



An  
Bord  
Pleanála

## Inspector's Report ABP-301269-18

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<b>Development</b>	Change of use of the permitted retail units at 1st and 2nd floor level of the building to provide for office use.
<b>Location</b>	Block A, The Waterways, Sallins, Co. Kildare W91 FH75.
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	17/1476
<b>Applicant(s)</b>	CWGS Investment Ltd
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant with Conditions
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Springwood Limited
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	18 <sup>th</sup> of July 2018
<b>Inspector</b>	Caryn Coogan

## 1.0 Site Location and Description

- 1.1. The subject site is included within an existing mixed-use development known as The Waterways, in Sallins Co. Kildare. It is a new contemporary development located off the main road to Naas at the southern end of Sallins town centre, fronting the R409., south of the train station. The Waterways includes several blocks which includes apartments, restaurants and takeaways on the ground floor, a post office, a Supervalu and a pharmacy.
- 1.2. The relevant Block is *Block A* has a prime location alongside the Sallins Road (R405), and it is the flagship building within the Waterways complex. The building is a three-storey contemporary design which is roughly triangular in shape. The building is currently vacant and has an open plan layout. It has a curved glass façade addressing the R405, and three storey glazed façade facing the access road to The Waterways.
- 1.3. There is surface carparking surrounding the building. The ground floor is also vacant in Block A and it would appear the building has been up for rent for a considerable length of time. There is a pizzeria on the ground floor of Block B and a number of retail outlets.

## 2.0 Proposed Development

- 2.1. Proposed change of use of retail units to offices (350sq.m.) (permitted use as restaurant remains to ground floor) at Block A, The Waterways, Sallins.

## 3.0 Planning Authority Decision

### 3.1. Decision

The planning authority granted the change of use subject to 3No. conditions. It stated in the decision, the development did not involve any works but only involved the partial change of use of an existing premises which did not result in a significant

intensification of use, or additional onsite parking, and would include a use which complies with the zoning objective for the area.

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

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

There are a total of No. 64 carparking spaces required, for existing and proposed uses. The existing parking at Block A had 31No. spaces for 'Park & Ride' associated with the railway station. Permission to Reuse was recommended for 2No. reasons:

- (1) Premature pending resolution of outstanding surface water drainage, attenuation and flooding issues
- (2) Insufficient detail regarding parking calculations

The recommendation was overturned by the Senior Planner who considered the change of use involved no works and did not represent an intensification of use. Non-compliance with planning conditions is an enforcement issue.

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

Water Services Department - Refusal is Recommended it is considered the development is premature pending satisfactory resolution of outstanding surface water drainage, attenuation and flooding affecting Waterways development.

Roads Department: Refusal recommended because there are no clear carparking calculations

Environment and EHO: No objections

## 4.0 **Planning History**

There are 3No. concurrent planning applications on the site:

**17/1474:** Permission sought for change of permitted a creche/ community centre use at ground, community/ meeting room use and office use at 1<sup>st</sup> floor and office use at 2<sup>nd</sup> floor to provide for educational and training facilities.

**17/1475** -Permission sought for a change of use of the permitted creche use at ground floor and community centre/ meeting room at first floor to provide for office use (450sq.m.)

**17/1477** – Change of use of permitted hotel use at ground, 1<sup>st</sup> and 2<sup>nd</sup> floor to provide a new apart hotel with 55No. rooms and a separate commercial gym at basement level.

There are several planning applications relating to the change of uses of various units within The Waterways e.g.

**15/959** Permission granted for a change of use from a takeaway to a restaurant.

**13/1040** Permission granted for a change of use from retail units to a hot food takeaway.

**13/703** Permission granted for a change of use from office to retail shop

The most relevant case which relates to the grounds of appeal is planning reference **12/326** An Bord Pleanála Reference Number: **PL 09.241485**, whereby a change of use and internal and external alterations to an existing building Block 1 (assigned as a hotel under planning register reference number 03/1034) to form a nursing home, nursing home comprising 50 number bedrooms plus ancillary accommodation (total 3,551 square metres) with basement, ground, first and second floors, external planning of the service yard, car spaces, site works and landscaping, minor alterations to glazed panels and doors and re-positioning of two number doors to ground floor elevations was **REFUSED** for the following reasons:

