



An
Bord
Pleanála

Inspector's Report ABP301585-18

Development	Permission for change of use from ground floor retail to café/take-away including connection to existing services and all associated works.
Location	Barrack Street, Athlone, County Westmeath.
Planning Authority	Westmeath County Council.
Planning Authority Reg. Ref.	17/7234.
Applicant	Noel Ryan.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party -v- Grant.
Appellant	Qiaoxia Chen.
Observers	None.
Date of Site Inspection	25 th July, 2018.
Inspector	Paul Caprani.

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1.0 Introduction

ABP301585-18 relates to a third-party appeal against the decision of Westmeath County Council to issue notification to grant planning permission for a change of use from ground floor retail to café/take-away in Barrack Street, Athlone. It is argued that the proposed development is located in an area which is primarily residential in nature. It is also argued that the proposed development contravenes many policy statements contained in the development plan, the opening times permitted for the café/take-away facility is also queried.

2.0 Site Location and Description

The appeal site is located on the southern side of Barrack Street between Market Place and Connolly Street in Athlone Town Centre. Barrack Street is one of the main commercial streets within the town centre and accommodates an array of commercial uses particularly on the southern side of the street in the vicinity of the appeal site. The northern side of Barrack Street accommodates Athlone General Post Office, Athlone Garda Station Headquarters and St. Peters and Paul Cathedral. The southern side of Barrack Street in the vicinity of the subject site accommodates an array of commercial uses including two public houses to the immediate east of the subject site as well as a hair salon and a vacant unit. A two-storey office building is located to the immediate west of the subject site at the corner of Barrack Street and Connolly Street. On the opposite side of the junction of Connolly Street and Barrack Street a public house with B&B facilities overhead is located.

3.0 Proposed Development

- 3.1. The subject site comprises of a two-storey pitched roof building with extensive glazing on ground and first floor. The upper floor accommodates an accountancy firm while the ground floor is currently vacant.
- 3.2. The stated site area on the planning application form is 0.002 hectares. The proposed change of use relates to an area of just less than 90 square metres at

ground floor level. The change of use sought is from retail to Café/ Takeaway use at ground floor level. The front area of the building is to accommodate customer seating the serving kitchen and prep. kitchen are to be located to the rear. Rear access to the site is provided from Connolly Street. Permission is also sought to include connection to public services together with new external signage.

4.0 Planning Authority's Decision

4.1. Decision

- 4.1.1. Westmeath County Council in its decision dated 16th April, 2018 issued notification to grant planning permission for the proposed development subject to six conditions.

4.2. Planning Authority Assessment

- 4.2.1. The planning application was received by Westmeath County Council on 28th December, 2017. A number of letters of objection, primarily from restaurant owners in the area.
- 4.2.2. A report from the Senior Assistant Chief Fire Officer states that the application will require a Fire Safety Certificate under the Building Control Act 1990. However, there is no objection to the granting of planning permission provided adequate water for firefighting is provided.
- 4.2.3. A report from the HSE states that there is no objection from a public health viewpoint subject to 12 conditions.
- 4.2.4. A report from the Senior Executive Engineer notes that the development is within the core retail area and complies with development standards with regard to car parking requirements. The report goes on to state that there is no objection to this development and should a grant of planning permission be considered appropriate there are no engineering conditions which are required to be attached.
- 4.2.5. The initial planner's report sets out details of the proposal and notes that the application site lays outside the flood area as per the CFRAMS maps. It notes that a change of use in this instance would not be detrimental to the vitality and vibrancy of the retail centre. It is considered that a restaurant use will be acceptable. However, it

is considered that further information is required in relation to the extraction system and the location of refuse storage together with operational hours. The applicant is also requested to submit revised drawings reflecting a more traditional shopfront.

4.3. **Additional Information Request**

4.3.1. On foot of the planner's report, Westmeath County Council requested the further additional information.

- Full details of refuse storage and management for the proposed development.
- Full details of the proposed extraction system to be provided.
- Details of hours of operation.
- A revised sign illustrating a traditional shopfront and advertising.

4.4. **Further Information Submission**

4.4.1. The applicant submitted a response to the additional information request. It included a drawing 03-008, which is not contained on file, notwithstanding the fact that it was requested from the planning authority. The response states that the applicant will be entering into a contract with Barna Waste. It is proposed to have the bins collected by a waste contractor three times a week. Ventilation to the bin storage area will also be provided.

