



An
Bord
Pleanála

Inspector's Report PL91.247492

Development	Change of use of existing public house to fast food takeaway with new signage, internal alterations, ventilation system and associated works.
Location	Lower Main Street, Hospital, Co. Limerick
Planning Authority	Limerick City & County Council
Planning Authority Reg. Ref.	16/320
Applicant(s)	Donal Butler
Type of Application	Planning Permission.
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Val & Helen O'Sullivan William Fogerty, T/A BPS Take Away Restaurant

	Niall O'Sullivan
	Golden Phoenix Restaurant
Observer(s)	None.
Date of Site Inspection	07 th February, 2017
Inspector	A. Considine

1.0 Site Location and Description

- 1.1. The subject appeal site is located within the centre of the town of Hospital and has a stated area of 0.041ha¹. The building comprises a two storey building which currently operates as a public house and lies in the Architectural Conservation Area of the town.

2.0 Proposed Development

- 2.1. Permission is being sought to change the use of existing public house to fast food takeaway with new signage, internal alterations, ventilation system and associated works, all at Lower Main Street, Hospital, Co. Limerick.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant planning permission for the proposed development subject to 10 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The initial planning officers report considered the proposed development in terms of the development plan and local area plan requirements, planning history and the comments submitted by internal departments of Limerick County Council as well as third party comments. The report notes that no pre-planning consultation was held, and that verbal representations were made by an Elected Member. The report also notes that details of the ventilation and grease trap proposals were submitted but that further information is required in relation to the air extraction system to serve the development. The report also noted that the Area Engineer made no comments and therefore the PA assumes that no significant issues arise in terms of roads and traffic. Further information was required in relation to Conservation issues also.

¹ The Board will note the third party appeal refers to an area of land which is included in the site area which lies outside the ownership of the applicant.

Following receipt of the response to the further information request, the planning officers report considered that the proposed development was acceptable and recommended that planning permission be granted.

3.2.2. **Other Technical Reports**

Fire Officer Raised concerns in relation to the proposed development particularly with regard to the first floor. The plan does not appear to be an accurate representation of the actual layout and it is likely that there are fire safety issues. The applicant is advised to contact the Fire Officer.

Pollution Control Conditions advised to be attached to a grant of permission.

Environment Section Further information is required in relation to details of any filter system used, any odour counteractant or neutralising systems used and flue design. Following receipt of the response to the FI request, the Environment Engineer recommended conditions be attached should permission be granted.

Conservation Officer Further information is required in order to fully assess the development in terms of the setting and amenity of a protected structure and ACA. Following receipt of the response to the FI request, the Conservation Officer recommended conditions be attached should permission be granted.

3.3. **Prescribed Bodies**

Irish Water No objection subject to Conditions

Health Service Executive Reservations raised in relation to the proposed development in relation to the following;

- Layout of the kitchen and the nature and extent of the take away facility
- Compliance with EC Regulations
- Insufficient space in the layout to provide for all food handling activities, refrigeration, equipment, storage, waste management, staff changing facilities and sluice/sanitary facilities.
- Provision of seating in waiting area requires patron sanitary conveniences.
- No waste storage area provided
- No sluice or cleaning storage area has been identified.

- Zoning of kitchen will be an issue.

It is submitted that further consultation with the HSE will be necessary.

3.4. Third Party Observations

There are five third party submissions / objections made in relation to the proposed development from the following:

- Golden Phoenix Restaurant: a grant of permission will be a threat to existing business serving the town.
- William Fogarty, BPs Take-Away: a grant of permission will be a threat to existing business serving the town. The town is adequately served and can't support another such business.
- Mr. Niall O'Sullivan: Lives next door to the subject site and has windows and skylights in close proximity to the subject building. A grant of permission would render the house uninhabitable due to obnoxious odours emitted from any windows or ventilation system fitted. The peaceful enjoyment of residential yard would be non-existent.
- Val & Helen O'Sullivan: Live next door in a protected structure with many windows, doors and vents. The development would render the house uninhabitable due to obnoxious odours and noise. The operation of the premises has resulted in anti-social behaviour in the past and a repeat of this nuisance is not wanted. The sewerage system is inadequate. It is questioned whether the applicant will operate the development as the property is for sale. Experience has shown that such developments present unbearable noise and odour problems regardless of systems installed.
- Sean O'Sullivan: This is the second time this application has been made. The development is largely in a residential area and would have a detrimental effect on the value of adjoining houses. The submitted maps are incorrect and encroach on objectors property. The development was refused previously on the grounds of non compliance with Section 10.6.5.1 of the County Development Plan due to its location within an ACA. It is requested that a planning officer visit his property to view the site.

