



An
Bord
Pleanála

Inspector's Report PL10.247398.

Development	Permission for the interconnection of units 12 & 13 to form one unit, the change of use from retail use to coffee shop use, the erection of fascia and projecting signage and all associated site works.
Planning Authority	Kilkenny County Council.
Planning Authority Reg. Ref.	16/522.
Applicant(s)	Insomnia Coffee Company.
Type of Application	Permission.
Planning Authority Decision	Grant permission with conditions.
Appellant(s)	1. Helen Clarke
Date of Site Inspection	17 th January 2017.
Inspector	Bríd Maxwell

1.0 Site Location and Description

1.1. The appeal site comprises units 12 and 13 located at ground floor level within the Market Cross Shopping Centre in Kilkenny City Centre. The combined units have a floor area of 136m² and are currently vacant, last used for retail purposes. On the date of my site visit I noted a reasonably vibrant shopping centre with a predominance of retail uses, however I also noted three other vacant units within the Market Cross Centre.

2.0 Proposed Development

2.1. The proposal involves the interconnection of units 13 and 14 to form one single unit and change of use from retail use to coffee shop use. The proposal also involves the erection of fascia and projecting signage and all associated site works. An indicative floor plan demonstrates proposed seating arrangement with accommodation for approximately 48 customers.

3.0 Planning Authority Decision

3.1. Decision

3.1.1 The Planning Authority decided to grant permission subject to four conditions including:

- Condition 2 restricting opening hours to between 07:00 and 23:00 daily.
- Condition 3. The use shall be as a coffee shop. Other restaurant uses shall be formally agreed with the Planning Authority.
- Condition 5. Waste management plan.

3.2. Planning Authority Reports

3.2.1 The report of the area planner asserts that the loss of two retail units is not considered to affect the vibrancy of the centre and recommends permission subject to conditions.

3.3. Other Technical Reports & Third Party Observations

3.3.1 Irish water submission indicates no objection subject to conditions.

Submission from Mrs Helen Clarke objects to the development asserting that the proposal will have negative impact on existing restaurants and coffee shops.

4.0 Planning History

4.1. No recent applications in relation to the site.

5.0 Policy Context

5.1 Development Plan

The Kilkenny City and Environs Development Plan 2014 refers. The site is located in an area zoned "General Business". The objective is to provide for general development. The site is also within the City Centre Architectural Conservation Area.

6.0 Natural Heritage Designations

- River Nore SPA (Site Code 004233)
- River Barrow and River Nore SAC. (Site Code 002162)

7.0 The Appeal

7.1. Grounds of Appeal

7.1.1 The appeal is submitted by Mrs Helen Clarke, Ashbrooke, Tullamaine, Callan, Co Kilkenny. Grounds of appeal are summarised as follows:

- Toilet facilities should be provided based on the size of the proposed unit
- Adequacy of ventilation, grease traps and refuse storage is questioned.
- Services - Sewerage and grease traps.
- Note numerous eateries in Kilkenny demonstrated on attached map.
- Fire access

7.2. Planning Authority Response

7.2.1 The Planning Authority chose not to comment on the appeal.

7.3. First Party Responses

The response on behalf of the first party is submitted by The Building Consultancy and is summarised as follows:

- Existing public toilet within the centre will serve the premises.
- Premises will be suitably ventilated. Notably no cooking will be undertaken on the premises therefore odour issue minimal.
- Issues of accessibility and fire safety addressed as part of disability access certificate and fire safety certificate.
- Premises connected to mains sewage waste.
- Grease traps will be provided.
- Proposal will provide more varied destinations for tourists and residents.

- Majority of established eateries are located either on the main street or side streets. Location within the confines of the shopping centre will have a minimal effect on existing establishments.
- Provision of a viable use in an existing vacant property will bring employment and is in accordance the Development Plan.

8.0 **Assessment**

- 8.1. I consider the key issues in determining this appeal relate to the principle of the proposed development and appropriateness of the proposed change of use. The issue of Appropriate Assessment also needs to be addressed.
- 8.2. As regards zoning the site is within the area zoned “General Business”. The objective is to provide for general development. The proposed use which provides for cafe use in combined units 12 and 13 is consistent with this zoning and is therefore acceptable in principle.
- 8.3 The third party appeal asserts that there is no need for another café at this location and that the proposed development will have a negative impact on established restaurants in the vicinity. I note that planning policy including the retail planning guidelines 2012¹ provides that the planning system should not be used to inhibit competition, preserve existing commercial interests or prevent innovation. I consider the proposed development will enhance the retail services offer and support the existing range of activities and services within the Market Cross Shopping Centre. On this basis I consider that the proposed use will have a positive impact on the vitality and viability of the Market Cross Shopping Centre.
- 8.4 As regards the servicing, ventilation, refuse I consider the proposals to be reasonable and appropriate. Fire safety and access issues are appropriately matters to be addressed as part of disability access and fire safety certificates. As regards

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

the details of proposed works minimal interventions are proposed and signage proposals are appropriate in the site context.

- 8.5 On the issue of Appropriate Assessment, significant effects are not likely to arise either alone or in combination with other plans or projects that will result in significant effects to the integrity of the Natura 2000 network. Having regard to the nature and scale of the proposed development and the receiving environment, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have significant effect individually or in combination with other plans or projects on a European Site.
- 8.6 Having regard to the foregoing, I am satisfied that the proposed development is in accordance with the objectives of the Kilkenny City and Environs Development Plan 2014 and that there will be no undue impact on the amenities of the locality. I recommend that the decision of Kilkenny County Council be upheld and permission granted for the reasons and considerations set out below and subject to the conditions attached.

REASONS & CONSIDERATIONS

Having regard to the zoning objectives for the area and the pattern of land use in the vicinity it is considered that, subject to the conditions set out below, the proposed development will not unduly impact on the amenities of the area or property in the vicinity and is therefore in accordance with the proper planning and sustainable development of the area.

CONDITIONS

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

developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Use of the premises shall be as in accordance with the details as submitted. No change of that use shall take place without a prior grant of planning permission notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001 and any statutory provision amending or replacing them.

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

3. The developer shall control odour emissions from the premises in accordance with measures which shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

Reason: In the interest of public health and to protect the amenities of the area.

4. Litter in the vicinity of the premises shall be controlled in accordance with a scheme of litter control which shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development. The scheme shall include the provision of litter bins and refuse storage facilities.

Reason: In the interest of visual amenity.

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

Reason: In the interest of public health and to ensure a proper standard of development.

6. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development

Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

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

Bríd Maxwell,
Planning Inspector
January 2017