



An
Bord
Pleanála

Inspector's Report PL08.248878

Development	Betting Office on ground floor and projecting sign.
Location	5 Pembroke Street, Tralee, County Kerry.
Planning Authority	Kerry County Council.
Planning Authority Reg. Ref.	17/92.
Applicant	Bar One Racing.
Type of Application	Permission.
Planning Authority Decision	To grant permission subject to conditions.
Type of Appeal	Third Party -v- Decision
Appellants	Martin Galvin, Tony Clarke, Josephine Healy.
Observers	None.
Date of Site Inspection	5 th October, 2017.
Inspector	Brendan Wyse.

1.0 Site Location and Description

- 1.1. No. 5 Pembroke Street is a part two-storey (plus attic) part single-storey terraced property, formerly in use as a shop but currently vacant. Immediately adjoining properties include a public house to the west and a hair salon to the east.
- 1.2. Pembroke Street is within the centre of Tralee just to the north of the main shopping area. It generally comprises a mix of retail and retail service outlets with a small amount of residential properties. There are a number of vacant lots including a substantial one almost opposite the appeal site and currently in use as a car park. On street parking is generally available subject to some restrictions particularly at the narrower eastern end of the street.
- 1.3. Maps and photographs in file pouch. See also photographs in Planning Authority Planning Report.

2.0 Proposed Development

- 2.1. The proposal is to open a betting office on the ground floor only of the premises (floor area stated as just over 90 square metres). The drawings indicate internal works for the most part. The existing shop front is to be retained with fascia sign to further detail. A projecting sign is to be affixed to the front façade above the shopfront – also to further detail.
- 2.2. Further information submitted to the Planning Authority on 10th May, 2017 includes:
 - Details of proposed signage. Shopfront to be painted red. Fascia sign of individual acrylic lettering fitted to painted background. Projecting sign aluminium, painted to chosen colour and internally illuminated.
 - Adhesive material not to be applied to inside of shopfront window.
 - Satellite dishes and any external plant/equipment to be fixed to the rear wall of the main building (2/3 storey element).
- 2.3. It is noted that subsequent to the above Further Information new public notices were published.

3.0 Planning Authority Decision

3.1. Decision

This is a decision to grant permission subject to 7 conditions.

Conditions include:

3. (a) No awnings, canopies, projecting signs, satellite dishes or internally lit signs shall be erected on the front of the premises without prior planning permission.

(b) No adhesive material or any other type of materials shall be affixed to the windows of the façade of the building.

Reason: In the interest of visual amenity and architectural harmony and to safeguard the amenities of the area.

4. Lighting of external signage shall be by means of spot lighting or floodlighting. Internal illumination is not permitted.

Reason: In the interest of visual amenity.

5. General de-exemption for further signs, symbols, emblems etc.

Reason: To safeguard the amenities of the area and because it is considered that the erection of signs, emblems etc., warrant prior written approval of the Planning Authority.

6. Details of proposed colour scheme to be agreed prior to occupation.

Reason: In the interest of visual amenity and to ensure that the proposed colour scheme will integrate satisfactorily with the streetscape.

7. The proposed projecting sign shall be omitted from the development.

Reason: In the interest of visual amenity to reduce visual clutter and because it is considered that the proposed finish and method of illumination would detract from the visual amenities of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Basis for Planning Authority decision.

Includes:

- Notes the location of the property outside the central core area of the Primary Retail Area.
- Reference to the Council's Shopfront Guidelines policy document.
- EIA and AA Screening – no requirements.

3.2.2. Other Technical Reports

Fire Authority – no objection subject to Fire Safety Certificate and Disability Access Certificate.

3.3. Third Party Observations

- 3.3.1. The submissions lodged to the Planning Authority by the three appellants in this case refer to similar issues to those raised in the grounds of appeal – see Section 6.1 below.

4.0 Planning History

None of relevance.

5.0 Policy Context

5.1. Development Plan

5.1.1. Tralee Development Plan 2009-2015 (extended)

The appeal site is located within an area subject to the zoning objective MU; "To protect and enhance the special physical and social character of the town and to provide for residential development".

This zoning objective applies to most of the town centre area.

Map 3a defines The Primary Retail Area of the town centre. The area comprises; a central core; a retail control zone; an urban design study area; and retail expansion areas. The appeal site is located just outside the Primary Retail Area.

Section 3.8.1 indicates that the urban design study area, that includes the southern side of Pembroke Street, is to be the subject of an urban design masterplan perhaps for niche market retailing.

Relevant Retail Policy Objectives include:

RP04: Strengthen and protect the retail function of Tralee's principal shopping streets and to control the provision of non-retail uses at ground floor level on the streets within the retail control zone as shown on Map 3a.

RP015: Encourage the use of upper floors in the primary retail area.

Section 11.8 indicates that the main planning strategy for the mixed use zone is to protect its vitality and viability.

Section 11.25, Matrix of Schedule of Use, indicates Betting Office as normally permitted in the mixed use zone.