4.0 Planning History

4.1. Application site

PA ref 14/618: Permission sought to change the use of existing public house to fast food take away with new signage, internal alterations, extractor vent and associated works at Lower Main Street, Hospital, Co. Limerick. Permission was refused for the following stated reason:

“The proposed development is considered contrary to section 10.6.5.1 Takeaway premises of the County Development Plan in so far as it is considered that the development would be likely to prove detrimental to the amenities of the occupiers of nearby residential properties, to the visual amenity of the Architectural Conservation Area and contribute to parking, traffic and litter problems, odours and noise and general disturbance generated by increased pedestrian and vehicular traffic drawn into an area. It is considered that the development would seriously injure the amenities of houses and depreciate the value of property in the vicinity and would, therefore, be contrary to the proper planign and development of the area.”

PA ref 08/1294: Retention permission was sought for rear external staircase to satisfy Fire Safety Requirements. Permission was granted subject to 1 condition.

5.0 Policy Context

5.1. Limerick County Development Plan 2010 – 2016:

Chapter 10 of the County Development Plan deals with Development Management Guidelines and Section 10.6.5 deals with Takeaway premises. The guidance provides for such developments in defined retail centres and small local centres and primarily residential locations. The following is the relevant section:

10.6.5.1 Takeaway Premises in the defined retail centres

Takeaway premises are often of concern to people who live close by and indeed those living in the wider area when noise and disturbance is generated by increased pedestrian and vehicular traffic drawn into an area. Proposals for takeaway premises will be open for consideration in retail centres and core retail areas, except where:

- a) The development would be likely to prove detrimental to the amenities of the occupiers of nearby residential properties, to the visual amenity and to parking, traffic and litter problems which could not reasonably be controlled by uses of planning conditions, or
- b) The applicant has failed to demonstrate that a satisfactory ventilation flue could be provided that would not cause problems of noise and fumes for the occupiers of nearby properties and it would not be detrimental to visual amenity, or
- c) Where there is an existing dwelling immediately above, or
- d) A further change of use from retail use (Class 1) would seriously affect the retail vitality and viability of the defined retail centre due to existing concentration of takeaway premises in an area.

5.2. Hospital Local Area Plan, 2012-2018

The subject site is located within the town of Hospital where a Local Area Plan has been prepared. The site is located within the area of the town zoned Town Centre / Mixed Use, towards the northern area of the zoning. Takeaways are generally permitted in such zoned lands. The site is also located within the Architectural Conservation Area of the town and is bound to the north by a Protected Structure. A second protected structure lies to the south of the site.

The subject building is listed in the National Inventory of Architectural Heritage, Ref No. 21811024.

5.3. Natural Heritage Designations

None.

6.0 The Appeal

6.1. Grounds of Appeal

This is a multiple third party appeal as follows:

6.1.1. Mr. & Mrs. Val & Helen O'Sullivan.

The grounds of appeal are summarised as follows:

- Inaccurate definition of site boundaries
- Detremental effects of odours on appellants dwelling
- Unsuitability of proposed development within ACA in a property listed on the NIAH list (ref no. 21822024) and adjacent to protected structure.
- Waste management issues including sewerage.
- Hospital is already well served by similar takeaway outlets
- Noise.

6.1.2. Mr. William Fogarty T/A BPS Takeaway Restaurant.

- Operates one of the two take away businesses in Hospital for 20 years.
- Business has disimproved and there is only room for the present two businesses. To allow a third would seriously affect existing business.

6.1.3. Mr. Niall O’Sullivan.

- Agrees with the submission of Val & Helen O’Sullivan in regard to odours, smells, nuisance etc.
- The development will affect the peaceful enjoyment of his home to the south of the site.
- It is requested that the Board refer to the original objection submitted to the County Council.

