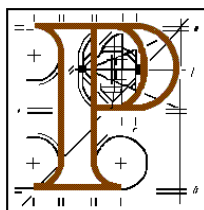


An Bord Pleanála



Inspector's Report

Appeal Reference No: PL09.245564

Development: Single Storey Extension to Rear, Change Use of Ground Floor to Family Restaurant with Take Away Services, Staff Office & Toilet on First Floor and 2 No. Apartments at the former Arch Bar, Main Street, Newbridge, Co Kildare

Planning Application

Planning Authority: Kildare County Council

Planning Authority Reg. Ref.: 15/255

Applicant: Sophie Wu

Planning Authority Decision: Grant Permission

Planning Appeal

Appellant(s): Alan Nolan

Type of Appeal: 3rd v Grant

Observers: None

Date of Site Inspection: 22 December 2015

Inspector: Juliet Ryan

1.0 SITE LOCATION AND DESCRIPTION

- 1.1 The subject site, with a stated area of 0.37 ha is located in the centre of Newbridge, County Kildare at Main Street and the corner of Robert Street. It is occupied by an extended vacant two storey premises, the ground floor of which was previously The Arch Bar, and the upper floor of which had been in residential use.
- 1.2 The site forms the southwestern culmination of a terrace of similar two storey structures running along this northern side of Main Street. Robert Street is a narrow thoroughfare delineating the site's southwestern boundary, and connects Main Street with Eyre Street, to the north.
- 1.3 The current structure on site opens directly to the path at its front (Main Street) elevation, with a recessed main entrance to the former Arch Bar and a separate, arched doorway providing access to the upper floors. Internally, at ground floor level, there is evidence of the most recent use as a betting office.
- 1.4 The site has an entrance to a small rear yard at its western corner, on Robert Street. Adjoining this entrance to the north is a double gated entrance to the adjoining (Appellant's) property (rear passage). Along this frontage all ground floor opes (including one door) of the subject property are blocked up.
- 1.5 The adjoining property to the north (Appellant's property) is in office use (Falcondale Properties). That property has been extended significantly (ground floor and first floor extensions) and 'wraps' around the subsite site to the north, with projecting rooflights adjacent to the subject site in the ground floor extension, and windows addressing the subject site at first floor level (both from the northeast and from the northwest).
- 1.6 On-street pay and display parking operates in the immediate vicinity. A bar / lounge (O'Rourke's) is situated on the other side of Robert Street. At the time of the site inspection Main Street was busy and vibrant with both pedestrian activity and significant vehicular traffic movement. The street has a traditional character, largely owing to its narrow plots and predominance of two storey terraced period structures.

2.0 PROPOSED DEVELOPMENT

- 2.1 The subject proposal seeks to redevelop the existing structure into two apartment units over a restaurant with ancillary takeaway. This involves internal alterations, subdivision of the existing premises at first floor level, and the construction of a single storey extension.

2.2 Key elements of the proposal may be summarised as follows:

- The ground floor restaurant (133 sq m) GFA will be extended by some 9.5 sq m to the side and rear to accommodate freezers and fridges and ventilation system.
- The sit-down restaurant will include a coffee bar element towards the front of house
- Ground floor windows that are currently blocked will be reopened.
- The ancillary takeaway element is proposed to coincide with the restaurant's evening service of 18h00-23h00.
- The first floor will be subdivided into 1 no. two bed unit (82 sq m) and 1 no. one bed unit (61 sq m).
- The residential units will be accessed from the dedicated entrance at street level via a lobby and stairway. The lobby will provide for bike and buggy storage.
- Bin storage for both the apartments and restaurant are located to the rear of the premises adjacent to the north-western boundary and accessed via a dedicated entrance at Robert Street (western side boundary).

3.0 PLANNING HISTORY

3.1 The Board is referred to the Planner's Report for a detailed summary of the site's planning history. In terms of recent (5 year) history, permission was refused by Kildare County Council in 2012 for the proposed change of use from permitted Betting Office to Internet café with ancillary gaming machines.

3.2 The neighbouring (Appellant's) site received permission in 2005 for change of use from butchers to offices with extension to include auction room, office, lobby, with access from Robert Street.

