



An
Bord
Pleanála

Inspector's Report PL19.247699.

Development	Permission for change of use of existing ground floor retail unit to take away pizzeria with associated signage and all ancillary site works.
Planning Authority	Offaly County Council
Planning Authority Reg. Ref.	16/251.
Applicant(s)	Shaw Properties Birr Ltd.
Type of Application	Permission
Planning Authority Decision	Grant permission with conditions
Appellant(s)	Tony's Cafe.
Observer(s)	Residents of Connaught Street.
Date of Site Inspection	7 th March 2017.
Inspector	Bríd Maxwell.

Site Location and Description

1.1. The appeal site comprises an established ground floor retail unit, currently vacant, located at Connaught Street, within the town centre of Birr, Co Offaly. Connaught Street which runs to the east of Main Street is characterised by a number of mixed uses. Traffic is one-way westbound. The appeal premises which was last used as a retail unit is currently vacant. The upper floor, an office unit, is also currently vacant and has a separate doorway access from the street. The adjoining unit to the west is in use as a barbershop with a residential use overhead. Adjacent to the east is a doorway and gateway entrance to the rear of Dooley's Hotel which fronts onto O'Connell Street. There are a number of mixed uses in the vicinity including a fast food takeaway, betting shop, public houses, retail and residential uses as well as a number of vacant properties.

2.0 Proposed Development

2.1 The application as set out involves permission for change of use of the ground floor retail unit to take-away. In response to the request for additional information it was outlined that the proposal will involve a small takeaway pizza and pasta parlour with no seating area. Intended hours of operation are Mon-Thurs 15:00- 00:00 Friday/Sat 14:00-00:00 and Saturday 14:00– 1:30am.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant permission subject to 10 conditions which included condition 2 agreement regarding signage details. Condition 9 restricts hours of operation. Condition 10 requires the payment of a development contribution of €470.40.

3.2. Planning Authority Reports

- Following a request for additional information in respect of signage, ventilation and a comment on issues raised in the third party submissions the final report of the area planner recommends permission subject to conditions

- Road Design report and the report of the Chief Fire Officer indicate no objection.
- Initial water services report sought additional information with regard to ventilation system

3.3. Other Technical Reports

- Irish Water – No objection.
- Environmental Health Services HSE no objections subject to conditions.

3.4. Third Party Observations

3.4.1 Submission by Residents of Connaught Street outlines objection on grounds of concentration of food outlets in the area giving rise to anti-social behaviour, noise nuisance, litter and other disturbance to residential amenity.

3.4.2 Submissions from Imelda Smyth and Tom Smyth object on grounds of negative impact on residential amenity.

3.4.3 Submission by Jim Brogan, Planning and Development Consultant on behalf of Tony's Café, Connaught Street objects to the development referring to non-compliance with development plan standards, traffic congestion, odour, noise nuisance and undesirable loss of retail unit. Seven existing restaurants in the town centre which provide take away will suffer from adverse effect on vitality and viability.

Proposal conflicts with retail objectives for the town centre which seek to prevent over development of particular retail units such as takeaways in core retail areas.

4.0 Planning History

4.1 No planning history on the appeal site.

5.0 Policy Context

5.1 Development Plan

5.1.1 The Birr Town and Environs Development Plan 2010-2016 extended to 2020 refers.

- The site is zoned Town Centre / Mixed use. (Map 4.1 shows town centre boundary). Town Centre and Retail policies appended.
- Within Chapter 4 Town Centre, Retail and Renewal, reference is made to the Birr Public Realm Plan 2009, which recognised that many of the town centre streets such as Emmet and Connaught Streets have developed a mixture of uses along their lengths overtime, adding a healthy diversity of activity to the town. The Councils will aim to sustain such mixes, to ensure that the town centre remains lively through different times of the day and week. This includes residential properties, as well as offices and public houses.
- Chapter 14 sets out the Built form and Urban Development Standards. Takeaway premises are addressed at 14.5 and Advertising Signage and Shopfronts 14.7.

