
An Bord Pleanála



Inspector's Report

Ref.: PL04.246261

Development: Change of use from retail to betting office (110.33sq.m.) at ground floor level, together with fitting of 4 No. satellite dishes and 4 No. condenser units within rear yard, proposed signage, internal modifications and associated works.

23-24 Connolly Street, Clonakilty, Co. Cork.

PLANNING APPLICATION

Planning Authority: Cork County Council

Planning Authority Ref.: 15/692

Applicant: Paddy Power Plc.

Type of Application: Permission

Planning Authority Decision: Refusal

APPEAL

Type of Appeal: First Party v. Decision

Observers: Mr. Andrew Ryan

INSPECTOR: Robert Speer

Date of Site Inspection: 29th June, 2016

1.0 SITE LOCATION AND DESCRIPTION

1.1 The proposed development site is located along the western side of Connolly Street in Clonakilty town centre in an area which can be characterised as mixed-use given the presence of a variety of retail and commercial outlets, including shop units, restaurants and public houses. The site itself has a stated site area of 0.01879 hectares, is irregularly shaped, and is presently occupied by a primarily three-storey, mid-terrace building which includes a vacant ground floor retail unit with a number of apartment units located overhead at first and second floor levels. The existing building has been extended at ground floor level and includes a single storey return to the rear of same which allows for access into a small enclosed yard area. Notably, the overall traditional vernacular of the wider area would seem to have contributed to its designation as an Architectural Conservation Area.

2.0 DESCRIPTION OF PROPOSED DEVELOPMENT

2.1 The proposed development, as initially submitted to the Planning Authority, consists of the change of use of an existing vacant retail unit to use as a betting office (floor area: 110.33m²). Associated works include the fitting of a new fascia sign over the existing shop front, the attachment of 4 No. satellite dishes to the boundary wall to the rear of the premises, and the installation of 4 No. condenser units on the side (southern) elevation of the existing single storey extension to the rear of the principle three storey building on site. The proposed fascia signage will comprise 3mm pressed metal covered with printed laminated vinyl bonded to the existing timber panel with 12mm thick individually mounted PVC raised letters fixed diagonally to a striped green laminated vinyl background (i.e. the 'PaddyPower' corporate signage).

2.2 In response to the decision to refuse permission, the grounds of appeal have been accompanied by revised proposals which seek to amend specific aspects of the proposed development as follows:

- The revision of the proposed fascia signage details by providing for 30mm deep individually mounted raised lettering fixed directly to the fascia in a horizontal alignment. The existing fascia is to be hand painted a single colour (i.e. medium green) with no diagonal stripes as had been previously proposed.

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- The rear of all the windows is to be kept clear of all walls, screens, hoarding and stickers in order to allow maximum visibility into the unit from the public footpath.
 - The 4 No. satellite dishes will no longer be affixed to the rear boundary wall and will instead be free-standing structures set atop a concrete plinth and secured within a galvanised metal enclosure.

3.0 RELEVANT PLANNING HISTORY

3.1 On Site:

PA Ref. No. 0550006. Application by Pat O'Mahony for permission for the retention of alterations to Nos. 23 and 24 Connolly Street and to construct a single storey store at rear of 23 and 24 Connolly Street. Also the re-development of retail unit at No. 25 Connolly Street with 2 apartments overhead and ground floor commercial unit. This application was withdrawn.

PA Ref. No. 0550036. Was granted on 3rd January, 2006 permitting Pat O'Mahony permission for the retention of store to rear.

PA Ref. No. 0650007. Application by Pat O'Mahony for permission for change of use from retail unit and store attached to offices and ancillary works. This application was withdrawn.

3.2 On Adjacent Sites:

PA Ref. No. 0650036. Was granted on 7th November, 2006 permitting Pat O'Mahony permission for the construction of ground floor commercial unit with 2 No. overhead apartments and associated site works at 25 Connolly Street, Clonakilty, Co. Cork.

3.3 On Sites in the Immediate Vicinity:

PA Ref. No. 15389. Was granted on 13th November, 2015 permitting Denis Crowley permission for alterations to existing shopfronts including fenestration alterations to front and side elevations to an existing building and all associated site works No. 26 Connolly Street and No. 1 Kent Street is a protected structure (RPS ID: 20000053). All at No. 26 Connolly Street & No. 1 Kent Street, Clonakilty, Co. Cork.

3.4 Other Relevant Files:

PA Ref. No. 02/23 / ABP Ref. No. PL50.201227. Was granted on appeal on 17th April, 2003 permitting John Tully permission for the change of use from ground

floor retail outlet to betting office together with elevational changes, signage, two satellite dishes and associated site works at Astna Square and No. 2 Rossa Street, Clonakilty, Co. Cork.

PA Ref. No. 0550027. Was granted on 10th October, 2005 permitting Ascot Stores Ltd. permission to construct 1 x bookmakers unit (130 sqm) 1 x restaurant (203.5 sqm) and 2 x apartments over 2 and 3 storeys, which will involve the redevelopment and conservation of a protected structure retaining the ground floor use, preservation of existing bakery chimney in new position, retention of existing pedestrian thoroughfare and associated site works. All at 1-2 Connolly Street & The Euro Spar Carpark, Clonakilty, Co Cork.