- 1. Having regard to the nature of the proposed development involving a change in use from hotel to nursing home, the vulnerable nature of the future occupants of the proposed development and the design and layout of the existing building, it is considered that the proposed development would seriously injure the residential amenity of future occupants of the proposed nursing home and fail to provide for a proper standard of development. The proposed development would, therefore, seriously injure the residential amenities of future residents of the facility and be contrary to the proper planning and sustainable development of the area.*
- 2. The proposed development involves the change of use from an existing purpose built hotel to a nursing home within the existing Waterways*

*Estate in Sallins. Having regard to the substandard surface water drainage and discharge network serving the entire Waterways development and the recent flooding history in the vicinity of the site, the Board is not satisfied that the amenities of the future residents of the proposed nursing home can be satisfactorily protected particularly given the vulnerability of such residents. The proposed development would, therefore, seriously injure the residential amenities of future residents of the facility and be contrary to the proper planning and sustainable development of the area.*

## 5.0 Policy Context

### 5.1. Development Plan

Sallins Local Area Plan 2016

#### **Zoning Objective K**

**Commercial/Residential - *To protect and improve existing commercial and residential uses and provide for additional compatible uses***

The purpose of this zone is to reflect the established mix of commercial and residential uses which have developed historically in Sallins. Any new development in this zone must not prejudice the viability of established land uses in the zone, especially the Town Centre.

#### ***Lands immediately north of the subject site***

#### **Lands South of Railway**

#### **Appraisal**

This area incorporates the old railway building, Sallins tool hire and a residential unit. The Waterways, a mixed-use development is located to the south while the remaining lands further east are used as a park and ride. The Tudor Gothic style former railway station is a Protected Structure of regional importance. The setting for this structure is defined by the rail line to the north while the south side of the building is poorly defined.

## **Vision**

It is proposed to redefine the urban setting of the old railway station and facilitate a new use within this attractive structure. There is an opportunity to enhance the setting by forming a landscaped plaza to the front (south) of the building and redevelop the tool hire site for mixed uses.

## **6.0 The Appeal**

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

Springwood Limited, Turnings has taken this appeal against Kildare Co. Co.'s decision to grant planning permission for the changed of use of the permitted retail units on the 1<sup>st</sup> and 2<sup>nd</sup> floor of Block A to office use. The grounds of appeal are outlined under a number of headings below:

### **6.2 *Flooding and Surface Water at The Waterways site***

In the 1980's the waterways site was purchased for use as a Pitch and Putt course, it is flooded on numerous occasions. There are serious flooding issues associated with the lands. During the 2000s The Waterways scheme was granted planning permission, and the disposal of surface water was carried out on a temporary basis, and this was agreed as an interim measure to the problem. On 30<sup>th</sup> of November 2009 there was a major flood event at the Waterways whereby people were rescued from their homes by boats. Enforcement Notices issued UD5654 was issued in December 2009, and since then the problems regarding flooding has not been rectified.

### **6.3 *Ownership and Title to Waterways***

The overall owner of The Waterways is difficult to determine. There are a number of Folios with a variety of ownerships. Promontonia (Arrow) Limited are shown as the owners of the legal charge on The Waterways lands which comprise of 3No. Folios, 3167, 42817F and 43544F. There is no evidence on planning file 17/1476 regarding the legal interest of CWGS Investments in 'The Waterways' for the purpose of making a planning application, and can therefore conclude the application is invalid.

#### 6.4 **Summary of Key Planning Issues**

Following examination of all documents associated with The Waterways, there is clear evidence the entire Waterways scheme is illegal. The development has not been constructed in accordance with the plans permitted. The applicants CWGS Investments do not appear to have sufficient legal interest in the waterways to apply for planning permission. Nothing has changed in planning terms since the Board's refusal under PI09.241485. There is still an enforcement issue on site UD5634.

There are no proposals to remove the flooding from the underground carpark and the surface carparking spaces are been used by commuters on the arrow Train Service, because the 200No. underground spaces are not available.

#### 6.5 **Applicant Response**

##### ***Flooding and Surface Water***

The applicant is currently involved in ongoing discussions with Kildare Co. Co. in relation to legacy issues at Waterways relating to surface water and foul water drainage. These issues are the subject of an enforcement order (UD5654) issued in December 2009. It is considered agreement will be reached in a number of weeks. Once an agreement is reached the works will be carried out in compliance with enforcement notice. The enforcement notice deals with compliance relating to the parent permission for the building, registration number 04/1324. The applicant does not object to the inclusion a condition requiring the applicant to comply with 04/1324.

