



An  
Bord  
Pleanála

## Inspector's Report PL02.248859

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<b>Development</b>	Change of use of fruit and vegetable shop to take away.
<b>Location</b>	Church Street, Kingscourt, County Cavan.
<b>Planning Authority</b>	Cavan County Council
<b>Planning Authority Reg. Ref.</b>	17/161
<b>Applicant(s)</b>	John O'Reilly
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party v Refusal
<b>Appellant(s)</b>	John O'Reilly
<b>Observer(s)</b>	Pat Burns and Others.
<b>Date of Site Inspection</b>	18 <sup>th</sup> October 2017
<b>Inspector</b>	Hugh Mannion

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## **1.0 Site Location and Description**

1.1. The site of the proposed development has a stated area of 0.011ha and the floor area the subject of the application for change of use is 43.5m<sup>2</sup>. The building's current permitted use is as a fruit and vegetable shop but is not occupied at present. The application site is part of a terrace, the building immediately to the north is the last in this terrace and is in use as a barber's shop. Adjoining this barber's shop is a laneway (the subject of the observer's comment); this laneway gives access to the rear of the barber's shop and to two or three residential units in a return behind the barber's shop. To the south of the site and completing the terrace are four further premises; the three closest are in residential use while the fourth is an unoccupied charity shop. A further lane separates the last two buildings on this side of Church Street; one an unoccupied jeweller's shop and the last may be an unoccupied garage.

## **2.0 Proposed Development**

2.1. The proposed development comprises a change of use from fruit and vegetable shop to 'take away' premises, signage and connection to services at Church Street, Kingscourt, County Cavan.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The planning authority refused planning permission because despite being zoned for 'town core' activity the proposed development would injure the amenity of nearby residential property and result in traffic and litter problems and that the application did not demonstrate that satisfactory ventilation could be provided.

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

#### **3.2.1. Planning Reports**

- The planner's report recommended refusal for the reason set out in the manager's order.

#### **3.2.2. Other Technical Reports**

There are no other technical reports.

### **3.3. Prescribed Bodies**

Irish water reported no objections.

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

There was a third party observation made by Pat Burns and others making the points, generally, set out in their submission to the Board.

## **4.0 Planning History**

Under reference number 98/228 permission was granted for change of use from residential to retail on the site.

## **5.0 Policy Context**

### **5.1. Development Plan**

The site is zoned 'Town Core Development' in the Cavan County Development Plan 2014 to 2020 with the objective;

"Establishes the extent of the town core and identifies the most suitable location for a mix of retail, commercial, residential, cultural and social uses. The overall aim is to strengthen the vitality and viability of the town core by actively facilitating the reuse of existing buildings, as well as, brownfield and Greenfield sites. The

emphasis will be on high quality urban design which does not detract from the existing urban framework.”

The permitted in principle uses in these areas are;

A.T.M., Bed & Breakfast, Betting Office, Carpark/Commercial/Surface, Casual Trading, Places of Worship, Civic Buildings and Offices, Community Facilities, Conference Centre, Childcare Facilities, Cultural Use, Night Club, Medical and Related Consultants., Education, Enterprise Centre, Entertainment Uses, Farmers Market, Financial Institutions, Take-away/Fast Food Outlet, Funeral Home, Guesthouse, Health Centre, Home Based Economic Activity, Hotel/Conference Centre, Offices, Open Space, Petrol Station, Professional Services, Public House, Public Services, Utility Installation, Recreational Buildings (Commercial), Recreational Facility/ Sports Club, Recycling Centre Facility, Residential, Restaurant/Cafe, Residential Care Home, Service Garage, Shop Neighbourhood, Shop-Major Sales Outlet, Taxi Office, Traveller Accommodation, Veterinary Surgery, Sheltered Housing, Nursing Home.

## **5.2. Natural Heritage Designations**

The site is unaffected by natural heritage designations.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- The premises have a permission under reference 98/228 for a change of use from residential to shop with no restricting condition in relation to opening hours.
- The proposed development complies with the Development Plan policy (12.2) to support viability and vitality of the town centre through reuse of existing buildings.

- It is development plan policy to permit take-aways in appropriately zoned locations. This site is zoned town centre. There are 64 commercial premises along Main Street/Church Street of which take-aways represent only 6.25%.
- There are several instances in the town where take-aways adjoin residential uses without injury to residential amenity.
- There will be no injury to visual amenity and no change to the streetscape is proposed.
- Table 4.7 of the development plan requires provision of 3 car spaces per 100m<sup>2</sup> of take-away floor space. The existing use avails of 3 car parking spaces. Therefore, there is no deficit in car parking provision.
- No extractor fans are required because the flue system will vent to an existing chimney.
- Bins can be provided to prevent littering the public street.