PA Ref. No. 14/891 / ABP Ref. No. PL09.244279. Was granted on appeal on 30th April, 2015 permitting Paddy Power Plc. permission for a change of use of the ground floor Unit Number 1 (176 square metres) from the previously approved retail use to betting office use, new shop front, fascia level signage to front elevation, fitting four number new satellite dishes, four number new condenser units at first floor roof level at rear, together with internal fit out of unit and associated works, all at Unit Number 1, Clane Shopping Centre, Main Street, Clane, Co. Kildare.

4.0 PLANNING AUTHORITY CONSIDERATIONS AND DECISION

4.1 Decision:

On 9th February, 2016 the Planning Authority issued a notification of a decision to refuse permission for the proposed development for the following 2 No. reasons:

- The proposed development, by reason of the proposed use within an Architectural Conservation Area, as designated on Map 7 of the Clonakilty Development Plan, 2009-2015, would contravene materially specific objectives, set down in paragraphs 3.3.3 and 3.3.4, which seek to resist betting shops, gambling and gaming uses in buildings situated along the streets within the Architectural Conservation Area and to prevent over-intensification of betting shops. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
- The proposed development, by reason of the design and materials of the proposed shopfront, would detract from the unique heritage character of the town centre and would seriously injure the visual amenities and heritage fabric of the area. The proposed development would, therefore,

be contrary to the proper planning and sustainable development of the area.

4.2 Objections / Observations:

A total of 5 No. submissions were received from interested parties and the principle grounds of objection contained therein can be summarised as follows:

- Excessive concentration of betting offices in the area
- Detrimental impact on the wider image / character of Clonakilty as a tourist / heritage town
- Negative impact on the vibrancy of the area and the ambience of the street
- The loss of a retail unit and the impact on the character of the town centre.
- The absence of a dedicated smoking area and the associated potential for obstruction of the public footpath
- The potential for littering
- Inappropriate signage / detrimental visual impact / out of character with the streetscape
- Contrary to the policies and objectives of the Development Plan, with particular reference to Sections 3.3.4 & 3.3.5.
- Inappropriate use within an Architectural Conservation Area
- Lack of car parking provision
- The absence of a flood risk assessment.
- The noise impact arising from the proposed condensers
- Concerns regarding the acceptance by the Planning Authority of a revised covering letter
- Wider concerns as regards gambling addiction.

4.3 Internal Reports:

Heritage Unit: States that whilst the principle of the proposed change of use is a planning matter, in view of the site location within an Architectural Conservation Area, the treatment in particular of the shop front, signage and utilities is not considered to be well furnished. The report proceeds to state that the application will require a significant amount of work in order to bring it up to an acceptable standard and that the level of information provided and the overall quality of the submitted proposal do not comply with the Development Management Objectives for Architectural Conservation Areas as set out in the Clonakilty Town Development Plan. The report subsequently concludes by recommending that further information be sought in respect of a variety of matters including the

shopfront, signage, lighting, window treatment and the revision of the configuration of the proposed satellite dishes.

Estates Primary: Notes that the proposed development site is located in an area at risk of flooding and subsequently recommends that the applicant be requested to submit a flood risk assessment by way of further information.

Area Engineer: States that the development could be completed in accordance with engineering standards before recommending that the applicant be requested to submit a flood risk assessment by way of further information.

4.4 Prescribed Bodies / Other Consultees:

An Taisce: Notes that the proposed development site is located within an Architectural Conservation Area and that regard should be had to Objective HE 4-5 of the Cork County Development Plan in the assessment of the application.

5.0 GROUNDS OF APPEAL

The grounds of appeal are summarised as follows:

- During the course of pre-planning discussions with regard to the proposed change of use of an alternative premises located in nearby Rossa Street, the applicant was advised by the Planning Authority that the location in question was not suitable for use as a betting office due to its proximity to the historic core of the town and its location along a historical walking trail linking Asna Square and Emmet Square. However, it was suggested at this meeting that if an alternative premises was chosen which was not located along one of the town's main heritage streets, such a proposal could receive more favourable consideration. Therefore, the subject site was identified as a possible location and the applicant was subsequently advised by the Planning Authority that there was no need for a further pre-planning meeting with regard to the proposal as the premises in question was located outside the main historic core of the town and was not located on the historic walking trail and, in the view of the Planning Authority, would generally be suitable for use as a betting office.

Whilst it is accepted that pre-planning discussions conducted pursuant to Section 247 of the Planning and Development Act, 2000, as amended, are not binding on the Planning Authority, it is considered that in this instance clear guidance was provided which was subsequently ignored during the

assessment of the application. Therefore, it is submitted that the decision to refuse permission for the subject proposal was unreasonable.

- Both the proposed development site and the surrounding streets are zoned as *'Town Centre 2 (TC2)'* where the principle objective is *'to encourage the full range of town centre uses within the constraints imposed by the need to retain the fabric and ambience of the old centre'*. The Development Plan further states that *'The overall objective is to maintain the animation and diversity of uses of the Town Centre whilst respecting the heritage character of the built fabric'*. In addition, the Plan states that *'In the case of existing buildings currently in use for commercial and other non-residential uses additional uses and extensions compatible with the town centre usage will be permitted with the provision that the scale and character of such small buildings will generally be maintained. In general, Town Centre uses respecting the fabric of the heritage built environment will be permitted'*.

