



An
Bord
Pleanála

Inspector's Report 302448-18

Development	Change of use from medical mobility equipment unit to dispensary and all associated site works.
Location	Dromleigh South, Bantry, Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	18/327
Applicant(s)	Ardmanagh Horizons Ltd.
Type of Application	Planning permission
Planning Authority Decision	Grant permission s.t. conditions
Type of Appeal	Third Party
Appellant(s)	Drinagh Co-operative
Observer(s)	None
Date of Site Inspection	17 th December 2018
Inspector	Mary Kennelly

1.0 Site Location and Description

- 1.1.** The site is located in the southern part of Bantry town on a site currently under development between Bantry General Hospital and Bantry Community College. The lands to the east and west are in use as suburban housing estates and the lands immediately to the south are vacant. The hospital site adjoins the north-western boundary. The site is accessed from the Dunmanway Road and a suburban road serving Ard Na Greine housing estate (to the southeast) and the Community College (opposite). The topography is such that the road serving the college and the site is elevated but the site itself is at a much lower level adjoining the hospital grounds.
- 1.2.** The site is currently under construction as a Primary Health Care Centre, following the grant of permission in March 2017 (16/743). The permitted building is split-level ranging from two storeys to single storey. When completed, it will contain HSE Primary Care Facilities at Ground and First Floor levels. The Ground floor will also include 2 no. GP Clinics, a Coffee dock/Canteen, a Medical Mobility Equipment Unit and a Sports Injury Clinic. The permitted development also includes 155 car parking spaces, a Service Yard, a Pump house structure etc. The building is located towards the western end of the site and the main car park is to the east, with a smaller separate car park to the west. It is U-shaped, with the main entrance facing the main car park. Vehicular access is gained to the main car park from Ard Na Greine and to the smaller car park from Dromleigh Close.
- 1.3.** The unit in question is shown on the permitted floor plans as the Medical Mobility Equipment Unit, which is located on the ground floor on the northern wing. It has a stated floor area of 114sq.m. The floor plans show that the remainder of this wing includes the coffee dock and the sports injury clinic, which are to the east of the main entrance foyer. The remainder of the ground floor is assigned as GP clinics or clinical assessment rooms.

2.0 Proposed Development

- 2.1.** It is proposed to change the use of the Medical Mobility Equipment Unit to a Dispensary. The layout of the unit shows a small administrative office, a consultation room and an Accessible WC. The main entrance would be from the carpark on the southern side with an additional door on the northern elevation.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission subject to 14 no. conditions. These were generally of a standard type and included the following conditions of note:-

- Condition 2 required compliance with the terms and conditions of the governing permission 16/743.
- Condition 5 restricted the use of the entire building on the site edged red to a use directly associated with a Primary Health Care Centre as permitted under 16/743 and to include a dispensary unit on the ground floor as indicated on Drawing no. 22003. This condition further prohibits the separate sale from the Primary Health Care Centre or its separate use for an independent purpose under Class 2 of Part 4 of the P&D Regs. 2001-2015. It is further stipulated that a Change of Use shall not take place unless otherwise permitted by a further permission notwithstanding the Exempted Development provisions of the Act.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. The Area Planner's report (18/07/18) outlined the planning history and noted that the governing permission 16/743 had been granted subject to a number of conditions, some of which had not been complied with. These related to provision of materials for approval, lighting details and further payments of the development contribution. It was proposed that the terms of these conditions be reapplied and adjusted where necessary.

3.2.3. It was noted that the site is zoned BT C-01. The Area Planner referred to the objection from the appellant and acknowledged the concerns raised. It was stated that the objection was from a retail operator that provides retail services throughout West Cork. A distinction was drawn in the AP's report between a "dispensary" and a "pharmacy". It was considered that the former is generally sited within a hospital and

dispenses medicines to patients upon being prescribed, while the latter can be attached to or free of a hospital and dispenses medicine on prescription as well as selling over the counter drugs. It was considered that having a dispensary on the site of a Primary Health Care Centre, was justifiable, rather than patients having to drive, walk or cycle c.650m to Bantry town centre or elsewhere. It was not accepted that it would undermine retail policy. However, it was advocated that a condition be attached restricting the use and preventing severance from the PHCC.