## 6.2. Planning Authority Response

- The planning authority did not respond to the appeal.

## 6.3. Observations

There is an observation from Pat Burns and others which may be summarised as follows;

- There are residential uses in this area which will be adversely impacted upon by the proposed development.
- The observer has a right-of-way over the adjoining laneway which will be subject to nuisance arising from the proposed development.

- There is are two Chinese takeaway/restaurants, and Indian restaurant and a fish and chip take away, two Italian takeaways, coffee shops and bars in the vicinity of the site.
- The proposal will give rise to litter.
- Bins do not resolve the issue of litter outside takeaways.

#### 6.4. Further Responses

There re no further responses.

### 7.0 Assessment

7.1. The site is zoned for 'town centre' uses in the Cavan County Development Plan 2014-2020. Takeaway/fast-food outlets are permitted in principle in areas so zoned. The permitted use of the building is retail. Section 10.9 of the County Development Plan states that the cumulative impact of a number of take-away restaurants in any particular area will be considered in the assessment of any application. Impacts such as noise, litter, disturbance, residential amenities, proximity to residential dwellings and traffic, will also be taken into consideration. The Planning Authority will control the opening hours of takeaways. Proposals for takeaways are generally permitted in appropriately zoned areas except where;

- Development would be likely to prove detrimental to the amenities of nearby residential properties, to visual amenity and parking and which would result in traffic and litter problems which could not reasonably be controlled by use of planning conditions.
- The application 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 the visual amenity of the area.
- A further change of use would seriously affect the retail vitality and viability of the defined retail centre due to an existing concentration of takeaway premises in an area.

- 7.2. The planning authority refused permissions for reasons related to impact on residential amenity, noise and odour. The observer states that the residential units behind the adjoining barber's shop to the north will be negatively impacted by the proposed development.
- 7.3. The application site is on the southern end of Church Street south of a roundabout which allows two regional routes (the R164 to Kells and the R165 to Ardee) to access the town centre. Most of the commercial uses are north of this roundabout. Immediately to the north of the site is a barber's shop which has 2 residential uses behind it which use the adjoining lane to access Church Street. Past this lane are two more residential uses and then a mixed café/residential building. Almost directly opposite the site is a post office, a two unoccupied residential units in poor repair and a Chinese restaurant, pub, and an off licence before the roundabout. There are six buildings to the south of the application site within the 'town core' zone and then that zone ends and is followed by 'public/community' zoning for a Church of Ireland church.
- 7.4. The issues of odour and litter control may be handled by way of planning condition. Irish water has no objection to the proposed development. There is ample parking on Church Street and I conclude that the proposal would not give rise to traffic hazard.
- 7.5. The principal issues are the question of how the proposed development would support the town centre zoning of providing for a mix or retail, commercial, residential, cultural and social uses and impact on residential amenity. There are a number of takeaways/restaurants in the town but these are concentrated on the northern end where the uses are predominantly commercial, the site is five/buildings from the edge of the 'town core' zone.
- 7.6. Retail uses can be compatible with residential amenity and in a town centre the balance of advantage should be with retail/commercial uses. Nevertheless, residential use is under pressure on Church Street at this southern end of the town as evidenced by the number of vacant residential properties in the immediate vicinity of the application site. The introduction of a takeaway into a predominantly residential terrace with its associated potential to give rise to injury to residential amenity particularly from noise and general disturbance will further exacerbate the pressure on residential uses to move out of the town centre, undermine an



appropriate mix of town centre residential and retail/commercial uses and, ultimately, undermine the zoning objective to protect that mix of uses.

#### **7.7. Appropriate Assessment**

7.8. Having regard to the modest scale of the proposed development and its location within a town centre where public piped services are available, 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**

8.1. I conclude that the proposed development would introduce a night time use in an area of Church Street where residential uses are under pressure and by virtue of noise and general disturbance and would seriously injure the residential amenity of property in the vicinity area and thereby contravene the zoning objective for the site set out in the County Development Plan to support a viable mix of retail, commercial, residential, cultural and social uses in the town core.

## 9.0 Reasons and Considerations

1. The proposed development is located in an area zoned for 'town core' uses in the Cavan County Development Plan 2014-2020 with the objective to establish the extent of the town core and identify the most suitable location for a mix of retail, commercial, residential and social uses. It is a policy of the planning authority set out in the plan to discourage the development of takeaway restaurants where they would be likely to prove detrimental to the amenities of nearby residential properties. The proposed development by reason of noise and general disturbance would seriously injure the amenity of residential property in the vicinity, undermine a viable mix of retail, commercial, residential, cultural and social uses in the town centre, and therefore, would be contrary to the proper planning and sustainable development of the area.

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Hugh Mannion  
Inspectorate  
19<sup>th</sup> November 2017