On the basis of the foregoing, it is submitted that the reuse of existing commercial premises for town centre uses, such as a betting office, will be permitted provided the fabric of the building is respected. In this regard, it is considered that the revised shop front proposals which have accompanied the grounds of appeal represent a suitable reuse of a vacant premises which respects the historic nature of the building and the surrounding streetscape.

- It is considered that the aforementioned Town Centre policies directly conflict with the provisions of Paragraph 3.3.3 of the Development Plan which states that betting offices will be resisted in the streets within the Architectural Conservation Area. Considering that almost all of the 'Town Centre 2' zoned lands are located within the ACA (with the exception of some backland areas), the decision to refuse the subject proposal effectively amounts to a ban on betting offices from locating in the town centre which is in conflict with the wider Development Plan policies for the area.
- It is suggested that whilst Paragraph 3.3.3 of the Development Plan seeks to *'resist'* betting offices on streets within the ACA, this should not be interpreted as an outright ban on such uses and should instead be viewed as a mechanism by which to control the number of said uses. In support of the foregoing, it should be noted that Paragraph 3.3.3 also states that nightclubs and fast food outlets *'shall be restricted'* in streets that are

primarily residential in character. This wording is considered to be much more robust and is effectively banning those uses on certain streets i.e. the use of the wording '*restricted*' is deemed to be far more definitive than '*resisted*'.

- It is accepted that the subject proposal is 'marginal' and not clear cut, however, it is felt that a favourable decision should have issued instead of a refusal. More recent 'Paddy Power' betting office fit-outs are more in line with retail use. For example, traditionally, betting offices were screened inside the window resulting in 'dead' frontage, however, this is no longer the case with the applicant's premises. In historically sensitive areas, such as Connolly Street in Clonakilty, there will be no screening or posters fitted on the inside of the window. Instead, the windows will be totally clear with visibility straight into the unit from the footpath thereby resulting in a more vibrant shop front similar to a retail use.
- From a review of the '*Architectural Heritage Protection, Guidelines for Planning Authorities*', it is clear that there are no restrictions on the proposed use of a premises within an Architectural Conservation Area. An ACA is determined by the character of the area which is manifested primarily by the physical attributes of the built or natural environment. Individual uses do not detract from an ACA in an urban context. Therefore, it is submitted that the Planning Authority has misinterpreted the concept of an ACA in its decision by stating that a betting office would detract from the ACA. In this regard it is notable that the Conservation Officer did not recommend a refusal of permission, but instead sought further information in relation to the treatment of the shopfront, signage and utilities.
- The assessment by the Planning Authority suggests that due to the presence of 2 No. existing betting offices nearby, the subject proposal would result in an over-concentration of such uses in the area in contravention of Paragraph 3.3.4 of the Development Plan. However, it is considered that this assessment ignores the following issues:
 - The proposed development is not located on the Main Street, but rather in a secondary location along a secondary commercial street.
 - Whilst the existing betting offices appear to be located a short distance away, neither of these units is visible from 23-24 Connolly Street. Accordingly, the provision of an additional betting office at the location proposed will not give rise to an over-intensity of such uses.
- It is a key principle of the planning system that it should not inhibit competition in the retail market, preserve existing commercial interests or

prevent innovation. There are only 2 No. betting offices in Clonakilty and both are operated by the same chain. By claiming that an additional betting office would lead to an over-intensification of such uses, the Planning Authority is effectively inhibiting competition.

- Given the population within the likely catchment area of the proposed development, it is suggested that Clonakilty can easily accommodate another betting office. In this regard the Board is referred to its determination of ABP Ref. No. PL09.244279 which concerned a proposal for a betting office in Clane, Co. Kildare:

'In deciding not to accept the Inspector's recommendation to refuse permission, the Board considered there was validity in the applicant's argument that the population to be served by the proposed development included not just the town but also a substantial population in its hinterland and that in this context a fourth betting office in the area could not be viewed as excessive'.

- With regard to the design of the proposed shopfront, and in view of the recommendations of the Conservation Officer, the Board is requested to consider the accompanying drawings and to impose the proposed revisions as a condition of any decision to grant permission. The drawings in question illustrate the following:
 - Details of the existing shopfront, to a scale of 1:50, including a specification of the materials and supporting photographs. The Board is further advised that the existing shopfront is not being altered other than for re-painting and the provision of new fascia level signage.
 - It is proposed to retain the existing shopfront and to paint the timber a different colour (medium green – RAL 6029). It is also proposed to fit a 'Paddy Power' sign to the existing fascia. It is not intended to alter any of the existing shopfront details such as the pilasters, stall risers, consoles etc.
 - In response to the concerns of the Conservation Officer, the proposed fascia signage has been revised in that it is now proposed that the lettering will comprise individually mounted raised timber letters fixed directly to the existing fascia behind. The letters, which will be horizontal rather than at an angle as was previously proposed, will be hand-painted white. The fascia will be hand-painted medium green – it will not have a different coloured, diagonal green striped background as was previously proposed.

