



An
Bord
Pleanála

Inspector's Report ABP-301499-18

Development	Change of use of existing retail unit to restaurant and take away. The site is situated within an Architectural Conservation area.
Location	49 Dundalk Street, Carlingford, Co. Louth
Planning Authority	Louth County Council
Planning Authority Reg. Ref.	18/91
Applicant(s)	Gazmend Malaj
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Anne Dearey; John McKeivitt
Observer(s)	None
Date of Site Inspection	3 rd August 2018
Inspector	Una O'Neill

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1.0 Site Location and Description

- 1.1.1. The subject site is located in the village of Carlingford, on the eastern coast of Co. Louth. The site is located on the western side of Dundalk Street, which is a one way street, accessed via Market Street and the main commercial centre of the village. The street is narrow and has parking laid out on the western side with double yellow lines on the eastern side. There is a footpath on the western side of the street. The street is characterised by two storey properties of a variety of styles with those on the western side of the street either directly fronting the street or having a staggered set back. There is a mixture of retail, commercial and residential properties in the vicinity.
- 1.1.2. The site, which has a stated area of 0.22ha, comprises a two storey semi-detached building which was vacant at time of site inspection. The adjoining building to the north appears to be in use by an adventure centre company and is in the same ownership as the appeal site. A similarly scaled two-storey detached building is to the south of the appeal site. To the west/rear of the property is a large backland open site, which is accessed from the side of the adjoining property to the north, and is informally used for parking (unlined). West of this backland area are houses and apartments.

2.0 Proposed Development

- 2.1. The proposed development comprises the following:
- Change of use from existing retail unit to a restaurant and take away. The gross floor area relating to the change of use is 171.25 sqm.
 - The works proposed to the building are internal.
 - The restaurant seating area is 67 sqm.

3.0 Planning Authority Decision

3.1. Decision

GRANTED, subject to 5 conditions, including the following:

C2: Hours of operations between 1200 and 0100 Monday to Friday and 1200 to 0200 Friday to Saturday.

C3: This permission does not include signage indicated on the east elevation drawing nor does it permit signage on the southern gable elevation.

C4: Notwithstanding exempt development regulations, no changes of the exterior of the structure or site to be carried out without planning approval.

C5: Development Contribution

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Officer's report generally reflects the decision of the Planning Authority. In relation to opening hours, it is stated that a mobile chip van has a licence to serve until 2am on Saturday and Sunday and it is considered reasonable to allow for the same opening hours for fixed premises as to mobile premises. This is consistent with a decision from An Bord Pleanála in 2012, ref PL15.240361, for a takeaway at Old Quay Lane, Carlingford, whereby the same opening hours of 2am at the weekend were permitted.

3.3. It is stated that no development contribution charges apply as change of use applications are exempt where the change of use and internal alterations does not lead to the need for new or upgraded infrastructure/services or significant intensification of demand placed on existing infrastructure. A section 48(2)(c) contribution is required in relation to a shortfall of one parking space.

3.3.1. Other Technical Reports

Environment: No objection.

Infrastructure Section: No objection. Recommendation that the application be appropriately levied for the provision of car parking spaces.

3.4. Prescribed Bodies

Irish Water: No objection subject to condition.

3.5. Third Party Observations

Two observations were received, one of which was signed by a number of people from the area. The contents of the observations are largely addressed within the grounds of appeal.

4.0 Planning History

The following application relates to the site subject of this appeal and includes the building to the north, to the south and the backland to the west:

PL15.243692 – Permission GRANTED to redevelop site to accommodate a shop, pharmacy, medical centre and 2 apartments. This application related to three building, one of which is the subject of this appeal application.

The following concurrent application relates to the neighbouring detached property to the south, which extends along the side and rear of the site subject of this appeal:

ABP-301567-18 – Concurrent application before ABP. Permission GRANTED by Louth County Council for RETENTION permission and PERMISSION for following development: 1. Retention permission for clearing and hardcoring of lands to provide car parking, 2. Change of Use of existing dwelling house to Hostel type accommodation ancillary to Carlingford Adventure Centre 3. Revisions to existing vehicular entrance to site, 4. Minor alterations to facades of dwelling, 5. Addition of balcony to rear elevation, and all associated site works.

