



An  
Bord  
Pleanála

## Inspector's Report ABP-301799-18

### Development

Alter and extend an existing off-licence into existing sandwich bar outlet, change of use of existing sandwich bar outlet (52m<sup>2</sup>) to off-licence usage, internal alterations and alterations to external shop facade to include signage and all associated site and development works.

### Location

Ardkeen Shopping Centre, Dunmore Road, Waterford.

### Planning Authority

Waterford City and County Council.

### Planning Authority Reg. Ref.

18/1.

### Applicant(s)

Brendan O'Brien.

### Type of Application

Permission.

### Planning Authority Decision

Refuse Permission.

### Type of Appeal

First Party.

### Appellant(s)

Brendan O'Brien.

### Observer(s)

None.

### Date of Site Inspection

31/08/2018.

### Inspector

A. Considine.

## 1.0 Site Location and Description

The subject site is located within the existing Ardkeen Shopping Centre, Dunmore Road, Waterford, and is located on the R683, which connects to the R710 Waterford ring road to the east. The Ardkeen Centre is a large single storey shopping centre which includes a food store and a variety of other smaller retail outlets including a pharmacy, butcher's shop, cafés/restaurant, a post office and several bank branches. The area also includes, a number of other supermarkets, including Aldi and Lidl, pubs and restaurants in the wider area. Surface car parking is available within the shopping centre and the University Hospital Waterford is located across the road from the site.

Ardkeen Shopping Centre was originally developed as a supermarket in the 1980s and has expanded over the years. The block within which the subject site is located, includes a café / restaurant, fast food outlet, a community room and a car valeting operation as well as the existing off-licence. The unit the subject of this appeal was previously used as a sandwich bar and is currently unoccupied. A search of historical planning applications indicate that there is a roof garden above the unit the subject of this appeal and the community room to the rear. Access to this roof garden is available both internally and externally.

## 2.0 Proposed Development

Permission is sought to alter and extend an existing off-licence into existing sandwich bar outlet, change of use of existing sandwich bar outlet (52m<sup>2</sup>) to off-licence usage, internal alterations and alterations to external shop facade to include signage and all associated site and development works, all at Ardkeen Shopping Centre, Dunmore Road, Waterford.

The proposed development will remove the access to the roof garden as discussed above, with no alternative access noted. The Board will note that the appellant advises that this roof garden was used by the creche, which previously occupied the community room, as a garden-play area.

## 3.0 Planning Authority Decision

### Decision

The Planning Authority decided to refuse permission for the proposed development for the following reason:

1. Having regard to the revised location of the entrance to the 'community rooms' and notwithstanding the proposed extended footpath and pedestrian crossing, the proposed development would give rise to a traffic hazard and would be prejudicial to public safety due to the location of the entrance to the side of the building and the potential conflict between vehicular and pedestrian movements in the area.

### Planning Authority Reports

#### 3.2.1. Planning Reports

The initial planning officers report considered the proposed development and requested that a revised site layout be submitted indicating the existing footpath and proposals to extend the footpath to the front of the new entrance to the community rooms. Following receipt of the response to the FI request, the PAs Roads Section raised concerns in relation to the potential for pedestrian safety to be compromised. The report concludes that the proposed development would not be contrary to the zoning objectives for the area, but recommends that permission be refused on the grounds of pedestrian safety.

#### 3.2.2. Other Technical Reports:

No technical reports are noted in the initial PAs assessment.

There is an undated Roads & Transportation Report on the file which advises concerns to the possibility of increased mixing of pedestrians and vehicles to the rear of the building. It is submitted that even with the construction of a footpath around the building, there remains a risk to pedestrians from vehicles reversing while egressing from the Car Valeting premises. Concern is also raised that the removal of existing walls and stairs will lead to reduced times and egress points in the event of a fire.

