



An
Bord
Pleanála

Inspector's Report ABP-301659-18.

Development	Change of use of existing B&B premises to office and apartment, with all associated site works.
Location	No. 26 James Street, Kilkenny.
Planning Authority	Kilkenny Co. Council.
Planning Authority Reg. Ref.	17/843.
Applicant(s)	Frank Lanigan.
Type of Application	Permission.
Planning Authority Decision	Grant permission with conditions.
Type of Appeal	Third Party.
Appellant(s)	Raymond Bradley.
Observer(s)	None.
Date of Site Inspection	31/08/2018.
Inspector	A. Considine.

1.0 Site Location and Description

- 1.1. The subject site is located within the centre of Kilkenny City on James Street, a busy commercial street in the city. The property comprises an end three storey building in a terrace of 4. There is a large multi-storey public car park located immediately adjacent to the north east with a secondary school located to the north west of the terrace. All other buildings in this terrace are occupied by solicitors offices.
- 1.2. There is rear access to the site via Tilbury Place via a gate which was locked on the date of my inspection. Access to a large shopping mall, Market Cross Shopping Centre, is located across the road from the subject site and James Street comprises a variety of commercial and retail uses including retail shops, dentists, St. Marys Cathedral and other professional services.
- 1.3. There are limited photographs on file as at the time of my site inspection, there were large numbers of school children leaving school adjacent.

2.0 Proposed Development

- 2.1. Permission is sought for the change of use of existing B&B premises to office and apartment, with all associated site works.
- 2.2. The Board will note that during the assessment of the proposed development with the Planning Authority, the apartment element of the development was omitted. The proposed development comprises a change of use to office only.
- 2.3. On the date of my site inspection, the Board will note that the change of use appears to have already occurred and the building was in use as a solicitors office.

3.0 Planning Authority Decision

3.1. Decision

Planning permission was granted for the change of use subject to 2 conditions. Condition 2 requires that prior to the occupation of the premises, full details of any signage will be agreed in writing with the PA.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Officers report noted the zoning afforded to the subject site and concluded that the proposal for 74% of the building to change its use from existing bed and breakfast to office space, materially contravenes Section 3.4.5.3 of the Kilkenny City & Environs Development Plan 2014-2020. The report further considered that the development was substandard in terms of the provision of car parking and the lack of private open space and storage space for the apartment would not comply with the policy requirements of the City Development Plan. The Planning Officer recommended refusal of permission for three reasons.

The Senior Planner considered the existing use of the premises, the limited extent of the residential zoning, the existing uses on James Street and the fact that a residential use is proposed as part of the development and concluded that the principle of the development was acceptable and sought further information.

Following receipt of the response to the FI request, the applicant excluded the proposed apartment. The Planning Officer recommended that permission be refused on the grounds of non-compliance with the City Development Plan in terms of zoning and provision of car parking.

The Senior Planners report notes the recommendation to refuse but concludes that while the office use is not compatible with the residential zoning, the uses within the area are no longer residential and are dominated by commercial uses such as café, office use and other employment uses. There is ample car parking in the area, both on street and in the adjacent multi-storey. Permission is recommended.

3.2.2. Other Technical Reports:

Chief Fire Officer: The development will require, and benefit from, a Fire Safety Certificate.

Conservation Officer: No objection subject to condition.

3.2.3. Third Party Submissions:

There is 1 third party submission in relation to the proposed development. The objections raised are summarised as follows:

- The zoning does not support the proposed use.
- Nature of the application, and applicant is questioned, given that the change of use is more specific than the office use sought, being for use as a solicitors office for use by a third party, not the applicant.
- The Solicitors office to be relocated to the site is already within the city centre.
- The development will result in a preponderance of similar office usage in the vicinity. The proposed change of use does not achieve the objectives of the Development Plan.
- Issues raised in relation to traffic congestion and parking.
- There is potential for up to 100 in the premises at any one time.
- The appellant objects to the request of the applicant to keep development contributions to a minimum.
- It is submitted that the applicant is proposing the application on behalf of a third party who is not a co-applicant. This is an impermissible approach to a change of use application as a matter of law.

It is requested that permission be refused.

Following receipt of the response to the further information request, the third party submitted a further objection, summarised as follows:

- The application being advanced in the context of the original application is ultra vires the planning legislative code.
- Previous issues raised remain a concern.

