



An
Bord
Pleanála

Inspector's Report PL88.249353

Development	Retain change of use of shop/office/petrol station to a restaurant/café and all associated site works.
Location	Newtown, Bantry, Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	17/00449
Applicant	Christian Barcoe
Type of Application	Retention permission
Planning Authority Decision	Refuse
Type of Appeal	1 st Party v. refusal
Appellant	Christian Barcoe
Observer(s)	None
Date of Site Inspection	10/01/18
Inspector	Pauline Fitzpatrick

1.0 Site Location and Description

The site, which has a stated area of 0.24 hectares, is on the southern side of the N71 on the northern outskirts of Bantry town where the 80kph speed limit applies. It is approx. 10 metres outside the 50kph speed limit. The road in the vicinity is governed by a solid central white line. The Mealagh River and Donemark Bridge immediately bound the site to the north-west beyond which is the junction of the N71 and Local Road L4718. There is a footpath on the southern side of the national secondary road extending to Bantry Bay Golf Club entrance (west), Bantry Garden Centre (east) and the 100kph speed limit boundary c. 600 metres to the north-east of the appeal site.

There is a single storey building on the site operating as 'Donemark West', a restaurant/cafe with seating for approx. 25 with a lean-to extension providing toilet facilities to the west and a covered seating area to the east. There is another detached outdoor seating area adjoining. A container is positioned to the rear of the building and is used for storage/refrigeration purposes. Car parking is provided to the east of the building. Save for a low boundary wall in the north-east most corner the roadside boundary is not delineated. The lands to the rear where the effluent treatment system is proposed slope down from north to south/south-east. There is a single storey dwelling upslope and to the rear of the building which overlooks it. It is served by an access immediately to the south-west.

2.0 Proposed Development

2.1. Retention Permission sought for:

- Change of use from petrol station/car valeting centre with shop and office to restaurant/café use. The stated floor area of the restaurant is 85 sq.m.
- 2 extensions to the premises including a toilet block to the west side and patio area the east side.
- External seating area
- Container for storage purposes

Permission sought for:

- Decommissioning of existing septic tank and percolation area and replacement with wastewater treatment system and polishing filter catering for a worst case scenario of PE 12. The site characterisation form notes that no water was encountered in the trial hole with a T- value of 16.03 calculated. The lands on which the system is to be installed are to be acquired subject to planning permission. A letter of consent from the landowner is attached.

A letter of consent from the adjoining landowner to facilitate cutting of hedgerows to maintain sightlines is attached.

The application is accompanied by a Flood Risk Assessment which concludes that the site is at low risk of flooding.

3.0 Planning Authority Decision

3.1. Decision

Refuse permission for two reasons which can be summarised as follows:

1. The proposal would endanger public safety by reason of traffic hazard due its location on a heavily trafficked national road where cross traffic movements are likely to interfere with the safety and free flow of traffic. It therefore contravenes materially Cork Development Plan objective TM 3-3 which requires that all new vehicular accesses are designed to an appropriate standard of visibility to ensure the safety of other road users of the N71 and to improve road safety.
2. On the basis of the information provided the planning authority is not satisfied that the development would not constitute an unacceptable risk of pollution and would, therefore, contravene materially County Development objective GI 10-5 which seeks to ensure that the discharge from septic tanks and waste water treatment systems comply with the relevant approved standards including installation and maintenance.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's report details the planning history on the site noting that previous uses included a filling station and small shop in addition to an office with permissions dating back to 1966. The shop was extended under permission granted in 1975. The site initially operated as a filling station/shop and then as an auctioneer's office. The report also details the enforcement for the unauthorised change of use dating from 2014. An application for retention was refused under ref. 16/381 for two reasons relating to traffic hazard and adequacy of details pertaining to effluent disposal. The report reiterates the contents of the other technical reports summarised below. There are no policy grounds of objection as the development relates to an existing and long established commercial premises. Some form of commercial development must be tolerated given the planning history. Whilst the unauthorised development provides employment and is well used, especially during summer months, it cannot be at the expense of traffic safety. It is considered that there has been significant intensification of traffic movements at the site from what previously operated in the past. In terms of traffic safety sightlines of 215 metres is the benchmark. A critical issue is the intensification of use and a restaurant/café is not only an intensification of use but one that will witness an intensification at certain peak periods. The location of the premises, just outside the 80kph speed limit travelling north, means that traffic accelerating out of the 50kph zone are required to stop without warning for right turning traffic. Travelling in a south-westerly direction speeds of between 50kph and 80kph are generally observed and, due to the bend in the road, there is a relatively short forward visibility available. The refusal on traffic safety grounds is understandable. Effluent disposal has not been adequately addressed. A refusal of permission for two reasons is recommended.