4.0 PLANNING AUTHORITY DECISION

4.1 Planning and Technical reports

- The Environmental Health Officer and Irish Water / Water Services Section requested Additional Information in respect of the proposal.

- The Area Engineer, Environment Section, Chief Fire Officer and Transportation Section had no objection subject to condition.

4.2 Submissions

Some three objections were received in respect of the proposal (from the Appellant and two others). Issues raised are generally reflected in the grounds of appeal.

4.3 Additional Information

4.3.1 The Planning Authority issued a Request for Additional Information in respect of nine items (including invitation to address Third Party objections) to which the Applicant's Response may be summarised as follows:

1. Clarifies that proposal will be predominantly sit-down family restaurant on ground floor and that take-away element will be ancillary. Provides various details regarding food types; opening hours; business model and list of similar restaurants / takeaways currently existing on Main Street with supporting figures regarding population catchment of customers.
2. Confirms that existing shop front design will remain
3. Provides rationale for non-provision of private open space for apartments, and notes that proposed floorspaces considerably exceed minimum standards (& notes that this is not a new residential development). Confirms details of bin, bicycle, and buggy storage.
4. Confirms floor areas of apartments
5. Confirms that it is proposed to link into existing drainage
6. Confirms provision of storage
7. Refers to construction details on revised drawings for noise impacts
8. Confirms connection to existing combined sewer and grey water recycling of roof water (detailed on drawing)
9. Responds to various Third Party submissions

4.4 Clarification of Additional Information

- 4.4.1 Subsequent to the Additional Information Response, the Water Services Section sought clarification regarding surface water recycling. All other Sections had no objections subject to condition.
- 4.4.2 A request for Clarification in respect of surface water recycling was issued. A copy of the response and subsequent internal report are not on file, have been requested from the Planning Authority, but have not been received at the time of writing. The final Planner's Report indicates that the internal report confirmed satisfaction with the Clarification response and had no objections subject to condition.
- 4.4.3 All internal reports were satisfied subject to condition that the proposal was appropriate. The Planner's Report considered that the provision of a predominantly sit-down restaurant with secondary takeaway and coffee bar / tapas area at the front window area would be a positive contribution to the town centre and that the proposed residential units were appropriate and that 'living over the shop' was essential to town centre development.

4.5 Planning Authority Decision

The Planning Authority decided to grant permission subject to 20 no. conditions, of which the following are noted:

Cndtn No. 2 - Restricts ground floor restaurant to a single operator with ancillary take-away. Take-away operating hours to be in association with restaurant from 18h00 – 23h00 only.

Cndtn No. 17 – Noise Control – includes, *inter alia*, requirement to submit Noise Study.

5.0 GROUNDS OF APPEAL

The Third Party appeal has been submitted by the adjoining commercial premises to the east, Falcondale Properties Limited, and may be summarised as follows:

- Lack of details regarding fire safety and inadequate fire separation between party walls
- Fire escape from one bed apartment unit is depicted as escaping onto Appellant's premises. No permission for same has been extended.

- Existing building has known structural defects
- Insufficient detail regarding waste disposal
- Area for bin storage is too small
- Adverse impact arising from ventilation fan (makes various suggestions on how noise could be minimised in this regard)
- Adverse impact from odours
- Proposal would be detrimental to the town and existing small businesses and residents
- Query whether takeaway element will be genuinely ancillary and state that town is already well served by takeaways
- Adverse impact to working environment arising from noise, smells, litter and anti-social behaviour

6.0 RESPONSES/OBSERVATIONS TO GROUNDS OF APPEAL

6.1 First Party Response

The First Party Response may be summarised as follows:

- Requests the Board to dismiss the appeal as frivolous
- All issues raised by Appellant are management or compliance issues
- There is a market for a family dining and healthy eating restaurant in Newbridge
- The inclusion of the coffee dock will create a visual connection with the street and encourage footfall which will be beneficial to all local businesses
- Takeaway will be ancillary to the evening dining element and will not function as a fast food takeaway but as a restaurant takeaway (different price point)
- Refers to exploring a delivery service as opposed to takeaway
- Outlines existing food premises in the town

