

## An Bord Pleanála



## Inspector's Report

**Appeal Reference No:** PL01.246488

**Development:** Change of use from an underground private car park to a valet centre.

**Location:** Hanover Court Car park, Kennedy Avenue Carlow.

**Planning Application**

Planning Authority: Carlow County Council

Planning Authority: Reg. Ref.: 15/320

Applicant: Jaroslaw Dziewa

Planning Authority Decision: Grant permission

**Planning Appeal**

Appellants: (1) Corajio (trading as Mr Price)  
(2) Trevor Gillespie

Type of Appeal: Third party

Date of Site Inspection: 21/7/16

**Inspector:** Siobhan Carroll

## **1.0 SITE LOCATION AND DESCRIPTION**

- 1.0.1 The appeal site is located in Carlow Town Centre at Kennedy Avenue. It comprises a basement car park associated with Hanover Court. Hanover Court is a two-storey over basement building containing a mix of retail, commercial and office uses. The front of the block addresses Kennedy Avenue and features predominately ground floor retail units. The subject basement provided 8 no. car parking spaces. I note from submissions on file and on inspection of the site that the basement has also been in use as a storage area associated with a restaurant within Hanover Court and also was used by a boxing club.
- 1.0.2 The rear of the block addresses the Hanover Court surface car park. This is a private car park which serves the discount retail unit '*Mr Price*' which is located 15m to the west of the appeal site. The car park is served by a single vehicular access off Kennedy Avenue. On inspection of the site, I observed that it is a busy car park where a one-way system operates with vehicles moving clockwise. Due to the relative confined nature of the car park the movement of vehicles into and out of spaces led to some queuing of vehicles.

## **2.0 PROPOSED DEVELOPMENT**

Permission is sought for a change of use from an underground private car park to a proposed valet centre with external signage and ancillary works.

- Site area – 0.018 hectares.

## **3.0 PLANNING HISTORY**

Reg. Ref. 2509 & PL42/5/8154 – Permission was granted for retail, offices and residential units within the block on Kennedy Avenue. Condition no. 8 of the permission issued by the Board required the payment of a development contribution towards the shortfall in 20 no. car parking within the site.

## **4.0 PLANNING AUTHORITY DECISION**

### **4.1 Planning Authority Decision**

The Planning Authority granted permission subject to 14 no. conditions.

## 4.2 Planning and technical reports

### Internal Reports:

Area Engineer: No objections.

Chief Fire Officer: No objections subject to conditions.

### Submissions

The Planning Authority received two submissions in relation to the planning application. The main issues raised are similar to those set out in the appeal.

## 5.0 GROUNDS OF APPEAL

**2 no. third party appeals were submitted by (1) Corajio (trading as Mr Price) & (2) Peter Thomson Planning Solutions on behalf of the appellant Trevor Gillespie.**

### **(1) Corajio (trading as Mr. Price)**

- The applicant Mr. Jaroslaw Dziewa does not have sufficient legal interest in the lands to carry out the proposed development. The Hanover Court surface car park is a privately owned car park. Corajio (trading as Mr Price) have a long term lease on the car park which serves the requirements of the Mr Price retail unit. The proposed development is considered piecemeal and its operation would require the restriction in use of car parking spaces within the Hanover Court car park due to the space restrictions.
- The proposed car valet centre would result in an increase in vehicular turning manoeuvres in a restricted car park. There are restricted turning circles within the basement car park which would result in vehicles having to reverse into the valet unit for service. There are no waiting bays or external parking facilities associated with the proposed valet unit.
- The submitted drawings do not demonstrate that vehicular turning movements can be safely made within the subject basement unit.
- The vehicular movements arising from the proposed development would conflict with the existing Hanover Court car park layout. There are car

parking spaces which are in direct conflict with the proposed turning manoeuvres to the proposed valet centre.

- The proposed development would give rise to pedestrian safety issues within the Hanover Court car park. The level of conflict between vehicles parking and those accessing the valet centre combined with the restricted car park size would result in congestion and give rise to traffic safety issues.

