



An
Bord
Pleanála

Inspector's Report ABP-300966-18

Development

The change of use of the existing premises from general commercial use to a takeaway/deli. Planning permission is also sought to remove an existing window to the rear and replace with a doorway, replace the existing signage and install an extraction system

Location

Unit 3, Castle House, Dungarvan, Co. Waterford

Planning Authority

Waterford City and County Council

Planning Authority Reg. Ref.

17/762

Applicant(s)

Eunice Power

Type of Application

Permission

Planning Authority Decision

Grant

Type of Appeal

Third Party

Appellant(s)

BarryLenihan

Date of Site Inspection

10th May 2018

Inspector

Colin McBride

1.0 Site Location and Description

- 1.1. The appeal site is located within Dungarvan Town Centre. The appeal site is an existing ground floor unit within Castle House, which is a five-storey building with retail units on the ground floor and apartment units on the floor above. Castle House fronts onto Davitts Quay with Thompsons Lane running along the eastern side of Castle House. There is a courtyard area to the rear of the building and Unit 3 with car parking and bin storage. The unit fronts onto Davitts Quay with an existing retail unit adjoining it to the west and Thompsons Lane running along the eastern gable of the unit.

2.0 Proposed Development

- 2.1. Permission is sought for a change of use of an existing premises from general commercial use to a takeaway/deli. It is also proposed to remove an existing window to the rear and replace with a doorway and replace signage and install an extraction system.

3.0 Planning Authority Decision

3.1. Decision

Permission granted subject to 5 conditions. Of note are the following conditions...

Condition no. 3: Open hours confined to between 11:00 and 22:00.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planning report (13/12/17): Further information required including details of waste management and refuse storage proposals.

Planning report (22/01/18): The principle of the proposal was consider acceptable, to be consistent with the zoning objective and satisfactory in the context of adjoining amenities. A grant of permission was recommended based on the conditions outlined above.

3.2.2. Other Technical Reports

Environmental Services (13/12/17): Further information including details of waste management and refuse storage.

3.3. **Prescribed Bodies**

3.4. **Third Party Observations**

6 third party submissions were received from...

Patrick Murphy

Castle House

Gerard Kelly & Emma Power

JI & CM Mackintosh

Mary Lou Carroll

Shane Lannen

The issue raised can be summarised as follows...

Proximity to residential development with potential impacts from noise, odour, anti-social behaviour.

Inappropriate use in a residential area.

Lack of suitable refuse storage facilities for the proposed development.

Management company of the building have not consented to the alterations proposed.

4.0 Planning History

17/445: Permission refused for a change of use of Unit 3 from

98510064: Permission granted for alteration to existing permission.

97510049: Permission granted or 20 apartments.

5.0 Policy Context

5.1. Development Plan

The relevant plan is the Dungarvan Town Council Plan 2012-2018. The site is zoned 'Town Centre' with a stated objective 'to provide for an integrated mix of residential, community and social uses within the designated Town Centre zoned area'.

The site is also located with a designated Architectural Conservation Area.

5.2. Natural Heritage Designations

None in the vicinity.

6.0 The Appeal

6.1. Grounds of Appeal

A third party appeal has been lodged by John Brennan Consulting Engineer on behalf of Castle House (Dungarvan) Management Company CLG

- The appeal is by the management company of Castle House of which Unit 3 is part of. It is noted that the management company are unwilling to allow the

alterations to the existing structure in the form of the new door and change of use. The appellants note that the applicant must have sufficient legal interest to carry out the proposed development and the fact the management company does not consent means the application and grant of permission is invalid.

- The proposal does not conform to the Town Development Plan on a number of ground including the fact that the development is inappropriate in a residential area, requires a road safety audit due to having a significant traffic impact, uses refuse storage facilities dedicated for existing residential use, would lead to a proliferation similar commercial premises in the area and insufficient parking in the area.
- The proposal would have an adverse impact on residential amenity due to concern regarding noise, odours, litter, general disturbance and anti-social behaviour.
- There is lack of sufficient waste storage for the proposed development and no provision for additional waste storage.
- There are existing traffic concern with congestion and along the quays and the proposal would exacerbate such issues with no parking proposals provided.
- The proposal would depreciate property values.
- The applicant has not demonstrated that the extract and ventilation system is sufficient to prevent an adverse impact on residential amenity and note that restrictions are required in terms of environmental health.

6.2. Applicant Response

Response be Peter Thomson Planning Solutions on behalf of the applicant Eunice Power.

- The proposal is consistent with the zoning objective and an appropriate use in a town centre location.

- The applicant notes that consent is need from the legal owner of the property and that the management company cannot unreasonably withhold content for such alterations provided it is in compliance with all other statutory provisions. The applicant has submitted a letter of consent from the owner of the unit consenting to the making of the application.
- The applicant notes conflicting information from the management company regarding facilities for waste storage with an email providing consent for use of certain waste storage facilities from the management company.
- It is noted a road safety audit is not warranted, there is sufficient space for waste storage for the proposed development, the proposal would have an adverse impact on town centre business with no similar ones in the vicinity, the parking requirement is similar to the previous use on site.
- The proposal would have no significant impact on residential amenity with restricted no late night opening hours and therefore negating the possibility of anti-social behaviour being a concern.
- It is noted that conditions have been attached regarding waste storage.
- The applicant would intend providing a litter bin outside the unit.
- It is not considered that the proposal would generate significant volume of traffic.
- The proposal would not depreciate property values.
- Condition no. 5 deals with any health and safety concerns raised.

6.3. Planning Authority Response

No response.

7.0 Assessment

7.1. Having carried out a site inspection and examined the documents associated with the appeal, the following are the relevant issues.