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- Detailed scaled drawings of the shopfront specifying the materials for the signage, window treatment etc. have been submitted. It is proposed to have an 'open' shopfront with no fixed screen or window stickers behind the glazing. It is proposed to leave the windows visually uncluttered. The area inside the window will be clear so that there will be visibility right into the unit from the pavement thereby adding to the vitality of the unit.
 - The proposed satellite dishes within the rear yard will no longer be affixed to the rear boundary wall, but will instead be free-standing in the yard area and enclosed in a 2m high metal enclosure.
 - In response to concerns raised by the Area Engineer, the grounds of appeal have been accompanied by a Flood Risk Assessment which concludes as follows:
 - There is a possibility that the proposed unit will flood some time in the future, however, mitigation measures will be put in place in order to reduce the impact of any such flooding on the premises. A flood relief scheme has also been proposed for Clonakilty Town and should be in place within the next few years.
 - Given that the proposal concerns an existing structure, and only relates to a change of use, there will be no impact on the existing flood regime of the area.

6.0 RESPONSE TO GROUNDS OF APPEAL

6.1 Response of the Planning Authority:

No further comments.

7.0 OBSERVATIONS:

7.1 Mr. Andrew Ryan:

- There are already 2 No. betting offices located in close proximity to the application site.
- The observer lives in close proximity to the existing betting office at No. 12 Harte's Courtyard and is only 80m from the other such premises at No. 2 Rossa Street and thus he has concerns as regards the proposal to develop another betting office within 50m of his place of residence.

The absence of smoking facilities in either of the existing betting offices causes people to congregate outside of the premises which results in congestion along the narrow footpaths, littering and (occasionally) anti-social behaviour.

- Given that Clonakilty is a tourist town, it is submitted that the provision of 3 No. betting offices within a 50m radius of each other would have a negative impact on the vibrancy of the area and would also have a detrimental effect on the ambience of the street.
- The proposed development is located within an Architectural Conservation Area and thus would contravene the policies and objectives of the Clonakilty Development Plan, 2009-2015, with particular reference to Paragraphs 3.3.3 & 3.3.4, which seek to resist betting shops, gambling and gaming uses from locating in buildings situated along streets within the ACA in addition to preventing an over-intensification of betting shops.
- The proposed development will detract from the visual, residential and other amenities of the area.
- The town of Clonakilty is already well provided for in terms of betting offices.
- The proposed development will result in 'dead' frontage as the window displays associated with such uses typically only comprise posters.
- The subject proposal will detract from the visual appearance of the existing building and the wider streetscape.
- The proposed frontage and its display are not compatible with the area and will be unduly obstructive along the streetscape.
- The proposed development does not provide for any car parking. Therefore, given that the western side of both Connolly Street and Rossa Street is marked with double yellow lines, it is submitted that any instances of on-street parking could inhibit the movement of pedestrian and vehicular traffic thereby giving rise to a traffic hazard due to the narrow width of the roadway and footpath.
- The absence of a smoking area for the proposed development will result in patrons congregating on the public street which will obstruct the footpath and detract from the wider image of this tourist town.
- The subject proposal is contrary to the objective of the Development Plan which seeks to promote the development of the town centre as the primary location for retail and other uses that provide goods and services to members of the public.

8.0 NATIONAL AND REGIONAL POLICY

8.1 The 'Architectural Heritage Protection, Guidelines for Planning Authorities, 2004' provide detailed guidance in respect of the provisions and operation of Part IV of the Planning and Development Act, 2000, as amended, regarding architectural heritage, including protected structures and Architectural Conservation Areas. They detail the principles of conservation and advise on issues to be considered when assessing applications for development which may affect protected structures and development within their curtilage or attendant grounds.

9.0 DEVELOPMENT PLAN

Cork County Development Plan, 2014:-

Chapter 7: Town Centres and Retail:

Section 7.2: Town Centres:

Section 7.2.5:

In order to maintain the attractive characteristics of our town centres applications for new development/changes of use within the town centre will need to ensure proposals will not detract from the amenity, vitality and character of the area. Where the evening economy is promoted it should avoid being detrimental to the amenity of residents. Safeguards regarding the hours of operation, control of litter and odour may be imposed as conditions to development. In cases where there is a proliferation of uses which threaten the vibrancy and mixed use character of the town centre they will be discouraged.

TCR 2-1: Town Centre:

- a) Maintain, strengthen and reinvent the role of town centres as dynamic attractive and inclusive environments and enhance their mixed use character by encouraging the retention and development of general office, retail, housing, office based industry, community, civic and entertainment uses.
- b) Encourage and promote innovation and creativity within town centres in relation to the use of streets, public spaces, vacant buildings and derelict sites for different public activities and events.
- c) Sustain, promote and manage the key role that diverse and vibrant town centres have to play in the tourism product of the county.

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- d) Encourage the initiation and support the development of 'Town Teams' to guide stakeholders in the holistic management and revitalisation of town centres across the county.
 - e) Support proposals for development involving evening and late night commercial, retail or entertainment uses within, or immediately adjacent to, the defined town centres or local service centre, where it can be demonstrated that the development will enhance the character and function of the area;
 - f) Encourage, promote and facilitate the development of country/farmers markets in town centres devoted to the sale of local agricultural and craft produce and support their role as visitor attractions which add to the vibrancy and vitality of towns.
 - g) Encourage the preparation of targeted public realm strategies and other strategies in a general and specific sense for individual towns over the lifetime of the plan, particularly where a need has been identified through the local area plan process.
 - h) Encourage and prioritise an urban framework approach for those town centres which are experiencing unique challenges such as heritage constraints, traffic and transportation issues, etc.
 - i) Local Area Plans will identify and set out a proactive approach towards the development of opportunity sites (normally within or adjoining core town centre areas).
 - j) In relation to Derelict Sites the council will endeavour to use all mechanisms available to it as appropriate in order to maximize the potential of such lands.
 - k) Establish a General Development Contribution fund to support the physical improvement of the public realm and parking infrastructure within town centres.