4.4.2. Also indicating in drawing (03-008), according to the response is the location of the overhead extraction fan and its outlet. A pipe outlet will also be installed. It is proposed to raise the outlet of the pipe over all surrounding eaves in order to avoid any odour problems in adjoining properties.

4.4.3. The proposed opening hours are as follows:

Monday to Thursday 0900 to 2400 hours

Friday to Saturday 0900 to 0200 hours

Sunday 1600 to 0200 hours

In relation to signage traditional print will be used.

- 4.4.4. A further planner's report was prepared on foot of the additional information submitted and it was recommended that planning permission be granted for the proposed development.
- 4.4.5. Condition No. 2 required that the applicant submits details of the proposed signage and shopfront design.
- 4.4.6. Condition No. 4 states that the hours of operation of the take-away shall be Monday to Thursday 0900 to 2400, Friday to Saturday 0900 to 0200 hours and Sunday 0900 to 2400.

5.0 Planning History

There appears to be no planning history associated with the subject site.

6.0 Grounds of Appeal

- 6.1. The decision of Westmeath County Council to issue notification to grant planning permission was appealed by MMKDA Consulting Engineers on behalf of Qiaoxia Chen. The grounds of appeal are outlined below.

It is argued that the proposed development will primarily trade as a take-away as the drawings submitted indicate that the maximum number of seated patrons will be 12 persons. This is only a quarter of what would be required to make any business feasible as a café.

While the area is zoned mixed-use it is argued that land uses in the wider vicinity are primarily residential and that Barrack Street itself has residential use above shop level.

Reference is made to the planning matrix contained in the Athlone Town Development Plan and it is noted that take-away use is only open for consideration under the land-use zoning objective. It is suggested that the proposed development will be heavily dependent on the take-away element as opposed to the sit-down café use. Reference is made to various policy statements in the development plan including Policy P-DU5 which seeks to encourage culture and entertainment uses in the town centre. Reference is also made to Policy P-DU3 which seeks to resist proposals for the change of use from retail to use as take-aways where such a

proposal would individually or cumulatively undermine the vibrancy of the town centre and would result in the loss of active retail frontage at pedestrian level.

Reference is made to the various development management standards. The development plan also seeks to ensure that careful consideration will be given to the provision of uses such as take-aways in close proximity to residential areas. It is suggested that the planning report did not give detailed consideration to this aspect of the proposal.

It is also noted that two existing take-aways are located 30 and 50 metres from the proposed development.

The Athlone Town Plan also seeks to encourage higher order comparison goods retail activity in the town centre. The proposed development does not accord with this objective.

Concerns are also expressed in relation to the opening hours of the take-away facility. It is noted that another take-away development at Dublingate Street restricted the hours of operation to 0800 to 2300 only. It is suggested that serious consideration should be given to restricting the operational hours.

7.0 Appeal Responses

7.1. Planning Authority Response to the Grounds of Appeal

A response was received from Westmeath County Council on 7th June, 2018. It notes that the unit has been vacant for a considerable period of time and the western part of the town has experienced high vacancy rates.

It is noted that the application site is located on the fringe of the culture and tourism quarter as defined in the draft Athlone Joint Retail Strategy (2018). Notwithstanding the efforts made by the Council, the western part of the town has continued to decline with high vacancy rates. And this is recognised in the draft Retail Strategy of 2018.

While it is the policy of the development plan to prevent excessive concentrations of take-aways, it should be noted that there is only one existing take-away in the vicinity of the application site that is incidentally in the ownership of the appellant

and it is not considered that there is an excessive concentration of take-aways. It is further noted that there are no objections from residents in the area.

It is not considered that the proposed change of use would undermine the vibrancy of the town centre nor would it result in the loss of active retail frontages. A refusal of planning permission in this instance would undermine the vibrancy and add to the already high vacancy rate of this part of the town centre. It is noted that the subject site is no longer within the Athlone Town Core Retail Area.

It is considered that the proposal represents a sustainable mix of uses and that the proposal would meet the Athlone Town Development Plan zoning objectives and retail strategy and would not negatively impact on the residential amenity of the area. It should be noted that there is a limited number of take-aways and cafes on the western bank area and therefore An Bord Pleanála are requested to uphold the decision of the Planning Authority.

7.2. Applicant's Response to the Grounds of Appeal

A response was received by the applicant on 6th June, 2018 and is summarised below.

The appellant contends that a café would need a seating capacity of 48 persons to be commercial viable. If this logic was extended to all urban areas with the exception of cities, then no small café would be viable and this is clearly not the case. The final seating capacity of the premises will be determined by occupancy load tables as set out in Part B of the Building Regulations and would be addressed by way of a fire safety certificate.

It is rejected that the area is primarily residential. Only one unit has residential accommodation above shop level at Barrack Street (No. 2 Barrack Street).

Connolly Street has suffered from a degree of dereliction and the amount of residential accommodation in the area is exaggerated in the grounds of appeal. The provision of a café will help encourage people back into the area.

It is argued that the proposed development is fully in accordance with the zoning and planner's report took due cognisance of the policies and provisions contained in the development plan. It is suggested that statements contained in the development plan are selective and do not accurately reflect the Council's policies in relation to

cafes and take-aways. The area has a significant amount of dereliction. And the proposal will address this problem.

With regard to opening hours, it is contended that the opening hours of the appellant's take-away extend to 0400 on Friday and Saturday which is significantly later than current proposal before the Board.

Reference is made to other take-away facilities in the wider area and it is argued that these do not impact on the viability of cafe use.

It is also stated that the proposed take-away facility will serve European cuisine and therefore will not be a direct competitor with the appellant's enterprise (which is a Chinese takeaway).

A further submission on behalf of the appellant dated 10th July specifically comments on the submission by the planning authority in response to the grounds of appeal. It states that the applicant is in full agreement with the planner's assessment of the original application. It is reiterated that the change of use in this instance would not undermine the vibrancy of the town centre nor lead to a loss of retail activity. The provision of cafes in the western part of the town can increase the footfall and vibrancy and vitality of the area. The application was considered under Policy P-DU5 and deemed to positively contribute to the tourism and cultural facilities of the area.

7.3. Further Submission on behalf of the Appellant

This submission reiterates that Westmeath County Council's decision to grant planning permission has no practical basis having regard to the policies and provisions of the development plan.

It is also stated that there is a discrepancy in the description of the development in that the proposed development related to "a café/take-away" whereas the conditions attached to the Planning Authority's grant of permission refers to "take-away restaurant". It is suggested that this is a different use. The opening hours permitted suggest that the café element is merely a smokescreen for the real intended use as a late-night take-away.

It is reiterated that there is an overconcentration of take-aways in the area and this is contrary to Policy P-DU3 of the development plan which seeks to resist an overconcentration of take-aways.

The appellant has no objection to the use of the premises as a restaurant with appropriate trading hours however the appellant does however object to the development of a late night café in the area. Concern is also expressed that the shopfront and signage are extremely poor. It is also suggested that the Planning Authority never considered the feasibility of the proposal and it is stated that any failure in the feasibility of the proposal will result in further dereliction and vacancy rates within the town centre.

It is stated that there is largescale residential development on Connolly Street in the vicinity. And the response goes on to reiterate concerns in relation to the overconcentration of take-aways in this area of the town.

Any reference to the Athlone Joint Retail Strategy should have regard to the fact that this is draft document at present and has not been the subject of the rigors of public consultation.

It is not accepted that the proposed development will in any way positively contribute to tourism and culture in the area as suggested by the Planning Authority. It is reiterated that the development plan highlights the need to ensure that retail activity is maintained in the town centre. It is contended that the fact that there are no objections for many residents living in the area does not provide a reasonable basis to grant planning permission for the proposed take-away.

In conclusion it is argued that the appellant in this instance seeks to protect his interests and is relying on the policies and provisions in the development plan to do this. It is also concluded that the subject application was not subject to a thorough assessment by the Planning Authority. It is suggested that the applicant is relying on a draft Retail Strategy to justify the proposed development and this has not been published for public consultation. It is reiterated that there is confusion between whether or not the proposal constitutes a café or a restaurant. It is suggested that overintensification of café/take-away activity will have a negative impact on the future culture and tourism quarter of the town. For these reasons it is requested that the Board overturn the decision of the Planning Authority and refuse planning permission for the proposed development.