- This is a viable proposal for the unit, which has been vacant for four years on the principal street of a large town
- Business model requires takeaway element for viability
- Sets out rationale for lack of private open space provision
- Apartment sizes are generous and considerably in excess of minimum standards
- Elements of Appeal submission are factually incorrect
- Location of ventilation system accords with public health requirements and there will be no impact on Appellant's property
- Proposal will comply with all noise and fire regulations
- Each habitable room must have a fire compliant window, regardless of where it leads
- Note that existing window would satisfy fire safety regulations, but that it is proposed to be increased for aesthetic as well as safety reasons
- The applicant is unaware of any major structural defects (which can be addressed in any case)
- There is no reason why vermin would be attracted to the development subject to good management and compliance with normal standards
- Environmental Health Officer had no objection to the development
- Working environment of Appellant's premises will not be affected
- Side entrance to Appellant's premises is only used sporadically

6.2 Planning Authority Response

The Planning Authority's response incorporates the comments of the Chief Fire Officer and the Environmental Health Officer (and refers the Board to its internal reports also) and may be summarised as follows:

- Fire safety issues raised by Appellants would be more appropriately addressed by Fire Safety Certification rather than planning system
- Departmental Guidelines caution against the use of the planning system to improve the operation of other controls or codes
- The ventilation stack was shown on drawings as extending 1 metre above the eaves as required and not discharging into the yard, as alleged by the Appellant
- The ventilation proposed represents "best practicable means" as defined in the Air Pollution Act 1987, and any further details can be addressed at a future stage if necessary
- Any structural defects should be addressed during development, given that any structure to be used as a private rented property must accord with Article 5 of the Housing (Standards for Rented Houses) Regulations, 2008 and be in a proper state of repair.
- Confirm that details for the handling, storage and collection of waste and recyclables are outlined on the plans, and that the premises has three potential access areas for deliveries.

7.0 POLICY CONTEXT

7.1 Newbridge Local Area Plan 2013-2019

7.1.1 The statutory Development Plan is the Newbridge LAP. In this Plan, the site is zoned A – Town Centre:

To provide for the development and improvement of appropriate town centre uses including retail, residential, commercial and civic uses.

7.1.2 Under this zoning objective restaurant and residential uses are permissible in principle.

- 7.1.3 Policy TC3 of the LAP seeks to protect and promote the vitality and vibrancy of the town centre.
- 7.1.4 Section 7.5.8 notes that “*Vacant sites threaten the vitality and viability of the town centre.*”
- 7.1.5 The LAP expressly recognises the need to strengthen Main Street to “create a vibrant and bustling core with a diverse mix of uses.”
- 7.1.6 Policy RR6 seeks to reinforce Main Street by intensifying development to create a compact core.
- 7.1.7 Policy RR10 seeks to encourage residential development at the upper floors of town centre properties.

[Excerpt copies appended of pertinent policies.]

7.2 Kildare County Development Plan 2011-2017

Specific details with respect to site development standards are set out in Chapter 19 of the County Development Plan (excerpts appended).

8.0 ASSESSMENT

8.1 Matters Arising

I consider the key planning considerations to be as follows:

- Appropriate Assessment
- Principle of Proposal
- Design & Layout
- Impact on Adjoining Properties
- Access, Servicing, Parking
- Other Issues

8.2 Appropriate Assessment

Having regard to the nature and scale of the development proposed at this urban serviced site, and to the nature of the receiving environment, and given the distance to the nearest Natura 2000 site (and the absence of any source-pathway-receptor link thereto), no appropriate assessment issues arise.