Section 7.3: *Retail:*

TCR 43: Support and develop the role of Mallow and Clonakilty as important retail centres in the North and West of the County while ensuring the vitality and vibrancy of their town centres is retained and enhanced.

Section 7.13: *Shopfronts:*

TCR 13-1: Shopfronts:

- a) Ensure new shopfront design respects the character and architectural heritage of the existing streetscape. Encourage, where appropriate, the use of contemporary shop front design.
- b) Prevent the use of film or screening that obscures the glazed area of a shopfront window where it negatively impacts upon the streetscape.
- c) Ensure that corporate logos, lighting, designs and colours are not used at the expense of the streetscape.
- d) Require that security shutters on new shopfronts are placed behind the window glazing and are transparent and encourage the use of transparent security shutters on all existing shopfronts.

Chapter 8: Tourism:

TO 2-1: Protection of Natural, Built and Cultural Heritage:

Protect and conserve those natural, built and cultural heritage features that form the resources on which the County's tourist industry is based. These features will include areas of important landscape, coastal scenery, areas of important wildlife interest, historic buildings and structures including archaeological sites, cultural sites including battlefields, the Gaeltacht areas, arts and cultural sites and the traditional form and appearance of many built up areas.

Chapter 12: Heritage:

Section 12.4: *Architectural Heritage:*

HE 4-5: Architectural Conservation Areas:

Conserve and enhance the special character of the Architectural Conservation Areas included in this plan. The special character of an area includes its traditional building stock and material finishes, spaces, streetscape, shop fronts, landscape and setting. This will be achieved by;

- a) Protecting all buildings, structures, groups of structures, sites, landscapes and all features considered to be intrinsic elements to the special character of the ACA from demolition and non-sympathetic alterations

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- b) Promoting appropriate and sensitive reuse and rehabilitation of buildings and sites within the ACA and securing appropriate infill development
 - c) Ensure new development within or adjacent to an ACA respects the established character of the area and contributes positively in terms of design, scale, setting and material finishes to the ACA.
 - d) Promoting high quality architectural design within ACAs.
 - e) Seek the repair and reuse of traditional shopfronts and where appropriate, encourage new shopfronts of a high quality architectural design.
 - f) Ensure that all new signage, lighting, advertising and utilities to buildings within ACA are designed, constructed, and located in such a manner that they do not detract for the character of the ACA.
 - g) Protect and enhance the quality of open spaces within ACAs and ensure the protection and where necessary reuse of street furniture and use of appropriate materials during the course of public infrastructure schemes within ACAs.
 - h) Protect structures from demolition, non-sympathetic alterations and the securing of appropriate infill developments.

Chapter 15: Putting this Plan into Practice:

Section 15.6: Local Area Development:

Section 15.6.6 In the past, 9 of the County's Towns have been served by Town Councils who were independent planning authorities and maintained their own Development Plans. However, in accordance with the Local Government (Reform) Act, 2014, all of the Town Councils have been dissolved and the County Council are now the sole planning authority for the entire area. The intention is that these town plans will expire when the new Municipal District Local Area Plans are adopted.

N.B. The Cork County Council website states that the Town Development Plans remain in force pending the making of the next County Development Plan in 2020.

Appendix G: "Composition of Municipal Districts":

West Cork Municipal District Local Area Plan

N.B. Preliminary consultations have commenced on the preparation of the West Cork Municipal District Local Area Plan.

Clonakilty Development Plan, 2009-2015:

Land Use Zoning:

The proposed development site is located in an area zoned as 'Town Centre: TC2'.

The principal objective is to encourage the full range of town centre uses within the constraints imposed by the need to retain the fabric and ambience of the town centre.

The overall objective is to maintain the animation and diversity of uses of the Town Centre while respecting the heritage character of the built fabric.

In general, Town Centre uses respecting the fabric of the heritage built environment will be permitted. Infill and new development to respect the character, architecture, height and massing of adjoining areas. In general the re-use and recycling of the fabric of the existing built environment will be encouraged.

Other Relevant Sections / Policies (Vol. II: Policies & Objectives):

Chapter 3.0: Social & Economic Objectives:

Section 3.3.1: Strategic Objectives

Section 3.3.2: Development Management Objectives

Section 3.3.3: Proposals for retail development within Clonakilty town centre:

Betting shops, gambling and gaming uses will be resisted in buildings situated along the streets within the Architectural Conservation Area. This objective is in the interests of preserving the ambience and character of the streets.

Section 3.3.4: It shall be an objective of the Plan:

To prevent over intensification of fast food outlets, betting shops and amusement arcades particularly on the Main Street.

The development of such units in locations that would distract from visual, residential or other amenities of the area will be restricted.

Section 3.3.5: It is an objective of the Plan:

To promote the development of the town centre as a primary location for retail and other uses that provide goods or services to members of the public.

To maintain and enhance the mixed use character of the town centre by encouraging the retention and development of general office, retail, housing, office accommodation, community, childcare, civic and entertainment uses.

