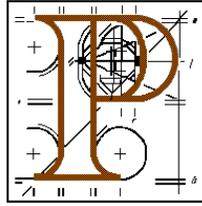


An Bord Pleanála



Inspector's Report

Development: Permission for change of use from ladies fashion shop to an Indian takeaway / fast food outlet and all associated site works. The proposed development occurs within the curtilage of a protected structure.

Location: Unit 1, 3 O'Connell Square, Edenderry. Co Offaly.

Planning Application

Planning Authority	Offaly County Council
Planning Authority Register Ref.	PL2/15/122
Applicant	Ms. Shazia Rasheed.
Type of Application	Permission
Planning Authority Decision	Grant Permission with conditions.

Planning Appeal

Appellant	Mr Luigi Macari & Mr Don Tramontozzi
Type of Appeal	3 st Party v Permission
Observer(s)	None

Date of site inspection 10th December 2015

Inspector: **Bríd Maxwell**

1.0 SITE LOCATION AND DESCRIPTION

- 1.1 The appeal site which has a stated area of 0.04 hectares comprises a retail unit located at No 3 O' Connell Square, Edenderry. Co Offaly. The appeal site is listed as protected structure reference 17-073 described as "A three bay two storey house of circa 1830 with the original square headed doorcase." The ground floor of the building is divided into two retail units. The larger unit to which the proposed change of use applies was formerly in use as a ladies clothes shop however is currently vacant. There are two apartments at first floor level which are accessed by central doorway located between the two shopfronts.
- 1.2 The appeal building has a render finish, and windows and doors are white uPVC. The adjacent buildings to the north and south on Market Square are in residential use and there are also a number of mixed retail and commercial uses in the vicinity. I noted on the date of my site visit that there were a number of vacant retail / commercial units within the town centre of Edenderry.

2.0 THE PROPOSED DEVELOPMENT

- 2.1 The proposal seeks permission for change of use of the larger retail unit No 1 with a floor area of 62 square metres from use as a ladies fashion shop to use as an Indian takeaway / fast food outlet and any associated works. The proposed internal layout of the unit shows the floorspace predominantly laid out as kitchen area. No structural alterations are proposed. Extractor outlet is to be provided to the rear wall of the building. No detail is provided as regards proposed signage.

3. PLANNING POLICY

3.1 Development Plan

3.1.1 The Offaly County Development Plan 2014-2020 and the Edenderry Local Area Plan 2011-2017 refer and the site is within the town centre zoning in the latter. Take Away use is open for consideration within this zoning objective. At 9.3.2 it is outlined that the proliferation of any individual use within the Edenderry town Centre which in the opinion of the Planning Authority, does not contribute to the vitality and viability of the town centre will not be permitted. A diversity of uses for both day and evening will be encouraged and all developments should contribute to the vitality and vibrancy of the town centre.

3.2 PLANNING HISTORY

Appeal Site

- **PL2/89/307** Permission was granted for renovation / extension for residential commercial use.
- **PL2/91/173** Permission granted for retention of office / shop.

Adjoining site No 4 O Connel Square

- **PL2/06/262** Refusal of permission for renovation of existing shop and conversion of existing ground floor residence to shop unit with 2 storey extension to side and rear consisting of 6 no apartments.
- **01/558** Permission for rear extension workshop shed, new workshop store retail space and demolition of outbuildings.

4.0 PLANNING AUTHORITY'S DELIBERATIONS AND DECISION

4.1 Submissions

- Third party submissions from Luigi Macari and Don Tramontozzi object to the development on grounds of negative impact on protected structures. Litter and odour impact on adjacent business and residences and proliferation of fast food outlets takeaways.

4.2 Internal Reports

- Area Engineer indicates no objection subject to conditions in respect of grease / oil interceptor, provision of street bins.
- Chief Fire Officer indicates no objection subject to fire safety certificate, disability access certificate and lodgement of commencement notice.
- Water Services Report seeks additional information showing surface water drainage routes.
- Senior Executive Architect indicates no objection.
- Planner's report asserts that the proposed works will not impinge on the architectural merit of the protected structure. Proposed opening hours 4pm-12 am Monday to Thurs and 4pm-2am Friday to Sunday are deemed acceptable.
- Following a request for additional information issued in respect of surface water drainage units and grease and oil interceptor the final planner's report recommended permission subject to conditions.

4.3 Decision

4.3.1 By Order dated 1th August 2015, Offaly County Council decided to grant permission subject to seven conditions which included the following of particular note:

Condition 4. Opening hours shall be from 4.00pm to 12.00am Monday to Thursday and 4.00pm to 2.00 am Friday to Sunday.

5.0 GROUNDS OF APPEAL

5.1 The Third Party Appeal is submitted by Kieran O Malley and Co Ltd on behalf of Luigi Macari, 28 JKL Street Edenderry and Don Tromontozzi, 58 JKL Street. The grounds of appeal are summarised as follows:

- Appeal site occupies a prominent location on O Connell Street part of an attractive streetscape close to Market Square.
- Replacement of retail unit by a hot food takeaway which would remain closed till 4pm every day would not contribute positively to the vitality and viability of the streetscape and would not contribute to the public realm.
- Proposal does not demonstrate how the development accords with the provisions of the Edenderry LAP with regard to protected structures and there was no detailed evaluation of the impact on the protected structure or adjoining protected structures by the council Planner.
- Policy P09-02 prohibits the proliferation of any individual use. There are a number of existing takeaways in the vicinity of the town centre none of which operate prior to lunch time. Note refusal P10/17 of permission for takeaway on JKL street

5.2 Responses to the Appeal

5.2.1 Planning Authority Response

5.2.1.1 The development of an Indian takeaway / fast food outlet will provide an addition to the existing range of food outlets available. There are currently a considerable number of vacant commercial units within Edenderry Town and the occupation of one of these units can only help to enhance the vibrancy and vitality of the town centre.