**A further submission was received from Corajio (trading as Mr. Price) on the 22<sup>nd</sup> of June 2016 in response to the submission lodged by the applicant. The issues raised are as follows;**

- The drawings to the Board by the first party on the 24<sup>th</sup> of May 2016 do not accurately reflect the car parking layout on the ground. The delineated car parking spaces are not indicated and this does not give a realist representation of the turning space available into the basement unit.
- The proposal represents over development of a small underground site which would conflict with existing vehicular movements.
- The 'Mr Price' car park has operated an informal one-way system over recent years due to the narrow nature of the access road. The proposal would compromise the safety of staff and customers of the business.

## **(2) Trevor Gillespie**

- Condition no. 6 of the permission issued by Carlow Co. Council only attempts to prevent vehicles to be valeted and valeting staff vehicles from blocking the free flow of traffic through the Hanover Court car park. The condition does not address the vehicles associated with valet centre parking in the external spaces or vehicles parking or being valeted on the access road within the car park. The appellant questions whether condition no. 6 could be enforced.
- It is stated that no staff car parking is provided to serve the valet centre. It is considered that there would be two staff members at the premises at any one time. The lack of staff parking could result in parking on the access road within the Hanover Court car park.

- The owners of the subject unit do not have an independent power supply and therefore no access to lighting. Therefore, the business would be reliant on natural daylight unless a generator is used which would cause noise nuisance.
- The subject unit is a confined basement car park which is an unsuitable location for a car valeting business. Its operation would result in congestion in an already busy car park. There is no evidence that valeting will operate by appointment only.
- The basement car parking has provided a potential means of escape from the kitchen of the restaurant on the first floor. The blocking of the escape route will be an issue in the application for a fire safety certificate.
- The Planning Authority has not applied the current Development Contribution Scheme correctly. The Carlow Town Development Contribution Scheme requires the payment of €7,916.00 for the shortfall of a car parking space. Eight car parking space within the basement would be lost as a result of the proposed development and no staff parking is provided. Therefore it is stated that a levy of a least €79,160.00 should be applied.

**A further submission was received from Peter Thomson Planning Solutions on behalf of the appellant Trevor Gillespie on the 23<sup>rd</sup> of June 2016 in response to the submission lodged by the applicant. The issues raised are as follows;**

- It is acknowledged that the applicant cannot control the coming and going of vehicles. Even if there is only one staff car parking space required there is only capacity for two other cars to wait while two are being valeted.
- There is no independent power supply serving the unit. The mains power and metering is within the appellant's building.
- It is considered that there is no space within the unit for customers to call speculatively. The likelihood is that customers calling speculatively will have to turn around and exit. The space does not exist for manoeuvring on the access road and this will result in the need to use the circulation route around the Mr Price car park or reversing out which will be a traffic hazard.
- The application drawings show the doors between the appellant's property and the proposed car valet area. These doors are currently emergency

escape doors for the basement car park and will have to be blocked to fire protect the appellant's property.

- The car parking spaces which would be lost are those originally intended to serve the overall development. Any loss of parking has the potential to put additional pressure on the public car parking in the area and this is provided for in the development contribution scheme that any shortfall in parking should be levied.

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

### **6.1 First party response**

A response to the 2 no. third party appeal has been submitted by Butler Architecture on behalf of the applicant Jaroslaw Dziewa on the 24<sup>th</sup> of May 2016. The main issues raised concern the following;

- In relation to the issue of the legal interest in the lands to the carry out the development it is stated that there is an established right of way through the car park for owners and tenants of the building with frontage onto Kennedy Avenue.
- It is not intended to use the Mr Price car park for parking for the proposed car valet centre.
- The manoeuvring of vehicles can be accommodated within the proposed car valet centre. It is stated that vehicles will not have to reverse into the unit to be serviced. Four drawings have been submitted with the appeal response which indicate the vehicular manoeuvres which the unit would accommodate. No external parking bays are proposed. It is stated that customers can drive into the premises if they have a query.
- The existing car park layout will not be effected by the proposed development. There are no car parking spaces in direct conflict with the proposed turning manoeuvres.
- The proposed car valet centre will not cause any increase in threat to the safety of pedestrians within the existing car park.

- In relation to staff parking requirements it is stated that two staff would generally be present but it would generate the need for one car parking space.
- There is an existing mains power supply to the unit and therefore a generator would not be required.
- A percentage of the business will be by appointment only.
- The applicant's Architect states that the basement car park would not have been regarded as a potential means of escape from the kitchen on the first floor. It is also noted that a Fire Safety Certificate has been granted for the proposed car valet centre.
- The proposed unit would not have a shortfall in car parking spaces and therefore would not be subject to a development contribution for such.
- The applicant requests that the Board uphold the decision of the Planning Authority and grant permission for the proposed car valet centre.

## **6.2 Planning Authority response**

A response to the third party appeals has been submitted by Carlow County Council on the 17<sup>th</sup> of June 2016 states that Planning Authority has no observations.

## **7.0 POLICY CONTEXT**

**Carlow Town Development Plan 2012-2018, which is incorporated into the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area 2012-2018**

The subject site is identified as being zone Town Centre GZT - "To protect the vitality and vibrancy of the town centre and provide for town centre activities"

## **8.0 ASSESSMENT**

Having regard to the above, and having inspected the site and reviewed all documents on file, the following is my assessment of this case. Issues to be considered in the assessment of this case are as follows:

- Principle of development
- Suitability of site in terms of access and traffic
- Appropriate Assessment
- Other issues

### **8.1 Principle of Development**

8.1.1 The subject site is located within lands zoned Town Centre GZT - "To protect the vitality and vibrancy of the town centre and provide for town centre activities". The existing permitted use of the subject basement is for car parking associated with the Hanover Court commercial/retail block. The proposed use a car valeting centre is not specifically included in the uses set out in the land use zoning matrix but I note that petrol service station is permitted in principle and car repairs is open for consideration. It is arguable that the use in the current appeal is a use associated with both of these uses. In my opinion, the use could be considered as permitted in principle.

8.1.2 Accordingly, while the proposed change of use may be acceptable at this town centre location in terms of zoning considerations I shall examine the suitability of site in terms of access and traffic considerations in the subsequent section of the assessment.

### **8.2. Suitability of site in terms of access and traffic**

8.2.1 Regarding the suitability of the site for the proposed car valeting centre the main concerns in my opinion relates to the level of additional traffic it would generate and the impact upon the operation of the Hanover Court car park.

8.2.2 The submitted drawing indicate two proposed car cleaning areas and three car waiting bays within the basement unit. There is no provision within the unit for staff car parking. The applicant has stated in the response to the



appeals that two staff would generally be present but it would generate the need for one car parking space as the business would be operated by the applicant and his wife. Notwithstanding this fact, staff car parking is not provided and would therefore have to be accommodated off-site. The proposed change of use would also result in the loss of 8 no. car parking spaces associated with the Hanover Court block.

- 8.2.3 The appellants raised concerns in relation to the movement of vehicles into and out of the premises and need for reversing manoeuvres. The drawings submitted with the first party appeal response indicate vehicular movement out of the car waiting bay and demonstrate that these can be accommodated within the basement unit.
- 8.2.4 The operation of a car valeting business would generate additional traffic movements to the location above the levels generated by the existing underground car park as it was primarily used by staff employed with Hanover Court. Typically the car valeting centre could provide a service for at least two vehicles per hour and more if the valeting were done at a quicker rate. Therefore over a working day at least 32-40 vehicular movements could be generated. I note in the appeal response that it is stated that a percentage of the business will be by appointment only. However I consider that the business has the potential to generate additional traffic movements by customers calling in speculatively.
- 8.2.5 I consider due to the limited width of the circulation aisle within the Hanover Court car park and the fact that a one-way traffic system is in operation that any additional traffic generated by the business which cannot be immediately accommodated within the premises has the potential to cause congestion by restricting pedestrian and traffic circulation within the car park. On inspection of the site at approximately 12pm on Thursday I observed that the Hanover Court car park was full and that the existing retail unit was generating car parking requirements in excess of the spaces available and this lead to congestion and the queuing of vehicles. The operation of the one-way system is necessary given the limited aisle width within the car park, however this exacerbates delays in traffic movement around the car park.
- 8.2.6 It is acknowledged that any busy car park gives rise to the queuing of vehicles for a parking space. If the proposed car valeting centre proves to be popular, it would give rise to significant queuing close to the entrance to the car park which could in turn would impact upon the junction with Kennedy Avenue.
- 8.2.7 In my opinion the proposed development would result in the loss of existing underground car parking spaces and generate additional traffic movements