Principle of the proposed development

Adjoining amenity

Design/visual impact

Traffic

Management company/consent to make alterations

Appropriate Assessment

Other issues

7.2. Principle of the proposed development:

7.2.1 Permission is sought for a change of use of an existing retail unit to a takeaway/deli.

The existing unit is a vacant unit whose last use was a dry cleaners. The proposal also entails some changes to the rear elevation with a window being converted to a door. Under the Dungarvan Town Council Development Plan 2012-2018, the site is in an area zoned 'Town Centre' with a stated objective 'to provide for an integrated mix of residential, community and social uses within the designated Town Centre zoned area'.

7.3 Adjoining amenity:

7.3.1 One of the main issues raised include concerns regarding the proximity of the proposal to residential development and potential disturbance cause by noise, odour, litter and anti-social behaviour as well as the inadequate provision of waste storage. The unit subject to the change of use is a ground floor unit in an existing apartment block. The applicant has noted that the use is not to be a late night use with opening hours proposed and conditioned as part of the permission being between 11:00 and 22:00. I would consider that this proposal would be reasonable and eliminate any concerns regarding late night activity or anti-social behaviour.

7.3.2 In relation to odour it is proposed to install an extraction system and use a vent located on the eastern gable of the unit. The applicant has provided details of specifications of the extract system and maintenance schedule for such. The location of the vent is on a black gable of the existing building with no window located adjacent the vent or above the vent. I am satisfied that sufficient measures are proposed for odour control.

7.3.3 The applicant has provided proposal for bin storage with existing space in the bin storage enclosure located in the courtyard to the rear provided for refuse as well as providing details of the amount of bin storage, the waste streams included and the schedule for collection. The existing structure on site is a mixed use development with commercial on ground floor and residential on the floor above. There is dedicated refuse/bin storage structure within the curtilage of this building and such is being used for purposes of bin storage associated with the retail unit subject to the change of use. I am satisfied based on the information provided on the file that there is sufficient measures proposed for waste storage associated with the proposed development and that such is separated from the actual structure and in dedicated structure for such purposes. I am satisfied based on the above that the provisions to prevent nuisance from odour or waste are adequate and the proposal would be satisfactory in the context of adjoining amenity.

7.3.4 The applicant has noted that they are willing to provide a litter bin outside the premises and I would note subject to such as well as a condition confining opening hours to that proposed, the proposal would be satisfactory in the context of its overall impact on amenities of adjoining properties. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

7.4 Design/visual impact:

7.4.1 The proposal entails very minor changes to the overall appearance of the unit with main change being the removal of a window on the rear elevation (south) and its replacement with a door opening providing access to the courtyard area. In visual

terms this alteration is minor and would have no adverse impact on visual amenity. The unit will entail the provision of new signage, however such can be dealt with by way of condition. I am satisfied that the proposal would be acceptable in the context of design/visual amenity.

7.5 Traffic:

7.5.1 The appellants note that there are existing congestion issues at Davitts Quay and that the proposed development would exacerbate such issues. Davitts Quay is a town centre location with the appeal site an existing retail unit. The proposal is a change of use an existing (albeit currently vacant unit) and I do not consider that new use is significant change in nature of use or on the traffic patterns at this location. The proposal does not entail increase in floor area and as such would cause no significant change in traffic patterns at this location. In addition I would note that the area is subject to parking restrictions/control measures. I am satisfied that the change of use would have no adverse impact in regards to traffic movements of the safety of other road users and pedestrians.

7.6 Management company/consent to make alterations:

7.6.1 The appeal is from the management company of Castle House noting that they do not consent to the alterations proposed as part of the application and that as such is the case the applicant does not have sufficient control or consent to make the application or carry out the permission. The appellants note that the application should have deemed to be invalid. The applicant is not the owner of the unit subject to the change of use but has got consent from the owner of Unit 3 to make the application (written consent with application). This level of consent is sufficient for the applicant to have the entitlement to make the application and with no issues concern validity on these grounds. The ability of the management company to prevent the development being carried out in the event of a grant of permission is not a planning consideration with no impediment for the Board from considering the proposal on its merits in the context of the proper planning and sustainable development of the area.

7.7 Appropriate Assessment:

7.7.1 Having regard to the nature and scale of the proposed development and its proximity to the nearest European 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. I recommend a grant of permission subject to the following conditions.

9.0 **Reasons and Considerations**

Having regard to the zoning objectives for the area, the nature of the proposed development and the pattern of land use in the vicinity, 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. 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 hours of operation of the take-away and delivery service shall be

restricted to between 1100 and 2200 hours from Monday to Sunday.

Reason: In the interest of residential amenity.

3. The developer shall control odour emissions from the premises in accordance with measures including extract duct details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of public health and to protect the amenities of the area.

4. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services. Grease traps shall be fitted on all kitchen drains.

Reason: In the interest of public health and environmental protection.

5. A waste management plan including the provision for the storage, separation and collection of all waste, shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of the permitted use.

Reason: In the interest of public health and the amenities of the area.

6. The proposed shopfront shall be in accordance with the following requirements:

(a) the proposed signs shall be restricted to single fascia sign as per the plans lodged with the application and shall use sign writing or comprise either hand-painted lettering or individually mounted lettering,

(b) lighting shall be by means of concealed neon tubing or by rear illumination,

(c) no awnings, canopies or projecting signs or other signs shall be erected on the premises without a prior grant of planning permission,

(d) neither internal nor external roller shutters shall be erected,

(e) no adhesive material shall be affixed to the windows or the shopfront, and

(f) no structures/storage areas shall be erected inside the shopfront windows.

Reason: In the interest of visual amenity.

Colin McBride
Planning Inspector

17th May 2018