5.0 Policy Context

5.1. Louth County Development Plan 2015 – 2021

- Carlingford is designated as a Level 3 settlement in the County's settlement hierarchy
- **Policy SS 9:** Promote and facilitate limited development within Level 3 Settlements that is commensurate with the nature and extent of the existing settlement, to support their role as local service centres and to implement the

policies and objectives relative to each settlement as provided for in Appendix 2, Volume 2 (a).

- **Section 6.6:** Retail policies outlined in the Plan aim to preserve and enhance the viability and vitality of the town and village centres.
- EDE 32: To ensure that applications for retail development comply with the provisions of Retail Planning: Guidelines for Planning Authorities 2012, Retail Design Manual 2012 and with the provisions and policies of the *Louth Retail Strategy 2014*.
- EDE 33: To promote a healthy competitive retail environment within County Louth and to maintain the vitality and viability of the town and village centres and their role as primary retail core areas.
- EDE 35: To generally discourage permission for change of use from retail or service (including banks and similar institutions with over the counter services) to non-retail or non-service uses at ground floor level.
- **Section 6.7.4:** Shopfront Design.
- **Section 6.8.2.6:** Fascia Signs
- **Table 7.6** requires car parking provision at a rate of 1 space per 50 square metres in settlement centres for retail development, and 1 space per 20 square metres for restaurants.
- **Appendix 2:** Settlement Plan for Carlingford, which includes the following zoning and policies:
 - **Zoning:** Village Centre - to provide, protect and enhance village centre facilities and enable town centre expansion
 - **CAR 1:** To support Carlingford in its role as a local rural service centre for its indigenous population and that of its rural hinterland, where the principles of environmental, economic and social sustainability including protection of the village's heritage and the natural and built environment are enshrined.
 - **CAR 4:** To retain and enhance the village setting within its unique scenic backdrop.

- **CAR 5:** To protect and retain the historic integrity and plots of the medieval town and support its preservation in future development.
 - **CAR 9:** To ensure that Carlingford develops a sustainable economic base by seeking to provide a range of employment opportunities locally.
 - **CAR 10:** To facilitate new retail development that would be commensurate with Carlingford's population size, location and traditional built environment.
 - **CAR 11:** To support sustainable tourism development in Carlingford.
- The appeal site is also within the Architectural Conservation Area (ACA) and Area of Special Archaeological Interest for the village core

5.2. Natural Heritage Designations

The site is not located within or adjacent to a Natura 2000 site. The nearest Natura 2000 sites are Carlingford Shore SAC (002306) and Carlingford Lough SPA (004078).

6.0 The Appeal

6.1. Grounds of Appeal

Two third party appeals have been submitted from a resident of River Lane in Carlingford and a resident of Dundalk Street. The grounds of the appeals are summarised as follows:

- This retail unit is one of three concurrent applications. The developer (not the applicant) has demolished and taken away the boundary walls of the medieval burgage plots, contrary to Policy CAR 5 of the development plan.
- The combined development of this and neighbouring plots is not sustainable for a village the size of Carlingford which is in an ACA, contrary to Policy CAR 10, whereby retail development should be commensurate with Carlingford's size, location, and traditional built environment.

- The previous unauthorised take away at this location had a negative impact on the quality of life of the residents of Dundalk Street due to footfall and noise in the early hours of the morning.
- There is a proliferation of chip vans, creperies, chip shops, ice cream and sweet vans in Carlingford. Given obesity levels, the proposed take away will impact negatively on the health and well-being of the local community nor does it support or improve the amenities of the area, contrary to Policy CAR 3.
- Proposal will result in anti-social behaviour.
- Proposal will detract from the character of the walled town of Carlingford.
- The footpath is limited and parking spaces are not available at this location.
- Noise levels at night are considerable and because there are no front gardens on the street, there is nothing to absorb the noise.
- If permitted, trading hours should be limited from 9-6.