6.1.4. Golden Phoenix Restaurant.

- Mr. Ren Guan Gao submitted an objection on the same basis as Mr. William Fogarty.

6.2. Planning Authority Response

The Planning Authority has not responded to this appeal.

6.3. First Party Response to Third Party Appeals

The First Party submitted a response to the Third Party appeals under the following headings:

- **Site Boundaries & Ownership:**

The applicant submits that the inclusion of neighbouring property was an innocuous error arising from the draftsman's unfamiliarity with updated ownership circumstances. No part of the planning application or proposed development is reliant upon, or has benefited from the accidental inclusion of the additional portion of the neighbouring property.

- **The potential effects on the amenity of adjacent property by odour and noise:**

The applicant has applied common sense, logic and a reasonable approach to the development proposal. The building is a former public bar where there is an established commercial use which differs from the residential use of the adjoining properties.

The site is located within the identified town centre.

The appellants have made sweeping generalisations without reviewing the technical site specific information submitted by the applicant, and no alternative theory or evidence in the appeals that supports their contentions in terms of noise and odours.

Significant technical information has been presented by the applicant which has not been challenged by the appellants engineer. The Planning Authority concluded that the development is acceptable.

The uses in the area include the appellants commercial yard, operating to the rear of their property, as well as the residential use.

- **Unsuitability of the proposal in the ACA and proximity to a protected structure:**

The development does not propose any external alterations and the building is not a protected structure.

The zoning confirms that takeaway uses are permissible in principle, regardless of the existence of the ACA or proximity to a protected structure.

There are a variety of uses in the vicinity of the site including commercial, residential and light industrial activities.

It is submitted that the longevity of the property, its heritage value and its contribution to the streetscape and character of the existing ACA is dependable on its commercial use. There is no demand for residential or other use and the bar is no longer viable.

- Concerns regarding waste management and sewerage:
There are no deficiencies with waste water infrastructure serving the property as suggested. It is logical and reasonable to agree by condition, the final refuse details once the operator is selected.
- Availability of Takeaways:
The spatial distribution of the property and the other takeaway facilities would satisfy that the proposal would not result in any sort of adverse excessive concentration of such uses.
It is not the role of the planning system to regulate or interfere with the commercial market. It is submitted that there is no alternative viable other than the proposed development. In the absence of the proposed or any other commercial use, the property will remain vacant and contribute to the current vacancy levels of Lower Main Street.
- Planning History:
The previous application differs materially from the current proposal.

It is requested that the Board uphold the decision of the planning authority and grant permission for the proposed development.

6.4. **Observations**

None

6.5. **Further Responses**

- 6.5.1. Niall O'Sullivan submitted a further response to the first party response to the third party appeals. It is submitted that the proposal is 99% identical to that previously refused. The lack of objections at that time was due to misinformation. The appellants parents live within 25m and 75m of the existing takeaways in the town and have caused nuisance in their form of obnoxious odours and fumes. The current proposal would be next door to the appellants residence.
- 6.5.2. Val & Helen O'Sullivan submitted a further response to the first party response to the third party appeals. The submission is summarised as follows:
- It is submitted that they have no beneficial or any interest in lands outside the curtilage of their residential property.

- It is further submitted that there is a residential use at the first floor level of the building as detailed in the submitted plans.
- A further fast food outlet has opened in Hospital, 400m from the subject site.
- The error in the site boundary line increased the site area by approximately 30%. A change in site boundaries is not an exempted development
- The impacts on the residential amenity of the adjacent residential property remains and the location of the site within an ACA needs to be considered. There would be no objections to any other commercial use that did not require ventilation for this type of cooking.
- Concerns regarding waste management remain.

Other issues raised in original appeal reaffirmed.