##### ***Legal Interest in Property***

The applicant has sufficient legal interest in the property/ land to make the planning application. Section 34 (13) of the Planning and Development Act 2000-2017 should be noted. They are entitled to carry out development on lands not in their ownership as per Section 34(13) of the Acts.

##### ***Underground Carpark***

The underground carpark is permitted as a park and ride facility for the adjoining train station at Sallins. The proposed development to change the use of the upper floors of Building A at the Waterways does not relate to the underground carpark.

Notwithstanding this the applicant is responding to surface water issues relating to the carpark under UD5053 and works are currently being implemented on site to ensure the underground carpark reopens. The enforcements matters are beyond the remit of the Board.

## 6.6 **Planning Authority Response**

The proposal does not propose any works it proposes the partial change of use of existing premises which would not result in any significant intensification of use of the premises beyond that previously permitted, and would not result in any additional on-site parking, and is in accordance with the zoning objective for the site.

The applicant stated in response to question 10 of the application form that CWGS Investments Ltd are the owners of the subject property. The planning authority had no grounds to challenge this assertion. The third party did not question the legal interest during the assessment of the planning application.

In terms of the issue of surface water drainage across the wider landholding the planning authority took the view the proposed change of use would not exacerbate any pre-existing compliance issues in any material way and that those pre-existing issues are best dealt with through those enforcement mechanisms available to the planning authority under Part VIII of the Planning and Development Act.



## 7.0 Assessment

7.1 I intend examining the proposed development under the following headings:

- Development Plan
- Carparking/ Traffic
- Flood Risk
- Ownership/ Legal Matters
- Appropriate Assessment

## 7.2 Development Plan

The current development plan for the area is the Sallins LAP 2016. The existing building and site is zoned Zoning Objective **K Commercial/Residential - *To protect and improve existing commercial and residential uses and provide for additional compatible uses.***

According to Table 10, the Zoning Matrix, Offices are Permitted In Principle. The permitted use of the first and second floors is Retailing, and the proposed change of use to offices is 584sq.m. with the permitted ground floor use as a restaurant been retained. The adjoining blocks are used for retailing, residential and offices, therefore the proposed change of use is in keeping with the development plan zoning objective for the area and the adjoining landuses.

The Board should note on the contiguous site to the north, between the subject building and the railway station, a large brownfield site with a gothic building has been designated for a mixed-use development scheme in the LAP. Therefore, the planning authority are actively encouraging the mixed use of these lands adjacent to Sallins village centre and the railway station.

The proposed development involves no material alterations or works to the existing building. The office area will be an open plan office on both upper floors over a restaurant. There are toilets, stores, stairwells and lifts in place within the building.

### 7.3 **Carparking**

The third party claim the underground parking on site is blocked up due to flooding and is not accessible to cars using the development. The underground parking was originally permitted as a 'Park and Ride' facility associated with the proximity to the train station. It was not intended for the provision of parking associated with the Blocks within the development. The existing surface carparking surrounding the blocks will be used to serve the proposed office use. There is no change of use associated with the ground floor, only 584sq.m. of the upper floor area will be changed to office space which requires **19No.** spaces according to development plan requirements. It states on Table 17.5 of the Kildare County Development Plan there is one carparking space required per 20 sqm gross floor area of retailing and office use is 1 per 30 sqm gross floor area is required. As the carparking requirement for the proposed change of use is lower than the permitted carparking provision on site, and the development will ultimately result in a surplus of spaces, I consider the carparking issue is acceptable.

Matters relating to flooding of the underground carpark serving the Park and Ride facility are been dealt with between the developer and the planning authority under an Enforcement Case and are not related to this change of use application.