6.2. Applicant Response

None.

6.3. Planning Authority Response

No further comment.

6.4. Observations

None.

6.5. Further Responses

None.

7.0 Assessment

7.1.1. I consider that the main issues in this case are as follows:

- Principle of Development

- Impact on Residential Amenity
- Traffic and Parking Impacts
- Other Issues
- Appropriate Assessment

Principle of Development

- 7.2. Permission is sought for a change of use for the ground floor of an existing retail unit to restaurant/take away, with the plans indicating seating for 32 people.
- 7.3. The grounds of appeal argues that Carlingford has a proliferation of fast food businesses and no more should be facilitated given health implications, impact on ACA and impact on character of Carlingford.
- 7.4. The subject site is zoned Village Centre, the objective of which is ‘to provide, protect and enhance village centre facilities and enable town centre expansion’. It is stated that the principal permitted land use in this zone will be town/ village centre related uses. These shall include shops, offices, residential (comprising of not more than 50% of the floor space of the overall development), crèches/playgroups, personal services, community and cultural activities, pubs, restaurants, guesthouses, hotels, places of entertainment, clinics, doctors/dentist surgery and any other similar type uses. The proposed restaurant and takeaway use is therefore acceptable in principle within this zoning category.
- 7.5. While I note that there are a number of food outlets in the area, there is a variation in the type of outlets, which one would expect in a village centre (public houses, restaurants, cafes, ice cream shops, and takeaways). The number of such outlets is reflective of the high level of tourism in the area. I do not consider that the proposed development, which is for a restaurant/take away, when taken in conjunction with the existing outlets and the mixed uses permitted within a village centre, would constitute an excessive concentration of this type of use. Village/Town centres should be facilitated in their offering of a range of services, as per the zoning objective, and it is not the role of planning to inhibit competition.
- 7.6. The changes proposed to the unit are internal only, with the existing wooden shopfront frame to be retained and no changes proposed to the shopfront. The proposal will therefore have a negligible impact on the ACA. I note an existing plastic

panel has been attached to the original wooden fascia advertising directions to a different business. As per section 6.2.8.6 of the development plan, painted signs or non-illuminated letters are preferable to panels or other types of display. I further note there were additional signs on the gable and façade which do not form part of this application and the planning status of which is unclear. Should the Board be minded to grant permission, a condition in relation to signage is recommended to protect the visual amenities of the ACA.

Impact on Residential Amenity

- 7.7. The grounds of appeal argue that the proposed restaurant/take away will impact on residential amenity, with an impact from excessive late night noise given the opening hours.
- 7.8. The site is located in the village centre/commercial core where there is a mixture of commercial and residential uses. I consider that the general operation of a restaurant/take away of the scale proposed would be unlikely to generate excessive noise levels above what exists within the core commercial area or to result in other undue impacts on the amenities of properties in the vicinity. Issues relating to the potential for anti-social behaviour is a matter for the relevant authorities, namely the Garda Síochána, to address.
- 7.9. To ensure that adequate provisions are in place prior to the operational phase of the development, should the Board be minded to grant permission, I would recommend that a condition is attached, requiring the developer to control odour emissions from the premises and to agree details of any external ducting or ventilation required with the planning authority prior to the commencement of development. I would also recommend a condition requiring the agreement of a litter / refuse management plan prior to the commencement of development.
- 7.10. With regard to the issue of opening hours, given the context of the site, planning history of the area, including permitted hours of operation of an existing mobile chip van and hours permitted at another take away (PL240361), the operation hours of 1200-0100 Monday to Thursday and 1200-0200 Friday to Sunday are in my view reasonable. Overall, I am satisfied that, subject to appropriate conditions in relation to hours of operation and the management of odour and litter that the proposed use would not impact unduly on the amenities of the nearby properties.