7.0 **Assessment**

Having regard to the nature of the proposed development and the details submitted with the planning application and appeal documents, I conclude that issues arising for consideration should be addressed under the following headings:

1. The principle of the development & the compliance with the County Development Plan.
2. Other issues
3. Appropriate Assessment

7.1. **The principle of the development & the compliance with the County Development Plan.**

- 7.1.1. The subject site is located on lands within the defined centre of the Tier 4 town of Hospital. The existing building on the site has had an obvious long history of commercial use, having been last used – is in use - as a public house. I am unclear if the public house is still operating. The subject site is zoned Town Centre / Mixed Use and takeaways are generally permitted within such zoned lands. In this regard, I consider that the principle of the proposed development can be considered as being acceptable and if permitted, would be in accordance with the requirements of the County Development Plan as it relates to town centre developments. Following my

site visit to Hospital, the Board should note that there are no similar amenities within the immediate area of the site, and the predominant use in this area of Hospital is residential. There is a Centra shop and two offices located across the road from the site as well as the local Garda Station. The secondary school is located approximately 200m to the south west of the site. However, Hospital does have other commercial entities and other amenities, including three fast food outlets.

- 7.1.2. In terms of the proposed use, I consider it reasonable to apply the specific objectives of the County Development Plan as it relates to the provision of takeaway facilities, which states as follows:

10.6.5.1 Takeaway Premises in the defined retail centres

Takeaway premises are often of concern to people who live close by and indeed those living in the wider area when noise and disturbance is generated by increased pedestrian and vehicular traffic drawn into an area. Proposals for takeaway premises will be open for consideration in retail centres and core retail areas, except where:

- a) The development would be likely to prove detrimental to the amenities of the occupiers of nearby residential properties, to the visual amenity and to parking, traffic and litter problems which could not reasonably be controlled by uses of planning conditions, or
- b) The applicant has failed to demonstrate that a satisfactory ventilation flue could be provided that would not cause problems of noise and fumes for the occupiers of nearby properties and it would not be detrimental to visual amenity, or
- c) Where there is an existing dwelling immediately above, or
- d) A further change of use from retail use (Class 1) would seriously affect the retail vitality and viability of the defined retail centre due to existing concentration of takeaway premises in an area.

- 7.1.3. In terms of the above, the Board will note that the drawings submitted with the planning application suggest that the first floor of the subject building is, or has been, used as a residence. In addition, third party appellants have submitted that the proposed development does not accord with the above policy as every building in

proximity to the subject site has a residential content. The appellant further submits that the development if permitted is likely to lead to significant loss of residential amenity, particularly in terms of foul odours, noise and waste management. Having undertaken a site visit, which included the adjacent residential property, I would agree. In particular, the Board will note that ventilation system for the proposed takeaway, notwithstanding the information presented in support of the proposed development, will result in the vent discharging in very close proximity to the adjacent house, and its windows.

7.1.4. The County Development Plan states that takeaway premises will be open for consideration in retail centres except where *the development would be likely to prove detrimental to the amenities of the occupiers of nearby residential properties, to the visual amenity and to parking, traffic and litter problems which could not reasonably be controlled by uses of planning conditions.* In this regard, consideration must be paid to the nearby residents, and those closest are located to the north and south. I am not satisfied that the development is acceptable in terms of the residential amenity of the adjacent residence, and if permitted, is likely to prove detrimental to same. That said, I am satisfied that from a visual amenity point of view, the development will have little or no impact on existing residential amenities. With regard to issues surrounding traffic and parking, I am satisfied that the area in the vicinity of the subject site provides adequate car parking facilities to service the proposed development. Finally, with regard to the issue of litter, I am satisfied that this issue could be appropriately controlled by condition.

Part c) of the this policy states that takeaway premises will be open for consideration in retail centres except where *the applicant has failed to demonstrate that a satisfactory ventilation flue could be provided that would not cause problems of noise and fumes for the occupiers of nearby properties and it would not be detrimental to visual amenity.* The Planning Authority, in their decision to grant planning permission have stipulated specific requirements with regard to noise levels arising from the proposed use, in the interests of residential amenity. In terms of the applicant demonstrating that a satisfactory ventilation flue could be provided, I am satisfied that as part of the planning application, details of the proposed extraction system were submitted to the Planning Authority. It is further noted that an existing flue rises through the building to the roof of the building on the side of the adjacent protected

structure. The flue rises only to the general height of the ridge of the roof of the subject property and generally in line with the windows of the adjacent house. Given the layout of the site, the flue and fan system, cannot be located away from the boundaries of residential properties. In terms of fumes, I am not satisfied that the development can be accommodated without resulting in a significant disamenity for the adjacent residential property. In terms of noise, I note the information submitted and also note that the modern extractor and ventilation systems can be fitted with noise silencers, which are fitted to the ducting, and which can reduce noise levels. I also note the conditions of the Planning Authority restricting noise limits, and note that the system proposed has a noise specification of less than 50dB. However, I am not satisfied that the proposal is acceptable at this location. However, should the Board be minded to grant planning permission in this instance, and a condition restricting the noise levels should be included, together with the requirement to comply with a specific noise level.