6.0 Natural Heritage Designations

- Dovegrove Callows SPA(2km NW)
- River Little Brosna Callows SPA (5.5km NW)
- Kileen Bog NHA (3km W)
- Ballyduff Confinane Bog SAC (5km W)
- Island Gen SAC (7km SE)
- Lisduff Fenn SAC (5km SE)
- Sharavogue Bog SAC (5.5km SW)

7.0 The Appeal

7.1 Grounds of Appeal

The appeal is submitted by Jim Brogan, Planning and Development Consultant on behalf of Tony's Café, Connaught Street, Birr. Grounds of appeal can be summarised as follows:

- Proposed development is not consistent with the proper planning and sustainable development of the area.

- Development detrimental to the amenities of the occupiers or nearby residential properties.
- 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.
- Concentration of takeaways and night time facilities in the area.
- The establishment of takeaway on ground floor level will eliminate any prospect of first floor conversion to residential use.
- Traffic and parking issues.
- Undesirable loss of a retail unit.
- Quality of the proposed accommodation is deficient with no provision for staff changing facilities or a staff break room.
- Without prejudice to the objections raised, in the event of a permission the appellant request that permission would not extend to authorisation of dining on site and hours of operation in accordance with condition 9 of Offaly County Council.

7.2 Planning Authority Response

7.2.1 The Planning Authority requests the Board to uphold the decision to grant permission.

7.3 First Party Response

- Appeal is vexatious and anti-competitive.
- Proposed business is a fast casual pizza and pasta parlour.
- Not a fast food rather a fast casual unique quality artisan pizzeria.
- Central location of the site is appropriate for proposed use. Significant car parking available within a short distance.

- No significant negative impact on residential amenity. More likely positive impact.
- First floor is designed as office use and could potentially be used for staff facilities.
- Waste storage provided to back yard.
- Ventilation and odour addressed.
- Retail unit subject of the application has been empty for 5-6 years and there are 5 other units vacant on Connaught street.
- Proposal will add vitality to the area and add to the variety of foods being offered in the town.

7.4 Observations

7.4.1 Observations are submitted by Ann Rohan on behalf of a number of residents of Connaught Street. Residents object to the development on grounds of concentration of such uses in the vicinity resulting in negative impact on residential amenity, anti-social behaviour, noise and disturbance litter and nuisance.

7.5 Third Party Appellant's Response

7.5.1 Response of appellant to cross-circulation of first party response to the appeal notes that there is no distinction in planning terms between a fast food takeaway and fast casual outlet. The potential for use to jeopardise the conversion of upper floors in the vicinity to residential use is maintained. Negative impact on residential use overhead the barbershop adjacent. Given limited parking in the immediate vicinity congestion and illegal parking is likely. Use of upper floor as staff facilities gives rise to potential for material change of use.

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 “Town Centre / Mixed Use”. The objective is to provide for general development. The proposed use which provides for a take away is consistent with this zoning and is therefore acceptable in principle.
- 8.3 The third party appellant and observers assert that there is no need for another takeaway at this location and that the proposed development will have a negative impact on established restaurants in the area. 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 services offer and support the existing range of activities and services within the Town Centre of Birr. On this basis I consider that the proposed use will have a positive impact on the vitality and viability of the Connaught Street and Birr Town. I note that the existing unit has been vacant for a number of years and I consider that the provision of a viable use is clearly in the interest of the vitality and viability of the town centre. In light of the extent of vacant retail units in the town the loss of this small unit to retail use is not significant.
- 8.4 As regards the servicing, ventilation, refuse I consider the proposals to be reasonable and appropriate. As regards the details of proposed works minimal interventions are proposed and signage proposals are appropriate. The upper floor of the building is not part of the appeal site and therefore speculation in terms of future use is not relevant to consideration of the current appeal.
- 8.5 As regards assertions that the proposed development will have a significant negative impact on residential amenity, I consider that having regard to the scale and nature

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

of the development no significant undue impacts should arise. As regards allegations of a concentration of such uses I do not agree that Connaught Street has an undue dominance.

- 8.6 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.
- 8.7 Having regard to the foregoing, I am satisfied that the proposed development is in accordance with the objectives of the Birr Town and Environs Development Plan and that there will be no undue impact on the amenities of the locality. I recommend that the decision of Offaly 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 and by the further plans and particulars submitted on the 19th day of October 2016 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 hours of operation shall be between 14:00 hours and 00:00 hours Monday to Friday and between 14:00 and 01:30 on Saturday. The take away shall not operate on Sundays or public holidays.

Reason: In the interest of the residential amenities of property in the vicinity.

7. 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
8th March 2017