### 7.4 **Flooding/ Flood Risk**

It has been documented on the appeal file, in the development plan and in planning histories about the dramatic flood that occurred at the Waterways on the 30<sup>th</sup> of November 2009. Following this, Kildare Co. Co. studied the area and found, the surface water drainage network servicing the site was almost completely surcharged and totally dependent on soakaways. Kildare Co. Co. is carried out the Sallins Flood Alleviation Works Contract in 2012, with the objective to reduce flooding in the Waterways estate. The drainage system serving the development remains surcharged, and pumping surface water into the foul system continues. The

situation is further complicated by the fact the original developers are no longer in existence, therefore the current applicant on a portion of the site is not the responsibility for the entire infrastructure associated with the Waterways estate. On this basis the planning authority and the Board REFUSED planning permission in 2013 for the change of use of Block 1 from a hotel to a nursing home. The reason was as follows:

*The proposed development involves the change of use from an existing purpose-built hotel to a nursing home within the existing Waterways Estate in Sallins. Having regard to the substandard surface water drainage and discharge network serving the entire Waterways development and the recent flooding history in the vicinity of the site, the Board is not satisfied that the amenities of the future residents of the proposed nursing home can be satisfactorily protected particularly given the vulnerability of such residents. The proposed development would, therefore, seriously injure the residential amenities of future residents of the facility and be contrary to the proper planning and sustainable development of the area.*

There was an Enforcement Notice issued **UD5654** regarding the flooding and non-compliance with conditions. This issue has been ongoing on the site since 2009. According to the applicant's response to the appeal, the owners are in the process of complying in full, with the terms and conditions of the parent permission reference 04/1324. The applicant has no issue with the Board reinforcing this condition.

In assessing this current application for a smaller scale change of use from retailing to office use, the planning authority took the view that the proposed change of use would not exacerbate any pre-existing compliance issues in a material way and that the pre-existing issues are best dealt with through enforcement procedures.

Unfortunately, the existing landmark building has remained vacant for a considerable length of time. As the change of use relates to first and second floors and not a residential use of the entire building like a nursing home previously, I believe the future occupiers of the development will not be as vulnerable either. I do not consider the refusal of a change of use from a hotel to a nursing home is a

precedent for a current change of use proposal. Therefore, I consider the Board can uphold the planning authority's decision to grant permission for the development and allow the planning authority to address the surface water issue through the enforcement procedures as specified by the planning authority on appeal. I note the Water Services Section of Kildare Co. Co. had recommended a refusal in its report on the planning application file dated 16<sup>th</sup> of February 2016 stating the development was premature pending the satisfactory resolution of the outstanding surface water drainage, attenuation and flooding issues. However, this recommendation was overruled by the Planning Control section who stated the outstanding issues were a matter for Planning Enforcement. I believe this issue can be reinforced by a planning condition requiring full compliance of the parent permission 04/1324 within a set timeframe of twelve months.

#### **7.5 Ownership/ Legal Matters**

The appellant claims the applicant has insufficient interest in the property and or the lands to make the planning application. This is a new issue raised on appeal that was not cited as grounds of objection during the planning application assessment. The application was validated by the planning authority. According to Item 10 of the Planning application form, it states the applicant, CWGS Investments Ltd is the owner of the subject site. As per Section 34(13) of the Planning and Development Act 200-2017, a planning permission does not entitle an applicant to carry out development on lands not in their ownership. The third-party appeal includes a vast amount of information relating to Folio numbers and different land registries, yet the information does not appear to be site specific. There are no grounds to dis miss this appeal on insufficient legal interest in the lands.

#### **7.6 Appropriate Assessment**

The Waterways site is not directly connected to any Natura 2000 sites or within 5km of one. The closet Natura 2000 site is 8.7Km from the development, Ballynafagh Bog (SAC). There would be no potential significant affects on the Network 2000 sites or ecological network.

## 8.0 Recommendation

- 8.1. I recommend the planning authority's decision to grant planning permission for the change of use be upheld by the Board.

## 9.0 Reasons and Considerations

Having regard to the fact the proposed development represents the partial change of use of an existing premises which will not result in any significant intensification of use that currently exists on the subject site, would result in less carparking requirements, and is in accordance with the current development plan zoning objective for the area as stated in the Sallins Local Area Plan 2016, it is considered subject to the conditions set out hereunder the proposed change of would be in keeping 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 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 interests of clarity

2. This permission relates to the change of use of a part of a premises granted under planning reference number 04/1324, and the applicant shall comply in full with all the terms and conditions relating to surface water collection, drainage and flood attenuation of the parent permission reference number 04/1324 within 12months of this decision.

**Reason:** In the interest of clarity and

3. 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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Caryn Coogan  
Planning Inspector

14<sup>th</sup> of August 2018