Section 3.4: *Zoning Objectives:*

Section 3.4.2: *Town Centre 2 (TC-2)*

Chapter 4: Heritage, Architecture, Conservation & Amenity Objectives:

Section 4.1: *Strategic Objectives:*

It shall be an objective to preserve the ambience and character of the streets comprising of the Clonakilty Heritage Trail indicated on Reference Map 7 Architectural Conservation Area / Historical Walking Trail.

Section 4.5: *Architectural Conservation Areas*

10.0 ASSESSMENT

From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised by the appeal are:

- The principle of the proposed development
- Siting within an Architectural Conservation Area
- Impact on the town centre:
- Impact on town character / streetscape / visual amenity:
- Appropriate assessment
- Other issues

These are assessed as follows:

10.1 The Principle of the Proposed Development:

10.1.1 The proposed development site is located in an area zoned as 'Town Centre 2 (TC-2)' in the Clonakilty Town Development Plan, 2009-2015 wherein it is the principal objective of the Planning Authority 'to encourage the full range of town centre uses within the constraints imposed by the need to retain the fabric and ambience of the old centre' in the context of an overall policy objective which seeks 'to maintain the animation and diversity of uses of the Town Centre while

respecting the heritage character of the built fabric'. In addition to the foregoing, it is a further strategic objective of the Development Plan to maintain the vibrancy of the town centre as the primary location for commercial, retail, civic and social development etc. and to maintain its dynamic mix of uses while recognising the unique historical and heritage character of the town. Further clarity as regards the future development of the town centre is provided in Section 3.3.5 of the Plan which refers to the promotion of same as a primary location for retail and other uses that provide goods or services to members of the public and the need to *'maintain and enhance the mixed use character of the town centre by encouraging the retention and development of general office, retail, housing, office accommodation, community, childcare, civic and entertainment uses*'. Accordingly, on the basis of the foregoing, and in light of the site location within a mixed-use area, I am inclined to conclude that there is no specific prohibition on the development of a betting office within the wider town centre of Clonakilty and that any such use would seem to be broadly consistent with the overall thrust of the Development Plan policy to maintain the vibrancy, vitality and viability of the town centre. However, having established that the development of a betting office at the location proposed is generally acceptable from first principles, it is necessary to consider whether there are any other relevant policy provisions which would serve to restrict / limit the development of betting offices and, in particular, the specifics of the decision of the Planning Authority to refuse permission for the proposed development on the basis that the subject proposal is located within an Architectural Conservation Area and that it would detract from the unique heritage character of the town centre.

10.2 Siting within an Architectural Conservation Area:

10.2.1 From a review of Map No. 7 of the Town Development Plan, it is apparent that the proposed development site is located within an Architectural Conservation Area and that it is also situated along the route of an identified 'Historical Walking Trail' (also referenced as the 'Clonakilty Heritage Trail'). In this respect I would draw the Board's attention to Section 3.3.2 of the Development Plan which states that Clonakilty town centre has been designated as an Architectural Conservation Area in order to further its potential to develop as a tourist attraction in its own right due to its *'unique character, excellent environment and the quality of preservation of its heritage structures*' whilst Section 4.1 of the Plan states that it is a strategic objective to preserve the ambience and character of those streets which comprise the Clonakilty Heritage Trail. It is further of relevance to note that a considerable emphasis has been placed throughout the Development Plan on the need to protect / preserve the built heritage and intrinsic character of Clonakilty town centre through the

development management process. Therefore, it is clear that the overall impact of the development proposal on the wider character of the town centre is a paramount consideration in the assessment of the subject application.

10.2.2 Having regard to the foregoing, I would refer the Board to Section 3.3.3 of the Development Plan which expressly states that *'Betting shops, gambling and gaming uses will be resisted in buildings situated along the streets within the Architectural Conservation Area'* in the interests of preserving the ambience and character of those streets. Accordingly, it would appear that the proposed development contravenes the aforementioned policy objective. However, the applicant has submitted that the provisions of Section 3.3.3 directly conflict with the wider strategic policy objectives of the Development Plan as regards the development of the town centre, particularly as a refusal of permission in the subject instance would effectively amount to an outright ban on betting offices from locating in the town centre given that all of the lands zoned as *'Town Centre: TC2'* are located within the ACA. In effect, the case has been put forward that an overtly rigid interpretation of the requirements of Section 3.3.3 would essentially give rise to conflicting policy objectives in the Development Plan and that the relevant provision should instead be viewed as a mechanism by which to control the number of such uses.

10.2.3 On balance, whilst I would concede that it is regrettable that the Development Plan provides no further explanation as regards the appropriate application or interpretation of Section 3.3.3 within the ACA, and although I would acknowledge the submission made by the applicant that this policy provision could potentially be held to conflict with the wider strategic objectives of the Development Plan, it is my opinion that it is clear from an exact reading of the specifics of Section 3.3.3 that it does not serve to undermine the broader aims of the Planning Authority as regards the development of the town centre. In this respect I would advise the Board that the restriction imposed on the development of betting shops is specifically limited to those locations along streets within the ACA (i.e. it does not apply to the full extent of the town centre) and thus it does not prohibit the development of such uses in other 'off-street' or backland locations. For example, the existing betting office at Harte's Courtyard is situated off Connolly Street, although I would concede that this was approved pursuant to the provisions of an earlier development plan (*N.B.* In the interests of clarity, it should also be noted that the existing bookmakers at Rossa Street approved under ABP Ref. No. PL50.201227 involved the development of a replacement premises). Therefore, I do not accept that Section 3.3.3 gives rise to any conflict with the remaining policy provisions of the Development Plan.

