



An  
Bord  
Pleanála

## Inspector's Report PL08.246819.

### Development

Retain the use of part of the car park for the operation of a mobile catering unit, permission to demolish an existing outbuilding and construct one unit for the sale of food for the consumption off the premises and one retail unit at Twomey's Tavern, Abbeydorney, Co Kerry.

### Planning Authority

Kerry County Council.

### Planning Authority Reg. Ref.

16/313.

### Applicant(s)

Twomey's Tavern Limited.

### Type of Application

Retention and permission.

### Planning Authority Decision

Grant retention and permission subject to conditions.

### Appellant(s)

1. John Joe Fealy (Jnr.).

### Type of Appeal

Third party versus decision.

### Observer(s)

None.

### Date of Site Inspection

2 September 2016.

### Inspector

Stephen Rhys Thomas.

## **1.0 Site Location and Description**

1.1. The appeal site is situated at the cross roads in the centre of Abbeydorney. The village of Abbeydorney is located approximately 9 kilometres north of Tralee, County Kerry. The village is focused on the cross roads and comprises a variety of commercial services such as a small supermarket, petrol station, pharmacy, two public houses, as well as a church, school and playing pitches.

1.2. The subject site is located at the centre of the village and comprises Twomey's Tavern, its yard and car park. The rear car park is laid out with hard-core and gravel, with no line markings or car parking spaces set out. The two storey public house building itself presents a pleasant backdrop to the street at the village centre. There is no defined streetscape to the rear of the property which presents a wide and open property boundary which allows the free movement of vehicles to either park or service the business. There are a number of separate buildings to the rear of the property which form a sort of enclosure to the rear yard/car park. A watercourse bounds the northern portion of the site. The mobile catering unit, the subject of the appeal was not present on the site.

## **2.0 Proposed Development**

2.1. Permission is sought for:

- The retention of the use of a car park for the operation of a mobile catering unit.
- The demolition of an existing outbuilding.
- The construction of two commercial units, (a) for the sale of food for consumption off the premises and (b) retail.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The Planning Authority decided to grant permission for retention and permission subject to 19 conditions contained in two schedules, relevant conditions are summarised below:

- Condition 4. The use of part of the car park for the operation of a mobile catering unit, shall be restricted to five years from the date of the final grant or permission.
- Condition 13. The applicant should submit details which increase the flood resilience of the development.
- Condition 14. The applicant should submit details with regard to the car parking area and surface water management.
- Conditions 15 and 16. Conditions with regard to the operational phase of the development with regard to noise and odour nuisance.
- Condition 17. Conditions which relate to wastewater management and Irish Water requirements.
- Condition 18. The requirement to prepare a Waste Management Plan.
- Condition 19. The requirement to ensure that pollutants do not enter the watercourse during the construction and operational phase of the development.

### **3.2. Planning Authority Reports**

#### **3.2.1 Planning Report**

Basis for the planning authority decision includes:

- In overall terms the development proposal to provide two commercial units accords with the Local Area Plan for Abbeydorney.
- The use of the car park for a mobile catering unit should be temporary and cease once the commercial units are completed.

### 3.3. Other Technical Reports

Flood Risk Officer – refers to the location of the site within Catchment Flood Risk Assessment and Management Study (CFRAM), immediately adjacent to the Boherroe River, and advises the attachment of a condition with regard to flood resistance and resilience measures to be agreed with the planning authority.

Conservation Officer - raises no issues with regard to the proposed demolition development.

Listowel Municipal District Office – Operations Department – refers to deficiencies with regard to the car parking area adjacent to a regional road and recommends upgrade works.

Environment Section – refers to the attachment of conditions to do with noise and odour nuisance.

Environmental Health Officer – refers to the recommendation to the attachment of conditions to do with public health, noise/odour nuisance, waste and accessibility requirements.

### 3.4. **Third Party Observations**

None.

### 4.0 **Planning History**

4.1. There is no relevant planning history for this site.

### 5.0 **Policy Context**

5.1. Development Plan

#### 5.1.1 **Kerry County Development Plan 2015-2021**

The site is located within the Settlement Boundary of Abbeydorney, Map 12.1b.

Policy RS-11 Support the sustainable development of local rural / village shops in appropriate locations, where the scale of development is compatible with the rural character of the area.

Policy NE-35 Promote the integration and improvement of natural watercourses in development proposals.

Policy NE-73 Ensure that Town and Local Area Plans include policies and objectives requiring and / or supporting flood resilient land uses and flood resilient designs for ground floors of existing and proposed buildings in flood vulnerable locations within existing urban centres, as appropriate.

#### 5.1.2 **Tralee Killarney Hub Functional Areas Local Area Plan 2013-2019**

The site is subject to zoning objective Mixed Use and Mixed Used Streetscape Frontage. The site is located within the Development Boundary of the LAP. The north west portion of the site is located within a Fluvial Indicative Flood Risk Assessment Area. In addition, a Pedestrian Walkway/Route (indicative) skirts the northern portion of the site, as outlined in the Abbeydorney Zoning Provisions map.