The Senior Executive Planner in a report endorses the above recommendation.

3.2.2. Other Technical Reports

The Estates Report notes that the north-eastern extremity of the site adjoins Flood Zone A as illustrated in the 2011 LAP. As per the Draft Flood Risk Assessment Maps the site adjoins an area prone to the 1 in 100 year fluvial flood. The

development can be considered to be minor in nature. The findings of the FRA that the building is not at risk of flooding is acceptable.

The Engineering Report notes that the size of the soil polishing filter calculated pro rata should be 108m², whereas the area given in the site characterisation form is 30m³ and that on drawing ref. 16151-SL-10 is 90m³. Minimum separation distances between the treatment system and the adjoining dwelling are not met. It is considered that the applicant has failed to demonstrate that the proposed wastewater treatment system would not constitute an unacceptable risk of pollution. There are serious concerns about the safety of the access. The minimum Y distance of 215 metres is required for an 80kph speed limit on a National Secondary Road as set out in the Guidelines for Sight Distances at Private Entrances onto Public Roads (Cork County Council. 2014) having regard to the horizontal alignment of the road, proximity to a busy junction within 80 metres and the heavy traffic. The Y distance of 119 metres would not be acceptable. There have been a number of accidents at the said junction. There is a continuous white line outside the entrance. The building has not been used for a number of years and any use that it has been put to in the last year would have been an unauthorised use and therefore there is no precedent. A refusal of permission for two reasons is recommended.

The report from Environment Section states that the site has limitations for the treatment of wastewater due to the small size of the site and its location close to the river. Further details are required on the proposed system.

3.3. Prescribed Bodies

Environmental Health Officer, HSE, has no objection.

Transport Infrastructure Ireland has no observations to make.

Inland Fisheries Ireland has no objection provided sufficient percolation is available of an appropriate standard. Planning conditions should ensure there is no interference with bridging, draining or culverting of any watercourse, its banks or bankside vegetation.

Irish Water has no objection subject to conditions.

3.4. Third Party Observations

Objections received raise issues relating to impact on Mealagh River, fisheries and pollution, traffic hazard, flood risk, impact on amenities of adjoining property and adequacy of submitted plans.

4.0 Planning History

The planning history on the site is set out in the Council Planner's report.

16/381 - permission refused in 2016 for the retention of the change of use and extensions for comparable reasons as set out in this case.

5.0 Policy Context

5.1. Development Plan

West Cork Municipal District Local Area Plan 2017.

The site is within an area zoned BT 0-01 – Open Space. Ridge Protection of lands which contribute to the setting of the town. Lands to remain predominately open. The flood risk objective applies.

The site is within a landscape of High Value with the N71 designated as a scenic route.

5.2. Natural Heritage Designations

None in the vicinity.

6.0 The Appeal

6.1. Grounds of Appeal

The 1st Party appeal against the planning authority's notification of decision to refuse permission, which is accompanied by supporting detail including a personal statement, can be summarised as follows:

Planning History

- The site was purchased in 2014 and had last been used as a shop, office, petrol station and car valeting centre. It is acknowledged that the petrol station had not been used for some time. It had been used for a sales outlet to include an Auctioneers office, car valeting centre and shop. The curtilage had also been used for car and boat sales as well as coal.
- Works were carried out to the premises. The appellant was of the opinion that he could trade as a café/restaurant without need for planning permission.
- There is a shop element to the business. It is adjacent to Donemark Falls. The previous shop was visited by tourists which included the sale of tourist items as well as teas, coffee and refreshments.

Reason for Refusal No.1 – Traffic hazard

- The entrance has been in place and has been used for over 40 years. It is not new.
- The fact that the site is an established commercial site is acknowledged in the Planning Officer's report on the previous application 16/381.
- There have never been accidents directly adjacent to the entrance arising from traffic in and out of the property.
- The current proposal would result in less traffic than that generated by the previous uses. There would be no intensification of use.
- The undertaking by the adjoining landowner to secure adequate sight lines was witnessed by a Solicitor.
- The 50 kph speed limit is metres away from the entrance to the south-west.
- The speed limit should have been relaxed considering its location and history.
- The continuous white line outside the property postdates 2016.
- TII had no observations to make.
- A Road Safety Audit can be prepared if required.
- He would be willing to open four nights a week to address traffic concerns.

