



An  
Bord  
Pleanála

## Inspector's Report ABP-300283-17

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<b>Development</b>	Change of use of ground floor of building from retail to a takeaway and new signage, retention of new, window, door and roof, and retention of demolition of buildings to rear and new extension to rear.
<b>Location</b>	Lower Main Street, Doon, County Limerick
<b>Planning Authority</b>	Limerick City & County Council
<b>Planning Authority Reg. Ref.</b>	17/831
<b>Applicant(s)</b>	Eoin Ryan
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	John Ryan
<b>Observer(s)</b>	Guan Qun Shen
<b>Date of Site Inspection</b>	22 <sup>nd</sup> February, 2018
<b>Inspector</b>	Kevin Moore

## **1.0 Site Location and Description**

1.1. The site of the proposed development is on the southern side of the main street in Doon in County Limerick. It is a two-storey, semi-detached structure that adjoins the Credit Union building. It is a building that was in use previously as a retail unit at ground floor with living accommodation at first floor level. It has a gated access to the rear of the property along its eastern side. There is one other takeaway in the village which is located on the same side of the road and just west of the site on the junction of Regional Roads R505 and R507.

## **2.0 Proposed Development**

- 2.1. The proposed development would comprise the change of use of a ground floor of a two-storey, semi-detached building from retail to a takeaway outlet, inclusive of the provision of signage on the front elevation. The proposal would also include the retention of new windows, a door and roof to the building, as well as the retention of the demolition of buildings to the rear and an extension to the rear of the building. The proposed hours of operation for the takeaway were stated to be between 8am and 12.30pm. The gross floor space of works to be retained is stated in the application form to be 27.5 sqm at ground level, 27.5 sqm at first floor level, with proposed works stated to total 50 sqm. The development is on a site area stated to be 0.023 hectares.
- 2.2. Details submitted with the application included a covering letter explaining the need for repair works and the demolition that were undertaken, a building condition report, and information on proposed plant to be installed to serve the proposed takeaway.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

On 31<sup>st</sup> October 2017, Limerick City & County Council decided to grant permission for the proposed development subject to 13 conditions.

## 3.2. **Planning Authority Reports**

### 3.2.1. Planning Reports

The Planner noted provisions of the development plan, internal reports received and objections made. The submitted building condition report was acknowledged. The change of use was considered acceptable, with adequate details provided on ventilation, greased traps and parking. A grant of permission was recommended.

### 3.2.2. Other Technical Reports

The Fire Department had no objection to the proposal.

## 3.3. **Prescribed Bodies**

Irish Water had no objection to the proposal.

## 3.4. **Third Party Observations**

A submissions from Guan Qun Shen referred to the impact the proposed development would have on the viability of his existing takeaway business and the extent of unauthorised works. A submission was also received from John Ryan. The third party appeal to the Board reflects the concerns raised.

## 4.0 **Planning History**

I have no record of any previous valid planning application or appeal relating to this site.

## 5.0 **Policy Context**

### 5.1. **Limerick County Development Plan 2010-2016**

#### Development Management Standards

##### *Takeaways*

Proposals for takeaway premises will be open for consideration in retail centres and core retail areas, except where:

- a) The development would be likely to prove detrimental to the amenities of the occupiers of nearby residential properties, to the visual amenity and to parking, traffic and litter problems which could not reasonably be controlled by uses of planning conditions, or
- b) The 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, or
- c) Where there is an existing dwelling immediately above, or
- d) A further change of use from retail use (Class 1) would seriously affect the retail vitality and viability of the defined retail centre due to existing concentration of takeaway premises in an area.

### Parking

Parking for takeaways is required at a rate of 1 space per 25 sq.m public floor area.

## **6.0 The Appeal**

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

The grounds of the appeal may be synthesised as follows:

- The negative impact of the proposed takeaway on an adjacent residence.
- The lack of a party wall agreement between the applicant and the neighbouring landowner.
- The submitted drawings do not correspond with the works carried out.
- The front façade and new roof is not in keeping with the streetscape.
- There would be an over-concentration of takeaways. Doon is a small village and two takeaways will not survive.
- There is concern about the lack of proposed parking provisions. The village already has problems with parking and congestion.

The appeal also provides a range of correspondence with the planning authority relating to works that were taking place at the site.