10.2.4 In relation to the suggestion that Section 3.3.3 of the Plan could be interpreted as permitting betting shops along streets in the ACA, subject to certain criteria, including built heritage considerations, I am inclined to suggest that the inclusion of this restriction should be viewed from first principles as a mechanism by which to avoid developments such as that proposed from locating along streets in the ACA and credence is lent to such a conclusion by the absence of any criteria by which an exception may be made to this over-arching policy objective. Accordingly, in my opinion, Section 3.3.3 seems to be purposely intended to prevent betting offices from locating along the streets in the ACA and thus should be interpreted as such. Therefore, the subject proposal must be held to be in contravention of the Development Plan.

10.3 Impact on the Town Centre:

10.3.1 The proposed development involves the change of use of an existing vacant retail unit and whilst I would acknowledge that Section 3.3.5 of the Development Plan seeks to promote the development of the town centre as the primary location for retailing and further states that the provision of retail development that contributes to the vibrancy of the town at ground floor level will be encouraged, in my opinion, there is no definitive prohibition within the Plan which specifically precludes the loss of a retail unit from within the town centre. Indeed, there is a clear acknowledgement in the Plan that uses other than retail can make a positive contribution to the overall character and vitality of a town centre. Therefore, I would concur with the Planning Authority that the loss of the retail unit in question as a result of the proposed development would not in itself warrant a refusal of permission.

10.3.2 With regard to the reference in the decision of the Planning Authority that the proposed development would give rise to an unacceptable concentration of betting shops in the locality which would be contrary to the provisions of Section 3.3.4 of the Development Plan wherein it is a stated objective *‘to prevent over intensification of fast food outlets, betting shops and amusement arcades particularly on the Main Street’*, although the proposal represents an additional betting shop in the town centre, it is notable that the Development Plan does not provide for any further elaboration on the criteria to be considered in the assessment of any such proposal. Therefore, it would appear that individual applications are to be assessed on their merits and in this regard I am not satisfied that it would give rise to such a concentration of uses as to detrimentally impact on the character or the amenity of the wider area.

10.4 Impact on Town Character / Streetscape / Visual Amenity:

10.4.1 The proposed development site is located within an Architectural Conservation Area in Clonakilty town centre and is also situated along the route of an identified 'Historical Walking Trail' (i.e. the 'Clonakilty Heritage Trail'). In this regard I would reiterate to the Board that the Town Development Plan places a considerable emphasis on the need to preserve the unique character and streetscape of Clonakilty and that development proposals will be required to complement the existing architecture, townscape, ambience and built heritage character of the town. Indeed, Section 4.5.3 of the Plan expressly states that it is an objective to maintain the special character of the historic core to the town and to ensure that development proposals are required to conserve and enhance the character and appearance of structures within the Architectural Conservation Area.

10.4.2 Whilst the proposed development primarily comprises the change of use of an existing premises, it also involves certain ancillary works which will affect the external appearance of the structure i.e. the erection of 4 No. satellite dishes within the enclosed yard area to the rear of the premises, the attachment of 4 No. condenser units to the side (southern) elevation of the existing single storey extension to the rear of the principle three storey building, and the alterations of the existing shop front, including re-painting and the fitting of a new fascia sign. In this respect I would advise the Board that the works to the rear of the structure will not be visible from any public area and, in my opinion, will have no impact on the wider streetscape or the character of the Architectural Conservation Area. However, it is clear from the decision of the Planning Authority that particular concerns arise with regard to the alterations proposed to the shopfront on the Connolly Street (front) façade of the existing building.

10.4.3 From a review of the proposed detailing of the shopfront as initially submitted to the Planning Authority (please refer to Drg. No. 1550/202), it should be noted that the new fascia signage would have comprised 3mm pressed metal sheeting covered with printed laminated vinyl and bonded to the existing timber panel with 12mm thick individually mounted PVC raised letters fixed diagonally to a striped green laminated vinyl background (i.e. the 'PaddyPower' corporate signage). Whilst I would concede that the aforementioned signage is confined to that area occupied by the existing fascia of the shopfront and that similar corporate signage has been employed elsewhere, given the specifics of the site context, with particular reference to its location within the historic town centre of Clonakilty, which has been designated as an Architectural Conservation Area,

and its positioning along the Clonakilty Heritage Trail', I am inclined to concur with the assessment by the Planning Authority that the introduction of such standardised signage would be an inappropriate addition to the streetscape which would detract from the wider appreciation of the surrounding built heritage and unique character of Clonakilty. Similarly, I would accept the reservations held by the Planning Authority as regards the potential for the window display associated with the proposed use to be dominated by the mass-produced and unsympathetic advertising etc. that is commonly associated with betting offices / bookmakers.

10.4.4 The applicant has sought to address the foregoing issues through the submission of amended signage / shopfront proposals with the grounds of appeal. In this respect I would advise the Board that these revisions include for new signage which will comprise 30mm deep individually mounted raised lettering fixed directly to the existing fascia in a horizontal alignment whilst the fascia itself is to be hand painted a single colour (i.e. medium green) with no diagonal stripes as had been previously proposed. In addition, a commitment has been provided whereby all the windows to the premises are to be kept clear of all screens, hoarding and stickers etc. in order to allow maximum visibility into the unit from the adjacent footpath.