3.2.4. Other Technical Reports

Area Engineer's Report – (04/07/18) – no objection subject to conditions.

3.3. Prescribed Bodies

Irish Water – no views received.

3.4. Third party observations

One submission received from the appellants. Much of the content of the submission is similar to that set out in the grounds of appeal. The objection relates to the nature of the proposed use, which it is believed would be as an independent pharmacy.

This view is primarily based on the extent of the floorspace and the fact that there is a proposed entrance door from the public car park. It was therefore considered that the proposed development should comply with the Retail Planning Guidelines and in particular, the onus to demonstrate that no alternative sites are available within the town centre.

4.0 Planning History

16/743 – permission granted for the construction of a Primary Health Care Centre on 31st January 2017. Permission was granted subject to 17 no. conditions, which were generally of a standard type.

10/697 – Permission granted for construction of a vehicular entrance to access site from southeast (L-84713-I).

5.0 Policy Context

5.1. Cork County Development Plan 2014

The aim of the Social and Community - Chapter 5 is

To seek the provision of high quality social and community facilities that meet both current and future needs and are accessible to people of all ages and abilities that will improve people's quality of life and create and support vibrant and sustainable urban and rural communities.

Relevant policies include:

SC 6-1 – Healthcare Facilities

To support the HSE and other statutory and voluntary agencies and private healthcare providers in the provision of healthcare facilities to all sections of the community at appropriate locations, with good public transport links and parking facilities.

SC 6-2 Provision of Primary Healthcare Centres

Support the provision of Primary Healthcare Facilities in appropriate locations across the county subject to proper planning and sustainable development requirements.

ZU 3-3 Appropriate Uses in Community/Utility Areas

Promote the provision of educational, community related and healthcare development that is not, generally, appropriate to town centres or other areas including, where relevant, the provision of ancillary accommodation and facilities.

5.2. West Cork Municipal District Area Local Area Plan 2017

Site is located within the Development Boundary for Bantry. It is zoned BT C-01, Community with specific objectives for healthcare and community facilities.

5.3. Natural Heritage Designations

Glengarriff Harbour and Woodland SAC and NHA (000090) – lies approx. 10km to the northwest.

Caha Mountains SAC (000093) lies approx. 11km to the north.

Derryclogher Bog SAC (001873) lies approx. 8km to the northwest.

Sheep's Head SAC (000102) lies approx. 12km to the southwest.

6.0 The Appeal

6.1. Grounds of Appeal

The third-party appeal is from Drinagh Cooperative Ltd. The main points raised may be summarised as follows:

- 6.1.1. Objectives SC6-1 and SC6-2 of Cork CDP** – there is no proper assessment as to whether these objectives support the provision of a pharmacy as part of an out of town primary health care centre. CDP indicates that the appropriate location and range of facilities for each PHC will vary from case to case (para 5.6.7). However, the CDP indicates that PHCs should be located in town centres in the first instance and if not, the alternative site selection process should be based on the sequential approach (5.6.8). It also states that PHCs should be accessible to pedestrians, by public transport and by car in order to maximise access for urban and rural populations. It is submitted that had the PHC application included a pharmacy at the outset, an alternative site in the town centre would have been sought to comply with above.
- 6.1.2. Commercial competition** – the suggestion that the appellants are motivated by a desire to restrict competition is rejected. A proper balance must be struck between unfettered competition and the need to protect the vitality and viability of the town centre. Reference is made to Para 2.5.3 of the Retail Planning Guidelines which relates to this issue.

False dichotomy between pharmacy and dispensary – this is considered to be an archaic and irrelevant distinction. The Irish Regulatory Framework is referenced, mainly in the form of the Pharmacy Act 2007, The Regulation of Retail Pharmacy Businesses Regulations 2008 and the Guidelines issued by the Pharmaceutical Society of Ireland. It is claimed that by reference to these documents, the premises will be registered as a retail pharmacy business. It is further argued that a grant of permission for a dispensary is in effect a grant of permission for a pharmacy, as a

dispensary can only be operated if it is registered under Section 13 of the Act as part of a retail pharmacy business.

