



An
Bord
Pleanála

Inspector's Report PL21.248085

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| Development | Change of use from retail to take-away restaurant at existing retail unit, signage and all associated site works |
| Location | Unit 3, Block 3, The Mill Centre, Coolaney, Co. Sligo |
| Planning Authority | Sligo County Council |
| Planning Authority Reg. Ref. | 16/316 |
| Applicant(s) | Mohamadullah Mukaray |
| Type of Application | Permission |
| Planning Authority Decision | Refuse |
| Type of Appeal | First Party |
| Appellant(s) | Mohamadullah Mukaray |
| Observer(s) | None |
| Date of Site Inspection | 25/04/2017 |
| Inspector | Gillian Kane |

1.0 **Site Location and Description**

- 1.1. The subject site refers to a ground floor single storey vacant unit in a three storey mixed use development. The ground floor units of the development are vacant with the exception of a pharmacy in Unit 1. Residential apartments are on the upper floors of the development with car parking available to the rear. The development is located in the southern side of the local country road that approaches the southern end of the village of Coolaney from the village of Carroweden in south-western Sligo.
- 1.2. Photographs and maps are attached in Appendix 1.

2.0 **Proposed Development**

- 2.1.1. Permission was sought for a change of use of a unit (87.5sq.m.) in a mixed-use block from retail to take-away restaurant, with late night opening to 02.00.

3.0 **Planning Authority Decision**

- 3.1.1. **Environment Report:** areas of concern include noise related disturbance, venting of cooking odours, waste disposal proposals and hours of operation. Site layout plan is vague regarding point of discharge and grease trapping system.
- 3.1.2. **HSE EHO:** Details drawings of proposed kitchen layout, store rooms and sanitary facilities not submitted.
- 3.1.3. **Area Engineer:** Grant recommended.
- 3.1.4. **Planning Report:** Site is zoned mixed-use, take-away is a permitted use. Proliferation of take-aways is a concern. Further information required.

3.2. **Third Party Observations**

- 3.2.1. A number of third party observations raised the following issues:
 - Litter and impact on 'tidy town'
 - Traffic hazard, lack of parking, public safety
 - Noise disturbance from late night opening
 - Odour and waste pollution
 - Proximity to the Owenbeg River, an SAC

- Proposed development does not accord with the Coolaney-Rockfield mini development plan

3.3. **Request for Further Information**

3.3.1. The applicant was requested to provide the following details:

- 1: proposals for a fume extraction system and proposals for making good of any breaks in the walls & ceilings
- 2: waste and litter management plan
- 3: confirmation that mechanical devices to alter food waste with the intent of discharging it as wastewater shall not be used
- 4: details of trading days and hours of operation
- 5: car parking to be delineated on site as shown on site layout plan
- 6: alternative signage
- 7: floor plans of proposed development

3.4. **Reports on file following submission of FI:**

3.4.1. **Environment Report:** Section has concerns regarding potential noise nuisance on residential properties overhead.

3.4.2. **Planning Report:** Proposed fan extraction system which would generate a noise level of 70dBA has the potential to create a nuisance for neighbouring residential properties. Vent will be located adjacent to the outdoor amenity area of the overhead apartments. While provision of a take-away is acceptable the area is predominantly residential and the proposed fume extraction system would have an unacceptably negative impact on the residential amenity of the overhead apartments. Permission should be refused.

3.5. **Third Party Observations:**

- Permission was refused for take-away on adjacent site due to noise levels

3.6. **Planning Authority Decision**

3.6.1. On the 30th January 2017 Sligo County Council issued a notification of their decision to REFUSE permission for the following reason:

Having regard to its nature and its location within a mixed-use area with a dominant residential component, it is considered that the proposed development would seriously injure the residential amenities of neighbouring residential properties by reason of noise at a level of 70dBA arising from the mechanical extraction of kitchen fumes. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

4.0 **Planning History**

- 4.1.1. Planning Authority Reg. Ref.: **P06/466**: Planning permission granted for a mixed use development on a 0.755-hectare site, consisting of 2 no. 2-storey blocks and 1 no. 3-storey block, landscaping including a new stream side footpath and new public square adjacent to the monument, 76 no. associated car parking spaces and associated site works, accommodation consists of Block 1. 3 No. 3-bed terraced houses, Block 2, 2 no. retail units of 85sq.m. and 107sq.m. at ground floor, 1 no. 2-bed apartment and 1 no. 3-bed apartment at first floor, Block 3, 4 no. retail units of 112sq.m., 295sq.m., 87.5sq.m., 77sq.m. at ground floor, 1 no. 3 bed apartment, 1 no. 1 bed apartment and 4 no. 2-bed apartments at first floor, and 3 no. 2-bed apartments at second floor

5.0 **Policy Context**

5.1. **Sligo County Development Plan 2011-2017**

- 5.1.1. Development management standards relevant to the proposed development and provided in the CDP are as follows: Table 12.A states that 1 car parking space is required for every 18sq.m. of take-away space
- 5.1.2. **Section 12.4.15** of the plan states that in order to maintain an appropriate mix of uses and protect night-time amenities in Sligo towns, the County Council, through the appropriate use of its development management powers, will prevent an excessive concentration of pubs, bars, nightclubs and hot-food take-aways in any particular area. The Council will ensure that the intensity of any proposed use is in keeping with both the character of the area (i.e. residential, mixed-use, etc.) and with adjoining businesses, when

development proposals are being considered. The following issues shall be taken into account in the assessment of applications for the above uses:

- Noise at the boundaries will be carefully monitored and noise insulation measures will be required at the time of the submission of the planning application. Other effects of the development on the amenity of nearby residents must be assessed prior to the granting of planning permission, i.e. general disturbance, hours of operation, car parking, litter and fumes.
- New buildings must be designed to prevent noise escaping, and with adequate provision for refuse disposal, storage and collection.
- The Council will encourage a diversity of uses in town centres throughout the day and evening, and will ensure that proper litter control measures are in place prior to the opening of any premises.
- Façade design will be carefully controlled by the planning authorities, in particular the type and degree of advertising signage and lighting. The design shall respect the character of the street and the buildings.

5.1.3. **Section 12.4.16** of the plan, in relation to Fast-food take-aways states that the “Proliferation of hot-food take-aways will not be permitted in any particular area. Regard will also be had to the impact of hot-food take-aways on the amenities of an area, including noise, odour and litter. The planning authority may impose restrictions on opening hours of such uses as a condition of a planning permission”.

5.1.4. In relation to noise control, the development plan has the following policies:

P-NC-1 Seek to protect the amenity of dwellings, businesses, community facilities and other existing developments when assessing proposals for development that is likely to generate significant levels of noise.

P-NC-2 Ensure all new developments incorporate appropriate measures to minimise noise nuisance from the development.

5.2. **Coolaney Rockfield Mini-Plan 2011-2017**

5.2.1. The subject site is zoned ‘mixed’ use in the mini-plan. Within such zones, take-aways are a permitted use.

- 5.2.2. The plan states that community facilities in Coolaney-Rockfield consist of a primary school, crèche, community centre, sports field and playground, church, burial ground and health centre but that recent population growth will eventually result in demands for more or enhanced community facilities. Therefore, while some lands have been specifically zoned to accommodate additional community facilities, a flexible approach should be taken towards proposals for community developments on other suitable sites
- 5.2.3. The plan notes that retail and commercial activities are restricted to a number of sole trader outlets, mostly in the vicinity of Coolaney's Main Street and that it is of concern that none of the retail units in a recently-completed mixed-use development have become occupied (the subject site), indicating weak demand in this sector. There is no tradition of local industry or enterprise providing employment. Efforts to address these deficiencies should be encouraged and accommodated, where appropriate.
- 5.2.4. Section 28.4 of the mini-plan provides the following objectives for village-centre mixed-use zones:
- A. Facilitate a blend of mainly residential and commercial/retail activities in the areas zoned for mixed uses, i.e. in the village core south of the Owenbeg River.
 - B. Promote the creation of a distinctive streetscape and ensure that new development is consistent in form and character with the existing traditional buildings along the Main Street. Terraced buildings are preferable along the Main Street.
 - C. Make provision for a secondary commercial nucleus within the mixed-use zone located on the southern side of the Rockfield Road, adjoining the new residential area, the business/enterprise park and the town park.
 - D. Require that lands within the secondary mixed-use zone be assembled and developed on the basis of an integrated design proposal/masterplan. Terraced buildings are recommended along the main street and the new roads/streets.
 - E. Give special attention to the siting, layout and design of new or redeveloped buildings around junctions. Particular care should be afforded to the

design of structures located at the junction of Local Roads L-6804 (Rockfield Road) and L-2801-43 (Mountain Road).

6.0 **The Appeal**

6.1.1. A first party appeal of the Council's decision can be summarised as follows:

- Proposed development is in accordance with the zoning objective of the development plan and would contribute much needed life to the streetscape.
- The design of the proposed ventilation system is such that it will not injure the residential amenity of adjoining properties. The fan will be internal and fumes will be ducted to a high level discharge point at a velocity specified by Sligo County Council. The fan is located at the furthest point from the bedrooms of the apartments.
- It is submitted that a noise level of 70dBA would not be audible from within the apartments. The anti-vibration mounting, location underneath the balcony and sound separation in the ceiling / floor structural slab separating the retail and residential units, all will reduce the noise impact.
- The proposed development has been revised to provide for a reduced canopy size (from 9ft to 6ft) and a drop in discharge velocity from 15.8m/s to 13.5m/s. This will reduce the noise level to 66dBA.
- The applicant is happy to carry out a sound analysis from with the residential units if required.
- The Board is requested to grant permission.

6.2. **Planning Authority Response**

6.2.1. The minor amendments to the extraction fan and minor reduction in noise emissions are not considered significant. The Board is requested to uphold the Planning Authority's decision.

7.0 **Assessment**

On reading of all documentation submitted with the appeal, I consider the issues to be:

- Principle of the proposed development
- Appropriate Assessment

7.1. **Principle of the Proposed Development**

- 7.1.1. Take-away use is a permitted use for the subject site in the Collaney-Rockfield mini-plan. As noted above, the plan notes that the subject site has not managed to attract retail uses / trade to the development. The plan states that efforts to address this deficiency should be encouraged and accommodated, where appropriate. Section 28.4 of the mini-plan seeks to facilitate a blend of mainly residential and commercial/retail activities in the areas zoned for mixed uses, i.e. in the village core south of the Owenbeg River.
- 7.1.2. The proposed development is considered to comply with the objectives and policies of the Coolaney-Rockfield Mini-Plan 2011 -2017.
- 7.1.3. The County Development plan, in section 12.4.15 states that in order to maintain an appropriate mix of uses and protect night-time amenities the County Council, through the appropriate use of its development management powers, will prevent an excessive concentration of pubs, bars, nightclubs and hot-food take-aways in any particular area. I note the Planning Authority Planning report refers to a take-away on the main street of Coolaney, approx. 50m from the subject site. On the date of my site inspection this appeared to be the only other night-time food outlet use in the village. I am satisfied that the proposed development complies with the objective of the development plan in terms of control of night-time uses.
- 7.1.4. I note the report of the Environmental Scientist for the Council, which states that hours of trading could be an area of concern. I draw the Boards attention to section 12.4.16 of the County development plan which states that provides that the Planning Authority may impose restrictions on opening hours as a means of ensuring that a take-away development does not impact on the residential amenity of an area. Should the Board decide to

grant permission, a condition limiting the opening hours of the take-away to 23.00 should be attached.

- 7.1.5. The fan for the proposed take-away unit is to be located internally with a high level duct to discharge any fumes at a point higher than the adjoining residential balconies. The redesigned unit, details of which were submitted to the Board, would have a noise level of 66dBA.
- 7.1.6. The subject unit is located in a mix-use development. Residents of the upper floors would have been aware of the fact when they occupied the units. That the units could be occupied by a night-time use must have been expected in the centre of a village for which it is Council policy to encourage development. The protection of the needs of the residents must be balanced against the needs of the village to trade successfully. I am satisfied that the proposed noise limit of 66dBA is acceptable in the centre of a village in a mixed-use development. The environmental health office of the Council have a role in monitoring and enforcing noise limits. Breaches of agreed noise limits can be addressed by the EHO.
- 7.1.7. I am satisfied that the proposed development is in compliance with the Sligo County Development Plan policy P-NC-1 which seeks to protect the amenity of dwellings, businesses, community facilities and other existing developments when assessing proposals for development that is likely to generate significant levels of noise and policy P-NC-2 which seeks to ensure all new developments incorporate appropriate measures to minimise noise nuisance from the development.

7.2. **Appropriate Assessment**

- 7.2.1. The subject site is approximately 100m to the Unshin River SAC (referred to as the Owenboy River). However, having regard to the nature and scale of the proposed development and the nature of the receiving environment, no appropriate assessment issues arise and it is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects, on a European site.

8.0 RECOMMENDATION

8.1.1. I have read the submissions on file, visited the site, and have had due regard to the provisions of the Sligo County Development Plan 2011-2017 and the Coolaney-Rockfield Mini-Plan 2011-2017 and all other matters arising. It is considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with the development plan, would not injure the amenities of the area and would be in accordance with the proper planning and sustainable development of the area. I recommend permission be GRANTED subject to the following conditions:

REASONS AND CONSIDERATIONS

Having regard to the zoning objectives for the area and pattern of development in area, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or property in the vicinity and would be acceptable in terms of traffic safety, public health and convenience. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

- 1 The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further information submitted to the Board on the 27th day of February 2017 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. The hours of operation shall be between 12.00 hours and 23.00 hours Monday to 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.

3. A noise monitoring programme shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development, to include an annual review, until such time that the Planning Authority decree, undertaken by a qualified acoustic engineer at the nearest noise sensitive location. The developer shall carry out any amendments to the subject development requested by the planning authority subject to the review.

Reason: In the interest of protecting the amenity of the nearby residential properties.

4. Notwithstanding the provisions of the Planning and Development Regulations 2001, as amended, or any statutory provision amending or replacing them, other than that indicated on the drawing no. 160507-3-104, no advertisement signs (including any signs installed to be visible through the windows), advertisement structures, banners, canopies, flags, or other projecting elements shall be displayed or erected on the buildings or within the curtilage of the site, unless authorised by a further grant of planning permission.

Reason: To protect the visual amenities of the area.

Gillian Kane

Gillian Kane
Planning Inspector

10 May 2017