, in relation to these elements of the application.

Terry Ó Niadh

Member of An Bord Pleanála

duly authorised to authenticate

the seal of the Board.

Dated this day of 2018.