5.2.2 FIRST PARTY RESPONSE

5.2.2.1 The response by David Mulcahy Planning Consultants Ltd on behalf of the first party is summarised as follows:

- Grounds of appeal are vexatious and without foundation and should be dismissed by the Board under Section 138(a)(i) of the Planning and

Development Act 2000 as amended. As appellants are operators of three existing premises close to the site there is an obvious competitive motive to appealing the decision.

- Proposed use is open for consideration under the zoning objective will add to the mix of uses within the town centre, will enhance the variety of food offers within a town which has witnessed significant population growth.
- No material impact on the built heritage of the protected structure and proposal will occupy one of the many vacant units within the town centre thus making a positive contribution to the vitality and viability of the town.
- Applicant is prepared to open from 12pm to avail of lunch trade.
- The town centre is extensive in size measuring approximately 22hectares and the provision of 8 takeaways within a 22 hectare area equating to one take-away per 2.75 hectares cannot reasonably be described as a proliferation of takeaway uses.
- There are no other take-aways within O'Connell Square and there are currently no Indian takeaways in Edenderry.
- As regards precedent case referenced at 28 JKL Street. note different location and each application should be assessed on its own merits.
- Development accords with the zoning objective for the area, will enhance the vibrancy of the town centre particularly in the afternoon and evening period and generate employment opportunities within the town.

6.0 ASSESSMENT

- 6.1 The first party has drawn attention to the possibility based on the fact that the appellants are operators of established takeaway restaurants in Edenderry, that the appeal is made on anti competitive grounds and is vexatious. The First Party thus by implication seeks the dismissal of the appeal in accordance with the provisions of Section 138 of the Planning and Development Act 2000. The issue of the validity of the appeal is a

matter for the Board to determine. I consider that notwithstanding the fact that the appeal submission is made by potential competitors, the appellants have a right to appeal the decision and have stated planning grounds which form the basis of that appeal.

6.2 As regards the principle of development the appeal premises is located centrally within the town centre of Edenderry where in accordance with the zoning objective takeaway use is open for consideration. I note that there are no takeaway uses in the immediate vicinity of the appeal site and in this regard I would concur with the first party that the issue of proliferation of such uses does not therefore arise. On the date of my site visit I noted a number of vacant retail and commercial units within Edenderry town centre and I consider that the provision of a viable and sustainable use will best protect the physical fabric and vitality of the town centre.

6.3 In considering the characteristics of the impact of the proposed use, I consider that having regard to the scale of the proposal, a standalone takeaway facility, the potential for negative impact on the amenity of adjacent dwellings or the amenities of the area is limited. I consider that noise and disturbance, odour and vermin can all be appropriately mitigated by good management and the implementation of appropriate noise and odour abatement measures. As regards hours of operation I consider that these should be restricted in the interest of protecting the amenities of the area in particular the residential amenity of adjoining properties.

- 6.4 As regards impact on the architectural heritage, I would concur with the first party that the proposal will not materially impact on the built heritage of the protected structure. Appropriate conditions will apply in terms of signage provision.
- 6.5 As regards the issue of Appropriate Assessment, having regard to the nature and scale of the proposed development and nature of the receiving environment and proximity to the nearest European Site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

7.0 RECOMMENDATION

- 7.1 I recommend that the decision of Offaly County Council be upheld and permission granted for the reasons and considerations set out below and subject to the conditions attached.

REASONS AND CONSIDERATIONS

Having regard to the central location of the site within the town of Edenderry and to the scale of development proposed, it is considered that subject to compliance with the following conditions, the proposed development would be in accordance with the development plan objectives for the area, would not significantly detract from the amenities and character 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 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.

Reason: In the interest of clarity.

2. The proposed shopfront shall be in accordance with the following requirements:
 - (a) Signs shall be restricted to a single fascia sign using sign writing or comprising either hand-painted lettering or individually mounted lettering.
 - (b) Lighting shall be by means of concealed neon tubing or by rear illumination.
 - (c) no awnings, canopies or projecting signs or other signs shall be erected on the premises without a prior grant of planning permission,
 - (d) external roller shutter shall not be erected, any internal shutter shall be only of the perforated type, coloured to match the shopfront colour.
 - (e) no adhesive material shall be affixed to the windows or the shopfront.

Reason: In the interest of visual amenity.

3. The takeaway facility shall not be operated between 11:30pm and 11.00 am on any day.

Reason: In the interest of the amenities of property in the vicinity

4. Prior to the commencement of development a scheme for the effective control of fumes and odours from the premises, including details of vents

and ducting shall be submitted for the agreement of the Planning Authority.

Reason: In the interest of protecting the amenities of the area.

5. 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.

6. A waste management plan including the provision for the storage, separation and collection of all waste, shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of the permitted use.

Reason: In the interest of public health and the amenities of the area.

7. 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. This scheme shall include the provision of litter bins and refuse storage facilities.

Reason: In the interest of visual amenity.

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.

Bríd Maxwell,
Planning Inspector.
15th December 2015