6.1.3. Nature and scale of proposed use and association with PHC – it is submitted that there is a lack of clarity in regard to the proposed use and that this is highlighted by the wording of Condition 5. It assumes that any clients of the dispensary will also be clients of the PHC. The economic viability of this assumption is questioned given that revenue would be restricted to prescriptions issued by 2 GP practices, the Sports Injury Clinic and the HSE's local primary care team. The restriction on separate sale is also questionable due to requirements of the Pharmacy Act 2007 (Section 64) which places restrictions on co-location of pharmacies and medical practices.

6.1.4. Sustainability – The Area Planner considers it to be unsustainable for customers to have to walk, cycle or drive to Bantry town. It is assumed by the Area Planner that all customers of the dispensary would also be clients of the PHC and that all prescriptions issued at the PHC would be filled there during the same visit. It is further assumed that if a prescription is written at the PHC, the customer would be obliged to make a special trip to the town centre on the day of the visit in order to fill the prescription. The town centre is the most sustainable location for small convenience retail units including pharmacies which generate multiple visits which can be combined with trips to work, school, leisure facilities and other shops. The benefits to clients of the PHC would be outweighed by long-term loss of trade to the town centre. This would create a precedent which would undermine the long-established policies of promoting the town centre as the primary location for this type of retail outlet.

6.2. First Party Response

The First Party's agent responded to the grounds of appeal on 3rd October 2018. This was mainly in the form of a rebuttal of the grounds of appeal. However, the following points are worthy of note:

- **Commercial competition** – It is submitted that the true motives of the appeal are commercial competition. The RPGs require an assessment of any adverse impacts on the vitality and vibrancy of the town centre and not on existing traders.

No evidence has been presented to substantiate this. Drinagh Co-op are the only pharmacy owners to have submitted an appeal, with no objections from other pharmacy owners in the town centre.

- **Nature and extent of development** - It was confirmed that the term 'dispensary' accurately reflects the proposed use as it will dispense prescriptions only, and will not retail cosmetics or other items or offer other complementary services that are associated with pharmacies elsewhere.
- **Definition of Dispensary as a 'shop'** – this was established by the Board in the case of a Referral PL63.RL.2637 in respect of the inclusion of a dispensary within a PHC in Killarney, when it was determined that a 'dispensary' falls within the definition of a 'shop' under Article 5 of the PRD, as does a 'pharmacy'. Thus, it is refuted that the applicant has sought to avoid defining the use as a shop.
- **Compliance with Obj. SC6-1 and SC6-2 of the CDP** – it should be noted that these objectives are general healthcare objectives supporting the provision of healthcare facilities, notwithstanding the appellants' belief that the proposed use is a retail use. The site is situated directly adjacent to Bantry Regional Hospital, which facilitates co-location in response to community needs. It is submitted that the proposal should be assessed against ZU 3-3 which permits the provision of ancillary facilities at healthcare developments in such locations.
- **Pharmacy Act 2007, Sections 63 and 64** – these provisions seek to prevent medical practices and pharmacy businesses being co-located where they are in the same ownership with beneficial interests. It is confirmed that the proposed dispensary would be operated independently from the PHC and will adhere to the requirements of the Pharmacy Act.
- **Impact on Bantry Town Centre** – having regard to the limited scale (114m²) and nature of the use (restricted to dispensing prescriptions), it will have no impact on the vibrancy and vitality of the town centre. The use would complement the services of both Bantry Hospital and the PHC. A map (enclosed) showing the location of other pharmacies in the town indicates that these are concentrated in the north and west of the TC, whereas the proposed unit is 650m to the south. It

is submitted that significant trade would not be diverted from existing pharmacies. Reference is made to a favourable decision made by the Board in respect of a similar change of use at Ballyfermot (PL29S.246503).

6.3. Planning Authority Response

A response was submitted by the Planning Authority on 26th September 2018. No new issues were raised. The response was mainly in the form of a rebuttal of the points made in the grounds of appeal and a confirmation of the P.A.'s decision to grant permission.

7.0 Assessment

7.1. It is considered that the main issues arising from the appeal are as follows:-

- **Compliance with policy objectives for area**
- **Impact on Bantry Town Centre**
- **Restrictions on use**
- **Environmental Impact Assessment**
- **Appropriate Assessment**

7.2. