

# An Bord Pleanála



## Inspector's Report

**Appeal Reference No:** PL09.246198

**Development:** Change of use at Ground Floor from retail to restaurant use with ancillary takeaway use. Retain existing shopfront with new paint finish and signage.

### Planning Application

Planning Authority: Kildare County Council  
Planning Authority Reg. Ref.: 15/0695  
Applicant: Jack Polin  
Planning Authority Decision: Grant Permission subject to conditions

### Planning Appeal

Appellant(s): Ben Sheridan  
Type of Appeal: Third Party  
Observers: None  
Date of Site Inspection: 9<sup>th</sup> May 2016

**Inspector:** Bríd Maxwell

## **1.0 SITE LOCATION AND DESCRIPTION**

- 1.1 The appeal site comprises a ground floor commercial unit of 73 sq.m located within the Riverforest Neighbourhood Centre which is approximately one kilometre to the north of Main Street, Leixlip and accessed off Captains's Hill. The appeal unit is located within a two storey L shaped development with commercial uses on ground floor and residential apartments on first floor. The appeal unit is presently vacant whilst the adjoining unit to the north is occupied by a bookmakers and the unit to the south by an off licence. The southern block within the neighbourhood centre includes a number of commercial units including a *Supervalu* supermarket, local butchers, newsagent, pharmacy, takeaway, burrito bar, barber shop and the River Forest Hotel. The eastern block within the neighbourhood centre comprises apartment units. A surface car park of c180 spaces serves the uses.

Photographs of the appeal site are provided in the appendices attached to the report.

## **2.0 PROPOSED DEVELOPMENT**

- 2.1 The proposal seeks permission for change of use from retail unit to a restaurant use with ancillary takeaway use. The existing shopfront will be retained with new paint finish and new signage. Intended hours of operation are 9am to 10pm daily.

## **3.0 PLANNING HISTORY**

- PL.09.232017 08/1676 Refusal of application for change of use from existing medical centre granted under reg. ref 06/2797 to two no apartments and associated site works.
- 06/2797 Permission granted for change of use from crèche to medical centre
- 06/2316 Permission for projecting sign and extend opening hours of off licence.
- 06/885 Permission for signage and associated works for off licence,
- 06/601 Permission for change of use from retail to off licence,
- PL09.212069 (04/2070) Permission granted for 4 no retail units and a crèche at ground floor level and 7 no apartments.
- PL.09.204117 (02/2375) Refusal of permission for medical centre, bank, retail / commercial units, 15 apartments. Refusal referred to contravention of the neighbourhood centre zoning objective by reason of disproportionate residential component and poor design including inadequate open space giving rise to a substandard form of development on a visually prominent site.
- 02/1656 Refusal of permission for 17 apartments bank and medical centre, Refusal reasons referred to overdevelopment of the site public and private open space, massing and design, overlooking, inadequate car and bicycle parking facilities and excessive concentration of apartments.

## **4.0 PLANNING AUTHORITY DECISION**

### **4.1 Planning and technical reports**

- 4.1.1 Initial Planner's report expressed concern the takeaway might be the main use and concern given that there are two existing takeaways within the neighbourhood centre that the proposal might result in an excessive concentration of takeaways. Following a request for further information seeking clarification of the intended use Planner's
- 4.1.2 Third party objection submitted on behalf of Ben Sheridan, 53 Ryevale Lawns, Leixlip raises concern that the site notice does not comply with Articles 19(1) and 19(2) of the Planning and Development Regulations 2001 as amended. Site notice were reported to have been concealed within a painted shop window site notice was not provided at the entrance from the public road. Submission further asserted that information was inadequate to describe the nature and extent of the proposed change of use. It was asserted that the development contravenes the objectives of the Leixlip LAP which seeks to curtail an excessive concentration of takeaways.
- 4.1.3 Fire Officers report indicates no objection subject to standard conditions. Irish water a recommends standard conditions. Water Services and Environment Section reports outlined standard conditions. Environmental Health officer sets out relevant requirements.
- 4.1.4 Following a request for additional information which sought details to clarify extent of takeaway use and precise nature of the development, signage details, details of grease separator, ventilation details of refuse storage area and noise mitigation the final Planner's report asserts that the proposed use of the unit for restaurant use is acceptable subject to a condition restricting the level of the takeaway element.

