



Planning and Development Acts 2000 to 2022

Planning Authority: Kerry County Council

Planning Register Reference Number: 22/867

Appeal by Andrew Marsh care of David Marsh of 'Roycroft', Market Street, Kenmare, County Kerry against the decision made on the 24th day of February, 2023 by Kerry County Council to grant permission to Keith Maloney care of Frank Curran, Consulting Engineers Limited of 16 Main Street, Caherciveen, County Kerry for development comprising the retention of change of use of shop to restaurant as constructed and permission for change of use of adjoining shop to restaurant with a food carry out facility ancillary to restaurant at Market Street, Kenmare, County Kerry as amended by the revised public notices received by the planning authority on the 31st day of January, 2023 which included the following: to retain change of use from permitted licenced betting office as granted under Planning Reference 044183, to restaurant use with take-away and deli with hours of operation of between 10am -10pm, retention permission to retain existing signage on a temporary basis and planning permission to erect new replacement hand painted shop, signage and all ancillary site works. Significant further information or revised plans, as appropriate, in relation to the application have been furnished to the planning authority in accordance with the plans and particulars lodged with the said Council.

Decision

GRANT permission for the retention of change of use from permitted licenced betting office as granted under Plan Reference 044183, to restaurant use with take-away and deli with hours of operation of between 10am-10pm, retention of existing signage on a temporary basis and planning permission to erect new replacement hand painted shop, signage and all ancillary site works 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 retention of the chimney flue installed in the flat roofed rear extension of the development based on the reasons and considerations marked (2) under.

Reasons and Considerations (1)

Having regard to the town centre location of the development proposed to be retained, the mixed use zoning of the site, the provisions of the Kerry County Development Plan 2022-2028 and the location of the site in an Architectural Conservation Area, it is considered that, subject to compliance with the conditions set out below, the retention of the change of use to a restaurant, incorporating take-away and deli, and permission for the new proposed shopfront signage, would not seriously injure the visual or residential amenities of the area and would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be retained, 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 5th of January 2023 and on the 31st day of January 2023, 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 and the development shall be retained, carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The development proposed to be retained shall operate only between the hours of 1000 and 2200.

Reason: In the interest of residential amenity.

3. The skylight in the kitchen shall be fixed in a permanently closed position.

Reason: In the interest of residential amenity.

4. The existing shopfront sign shall be removed within three months of the date of this Order.

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

5. The proposed new hand painted shopfront sign shall be erected with three months of date of this Order and the planning authority shall be notified in writing when the works have been carried out.

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

6. 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 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)

In deciding to refuse retention of the chimney flue, the Board considered that the flue as constructed would seriously injure the visual amenity of the area and the residential amenity of nearby accommodation, and considered the drawings submitted to be inadequate. The chimney flue proposed to be retained would, therefore, be contrary to the proper planning and development of the area.



Stephen Brophy

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

Dated this *10th* day of *April*

2024