8.0 Development Plan Provision

- 8.1. The site is governed by the policies and provisions contained in the Athlone Development Plan 2014 – 2020. The subject site is zoned for 'mixed use development'. This land use zoning objective seeks to provide for protect and strengthen the vitality and viability of town centres, to consolidating development, encouraging a mix of uses and maximising the use of land, to ensure the efficient use of infrastructure and services.
- 8.2. It is the policy of the development plan to sustain and enhance the vitality and viability of town centres and where appropriate consolidate urban areas. This will be achieved by encouraging a mix of compatible uses within town centres and maximising the use of land to ensure the efficient use of infrastructure and services to mobilising brownfield and underutilised land for development where appropriate.
- 8.3. Section 5.9 of the development plan seeks to incorporate a variety and mix of uses in the town centre.
- 8.4. Policy P-DU3 seeks to resist proposals for a change of use from a retail use to a non-retail use such as take-aways and betting offices in the town centre core area, where such a proposal would individually or cumulatively undermine the vibrancy of the town centre and result in the loss of active retail frontages at pedestrian level.
- 8.5. P-DU5 seeks to encourage culture and entertainment uses within the town centre and other uses that support the evening economy.
- 8.6. P-DU6 seeks to protect the residential amenity from undue encroachment of commercial uses in the town centre.
- 8.7. Section 5.9.2 of the development plan recognises that the areas to the east and west of the Shannon have different commercial profiles. The west bank has become the preferred location for restaurants and the east bank accommodates retail and office uses. The west bank area with its winding streets and proximity to the quays tends to attract tourists stopping off for food or to visit the castle. The east side contains the convenience and comparison shops. It is considered that a greater synergy should be aimed at both sides facilitating each other and to encourage people to linger for longer in the town centre.

8.8. Section 12.16.7 of the development plan specifically sets out objectives in relation to take-aways. It states that due to amenity considerations, take-away establishments should generally be confined to core retail areas or areas of mixed commercial development. Such uses are generally not suited to mid-terrace locations or other locations where neighbouring properties or upper floors unconnected with the business are in residential use. Proposal for such uses near to residential areas will be given very careful consideration. In order to maintain an appropriate mix of uses and protect night-time amenities in particular areas, it is the objective of the Council to prevent an excessive concentration of take-aways and ensure that the intensity of any proposed take-away is in keeping with both the scale of the building and pattern of development in the area.

9.0 Planning Assessment

- 9.1. I have read the entire contents of the file, have had particular regard to the issues raised in the grounds of appeal and have visited the subject site and its surroundings.
- 9.2. The key question before the Board is whether or not the principle of a café/take-away facility is appropriate on the subject site. Such a use is open for consideration under the land use zoning objective and as such the proposal should be assessed on its merits. A key consideration in determining the whether or not the principle of development is acceptable is the fact that the subject ground floor use is currently vacant at present, and according to the planning authority, the subject site has been vacant for some time. It is also of note that there is a significant problem with vacant units on the western side of the town and there are a number of vacant units within the vicinity of the site and on Barrack Street between Market Place and Connolly Street.
- 9.3. The grounds of appeal point out that Policy Statement P-DU3 seeks to resist proposals for a change of use from retail use to a non-retail use such as take-aways and betting offices in the town centre core area, where such a proposal would individually or cumulatively undermine the vibrancy of the town centre, and result in the loss of active retail frontages at pedestrian level. I note that this policy would not

readily apply in the case of the current application before the Board on the grounds that the unit is currently not in active use and does not contribute to the vibrancy of the town centre. I consider that a grant of planning permission for a change of use from retail to café/take-away would be appropriate in this instance as the unit is not currently in use and the incorporation of a café, particularly during the daytime would contribute to the vibrancy of the town centre.

- 9.4. Were the current unit in active retail use, I consider a case could be made for the argument that the proposed development is contrary to Policy P-DU3. However, the proposed development would result in a ground floor unit accommodating an active use which would facilitate active frontage at a pedestrian level along an important city centre street.
- 9.5. The grounds of appeal argue that there is some ambiguity as to whether the proposed development constitutes a restaurant or a café/take-away facility. Notwithstanding the wording that is used in the planner's report where reference is made to "a restaurant use", the wording in the planning application makes it clear that permission is sought for a café with an on-site sit-down facility together with a take-away facility for consumption of hot food off the premises. Thus the development described in the public notices is the development on which the Board must adjudicate and decide whether or not it is in accordance with the proper planning and sustainable development of the area. I do acknowledge that reference to the proposal as being a restaurant facility may not be entirely accurate and a more appropriate description would be that of a café/take-away facility.
- 9.6. The development plan is also clear in Section 12.16.7 that take-away establishments should be generally confined to core retail areas or areas of mixed commercial development. The proposal fully accords with this in terms of the land use zoning objective pertaining to the site and the location of the site within the town centre.
- 9.7. The development plan also suggests that such uses are not generally suited to mid-terrace locations or other locations where neighbouring properties or upper floors unconnected with the business are in residential use. The Board will be aware that the subject site accommodates an office use at upper floor level which will not be subject of any potential late night disturbance arising from the operation of the take-away facility. Furthermore, there is a letter contained on file from the occupiers of the

office development at first floor consenting to the application (see letter received by the Planning Authority dated 28th December, 2017).