4.0 Planning History

4.1. Subject site:

93990095 (1993)	Erection of 2 windows in gable ends. FI requested, not responded to
96990052 (1996)	Retention of existing advertising signs.
06990022 (2006)	Invalid as below

06990037 (2006) to construct an extension to the rear of a three-storey bed-and-breakfast, and for the change of use of a lounge and kitchen (currently forming part of the existing bed and breakfast) to a coffee shop/hot food outlet, with all associated works

11990052 (2011) EXTENTION OF DURATION Guest House Development

4.2. Adjacent Sites:

4.2.1. 23 James Street, Kilkenny

96990049: Change of use of part of ground floor to commercial use, and for alterations to front windows and railings permitted.

96990124 (ABP PL62.102234) (1997) Change of use of the ground floor to restaurant and the extension of ground floor and first floor. Residential use to continue in the remainder of the building.

98990054 (1998) For an extension to the rear of No23 James Street and for office use of the entire premises with signage and for a car park at the rear with alterations to the roadside boundary wall (note previous permission obtained for change of use to restaurant use was granted planning ref p124/96

00990025 (2000) For two storey office and garage extension to rear of existing approved office premises P.54/98 FI sought not responded to.

06990121 (2006) development at No. 23 James Street, Kilkenny. The development consists of the construction of: (a) 2-storey extension to the rear of the property, comprising of office and storage space on ground floor and storage space on first floor; (b) the provision of three new first floor windows and three new ground floor windows to the existing premises overlooking Tilbury Place; (c) Minor internal alterations and ancillary related works

4.2.2. 24 James Street, Kilkenny

94990005: Two number apartments dwellings and for a change of use of existing ground floor premises from health centre to one apartment dwelling

17297: for the development which will consist of: Change of use of Ground floor of No 24 from café/restaurant to residential use including partial

reconstruction of existing ground floor party wall between adjoining premises No.25 and all associated siteworks

4.2.3. 25 James Street, Kilkenny

05990050 (2005) change of use of existing B&B premises to retail space on the ground floor and office space on the first and second floors, to make alterations to existing single storey accommodation to the rear comprising a new 2 storey dormer extension to accommodate further office space, to erect new bill board signage and all associated site works to property - Withdrawn

05990082 (2005) for the change of use of existing B&B premises to retail space on the ground floor and office space on the first and second floors, to erect new billboard signage and all associated site works to my property

07990030 (2007) change of use of ground floor at Tilbury House, 25 James's Street, Kilkenny from retail to cafe/restaurant, with associated front elevation signage

4.2.4. 24/25 James Street, Kilkenny

10990070 (2011) Change of use to ground floor of No. 24 from residential to café/restaurant use including partial removal of existing ground floor party wall between adjoining premises No. 25; provision of new bay window to No. 24; new shopfront to No. 25, wall signage and all associated siteworks

5.0 Policy Context

5.1. Development Plan

The Kilkenny City & Environs Development, 2014-2020 is the relevant policy document relating to the subject site. The site is zoned R2 Existing Residential where it is the stated objective 'to protect, provide and improve residential amenities'. This zoning lies immediately adjacent to the M2 zoning, General Business, where it is the stated objective 'to provide for general development' and is on the edges of the retail core of the city.

Section 3.4.5 of the City & Environs Development Plan deals with Zoning Objectives, and states that the purpose of zoning is to indicate to property owners and the

general public the type of development which the Planning Authority considers most appropriate in each land use category. Zoning is designed to reduce conflicting uses within areas, to protect resources and, in association with phasing, to create a basis for investment in public and private infrastructure and facilities thereby ensuring that land suitable for development is used to the best advantage of the community as a whole.

The site is located within the City Centre Architectural Conservation Area but is not a protected structure. There are no identified recorded monuments within the site, but the site is located within the Zone of Notification of Recorded Monuments in Kilkenny City.

5.2. Natural Heritage Designations

The site is not located within any designated site. The River Barrow and River Nore SAC, Site Code 002162 and the River Nore SPA Site Code 004233, are located approximately 300m to the east of the site.

6.0 The Appeal

6.1. Grounds of Appeal

This is a third party appeal against the decision of the Planning Authority to grant permission for the change of use. The appeal raises similar issues to those raised during the PAs assessment of the proposed development. The grounds of appeal are summarised as follows:

- The third party objects to the grant of permission or a grant of permission without stringent conditions relating to car parking.
- The location of the site is within a city centre of national heritage importance where the ethos is to promote the development of tourism.
- Previous permissions on the site complied with the tourism related facilities.
- Questions the jurisdiction of Kilkenny County Council to address the application given the applicant is different to the indented occupier, and also the specific nature of the intended use, as a solicitors office.

- The proposed development does not accord with the proper planning and sustainable development of the area.
- Issues in relation to car parking and congestion.
- Issues raised in previous third party submissions do not appear to have been considered by the PA.