8.3 Principle of Proposal

- 8.3.1 The subject site is zoned A- Town Centre in the Newbridge LAP 2013-2019. Under this zoning objective the proposed restaurant and residential uses are permissible in principle. As such, I consider the principle of the proposed development to be acceptable. Moreover I note that the redevelopment and active use of a centrally located property that has been vacant for some time will contribute to the Development Plan's stated aim of creating a vibrant core with a diverse mix of uses. In this regard the Board is referred to Section 7.5.8 of the Development Plan, which recognises the threat that vacant sites pose to the vitality and viability of the town centre.
- 8.3.2 The redevelopment of the residential units over the proposed restaurant accord with Policy RR10 of the Development Plan, which encourages residential development at the upper floors of town centre properties.
- 8.3.3 I consider the modest ground floor extension (9.5 sq m) to be acceptable at this town centre site, and am mindful in this regard of Development Plan policy RR6, which seeks to reinforce Main Street by intensifying development to create a compact core.
- 8.3.4 The Appellant submits that the proposal would be detrimental to the town and would have an adverse impact on existing local small businesses and residents. I would not agree. Subject to appropriate site development and management standards, I would consider the proposal will make a positive contribution to the Main Street and is an appropriate land use and form of development in this town centre location.

8.4 Design & Layout

- 8.4.1 The site is considerably constrained in terms of development potential having regard to its size, context, and surrounding development. Accordingly, the subject proposal is essentially a redevelopment of the existing structures on site, with a small 9.5 sq m ground floor extension to the rear to facilitate a kitchen storage area / fridges & freezers. This is considered appropriate. It is worth noting in this regard that certain plans / mapping on file do not present an accurate picture of development at the Appellant's property, which has a larger footprint than shown and extends to the communal boundary in certain instances.
- 8.4.2 The design and layout of the proposed restaurant is appropriate and the proposed coffee bar / tapas area would facilitate interaction with the street, which is to be welcomed. In this regard I note that no external elevational changes are proposed except for new signage. This is considered

appropriate and will ensure that the existing streetscape is not adversely affected.

- 8.4.3 The proposed apartment units comprise 1 no. two bed apartment and 1 no. one bed apartment. It is to be welcomed that these have a dedicated separate access from the street, with buggy / bike storage area in the ground floor entrance hallway. The apartments exceed minimum internal floor area standards at 61 and 82 sq m, respectively. Whilst I note that no private open space is provided, I would agree with the Applicant that it would be inappropriate to affix balconies at the subject property. I would also note that there is an established residential use of these upper floors. Having regard to these, to Development Plan policy regarding the residential use of upper floors of town centre properties, and the site's town centre location, I am satisfied that the residential element of the proposal is appropriate and achieves a satisfactory standard of residential amenity.

8.5 Impact on Adjoining Properties

- 8.5.1 Various concerns regarding adverse impacts arising from the proposed ventilation fan (and associated noise); odours; litter and anti-social behaviour have been raised by the Appellant. Whilst these are all valid concerns, I would consider that they could be addressed by appropriate construction standards and site management, which can be addressed by condition.
- 8.5.2 With particular regarding to the proposed ventilation system, the Planning Authority submission confirms that the ventilation stack is shown as extending 1 metre above the eaves of the property as required and does not discharge into the Appellant's yard. I consider this satisfactory.
- 8.5.3 The Applicant submits that the development's business model requires the takeaway element for viability, but is willing to explore a delivery service instead of takeaway. I consider the key issue here to be the nature and extent of operation of the takeaway service. Clearly a takeaway business would have differing planning implications than a restaurant use (particularly in terms of operating hours; impact on residential amenity; noise; traffic; litter etc). As such the concerns of the Appellant (and objectors at Planning Authority stage) are reasonable. However, I note that the subject proposal is for a restaurant, with ancillary takeaway service. This is a relatively common operating format, and provided the takeaway element remains ancillary to the primary restaurant use, I would have no concerns (this can be managed by condition). In this regard the Board is referred to the ground floor plan (Drg No. SW/PLN-003AI), which shows a sit-down restaurant layout.

8.6 Servicing

- 8.6.1 The Appellant is not satisfied that the proposed manner of waste disposal for the development is adequate, particularly the size of the proposed bin storage area. In response, the Planning Authority has confirmed that details for the handling, storage and collection of waste and recyclables are outlined on the plans, and that the premises has three potential access areas for deliveries. The Planning Authority is satisfied in this regard. Having reviewed the plans I consider proposed access and servicing to be appropriate given the location of this constrained town centre site, and that final details and management of same can be addressed appropriately by condition.
- 8.6.2 The Board is advised that there is no parking provided with the proposal. Given its modest scale; its town centre location; and the availability of nearby parking (including on-street pay and display at Main Street and Eyre Street) I consider this to be acceptable.