7.11. While I note the concerns raised by the appellants in relation to alleged unauthorised development, this is not a matter for the Boards consideration, and issues of this nature should be raised with the planning authority.

Traffic and Parking Impacts

7.12. The grounds of appeal argues that the proposed change of use would exasperate traffic issues in the area, given limited footpath space and parking available.

7.13. In accordance with development plan standards, the proposal generates a requirement for one additional car parking space above what was required for the previous retail unit.

7.14. I note that no parking spaces are proposed and there are no existing parking spaces identified. Carlingford is a medieval village and the site is within an ACA. It is not possible or desirable to provide additional parking within such a tight urban context without causing damage to the character of the village. At present, there is limited parking within the centre, with a car park at the edge of the centre within walking distance of the various attractions. I am satisfied that there is adequate car parking in the immediate area to serve customers and staff and the proposal will not result in a significant increase in traffic demand or a traffic hazard in this area.

Other Matters

7.15. The planner's report states that, as per article 6.1(10) of the Louth County Council Development Contribution Scheme 2016-2021, no development contribution charges apply, as change of use applications are exempt, where the change of use and internal alterations does not lead to the need for new or upgraded infrastructure/services or significant intensification of demand placed on existing infrastructure. However, as per the schedule of contribution rates in appendix III, a section 48(2)(c) contribution is stated to be required in relation to a shortfall of parking spaces. Condition 5 of the decision issued by Louth County Council requires a payment of €2560 under section 48(2)(c) in lieu of one parking space.

7.16. Section 48(2)(c) of the Act applies where specific exceptional costs not covered by a development contribution scheme are incurred by a local authority in respect of public infrastructure and facilities which benefit the proposed development. I would query the requirement for a levy of this type, given the application of an overall exemption from general contributions under the Section 48 scheme on the basis of

the limited scale and impact of the development, as stated in the planner's report. Furthermore I would question the application of 48(2)(c) for parking, given this is a foreseeable infrastructure cost for which levies can be charged under a Section 48 scheme and no specific scheme/allocation of monies toward where the parking is to be provided has been identified. Should the Board be minded to grant permission, they may wish to consider further the inclusion of the section 48(2)(c) condition.

Appropriate Assessment

- 7.17. Having regard to the minor nature of the development, its location in a serviced urban area, and the separation distance to any 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. It is recommended that permission is granted.

9.0 Reasons and Considerations

- 9.1.1. Having regard to the location of the site within the village centre of Carlingford and the pattern of development in the area, it is considered that the proposed restaurant/take away, subject to compliance with the conditions set out below, would not seriously injure the amenities of the area, would not detract from the character of the Architectural Conservation Area and would not conflict with the objectives of the Louth County Development Plan. 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 opening of the restaurant and take-away shall be restricted to between:

1200 hours and 0100 hours Monday to Thursday, and

1200 hours and 0200 hours Friday to Sunday

Reason: In the interest of the amenities of the area.

3. The proposed development shall be in accordance with the following requirements:

(a) Signage shall be restricted to a single fascia sign. Signage shall be contained within the wooden fascia panel, using sign writing or comprising either hand-painted lettering or individually mounted lettering onto the wooden fascia board, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development

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

(c) No adhesive material shall be affixed to the windows or the shopfront.

Reason: In the interest of visual amenity.

4. Notwithstanding the provisions of the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, no advertisement signs (including any signs installed to be visible through the windows), 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.

5. The developer shall control odour emissions from the premises in accordance with measures, including ducting, details of 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.

6. Litter in the vicinity of the premises and refuse from the premises shall be controlled in accordance with a scheme of litter and refuse control which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the provision of litter bins and refuse storage facilities.

Reason: In the interest of visual amenity.

7. Security roller shutters, if installed, shall be recessed behind the perimeter glazing and shall be factory finished in a single colour to match the colour scheme of the building. Such shutters shall be of the 'open lattice' type and shall not be used for any form of advertising, unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

8. Water supply and drainage arrangements, including the disposal and attenuation of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

Una O'Neill
Senior Planning Inspector

13th August 2018