6.2. Applicant Response

The applicant has responded to the third party appeal through their agent. The submission is summarised as follows:

- Questions the validity of the third party objection as details of the objector are unclear in the initial submission. The second submission notes that the objection is from the law firm on its own behalf.
- The appeal has not made it clear who is the client and who is the agent. It is submitted that the requirements of Article 29 have not been complied with and therefore, the appeal should be dismissed as invalid.
- As no acknowledgement letter from KCC was submitted in relation to the submission of the 9th of April, 2018, it is requested that the Board ignore same in reaching its decision.
- It is submitted that the appeal has been submitted to delay the development. The appellant / firm are solicitors who do not practice in Kilkenny and do not appear to own land or business interests in the city. It is submitted that the appeal is frivolous and vexatious and it is requested that the appeal be refused and the permission granted.
- In terms of car parking, it is submitted that there is huge capacity in the vicinity of the site including paid and unpaid street parking, municipal car parks and large car parks. The Market Cross Shopping Centre car park overlooks the subject site and always has capacity.
- The existing solicitors business currently uses the parking facilities in the vicinity and a grant of permission will not result in a change in the number of vehicles in the area.

- It is considered that the development will reduce vehicle numbers when compared to the previous use of the building as a B&B.
- The solicitors who will occupy the building are a family business who have operated in Kilkenny for 125 years, originally in High Street and then Dean Street, approximately 300m away.
- The proposed development complies with the economic and other objectives of the Kilkenny City Environs Development Plan 2014-2020.
- The subject building was abandoned 5 years ago and is in poor condition, and forms part of a terrace of 19th Century buildings on James Street.
- The first party does not understand or accept the issues raised in relation to the applicant and the support of the intended occupants.
- The preponderance of solicitors offices is not understood or accepted as James Street is a shopping and commercial street with the subject building having a commercial use for many years. A solicitors office is not known as a use of special planning concern.
- Issues raised in terms of the number of occupants at the building will be dealt with by way of the fire certificate.
- The cost of maintaining the building will exceed the cost of a new building. It is submitted that the proposal will add to the built environment of the city, and KCC saw fit not to apply development charges.

It is requested that permission be granted for the proposed development.

6.3. Planning Authority Response

The Planning Authority as responded to the third party appeal advising no further comments.

6.4. Observations

None.

7.0 Assessment

7.1. Having regard to the nature of this appeal, and having undertaken a site visit, as well as considering the information submitted, and proposed development, I suggest that it is appropriate to assess the proposed development under the following headings:

- The principle of the development and compliance with policy
- Other Issues
- Appropriate Assessment
- EIA Assessment

7.1. Principle of the development and compliance with policy

7.1.1. The subject site is located within an area of Kilkenny which has been zoned 'Existing Residential' where it is the stated objective 'to protect, provide and improve residential amenities'. This zoning lies immediately adjacent to the M2 zoning, General Business, where it is the stated objective 'to provide for general development' and is on the edges of the retail core of the city.

7.1.2. The Board will note that the Local Authority Planning Officer recommended refusal of permission on the basis that the proposed change of use materially contravened Section 3.4.4.3 of the Development Plan as offices are not a permitted use. The Senior Planner noted the existing use of the building as a B&B, and given the limited area and the surrounding uses, which are no longer residential, considered that permission for the change of use was acceptable.

7.1.3. I have considered this matter very carefully and would agree that the use of the existing premises has not had a 'residential' use in a number of years, operating as a commercial B&B in the past. In terms of contravening the Kilkenny City & Environs Development Plan, I note Section 3.4.5 of the Plan deals with Zoning Objectives, and states that 'the purpose of zoning is to indicate to property owners and the general public the type of development which the Planning Authority considers most appropriate in each land use category. Zoning is designed to reduce conflicting uses within areas, to protect resources and, in association with phasing, to create a basis for investment in public and private infrastructure and facilities

thereby ensuring that land suitable for development is used to the best advantage of the community as a whole.'

7.1.4. The Plan states that 'Permitted Use' means a use which is acceptable in the relevant zone. However, it is still the subject of the normal planning process. Uses listed under each zoning objective are generally acceptable in principle in the relevant zones. 'Open for Consideration' means a use which may be permitted where the Planning Authority is satisfied that the suggested form of development will be compatible with the policies and objectives for the zone, and will not conflict with the permitted uses and also conforms with the proper planning and development of the area. In terms of the above, the Board will note that the City & Environs Development Plan does not provide a matrix for uses which are not permitted in specific zoned areas. However, the Plan also notes that 'The schedule of Permitted Uses is intended as a guideline in assessing development proposals and should not be regarded as being exhaustive.'