Reason for Refusal No. 2 – Effluent Disposal

- The historical uses on the site never raised issues with effluent disposal. The septic tank has been in place for over 30 years and was registered in 2013. It was upgraded on acquiring the property. A grease trap was installed.
- The issues arising in the Environmental Report can be easily clarified and the adjoining owner has agreed to provide extra land if required for the installation of the treatment system.
- The mains water is metered on the premises, accordingly the loading can be clarified.
- Other larger commercial premises have septic tanks.

6.2. Planning Authority Response

The response can be summarised as follows:

- The location of the 50kph speed limit to the south was noted and the sightlines in that direction are acceptable. However even if the 80kph speed limit ends at that point the speed of traffic travelling from the north is more than likely to be travelling at 80kph until such time as they pass the entrance and enter the 50kph zone.
- TII is responsible for the solid white line in front of the site as part of its relining programme.
- The difference in sizes of the polishing filter specified in the site characterisation form (30m²) and the site layout (90m²) and that required as set out in the Table 10.1 of the relevant EPA Code of Practice (108m³) is reiterated.

6.3. Observations

None - Submission by D. Bollins received outside the appropriate period.

7.0 Assessment

I consider that the issues arising in this case can be assessed under the following headings:

- Principle of Development
- Site Access
- Effluent Disposal
- Other Issues
- Appropriate Assessment

7.1. Principle of Development

The site in question is on the southern side of the N71 to the north of Bantry town where the 80kph speed limit applies. It is approx. 10 metres outside the 50kph speed limit. As per the current West Cork Municipal District LAP the site is within an area zoned BT 0-01 – Open Space, the objective for which is the ridge protection of lands which contribute to the setting of the town. Lands are to remain predominately open.

As extrapolated from the details on the file the site has been in commercial use dating back to 1966 including petrol station, shop and office. The petrol station use has ceased with the pumps removed and tanks decommissioned. Prior to the current use the building on site was occupied by an estate agents/auctioneers with a car wash/valeting service.

I submit that there is an established commercial use on the site and that the change of use and retention of extensions, which are relatively small, would not compromise the zoning objective for the lands. I note that this view is also held by the Council Planners. However, I submit that the acceptability of the proposal is predicated on other planning and environmental considerations being satisfied.

7.2. Site Access

As noted above the site is accessed from the N71 national secondary road at a point where the 80 kph speed limit applies, albeit just outside the town's 50kph limit. The said 80kph limit extends beyond the site for c.600 metres north-eastwards to a point

just short of the entrance to Bantry Bay Golf Course (west) and Bantry Garden Centre (east). A footpath extends out from the town to the said speed limit. The road is governed by a solid white line along the site frontage, the relining of which was undertaken by Transport Infrastructure Ireland. The site is c. 60 metres to the south-east of the N71 junction with local road L4718 at which frequent turning movements were noted, most likely arising from the extent of development along the said local road including Lahadane Business Park. As noted on day of inspection the N71 was well trafficked.

I consider that any proposal for change of use on this site must be assessed in the context of the established commercial use on the site which would have generated vehicular turning movements. Whilst the use for which retention is being sought would, most likely, generate greater movements than the previous auctioneer's office and car valeting service I note that the site was previously used as a petrol station and shop. There is nothing to suggest that there has been an abandonment of use, a point accepted by the Council planner. The premises, although extended, is small and provides for only a limited number of tables which would accommodate no more than 25 persons. As such the level of intensification anticipated would not be material.

I submit that the retrospective application of minimum sight distances in accordance with current standards, whether they be those set out in the NRA DMRB or in the County Council's guidance document is not reasonable in this instance. The applicant has attempted to improve on the deficiencies as identified by the planning authority and has secured agreement with the respective landowner so as to secure 120 metre sightlines to the north-west. Sightlines of 90 metres to the south-east in the direction governed by the 50kph can be attained and, as noted in the planning authority's response to the grounds of appeal, are considered acceptable. I note that Transport Infrastructure Ireland had no comment to make when consulted.

Therefore, on the basis of the long established commercial use on the site I do not consider that the change of use would give rise to increased traffic hazard as to warrant a refusal of permission. It is within the remit of the County Council to extend the speed limits along this stretch of road should it so consider appropriate.

As per the details given on drawing 16151-SL-101 the existing unconsolidated access arrangements are to be amended providing for a more definitive layout. A condition requiring the necessary works to be undertaken within a specified period is recommended.

7.3. Effluent Disposal

The applicant proposes to install a proprietary effluent treatment plant on lands to the south of his premises which will be acquired subject to permission being secured. A letter of consent from the respective landowner accompanies the application.