into an existing busy car park where traffic congestion already exists. Accordingly, the proposed development would generate additional traffic and increase traffic congestion by generating queuing of vehicles to the front of the car park, thereby giving rise to significant additional potential conflicts and would endanger traffic and pedestrian safety.

### **8.3 Appropriate Assessment**

8.3.1 The appeal site is situated circa 560m from the River Barrow and the River Burren a tributary is located 30m to the south of the site. The River Barrow and forms part of the River Barrow and River Nore SAC (Site code 002162).

8.3.2 The application was accompanied by a report titled '*Appropriate Assessment Screening Report for Mr Jaraslaw Dziewa, Hanover Court Car Park, Kennedy Avenue, Carlow*' by Panther Environmental Solutions Ltd. The report concludes that there are no elements of the development that could, on their own or in combination with other plans or projects, lead to risk of significant impacts on European Sites.

8.3.3 Having regard to the nature and scale of the proposed development, the nature of the receiving environment, namely an urban and fully serviced location and proximity to the nearest European site, I am satisfied that no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

### **8.4 Other issues**

8.4.1 The appellants have raised the issue of whether the applicant has sufficient legal interest in the lands to carry out the proposed development. The Planning and Development Act 2000, as amended, requires that applicants have sufficient legal interests in the lands to carry out the development. It is noted that the Hanover Court car park is a private car and is currently leased by the appellant Corajio (trading as Mr Price). The Planning Authority requested further information on the matter and required the submission of relevant documentation to confirm that the applicant has legal right of way from the owners of the car park to access the property. The applicant submitted copies of land registry folio maps and associated legal documents which indicate that there is a legal right of way over a section of the access road within Hanover Court car park providing access to the property.

8.4.2 Furthermore in relation to the matter I note that it is not within the remit of the Board to determine legal interests and/or obligations held by the applicant, in relation to such lands. Section 34(13) of the Planning and Development Act, 2000, as amended, relates as follows: "A person shall not be entitled solely by reason of a permission or approval under this section to carry out a development." This subsection makes it clear that the grant of permission does not relieve the grantee of the necessity of obtaining any other permits or licences which statutes or regulations or common law may necessitate." Accordingly, I do not consider that these matters are reasonable and substantive grounds for refusal of the proposed development.

## **9.0 CONCLUSIONS AND RECOMMENDATION**

9.0.1 I have read the submissions on file and visited the site. Having due regard to the provisions of the Development Plan, together with all other issues arising, I recommended that permission be refused for the following reasons and considerations.

### **REASONS AND CONSIDERATIONS**

1. The proposed car valeting centre would result in the loss of basement car parking spaces associated with Hanover Court and would give rise to additional traffic movements into the Hanover Court car park which due to the limited width of the circulation aisle operates a one-way traffic system. Accordingly, the additional traffic movements associated with the proposed development would increase the traffic congestion within the car park and its vicinity and would endanger public safety by reason of a traffic hazard and therefore, would be contrary to the proper planning and sustainable development of the area.

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**Siobhan Carroll,**  
**Inspectorate**  
**11<sup>th</sup> of August 2016**