### **4.2 Planning Authority Decision**

- 4.2.1 By Order dated 28<sup>th</sup> January 2015, Kildare County Council decided to grant permission subject to 21 conditions. Condition 2 required that the takeaway element remain ancillary to the use as a restaurant and shall not become the predominant feature of the unit.

## **5.0 GROUNDS OF APPEAL**

5.1 The grounds of appeal as summarised as follows:

- Planning Authority failed to address matter of invalidity of the application on basis that site notices did not comply with Article 19(1) and 19(2) of the Planning Regulations.
- Given the quantum of further information planning authority should have deemed response significant thus warranting further public notices.

- Suggested restaurant / takeaway use is merely speculation as no end user has been secured.
- A comparison of the floor area is not a reliable metric to support a comparison between the relative strengths of uses. (As illustrated in RL3156)
- Note the complexity of primary and ancillary uses in any specific case.
- Extent of floor area given over to restaurant 33% as opposed to 7% allocated to takeaway does not provide objective basis for determining which is likely to be the dominant use.
- Examples referenced as type of restaurant envisaged have a significant takeout trade.
- While the objective of condition 2 is understood it is unenforceable.
- Question the viability of a restaurant of this small size within this neighbourhood centre location.
- In the event that the Board consider a permission in this case it might be appropriate to require that the unit shall not be operated as a takeaway for the sale of fried food.
- Urge An Bord Pleanála to refuse permission.

## **6.0 RESPONSES/OBSERVATIONS TO GROUNDS OF APPEAL**

### **6.1 Planning Authority response**

6.1.1 Planning Authority considers that the proposed use of a vacant structure in the built up area of Leixlip is an appropriate use. Competition in the marketplace is required in order to achieve vibrancy and vitality in an area such as this location.

### **6.2 First party response**

6.2.1 Note appellant's address provided to the Board entirely different to that given in initial objection to the Council. Urge the Board to dismiss the appeal under Section 138 of the Planning and Development Act 2000 on the basis that it is vexatious and frivolous and made with the sole intention of delaying the development. There is no onus on the applicant to have end user at application stage. Notably there few takeaway type uses and only on other restaurant in this area despite a large residential population in the vicinity. Condition 2 is practical and enforceable. Location is appropriate for the type of development proposed

### **6.3 Third Party Appellant's Comments on First Party Response**

6.3.1 Comments regarding third party appellant's address are irrelevant and there are no grounds for invalidation of appeal. First Party fails to show correlation between floor area and turnover. Single access for delivery and waste is noted. It is inferred from the lodged plans that the development will not involve frying methods as such methods require extraction. If extraction ducting were installed there is significant potential for impact on residential amenity. Viability of the proposed restaurant is in

doubt. Appellant has raised legitimate planning concerns regarding the proposed development and urges the Board to refuse permission.

## **7.0 POLICY CONTEXT**

- **Kildare County Development Plan 2011-2017.** Development Management Standards.

- **Leixlip Local Area Plan 2010**

The site is zoned 'G' Neighbourhood Centre. The zoning objective seeks 'to provide for neighbourhood facilities'. In accordance with the land use zoning matrix restaurants are permitted in principle where takeaways are open for consideration.

## **8.0 ASSESSMENT**

8.1 From my review of the file all relevant documents and inspection of the site and its environs, I consider that the main issues for consideration may be appraised under the following broad headings.

- Procedural Matters and Validity of the Appeal
- Principle of development and appropriateness of the proposed change of use,
- Other Matters.