Sections 12.32 – 12.39 set down development management guidelines for shopfronts and related matters.

5.1.2. **Tralee Town Council Shopfront Design Guidelines and Policy, 2010.**

This appears to be a non-statutory guidance document employed by the Planning Authority to inform decisions on planning applications. It places a particular emphasis on the preservation/retention of traditional shopfronts that contribute to the character of Tralee.

5.2. **Natural Heritage Designations**

None relevant.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. Three third party appeals against the Planning Authority's decision have been lodged by:

Martin Galvin

Tony Clarke

Josephine Healy

The main grounds may be summarised as follows:

Martin Galvin

- The public notices are inadequate in failing to adequately describe the extent of the proposed development. There is no mention of externally mounted satellite dishes or plant/equipment.
- Application drawings are not properly dimensioned.
- The granting of planning permission for another betting office/Class 2 financial services and other commercial use premises would lead to a proliferation of such uses in the area.
- The proposed non-retail use in the principal retail core area of Tralee would not contribute to vibrancy and vitality and would be contrary to development plan policies/objectives.
- Betting offices are generally associated with dead frontages and detract from the quality of the streetscape.

Tony Clarke

- The application is invalid as it does not comply with Articles 18, 19, 22 and 23 of the Planning and Development Regulations 2001, as amended. In particular, deficiencies include:
 - Lack of detail re proposed signage and shopfront.
 - No reference in public notices to satellite dishes or condenser units.

- Wording of public notices is misleading. It should have referred to a change of use. It should also have indicated the area/extent of the change of use.
- Drawings only include one elevation. All elevations should have been indicated.
- Neither the first or second floor plans nor the site layout plan have dimensions indicated.
- No existing ground floor plan has been submitted.
- The further information submitted in relation to signage was inadequate.
- The further information site notice was erected outside the statutory period.
- The proposed development would be contrary to various policies/objectives of the Tralee development plan, including:
 - Section 3.7 which refers to betting offices, amongst other uses, as a threat to maintaining the town centre as a primary shopping area.
 - Retail Policy Objective RP015 which refers to encouraging the use of upper floors. The proposed development shuts off the upper floors for any type of use.
 - Section 3.8 which refers to the importance of retaining the town centre for retail use.
 - Retail Policy Objectives RP03, RP04 and RP06 which refer to the importance of the retail function within the principal shopping streets of Tralee, including the issue of design.
 - Section 3.5 which refers to the retail primacy of the town centre.
- Retail Policy Objectives RS-5, RS-6 and RS-8 of the Kerry County Development Plan also encourage sustainable retail use in town centres. The proposed development would result in an over intensification of betting offices in Tralee Town Centre.

Josephine Healy

- The wording of the site notice is very unsatisfactory.
- The proposal to not use the upper floors is contrary to development plan policy.

- The proposed entrance lobby does to conform to current regulations in terms of size. Dimensions are not indicated on drawings.
- Shopfront details are inadequate.
- Parking and traffic issues have not been properly addressed.
- Does Tralee need another betting shop?

6.2. **Applicant Response**

None received.

6.3. **Planning Authority Response**

None received.

6.4. **Observations**

None.

7.0 **Assessment**

The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues raise.

The issues are addressed under the following headings:

- Change of Use
- Design
- Validation Issues
- Other Matters
- Appropriate Assessment

7.1. **Change of Use**

- 7.1.1. The fundamental issue in this appeal is the question of appropriateness of the proposed change of use from retail/shop to betting office. The appellants argue; that this would be contrary to development plan policies/objectives aimed at maintaining

the vitality and viability of the town centre; that there is already a proliferation of such uses in the area; that the dead frontage associated with such a use would detract from the quality of the streetscape; and that the omission of the upper floors is contrary to relevant policy.

- 7.1.2. As indicated at Section 5.1.1 above, and contrary to the assertions of the appellants, No. 5 Pembroke Street is not located within the designated Primary Retail Area of the town. It is located just outside that area. The southern side of Pembroke Street is within the area and subject to proposals for an urban design masterplan. On the ground is apparent that Pembroke Street is peripheral to the main shopping area and has only a secondary retail offering. Retail service and other non-retail uses predominate. There is also a considerable degree of vacancy.
- 7.1.3. The proposed betting office use is normally permitted under the mixed use zoning objective for the area. It is also worth emphasising that this zoning objective applies to the entire town centre area, including the Primary Retail Area.
- 7.1.4. On the issue of proliferation of betting office or retail service use this is a difficult one to judge. It certainly is not readily apparent within the town centre generally or within the Pembroke Street area. The latter, in any case, is secondary in retail terms and, therefore, is to be expected to be characterised by such uses amongst other non-retail uses.
- 7.1.5. On the issue of the upper floors I would agree with the appellants that, ideally, these should be put into use. However, I would acknowledge the challenge that this often presents in these types of properties. I note that access will be retained for maintenance purposes. In the longer term the current proposal does not necessarily mean that an appropriate use for the upper floors will not be found.
- 7.1.6. In conclusion, I do not consider that the proposed development, involving a change of use to betting office, is contrary to development plan policy or that it would have any material impact on the vitality or viability of the town centre.