## Development Strategy

The overall vision for Abbeydorney is to ensure that it develops sustainably as an attractive location for residents and that future development preserves the village's character and reinforces it where necessary

The overall development strategy is to provide for the development of Abbeydorney as a vibrant local service centre with a strong local identity, to increase its amenity provision and make the village an attractive location in which to settle.

The development strategy for the village is to:

- Ensure that future development should support the existing role and function of the village as a rural service centre and dormitory village.
- Ensure that all development shall have regard to the scale and setting of the existing village in an attractive rural landscape.
- Facilitate the sustainable development of walking and cycling routes throughout the village and particularly from development areas to the village centre and service centres. An indicative walking route is shown on LAP maps, running alongside the watercourse to the north of the site.
- Encourage sustainable expansion in the range and number of commercial services within the village which in turn will provide local employment and improve the quality of life of the local community.

Relevant zoning maps are attached to appendix 1.

### 6.0 Natural Heritage Designations

The nearest European site is the River Shannon SAC, located approximately seven kilometres to the north east of the site. The Boherroe River runs along the northern boundary of the site and forms a part of the river systems that flow in to the River Shannon SAC.

## 7.0 The Appeal

### 7.1. Grounds of Appeal

John Joe Fealy of Fealy's The Abbey Grill, Abbeydorney submitted an appeal, the grounds of appeal can be summarised as follows:

- There is already a sufficient amount of convenience and takeaway food establishments in the village.
- Understands that Kerry County Council ordinarily do grant permission for takeaways, but chose to grant permission for a mobile takeaway unit and for a permanent takeaway unit.

### 7.2. Planning Authority Response

None.

### 7.3. First Party Response

First party response to the third party appeal

The applicant provides a background to the reasons for the takeaway van business at this location and the rationale for the development of new retail units. In addition, the applicant is satisfied to adhere to the conditions of the grant of permission applied by Kerry County Council. No new issues are raised.

### 7.4. Observations

None.

## 8.0 Assessment

- 8.1. The main issues in this appeal are those raised in the grounds of appeal. In addition, there are other issues of relevance which are not raised in the appeal, however, I consider it necessary to address residential/visual amenity and flood

resilience. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Principle/policy issues
- Residential Amenity
- Visual Amenity
- Flood Resilience
- Appropriate Assessment

## 8.2. Principle/policy Issues

8.2.1 The proposed takeaway use is open for consideration under section 1.5 Zoning Definitions and Zoning Matrix of the Tralee Killarney Hub Functional Areas Local Area Plan 2013-2019, Retail use is permitted in principle and is consistent with the policies for the village centre. The proposed retail and takeaway development is consistent with the aim of the planning authority to develop Abbeydorney as a vibrant local service centre and to encourage sustainable expansion in the range and number of commercial services available to the community. I therefore consider that the provision of the retail and takeaway units is acceptable and in accordance with the stated objectives of the Council for the village.

8.2.2 The appellants concern about the planning status of the mobile catering unit are broadly addressed by the grant of permission issued by the planning authority. The permission restricted the period of time for the retention of the use of part of the car park for mobile catering unit. Likewise, in the event of a grant of permission by the Board, a similar condition should be attached to restrict the use of the car park for such a purpose and if the commercial units are completed earlier than five years the use of the car park area for the parking of a mobile catering unit should cease.



8.2.3 It is understandable that the third party would have serious concerns regarding the potential adverse impact on business arising from the temporary retention of part of the car parking area for the placement of a mobile catering unit and the eventual construction of a purpose-built takeaway unit. This is a matter of competition and, the Retail Planning Guidelines (RPG) 2012 provide that the planning system should not inhibit competition, preserve existing commercial interests or prevent innovation and planning authorities should avoid adversely affecting competition in the retail market. In this regard the RPG 2012 state: 'An Bord Pleanála should assess the likelihood of any adverse impacts on the vitality and viability of the city or town centre as a whole, and not on existing traders.' (p.15). Though this advice refers to cities and towns it is readily applicable to village centres too, consequently, I consider that the proposed temporary change of use of the car park area for the siting of a mobile catering unit and the construction of a dedicated takeaway unit will not adversely affect the vitality and viability of Abbeydorney village centre and may actually have a positive impact through the construction of additional commercial units. Whilst I note that there are existing fast food offerings in the village (the Abbey Grill, Gala supermarket with hot deli counter and the soon to be completed refurbished petrol station and shop), it is the direct consequence of planning policy which results in the accretion of commercial services centrally located within the village that results in open competition and the demand for services, in this instance fast food takeaways. As such, the market would also determine to some degree the viability of such units within the village. Furthermore, a grant of permission for the provision of a dedicated takeaway unit in this instance does not preclude the future change of use as market demand changes and alternate tenants are attracted to the village.