8.7 Other Issues

- 8.7.1 The Appellant has raised fire safety as an issue and objects to the proposed use of the roof of his ground floor extension as a fire escape from the bedroom of the one bed apartment. In this regard I would note that the Fire Safety Officer was satisfied with the proposal, and, as noted by the Applicant, that each habitable room must have a fire compliant window, regardless of where it leads. Further, I would agree with the Planning Authority, that such issues would be more appropriately addressed by Fire Safety Certification rather than the planning system (given that the proposal complies with site development standards regarding the design of the residential units).
- 8.7.2 With respect to alleged structural defects of the existing building, the Applicant attests to no knowledge of same. In any case, I consider that these should be rectified at construction stage. This would be a responsibility of the developer, and I note that other codes such as the building regulations and (per the submission of the Planning Authority) the Housing (Standards for Rented Houses) Regulations 2008 would apply in this regard.
- 8.7.3 With regard to alleged propensity for an increase in vermin arising from the proposal, I can see no evidence for this. Further, I note that the Environmental Health Officer had no objection to the development.
- 8.7.4 In short, I would tend to agree with the First Party, that the issues raised by the Appellant are generally management and compliance issues, and not

reasonable grounds for refusal on this vacant, zoned, serviced town centre site.

9.0 CONCLUSIONS AND RECOMMENDATION

It is considered that the proposed development should be granted for the reasons and considerations hereunder.

REASONS AND CONSIDERATIONS

Having regard to its nature, scale, and design and to the provisions of the Newbridge Local Area Plan 2013-2019 and to the Town Centre zoning objective for the site, it is considered that, subject to compliance with the conditions set out below, the proposed development would be an appropriate form of development in this location; would not seriously injure the amenities of the area or of property in the vicinity; would make a positive contribution to the streetscape; would not be prejudicial to public health, and would 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, as amended by the further plans and particulars submitted on the 14th of July 2015 and the 25th of August 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. The use of the ground floor unit shall be restricted to that of a sit down restaurant with ancillary take away element and shall be subject to one occupier.

Reason: In the interest of clarity, and the amenity of adjoining properties

3. The restaurant's ancillary take away shall operate only during evening and in association with the restaurant, from 18h00 – 23h00.

Reason: In the interest of the amenity of adjoining properties and the proper planning and sustainable development of the area

4. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including a traffic and pedestrian management plan during the course of site development works.

Reason: In the interest of accessibility, pedestrian and traffic safety, and the proper planning and sustainable development of the area

5. Water supply and drainage arrangements, including the attenuation and 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.

6. Site development and building works shall be carried out between the hours of 08.00 to 18.00 Mondays to Fridays inclusive, between 09.00 to 14.00 on Saturdays and not at all on Sundays or public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

7. No additional development shall take place above roof parapet level, including air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.

Reason: To protect the residential amenities of property in the vicinity and the visual amenities of the area.

8. Proposals for advertisement signage shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of use of the shop and restaurant. Thereafter, only the agreed signage shall be installed. Other than the aforementioned advertisement signage, no advertisement or advertisement structure shall be erected or displayed on the building in such a manner as to be visible from outside the building, unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

9. 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 shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: In the interest of residential amenity and to ensure the provision of adequate refuse storage.

10. The developer shall control odour emissions from the premises in accordance with measures, including extract duct details, 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.

11. A detailed Noise Study with recommendations shall be carried out and submitted to the Planning Authority by a suitably qualified noise /environmental consultant within three months of the development being in full operation.

Reason: In the interest of public health, the amenity of adjoining properties, and the proper planning and sustainable development of the area.

12. No external security shutters shall be erected on any of the commercial premises unless authorised by a further grant of planning permission. Details of all internal shutters shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

13. 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. The application of any indexation required by this condition 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.

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.

Juliet Ryan
Senior Planning Inspector
12 January 2016