7.1.5. Part d) of section 10.6.5.1 of the Plan provides that takeaway premises will be open for consideration in retail centres except where *there is an existing dwelling immediately above*. The submitted drawings clearly indicate that there is a residential element immediately above the proposed takeaway. I have undertaken a site visit and have had regard to the planning history pertaining to the site where it is indicated that the applicant used the first floor as his residence. The drawings submitted in support of the proposed development provides that the first floor area of this structure is laid out as a residence and as such, I am satisfied that the proposal as presented does not accord with the requirements of the Development Plan.

7.1.6. Finally, this section of the CDP provides that permission will be excluded where a further change of use from retail use (Class 1) would seriously affect the retail vitality and viability of the defined retail centre due to existing concentration of *takeaway premises in an area*. This does not apply in this instance as the building is/ has been in use as a public house, and not a shop or other 'retail' use. Whether or not the proposed change of use from said public house to a takeaway would seriously affect the retail vitality and viability of the defined retail core is in question. In relation to the subject site, the Board will note that the primary uses in the vicinity of the site is residential with office and shop. I do not consider that the development, if permitted will have any impact on the vitality or viability of the retail core of Hospital. However,

and while I do have concerns in terms of the proposed use, I am satisfied that the principle of the proposed development accords appropriately with the policies of the Planning Authority.

7.2. Other Issues:

7.2.1. Other third party appeals:

The Board will note the submission of existing fast food operators in Hospital who submit that there is no capacity for a further similar business in the town. I am satisfied that the issue of competition is not a matter for the Board.

7.2.2. Encroachment of lands:

Having regard to the layout of the subject site, together with the submissions of the applicant, I am satisfied that the matter has been addressed.

7.2.3. First Party Comments:

I note the comments of the first party in terms of the commercial use of the building and the longevity of the building. I would submit that there is no real issue with the commercial use of the building, but the proposed use presents significant challenges, over and above other commercial uses including a public house, which are required to be considered in terms of proper planning and sustainable development.

7.2.4. Servicing:

In terms of the servicing of the proposed development, the Board will note that there was no objections raised from either the Area Engineer or Irish Water. I am satisfied that the development can be adequately serviced in terms of water services.

7.2.5. Planning History:

I note the planning history associated with the subject site and the comments by both the first and third parties in this regard. I conclude that the issues relating to residential amenity, notwithstanding the information provided by the first party in terms of the proposed ventilation system, remain a significant concern.

7.3. **Appropriate Assessment :**

- 7.3.1. The subject site is located at a distance of approximately 5km from the nearest SAC, being Glen Bog, Site Code 001430 to the north west of the site. The site itself, is not located within a Natura 2000 site.
- 7.3.2. Having regard to the nature and scale of the proposed development, the nature of the receiving environment, and the proximity to the nearest European site, 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.

8.0 **Recommendation**

I recommend that planning permission be **Refused** for the reasons set out below.

9.0 **Reasons and Considerations**

Notwithstanding the zoning objective afforded to the site, or the information presented in support of the proposed development, the Board is satisfied, having regard to its nature and its location immediately adjacent to principally residential buildings, that the proposed development would materially contravene section 10.6.5.1 Takeaway premises of the Limerick County Development Plan, 2010-2016, whereby the development would seriously injure the residential amenities of a significant number of dwellings in close proximity, by reason of odour and noise arising from the discharge of fumes directly into the residential properties, as well as from the management of waste activities, which would result in noise and general disturbance in a residential environment that is sensitive to such activity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

A. Considine
Planning Inspector
09th February 2017