7.2. Design

- 7.2.1. This refers essentially to the proposed treatment of the shopfront and related signage.

- 7.2.2. While I agree with the appellants that these matters could have been detailed to a much better standard in the application documentation I consider that there is sufficient information available for the Board to make a decision.
- 7.2.3. It is worth noting that the existing shopfront is not of any intrinsic quality or value. It compromises a coloured aluminium/uPVC framed door/window inner section within a simple painted timber frame comprising plain pilasters and a fascia.
- 7.2.4. The further information submitted to the Planning Authority on 10th May, 2017 clarifies that it is not proposed to make any changes to the existing shopfront save from painting it red (the standard colour for Bar One Racing). Individual acrylic lettering is to be fitted to the painted fascia. In my view such an approach, which is minimalist in terms of intervention, is quite acceptable and would not be out of keeping with the guidance contained in the Planning Authority's Shopfront Design Guidelines and Policy document. As is often the case with proposed developments of this type a condition requiring final details to be agreed with the Planning Authority would also be appropriate. This can also cover such matters as the fixing of adhesive materials to the shopfront windows.
- 7.2.5. It should be noted that I consider the photographs of typical shops submitted by the applicants to be of an indicative nature only and not representative of what is proposed in this instance.
- 7.2.6. The related matter of illumination to the shopfront can also be appropriately dealt with by condition.
- 7.2.7. I note that the Planning Authority (Condition 7) has required the omission of the projecting sign to the front façade at first floor level. While I would not object, in principle, to a sign of this type, I would agree that it should be omitted in this instance given the lack of detail presented specific to the subject building. It could, of course, be revisited in another application.
- 7.2.8. In conclusion, I consider that the proposal is generally acceptable in design terms subject to a number of conditions.

7.3. **Validation Issues**

- 7.3.1. This refers to the matters raised by the appellants in relation to the public notices and the application drawings.

- 7.3.2. While I agree with the appellants that the terminology in the public notices is somewhat unusual – reference, in particular to ‘create a betting office’, I nevertheless consider that the notices meet the requirements of Articles 18 and 19 of the Regulations. In terms of content the stipulation is that the notice provides only a brief description of the nature and extent of the development. I consider that the notices achieve this and that members of the public were provided with sufficient information in relation to what is a relatively minor development.
- 7.3.3. It follows that the omission from the notices of any reference to external satellite dishes or plant/equipment is not fatal. The applicant’s proposal, as indicated in the further information submission, to erect any such fittings on the rear wall of the main building is, in my view, reasonable. Satellite dishes are expressly prescribed by the exempted development regulations (Class 55, Schedule 2, Part 1) while the provision of any other plant/equipment would need to be considered in the context of planning requirements. In the interests of clarity, a condition could be attached expressly excluding such equipment from the scope of the permission.
- 7.3.4. In relation to the application drawings I agree with the appellants that these could have been detailed to a higher standard. However, by reference to Article 23, I am satisfied that the drawings as submitted are in substantive compliance with the requirements.
- 7.3.5. In conclusion, therefore, I do not consider that any of the issues raised should prevent the Board from issuing a decision in this case.

7.4. Other Matters

- 7.4.1. I draw the Board’s attention to the fact that the Planning Authority Planner’s Report on this case includes a formal EIA Screening. In my view such a screening exercise (formal EIA determination) is not warranted for a proposed development of such minor significance and has no legal basis. Being a change of use as described it is not a class of development for EIA and, therefore, cannot constitute sub-threshold development. Therefore, not even the de minimus scenario as expressly provided for under Article 109(2) Planning and Development Regulations applies.

7.5. Appropriate Assessment

Having regard to the nature and scale of the proposed development, being a change of use within a serviced urban area, 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 permission be granted subject to conditions for the following reasons and considerations.

9.0 Reasons and Considerations

Having regard to the location of the site in an area subject to a mixed use zoning objective and outside the Primary Retail Area as identified in the current development plan for Tralee it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the vitality and viability of the town centre and would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The proposed development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted to the planning authority on the 10th day of May 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 the 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. This permission does not authorise the provision of any satellite dishes or other external plant or equipment.

Reason: In the interest of clarity.

3. The projecting sign to the front elevation shall be omitted. No awnings, canopies or other signs shall be erected on the premises without a prior grant of planning permission.

Reason: In the interest of visual amenity.

4. The shopfront shall be in accordance with the following requirements:
 - (a) Signs shall be restricted to a single fascia sign using sign writing or comprising either hand-painted lettering or individual mounted lettering.
 - (b) Lighting shall be by means of concealed strip lighting or by rear illumination.
 - (c) No adhesive material shall be affixed to the shopfront windows.

Details in relation to the above shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of the development.

Reason: In the interest of visual amenity.

Brendan Wyse,
Assistant Director of Planning.

15 November, 2017.