### 3.2.3. Third Party Submissions:

7 submissions are noted in relation to the proposed development in the initial assessment period. The issues raised are summarised as follows:

- Inadequate mix of uses in the vicinity.
- Location of off-licence adjacent to access to community facility.
- Over-provision of off-licence facilities in the area.
- Issues relating to alcohol fuelled anti-social behaviour.
- The proposal does not protect the primacy of the city centre.
- Planning history and refusal by Waterford City & County Council.
- Loss of community facility would materially contravene the Development Plan Objectives of providing and protecting community facilities.
- Validity of the application questioned.
- Concentration of take away type facilities within a portion of the District Centre.
- The off-licence operator has failed to comply with previous conditions of planning permission.
- Lack of adequate parking.
- The development, if permitted will impact the quality of life in the area and would be negative for this family area.

## 4.0 Planning History

The planning history for this wider development extends back to the 1970s.

**PA ref: 10/500177:** Permission granted for the change of use of an existing shop to a sandwich bar, along with related changes to external elevations.

**PA ref: 13/500077:** Permission was granted for a change of use from retail unit to restaurant use, new external seating area, alterations to elevational treatment, new signage and associated site works.

**PA ref: 14/500013:** Permission granted to Ardkeen Superstores Ltd. for alterations to elevational treatment of the north elevation (meeting rooms) and west elevation (old petrol station), replacement roof to existing stair enclosure at roof level and all associated site works.

**PA ref: 14/600373:** Permission granted to Ardkeen Superstores Ltd. for change of use of 2 no. community rooms to a single retail unit, minor alterations to the already approved northern (front) elevation under 14/20013, all associated site works. Condition no. 2 of the permission limited the use of the permitted unit to the retail sale of convenience goods and low order comparison goods as defined in the RPG.

**ABP PL93.247429 (PA ref: 16/525):** The Board permitted a change of use of existing retail / commercial unit (PA ref 14/600373 refers) to off-licence; amendments to external elevation, including signage on appeal. Waterford City & County Council had refused permission for the following reason:

It is the policy of the Waterford City Development Plan 2013-2019 to restrict the excessive concentration or intensity of uses such as off licences, public houses, take aways, nightclubs etc. in order to maintain an appropriate mix of uses and protect night time amenities in any particular area. Taking cognisance of the locational context of the proposed development and the mix of commercial uses in the vicinity it is considered that the Ardkeen area is more than adequately serviced with off licence sales retail floor space. Therefore the proposed development, taken in conjunction with other commercial uses in the vicinity would result in an inappropriate mix of uses at this location and reduce the night time amenity of the area, would set a precedent for similar inappropriate development in the city, would materially contravene the policies of the development plan and would therefore be contrary to the proper planning and sustainable development of the area.

PA ref 18/379: Permission granted to current applicant for window signage to include 3 no. lightboxes and information manifestations on entrance door with all associated site and development works.

## 5.0 Policy Context

### Development Plan

The Waterford City Development Plan 2013-2019 is the relevant policy document pertaining to the subject site. The site is zoned M5, for General Business uses, where it is the stated objective to provide and improve general business uses. The Ardkeen / Farronshoneen area is designated as a district centre and section 13.2 of the Plan deals with policies relating to off-licences.

Chapter 7 of the Plan deals with Social, Community & Culture, while Section 7.4 deals with Community Facilities. It is the City Council's overall aim with regard to community facilities is to plan, provide, support and encourage the growth of a wide range of public, social and community services and facilities. It is the stated objective of the City Plan, OBJ 7.5.2, to ensure the efficient use of new and existing community facilities.

### Natural Heritage Designations

The site is not located within any designated site. The following Natura 2000 sites are located within 15 km of the subject site:

- Tramore Dunes and Back Strand SAC, site code 000671;
- Lower River Suir SAC, site code 002137;
- River Barrow and River Nore SAC, site code 002162;
- Tramore Back Strand SPA, site code 004027;
- Mid-Waterford Coast SPA, site code 004193.

## 6.0 The Appeal

### Grounds of Appeal

This is a first party appeal against the decision of the Planning Authority to refuse permission for the proposed change of use. The submission provides a background

to the proposed development and provides commentary on the third party observations made to the PA. The grounds of appeal are summarised as follows:

- Traffic and safety concerns:
  - In terms of traffic movements pertaining to the car valeting business, it is submitted that the car wash/valeting work a one-way system.
  - The existing covered valeting area exits out onto the car wash area and does not interfere with pedestrian /traffic movements.
  - Reversing cars, when necessary, happens under supervision.
  - The area the subject of this appeal was previously used as a Subway with a constant flow of pedestrians, which was deemed acceptable.
  - The proposal would reduce the overall levels of pedestrians, thereby negating the concerns of the Roads section.
- Community Room Access
  - A new 2m wide footpath will be constructed for the safety of end users.
  - The room is currently used twice weekly and by adults only.
  - A set down area is proposed
  - Originally, the community room was used as a creche and the roof garden was used as a play area. This creche closed as it moved to a larger facility.
  - There are additional community facilities available in the area, including the Farronshoneen Youth and Community Centre Project

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

### **Planning Authority Response**

The Planning Authority has not responded to this appeal.

### **Observations**

None.

## 7.0 Assessment

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
- Roads & Traffic Issues
- Other Issues
- Appropriate Assessment
- EIA Assessment

### Principle of the development and compliance with policy

7.2.1. The site is located within the district centre of Ardkeen/Farronshoneen on lands zoned for general business use under the current development plan. It is the stated objective of this zoning to provide and improve general business uses. I am satisfied that the off-licence use is acceptable on such zoned lands, and given that the proposal is for an extension to an existing off-licence facility, I am satisfied that the proposed generally accords in principle with development plan requirements.

7.2.2. Section 13.2 of the plan deals with takeaways, amusement centres, night clubs / licenced premises, off-licences and open air concerts, and states as follows:

In order to maintain an appropriate mix of uses and protect night-time amenities in a particular area, it is the objective of Waterford City Council to prevent an excessive concentration of the above uses and to ensure that the intensity of any proposed use is in keeping with both the scale of the building and the pattern of development in the area.

The provision of any of the above will be strictly controlled, having regard to the following, where appropriate:

- The amenities of nearby residents, i.e. noise, general disturbance, hours of operation, litter and fumes:

The site is located within a district centre where there are a variety of uses evident, including restaurants and bars, amongst other 'daytime' uses. I



would not consider that the proposal would have an impact on the existing residential amenities of the area by reason of noise, general disturbance, hours of operation, litter and fumes, and would note that off-licences are subject to specific hours of operation by law.

Third party submissions to the PA raised concerns in terms of anti-social behaviour by younger people who have consumed alcohol. While I acknowledge these concerns, I would suggest that such issues are restricted to this area of Waterford City. Having regard to the context of the location, I am satisfied that the proposal is acceptable.

- The need to safeguard the vitality and viability of shopping areas in the city and to maintain a suitable mix of retail uses

The district centre at Ardkeen / Farronshoneen is identified as one of 4 district centres in the city in the Waterford City Development Plan, 2013-2019. Section 4.14 deals with Assessing Particular Types of Development and states that 'District Centres should be of an appropriate scale to the City and its population and should be characterised by convenience retail, retail services, community and social facilities and a limited range of low and mid order comparison goods.

In terms of the current proposal, I am satisfied that the proposed change of use from the sandwich bar outlet and the extension of the existing off-licence into the space is in accordance with the stated policy requirements. The proposal will result in an increase in the floor area of the off licence, currently 150m<sup>2</sup> including storage area and staff area of approximately 40m<sup>2</sup>, to 202m<sup>2</sup>, with approximately 25m<sup>2</sup> provided for the new access hall area to the community room and an area of 3m<sup>2</sup> assigned to the electrics room. If permitted, the off-licence will have a retail floor area of approximately 160m<sup>2</sup>.

In terms of the community and social facilities, I have concerns that the proposed removal of the stair access to the roof garden would eliminate this community amenity, contrary to the spirit of what district centres should offer. I will discuss this issue further below.

- Traffic considerations

The Board will note that the Planning Authority refused permission for the proposed development on the grounds of traffic hazard and public safety by reason of conflicts between vehicular and pedestrian movements due to the relocated entrance to the community room. I will deal with this issue further below but would state that in principle, I consider that a grant of permission in this instance would not result in a significant increase of impact on traffic or parking within the wider district centre.

- The number/frequency of such facilities/events in the area

While there are other off licence facilities available in the wider area, given that the proposal is for an extension to an existing off-licence, the development, if permitted will not increase the number of frequency of such facilities in the area.

- The operators come to a satisfactory arrangement with Waterford City Council in relation to litter control.

Not an issue

- The larger leisure complexes which contain a mix of uses, e.g. cinema, bowling, and restaurant will be treated on their merits.

Not relevant

As the proposal is for an extension to an existing off-licence, I am satisfied that no issue of concentration arises at this location. I am further satisfied that the proposal generally accords with the stated policy controls.

## **Roads & Traffic issues**

7.3.1. The Board will note that the PA refused permission for the proposed development, primarily with regard to the relocation of the access to the community rooms. While I note the submission of the first party in terms of the usage of the community rooms, I would consider it wholly appropriate to seek to protect and maximise this amenity. In terms of the proposal, the applicant intends extending the footpath to the front of the proposed new entrance to the community rooms. In addition, it is proposed to provide a new pedestrian crossing. While I acknowledge

the concerns of the Roads Section of Waterford City & County Council, I consider that the applicant has made all reasonable efforts to ensure pedestrian safety. I also note that the provision of the pedestrian crossing onto the extended footpath will provide enhanced pedestrian safety by connecting the existing footpath to the building. I am satisfied that the issue of pedestrian and vehicular safety has been adequately addressed in this instance.

#### **Other Issues:**

The Board will note that the proposed development seeks to remove an existing stair access to the roof garden area of the wider development. I have undertaken a thorough planning search on-line but cannot locate if an alternative access to it is available elsewhere across the wider development at this location of the Ardkeen Shopping Centre. It is not identified in the plans submitted as part of ABP ref PL31.103358 but was noted in subsequent applications. Certainly, it would appear that there is no access via a 'community' space.

It is noted that the roof garden area was used as an outdoor play area for the creche when it operated in the community room. Permission was granted in 2014, PA ref: 14/500013 refers, to Ardkeen Superstores Ltd. for alterations to elevational treatment of the north elevation (meeting rooms) and west elevation (old petrol station), replacement roof to existing stair enclosure at roof level and all associated site works.

The current application form identifies the applicant as the occupier of the premises and a letter of consent from the property owner is on file, following a request for further information. This letter specifically relates to the construction of a new footpath, pedestrian crossing markings and to alter road markings. While I am satisfied that adequate permission has been given to make the application, I am concerned that the matter of access to the roof garden has not been adequately addressed. In addition, I acknowledge that the roof garden appears to have been associated only with the operation of the creche in the community room, but I would consider it inappropriate to remove access to this community facility in the absence of further information. In simple terms, the roof garden is an amenity which appears to be associated with the community function of this district centre. The same community function has been reduced through the years from three meeting rooms

to the single one remaining. While I acknowledge the submission of the applicant in relation to other community facilities in the area, it would be inappropriate, in my opinion, for further erode the available amenities in the area, contrary to the stated objective of the Waterford City Development Plan, OBJ 7.5.2, which seeks to ensure the efficient use of new and existing community facilities.

That said, and should the Board be minded to grant permission in this instance, I would consider appropriate to reconsider the access to the community room in order to retain the roof garden amenity. In this regard, I would consider that significant changes to the internal layout would be required in order to facilitate a level access to the community room, while maintaining the existing fire door to the south of the building and maintaining the stairs to the roof garden. The Board might consider a request for further information in this instance, or deal with the matter by way of condition.

### █ **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.

### █ **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**

█ It is recommended that permission be refused for the proposed development for the following stated reason:

Having regard to the proposed revisions to the access to the community rooms, including the roof garden, it is considered that the proposed development would result in the loss of access to an existing community amenity in the roof garden

which would be contrary to objective OBJ 7.5.2 of the Waterford City Development Plan, 2013-2019, which seeks to ensure the efficient use of new and existing community facilities. The development, in its current form and layout would seriously injure the amenities of the area by reason of loss of this open space. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

---

A. Considine  
Planning Inspector  
7<sup>th</sup> September, 2018