## 6.2. Applicant Response

The applicant's response to the appeal may be summarised as follows:

### Vexatious Appeal

- The appeal is vexatious as the appellant is the owner of the existing takeaway and he is trying to prevent any competition to his business.

### Negative Impact

- There are no changes to the visual appearance of the property except those necessary for the upkeep and maintenance of the building.
- The proposed extractor fan will be installed in full compliance with current standards.
- It would not affect retail viability because there is no concentration of takeaway premises in the area.

### Party Walls

- The appellant owns the property to the east of the site and there are no party walls between the two properties and no windows abutting the appeal site. The outbuildings were demolished because of safety concerns.

### Submitted Drawings

- There are no inconsistencies with the drawings submitted.

### Streetscape Impact

- The streetscape was fully considered during development.

The response includes letters of support from Doon Credit Union and Doon Tidy Towns Committee.

## 6.3. Planning Authority Response

I have no record of any response from the planning authority to the appeal.

## 6.4. Observations

The observer refers to the building being of architectural heritage and the associated demolition that has taken place without neighbours consent.

## 7.0 Assessment

### 7.1. Introduction

7.1.1 I consider the principal planning issues to be the proposal in the context of development plan provisions and impact on architectural heritage.

### 7.2. The Proposal in the Context of the Development Plan

7.2.1 I note the provisions in the Limerick County Development Plan that relate to takeaways. My submission to the Board on the matters required to be considered for such development in accordance with the Plan are as follows:

- I first acknowledge that takeaway premises are generally open for consideration in retail areas. The proposed development would be located within the village centre of Doon and, thus, the principle of the development in such a location must reasonably be considered acceptable.
- I note that the application provides details on provisions relating to the functioning of the takeaway and the infrastructure to be put in place. With the development required to meet environmental standards, it is not considered that the proposal would have significant adverse impacts in terms of noise, odours or visual impact that would undermine the amenities of the area. I note the siting of the development within a village centre. The nature of the activity again is acceptable in principle in such a location, where there is a mix of retail uses. The proposed filter unit would be located on the east gable of the structure which abuts the laneway leading to the rear of the site and is separated from adjoining property.
- On-street parking is permissible on both sides of the street at this location. I do not consider that a development of this nature would likely generate significant volumes of vehicular traffic and, thus, I do not consider that any significant traffic hazard would arise.

- In terms of litter control, the applicant can make adequate provisions in accordance with the planning authority's requirements to address on-street litter concerns.
- I note that the Plan states that proposals for takeaways in retail areas are acceptable except where there is an existing dwelling immediately above. The applicant intends to retain the residential use at first floor level over the takeaway. While such a proposal appears to conflict with this provision, I can see no planning merit in this village location in refusing the development for this reason. With the provision of necessary infrastructure to serve a functioning modern takeaway, the layout of such facilities and that of the residential unit overhead, I do not consider that the proposal would have significant adverse impacts on the amenities of residents living over the outlet in this village centre location. The concept of 'Living over the Shop' is well understood to be appropriate to maintain and enhance the vitality of town and village centres and residential use in this village centre should be encouraged. Further to this, and separate from the Planning Code, I note the acceptability of the proposal in the report of the Fire Officer to the planning authority.
- With regard to the impact of the proposed development on the retail vitality and viability of the retail centre of Doon, I note that the existing building is unoccupied and a replacement use would be important for the maintenance of the structure and for the vitality of the retail core of the village. While I acknowledge that there is one other takeaway outlet in the village (the Observer's takeaway close by), I do not accept that the proposed development could be seen to result in an over-saturation of such uses in this village and it has not been demonstrated as to how such a proposal would create significant adverse effects on the viability of the existing outlet.

7.2.2 In conclusion, I am satisfied to submit that the proposal would be in accordance with the relevant provisions of the Development Plan as they relate to takeaways.

### 7.3. Impact on Architectural Heritage

7.3.1 I acknowledge the loss of outbuildings to the rear of the main building. It is apparent that these were an integral part of the complex of buildings on this site. I further note

the importance of the building in the context of the village streetscape. I note that the Planner refers to the building as being identified as significant in the NIAH (National Inventory of Architectural Heritage). The building is rated 'Local' in the Inventory. The following is referenced in this Inventory:

***Description***

*End-of-Terrace two-bay two-storey house, built c. 1850, having rendered shopfront to front (north) elevation. Pitched slate roof with redbrick chimneystacks and cast-iron rainwater goods. Rendered walls having render quoins. Square-headed openings to first floor with painted stone sills and one-over-one pane timber sliding sash windows. Recessed square-headed opening having glazed overlight over half-glazed timber panelled door.*

***Appraisal***

*This modest building retains notable features, such as the sash windows and slate roof. The simple render shopfront, despite its poor condition, remains an important component of the façade."*

7.3.2 Having regard to the works that have been carried on the building in recent times, it is apparent that much of architectural value, as identified in the Inventory, has been lost in terms of removal of important fenestration and roof finish. Notwithstanding this, I note that the building and its former outbuildings were not listed as a Protected Structure in the Development Plan. I submit that the replacement roof finish does not distort the character of the roofscape in this village centre. While the changes to fenestration are undesirable, maintaining a simplicity to any shopfront is considered essential to retaining the character of the street frontage presentation and changes in the form of signage need to be agreed with the planning authority. In addition, the removal of the new windows on the front elevation and their replacement with timber-framed windows may be seen as reasonable interventions to restore some of the important character of the building, with alternatives agreed with the planning authority at ground floor level and the provision of one-over-one timber sliding sash windows at first floor level.

7.3.3 Having regard to these recommended alterations, I consider the proposal to be acceptable in terms of treatment of the building and the visual impact on the streetscape.



#### 7.4. Miscellaneous Issues

7.5. My considerations on a number of other issues raised by the third party are as follows:

- I note the Board is dealing with this application *de novo*. I further note that the planning authority, in attaching conditions to its decision, restricted the opening hours of the takeaway to 11pm. The proposed development requires to be acknowledged as a takeaway outlet. It is my submission that, if the Board is granting permission for the proposal, such opening hours require to be revised to sensibly reflect this village centre use, with opening hours that are practical to at least 00.30am.
- The retention of the works undertaken to date have no significant structural impact on the property to the east of the site. The necessity for any party wall agreement does not appear merited.
- I am satisfied to conclude that the submitted drawings accurately reflect the development proposed for retention.

### 8.0 **Recommendation**

8.1. I recommend that permission is granted in accordance with the following reasons and considerations.

### 9.0 **Reasons and Considerations**

Having regard to the siting of the proposed development within the village centre of Doon, to the established commercial and residential use of the existing building, to the limited range of existing takeaway outlets within the village, to the layout and infrastructural provisions associated with the proposed use, and to the extent of structural changes undertaken, it is considered that, subject to compliance with the conditions set out below, the proposed takeaway use would not seriously injure the residential or visual amenities of the area, would not undermine the vitality and

viability of other similar commercial premises in the village or depreciate the value of properties in the area, and would not undermine the architectural character of the established building. 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 carried out 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. The proposed takeaway shall operate between 1000 hours and 00.30 hours only. No deliveries shall be taken at the premises outside of the hours 0700 and 1900 from Mondays to Saturdays, or at any time on Sundays, Bank or Public Holidays.

**Reason:** In the interest of residential amenity.

3. Within six months of the date of this Order, the existing windows on the front elevation of the building shall be replaced with timber-framed windows, inclusive of one-over-one timber sliding sash windows at first floor level. Details of the replacement windows shall be agreed in writing with the planning authority prior to their installation.

**Reason:** In the interest of visual amenity.

4. Details of the external shopfront finish and signage, exclusive of any backlighting, awning and external roller shutters, shall be submitted to, and

agreed in writing with, the planning authority prior to the occupation of development.

**Reason:** In the interest of visual amenity.

5. No other advertisement or advertisement structure, the exhibition or erection of which would otherwise constitute exempted development under the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, shall be erected or displayed on the building in such a manner as to be visible from outside the building unless authorised by a further grant of planning permission.

**Reason:** In the interest of visual amenity.

6. Water supply, drainage and the disposal of waste, inclusive of control of litter, 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.

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, as amended. The contribution shall be paid prior to 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, 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.

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Kevin Moore  
Senior Planning Inspector

8<sup>th</sup> March 2018