### **8.2 Procedural Matters and Validity of the Appeal**

8.2.1 On the issues raised by the third party in respect of site notices and procedures adopted by the local authority in this regard, it is not possible to verify the circumstances of the public notice retrospectively. However it is clearly evident that the third party was not disadvantaged in his ability to make submissions to the planning authority.

8.2.2 On the issue of validity of the appeal the first party has alleged that the appeal is vexatious and without substance. This assertion is based on the appellant's interest in a potential rival restaurant currently operating in Leixlip. The issue of validity is a matter for the Board to determine. The restriction of competition or protection of an existing monopoly is clearly not the purpose of planning regulation.

### **8.3 Principle of Development and Appropriateness of the proposed change of use**

8.3.1 As regards zoning the site is within the area zoned neighbourhood centre where the policy is "To provide for neighbourhood facilities". The proposed

use is consistent with this zoning and is therefore acceptable in principle. On the question of a proliferation of food outlets I consider that this is not the case.

8.3.2 I note that planning policy including the retail planning guidelines 2012<sup>1</sup> provides that the planning system should not be used to inhibit competition, preserve existing commercial interests or prevent innovation. I consider the proposed development will enhance the retail services offer and support the existing range of activities and services within the Riverforest Court Shopping Centre. On this basis I consider that the proposed use will have a positive impact on the vitality and viability of the Riverforest County Shopping Centre. As regards the detail of the intended use as a restaurant with ancillary takeaway, I consider that it is sufficiently outlined within the documentation. The third party appellant raises questions in respect of the proportion of each use and suggests that a more precise and detailed nature of operation should be outlined. Such arguments are not pertinent to this planning merits of the proposed development. I would concur with the first party that a planning application should not require such a level of detail rather any planning permission should provide a degree of flexibility to accommodate a variety of end users, clearly within the confines of the stated nature of the development as a restaurant with ancillary takeaway with hours of operation between 09:00hours and 22:00hours daily. On the basis of my assessment of the development as set out I consider that the principle of development is appropriate and the proposed development will not have significant negative impact on the amenities of the area.

## **8.4 Other Matters**

8.4.1 On the matter of servicing, having regard to the nature of the development and on the basis of the technical reports of the planning authority on the appeal file no issues arise in relation to servicing. As regards the details of proposed works minimal interventions are proposed.

8.4.2 On the issue of Appropriate Assessment having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely a neighbourhood centre and fully serviced location, no appropriate assessment issues arise.

## **8.5 Conclusion**

8.5.1 Having regard to the foregoing, I am satisfied that the proposed development is in accordance with the objectives of the Kildare County Development Plan

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<sup>1</sup> Guidelines for Planning Authorities, Retail Planning. Department of the Environment Community and Local Government. April 2012.

2011-2017 and the Leixlip Local Area Plan 2010 and that there will be no undue impact on the amenities of the locality. I recommend that the decision of Kildare County Council be upheld and permission granted for the reasons and considerations set out below and subject to the conditions attached.

## **REASONS & CONSIDERATIONS**

Having regard to the zoning objectives for the area and the pattern of land use in the vicinity it is considered that, subject to the conditions set out below, the proposed development will not unduly impact on the amenities of the area or property in the vicinity and is therefore 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 plans and particulars received by the Planning Authority on the 23<sup>rd</sup> December 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. Use of the premises shall be as in accordance with the details as submitted. No change of that use shall take place without a prior grant of planning permission notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001 and any statutory provision amending or replacing them.

**Reason:** To protect the amenities of property in the vicinity.

3. The developer shall control odour emissions from the premises in accordance with measures 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.

4. 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. The scheme shall include the provision of litter bins and refuse storage facilities.

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

5. 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.

6. Water supply and drainage arrangements, 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. The hours of operation shall be between 09:00hours and 22:00 hours.

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

8. No advertisement or advertisement structure (other than those shown on drawings submitted with the application) shall be erected or displayed on the building (or within the curtilage of the site 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. 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.

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**Bríd Maxwell,**  
**Planning Inspector**  
**18<sup>th</sup> May 2016**