### 8.3. Residential Amenity

8.3.1 Given the village centre location and the mixed use zoning objective for the area, it is not anticipated that residential amenity will be adversely impacted upon by the proposed development. In order to preserve the existing residential amenity of the

wider area, appropriate conditions should be attached in order to ensure adverse impacts of noise and odour nuisance are controlled and managed.

#### **8.4. Visual Amenity**

8.4.1 The County Development Plan aims to promote the integration and improvement of natural watercourses in development proposals. In addition, the Abbeydorney Zoning Provisions map of the LAP shows an indicative recreational walking trail between the historical Abbey site and around the village and a desire to protect features of biodiversity and cultural importance. In this context, an indicative route for a walking trail passes along the northern boundary of the appeal site. The proposed commercial units will be located to the northern section of the site and are situated off the boundary, however, a detailed boundary and landscape treatment plan has not been submitted. In the interests of securing stated objectives of the Council and to enhance the visual amenity of the village, an appropriate landscape and boundary treatment plan should be prepared and agreed with the planning authority.

#### **8.5. Flood Resilience**

8.5.1 The appeal site is located within the Catchment Flood Risk Assessment and Management Study (CFRAM), immediately adjacent to the Boherroe River. The County Development Plan has a stated policy which requires flood resilience for the ground floors of development proposals, in flood vulnerable locations within existing urban centres. It is noted that the site is occupied by existing buildings and a car park. The proposed development will retain a mobile catering unit on the car park and demolish some of the existing buildings and replace them with new commercial units. I consider that the situation with regard to flooding remains as is, and maybe improved, therefore, in the event of a grant of permission a condition should be

attached to ensure that the surface water drainage works comply with the technical standards of the Council. The planning authority attached conditions to the grant of permission with regards to flood resilient design and this is considered to be a reasonable condition, a similar condition should be attached in this instance.

## **8.6. Appropriate Assessment**

8.6.1 A watercourse (Boherroe River) located along the northern boundary of the site flows into the River Shannon SAC approximately seven kilometres to the north east. The report of the Council Planner included an Appropriate Assessment Screening Report and concluded that there is no potential for significant effects to Natura 2000 sites. The site is currently a hard-core/gravel car park and occupied by existing buildings, given that the proposed development seeks to retain a mobile catering unit on the car park and develop commercial units in place of the existing buildings, I consider that there is unlikely to be any significant impacts. In this context and having regard to the nature and scale of the development it is proposed to construct as part of an established village centre environment, 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.

## **9.0 Recommendation**

I recommend that permission be granted, subject to conditions for the reasons and considerations as set out below.

## **10.0 Reasons and Considerations**

10.1. Having regard to the provisions of the Kerry County Development Plan 2015-2021, the Tralee Killarney Hub Functional Areas Local Area Plan 2013-2019 and to the nature and scale of the development it is proposed to construct, the temporary

mobile catering unit use it is proposed to retain and to the pattern of development in the area, it is considered that subject to compliance with the following conditions, the proposed development would not seriously injure the amenities of the area or of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to the commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The use of part of the car park area for the operation of a mobile catering unit shall be for a period of five years from the date of this order. In the event that Unit 1 for the sale of food for consumption off the premises is completed prior to the expiration of the aforementioned five years the use of the car park for the operation of a mobile catering unit shall immediately cease.

Reason: In the interest of residential and visual amenity

3. The site shall be landscaped in accordance with a comprehensive scheme of landscaping with specific attention to the river side boundaries, details of

which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

4. Prior to the commencement of development the developer shall submit for the written agreement of the planning authority full details demonstrating compliance with the following: (a) The ventilation system shall be adequately filtered and externally vented so as not to cause a nuisance to neighbouring properties. (b) Any fumes emitted from the premises shall be minimised and, if necessary, treated using the Best Available Technology and emitted to the outer air. (c) The noise from the operation of the ventilation system shall be attenuated so as not to cause a noise nuisance to nearby residential properties.

Reason: In the interest of public health.

5. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: To ensure adequate servicing of the development, and to prevent pollution.

6. No advertisement or advertisement structure, the exhibition or erection of which would otherwise constitute exempted development under the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, shall be displayed or erected (on the building/within the curtilage of the site) unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity

7. Details of all external shopfronts and signage shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

Reason: In the interest of the amenities of the area and visual amenity.

8. Prior to the commencement of the development the applicant/developer shall submit details increasing the flood resistance and flood resilience of the development, for the written agreement of the planning authority.

Reason: In the interests of flood protection and the proper planning and sustainable development of the area.

9. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interest of public safety and residential amenity.

10. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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Stephen Rhys Thomas  
Planning Inspector

4 October 2016