The treatment plant is designed for a population equivalent of 12. On the basis of a BOD loading of 15g/day/person as per Table 3 of the EPA Manual – Treatment Systems for Small Communities, Business, Leisure Centres, this allows for a capacity of 48. Taking into consideration the fact that the indoor seating area has a capacity of in the region of 25 and that the accompanying documentation refers to an anticipated occupancy of 46, the system is appropriately sized.

There are a number of issues arising both in terms of the sizing of the polishing filter and the setback from adjoining property. In terms of the former the polishing filter is to have a T-value of 10-30. The details given on the Site Characterisation Form stating that the area would 30 sq.m. do not correspond with the 90 sq.m. area delineated on Site Layout Plan (drawing no. 16151 -SL-101). I note that the above stated Manual does not delineate minimum size areas. Were the requirements of Table 10.1 of the EPA Code of Practice for Waste Water Treatment and Disposal Systems Serving Single Houses to be applied on a pro rata basis then an area of 108 sq.m. would be required. In addition, the proposed treatment system being 16.5 metres from the adjoining dwelling to the south, does not meet the minimum separation distance of 28 metres as set out in Table 4 of the above EPA Manual for Small Communities, Business, Leisure Centres and Hotels.

In addressing this issue in the grounds of appeal the appellant states that additional land can be acquired to allow for a bigger polishing filter if necessary with confirmation of same provided by the relevant landowner. It is somewhat unfortunate that he did not avail of the opportunity to clarify the discrepancies in the plans, confirm the required area or address the issue of separation distances to adjoining property, but I submit that the necessary amendments can be made within

the site boundaries as delineated on the plans to ensure compliance with the respective requirements. I recommend that such details be required for agreement with the planning authority and for the necessary works to be undertaken within a specified period of time.

The Environmental Health Officer noted that the proposed wastewater treatment system appears to have taken into account the maximum loadings from the food business premises and a maintenance contract is also in place. I also note that Inland Fisheries Ireland have no objection to the proposal subject to an appropriately sized polishing filter.

7.4. Other Issues

As there is a long standing established commercial use on the site it is not envisaged that the change of use would give rise to material concerns in terms of amenities of adjoining residential property.

A desktop flood risk assessment accompanies the application. Whilst the Mealahg River immediately adjoins the site it is at a much lower level. There is no known flooding associated with the building. The assessment concludes that due to the steep cross sectional profile of the river and its difference in level with the site means it is unlikely to pose any flood risk to the development to be retained. The conclusions are considered to be reasonable and, I note, were accepted by the Council Estates Section.

7.5. Appropriate Assessment

The site is c. 7.5km to the south-east of Glengariff Harbour and Woodland SAC (site code 00090). In view of the nature and extent of the development proposed and the said separation distance to the said designated 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

8.1. Having regard to the documentation on file, the grounds of appeal, the responses thereto, a site inspection and the assessment above I recommend that permission

for the above described development be granted for the following reasons and considerations, subject to conditions.

9.0 Reasons and Considerations

Having regard to the established use of the site for commercial purposes, to the nature and extent of the change of use to restaurant/café and extensions to be retained 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 of property in the vicinity, would not be prejudicial to public health and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be retained and completed in accordance with the plans and particulars lodged with the application, 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. (a) Within two months of the date of this order a revised site plan with the location of the effluent treatment plant and appropriately sized polishing filter and timescale for installation shall be submitted to the planning authority for written agreement. The treatment plant and polishing filter shall be in accordance with the requirements of the Wastewater Treatment Manual 'Treatment Systems for Small Communities, Business, Leisure Centre and Hotels', Environmental Protection Agency. No system other than the type proposed in the submission shall be installed unless agreed in writing with the planning authority.

(b) Certification by the system manufacturer that the system has been properly installed shall be submitted to the planning authority within four weeks of the installation of the system.

(c) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.

(d) Within three months of installation of the treatment system, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner and that the polishing filter is constructed in accordance with the standards set out in the EPA document.

Reason: In the interest of public health.

3. (a) The proposed access arrangements as delineated on site layout drawing No.16151-SL-101 received by the planning authority on the 10th day of July, 2017, shall be completed within three months from the date of this order.

(b) Full details of the roadside boundary treatment and finishes shall be submitted to the planning authority for written agreement prior to the commencement of the works.

Reason: In the interest of traffic safety

4. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works. Surface water from the site shall not be permitted to drain onto the adjoining public road.

Reason: To ensure adequate servicing of the development, to prevent pollution and in the interest of traffic safety

5. Notwithstanding the provisions of the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, no advertisement signs, 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

Pauline Fitzpatrick
Senior Planning Inspector

January, 2018