10.4.5 Having reviewed the amended particulars which have accompanied the grounds of appeal, I am satisfied that the new fascia detailing and shopfront colour scheme will not detract from the wider architectural / built heritage qualities of the surrounding area. Accordingly, in the event of a grant of permission, I would recommend the imposition of a condition requiring the proposed shopfront and signage detailing to accord with the revised plans and particulars submitted with the grounds of appeal. Similarly, it is my opinion that concerns with regard to the display of inappropriate signage / advertising within the window display can be satisfactorily addressed by way of condition.

10.5 Appropriate Assessment:

10.5.1 Having regard to the nature and scale of the proposed development, the availability of public services, the nature of the receiving environment, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the proposed development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site

10.6 Other Issues:

10.6.1 Car Parking:

10.6.1.1 Given the restricted configuration and nature of this town centre site, in my opinion, it abundantly clear that the provision of on-site car parking is neither practical nor feasible and, therefore, it would be entirely appropriate in this instance to address any additional demand on public parking facilities arising as a result of the proposed development by way of a development contribution towards the provision of same by the Local Authority. In this respect it should be noted that an allowance should be made for the parking requirements of the existing vacant retail unit on site.

10.6.2 Flood Risk Assessment:

10.6.2.1 Section 5.28 of *'The Planning System and Flood Risk Management: Guidelines for Planning Authorities, 2009'* (as amended by Circular PL 2/2014) states that most changes of use of existing buildings are unlikely to raise significant flooding issues (unless they obstruct important flow paths, introduce a significant additional number of people into flood risk areas or entail the storage of hazardous substances) and that *'Since such applications concern existing buildings or developed areas, the sequential approach cannot be used to locate them in lower-risk areas and the Justification Test will not apply'*, although it is acknowledged that any such applications should be accompanied by a commensurate assessment of the flood risk to demonstrate that they would not have an adverse impact or impede access to a watercourse, floodplain or flood protection and management facilities.

10.6.2.2 Having regard to the foregoing, I would advise the Board that the grounds of appeal have been accompanied by a Flood Risk Assessment of the proposed development (in direct response to concerns raised by certain departments of the Local Authority) wherein there is a clear acknowledgement that the proposed development site is situated within a known floodplain with flood events having previously been recorded on site during 2009 and 2012. The FRA proceeds to state that following a review of the National Flood Hazard Mapping prepared by the Office of Public Works, the Indicative Flood Maps set out in the Skibbereen Electoral Area Local Area Plan, 2011, and the Draft Flood Hazard Mapping contained in the South-Western CFRAM Study, it can be confirmed that the application site is located within 'Flood Zone A' as defined in *'The Planning System and Flood Risk Management: Guidelines for Planning Authorities'*. Reference is subsequently made to Table 3.1 of the Guidelines which sets out the classification of various land uses / development types which are either highly vulnerable, less vulnerable or water-compatible and in this

respect it is noteworthy that the proposed change of use can be classified as a 'Less Vulnerable Development' which is the same as the existing retail use of the premises i.e. there is no change in the 'vulnerability' of the property.

10.6.2.3 Notwithstanding the provisions of Section 5.28 of the Guidelines as outlined above, the FRA has included a 'Justification Test' of the proposed development compiled pursuant to Box 5.1 of the guidance and whilst I would acknowledge the contents of same, considering that the proposed development is effectively limited to the change of use of an existing premises and will not involve any alteration of the building footprint, I am satisfied that any impact on the flood regime of the area will be negligible.

10.6.2.4 In terms of mitigation measures, Section 6.0 of the FRA states that a site specific flood management plan will be prepared for the development with consideration to be given to the inclusion of demountable flood barriers, the sealing of all ducting and conduits into the building, and the use of non-return valves on sewers exiting the building. It is further stated that in advance of the wider flood defence measures proposed for Clonakilty, removable slot-in flood barriers will be fitted at the main entrance door whilst additional precautions / measures will include the laying of a tiled floor (as opposed to carpet), the routing of electrical wiring down from the ceiling level, and the positioning (where possible) of electrical sockets / outlets at least 600mm above the finished floor level of the unit.

10.6.2.5 Having considered the foregoing, and following a review of the available information, it is my opinion, on balance, that the submitted proposal satisfies the requirements of the '*Planning System and Flood Risk Management, Guidelines for Planning Authorities*' and will not have a detrimental impact on the flood regime of the area.

11.0 RECOMMENDATION

Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission be refused for the proposed development for the reasons and considerations set out below:

Reasons and Considerations:

1. Having regard to the existing character and the prevailing pattern of development, and the site location within an Architectural Conservation

Area and along the route of a designated 'Historical Walking Trail' (also known as the 'Clonakilty Heritage Trail') identified in the Clonakilty Development Plan, 2009-2015, it is considered that the proposed change of use to a betting office would diminish the traditional character of Connolly Street, would detract from the surrounding townscape, and would contravene the policy set out in Section 3.3.3 of the Development Plan which aims to resist betting shops, gambling and gaming uses in buildings situated along the streets within the Architectural Conservation Area. The proposed development would, therefore, seriously injure the amenities of the area and would be contrary to the proper planning and sustainable development of the area.

Signed: _____

Robert Speer
Inspectorate

Date: _____