- 9.8. While I acknowledge that the subject premises is in close proximity to Connolly Street which accommodates residential development, the subject site is not located contiguous to residential units and is zoned specifically for mixed commercial development. The Board will also note that there are a number of other commercial uses along Barrack Street including three public houses in the vicinity which would accommodate late night activity. There is therefore a precedent for such late night uses in the vicinity of the subject site.
- 9.9. Section 12.16.7 of the development plan also seeks to ensure that an excessive concentration of take-aways and the intensity of any proposed take-away is in keeping with the pattern of development of the area. The Board will note that there is no such take-away facility on either the northern side or southern side of Barrack Street between Market Place and Connolly Street. There are two take-away facilities further to the south-west along Barrack Street including the appellant's premises which is located approximately 30 metres west of the subject site. The proposal will amount to a total of three take-away type facilities along the entire length of Barrack Street which is one of the main commercial streets on the western side of the town. I do not consider that the provision of three cafes/restaurants/take-away facilities along Barrack Street is excessive.
- 9.10. Finally, with regard to opening hours, I would be in agreement with the arguments set out in the grounds of appeal that the opening hours particularly at weekends which permits the facility to operate to 0200 hours in the morning could potentially give rise to amenity problems and late night loitering problems and as such the Board may consider it appropriate to restrict the opening hours to either midnight or 1 p.m. to safeguard the amenities of the area.

10.0 **Conclusions and Recommendations**

Arising from my assessment above, I consider the proposed development accords with the land use zoning objective as it relates to the site and would not result in an overconcentration of take-away uses along Barrack Street nor would it adversely impact on the residential amenities of the area. I therefore recommend that the

decision of the planning authority should be upheld and that planning permission should be granted for the proposed development.

11.0 Appropriate Assessment

Having regard to the nature and scale of the proposed development and nature of the receiving environment together with the 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.

12.0 EIAR Screening Determination

Having regard to the minor nature of the development which relates to a change of use, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination stage and a screening determination is not required.

13.0 Decision

Grant planning permission in accordance with the plans and particulars lodged based on the reasons and considerations set out below.

14.0 Reasons and Considerations

Having regard to the town centre location of the proposed development and the mixed-use zoning objective relating to the site, it is considered that, subject to compliance with the conditions set out below, the proposed change of use from retail to café/take-away would not result in an overconcentration of such uses on Barrack Street, would not be prejudicial to public health and would add to the vitality and vibrance of the town centre. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

15.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the plans and particulars submitted to the planning authority on the 28th day of March 2018, 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 the 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. Prior to the commencement of development, the applicant shall submit details of the proposed shopfront and signage associated with the proposed café/take-away use. Details shall include the colour, textures and materials including samples together with details of any proposed illumination of signage. All details shall be the subject of written approval with the planning authority prior to commencement of development.

Reason: In the interest of visual amenity

3. 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 shopfront. 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.

4. No goods, sandwich boards or similar structures shall be displayed outside any of the premises.

Reason: In the interest of visual amenity.

5. Notwithstanding the provisions of the Planning and Development Regulations 2001, or any statutory provisions 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.

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

Reason: In the interest of public health.

7. A plan containing details for the management of waste (and in particular recyclable materials) within the development, including the provision of a facilities for the storage, separation and collection of waste and, in particular recycle materials and for the ongoing operation of these facilities within the café/take-away shall be submitted to and agreed in writing with the planning authority prior to commencement of development. Thereafter, the premises shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste and in particular recyclable materials in the interest of protecting the environment.

8. 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 the commencement of development.

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

9. Litter in the vicinity of the premises shall be controlled in accordance with a scheme of litter 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.

10. The hours of operation shall be between 0900 hours and 2400 hours Monday to Thursday and between 0900 hours to 0100 hours on Fridays and Saturdays and 0900 hours to 2400 hours on Sundays.

Reason: In the interest of protecting the amenities of property in the vicinity.

Paul Caprani,
Senior Planning Inspector.

10th September, 2018.