7.1.5. As such, and given that the fact that the property the subject of this appeal is located within a terrace which all operate as offices, or as commercial properties, I would be inclined to agree with the Kilkenny Senior Planner and consider that a grant of permission in this instance would not negatively affect the zoning objective and would conform to the pattern of development in the immediate vicinity of the site. The Board should note that on the date of my inspection, the premises was operating as a Solicitors Office.

7.2. Other Issues

7.2.1. Validity of application:

The Board will note that the third party appellant has raised issues in relation to the validity of the application on the basis that the applicant will not be the user of the property. The information submitted by the applicant, who is the property owner, indicates that the building will be leased to a third party for use as a solicitors office. The appellant suggests that the permission should have been sought by the third party and that the public notices should have specified solicitors office.

I am satisfied that there is no issue in either regard. The applicant is the property owner and entitled to make the application. The Planning & Development

Regulations, 2001 as amended, do not differentiate in terms of a solicitors office and any other 'business premises' which includes structures used for the '.....carrying on of any professional, commercial or industrial undertaking or any structure (not being an excluded premises) which is normally used for the provision therein of services to persons'. A 'betting office' is the only 'office' interpreted differently under Article 5(1) of the P&D Regulations.

With regard to the concerns raised in relation to the alterations made to the application at further information stage, I am satisfied that the omission of the apartment as proposed was indeed considered significant and that the application was appropriately advertised in accordance with the requirements of the Planning & Development Regulations, 2001 as amended. The Board will also note that the Planning Officers report noted that the site notice regarding the significant further information was in situ in the front window of the premises during a site inspections on the 17th April, 2018. I am satisfied that the appropriate procedures have been followed. The planning legislation does not prevent consultation between parties and the planning authority.

7.2.2. Parking & Traffic

The subject site is located within the centre of Kilkenny City and immediately adjacent to a large public car park. I attended at the site on a busy Friday afternoon, just as the adjacent school was finishing and had no significant delays or difficulty in getting to the car park, or finding a parking space to facilitate my site visit on foot.

The B&B on the site operated 8 guest bedrooms and therefore had a parking requirement of 8 spaces. The City & Environs Development Plan require 1 space per 15m² of office space and therefore, the change of use would have a requirement of 18 spaces. Given the previous use, it is considered that the development has a shortfall of 10 parking spaces. Chapter 10 of the Plan indicates however that 'cases where complete on-site provision of parking is not possible, the Planning Authority will insist on a Mobility Management Plan submitted as part of the application in weighing up the total requirements and possible financial contribution.' No Mobility Management Plan has been submitted, however, I do note the submission of the applicant and the fact that the business is transferring from an existing premises 300m from the subject site and that the employees currently use the existing parking

facilities in Kilkenny City. It is further submitted that given the nature of the business proposed, there will be a reduction in the parking requirement from the current requirements associated with a B&B.

Having regard to the availability of parking in the immediate vicinity of the site, I am satisfied that the development, if permitted, would be acceptable in terms of servicing, roads and traffic.

7.2.3. Heritage Issues

The third party has raised concerns that the development is to be located within the city centre which is of national heritage importance and where the ethos of the locality is to promote the development of tourism. The submission suggests that solicitors offices are not included as a permissible use within the General Business area. In this regard, I considered that the appellant has applied emphasis to the use of an office space for a solicitors office. Office uses are clearly permissible within the General Business zoned areas of the city and as previously indicated, the Planning & Development Regulations do not make such specific differentiation between a solicitors office or any other business premises.

In terms of the issue of tourism, I note that the B&B has not operated for a number of years and therefore, there was no tourism offer associated with the property in this time. I am satisfied that if permitted, the development will not negatively impact on the tourism offer associated with the city of Kilkenny and would not be contrary to the proper planning and sustainable development of the area.

7.3. Appropriate Assessment

Having regard to the location of the subject site within an established and built up area, together with the nature and scale of the proposed development, I am satisfied that there is no potential for impact on any Natura 2000 site, warranting AA.

7.4. Environmental Impact Assessment

Having regard to the nature and scale of the proposed development, 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 and a screening determination is not required.

8.0 Recommendation

8.1. It is recommended that permission be granted for the following stated reason.

9.0 Reasons and Considerations

Having regard to the location of the site within Kilkenny City centre, together with the historical commercial use on the site, the pattern of existing development and uses in the vicinity of the site and the proposed use within the building, it is considered that the change of use from B&B to office use would be appropriate and would not seriously injure the existing amenities of the area. Subject to compliance with the following conditions, the proposed development would accord 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 as amended by the further plans and particulars submitted 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 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. Details of all external signage shall be submitted to, and agreed in writing with, the planning authority within one month of this decision.

Reason: In the interest of the amenities of the area/visual amenity.

A. Considine
Planning Inspector
06 September, 2018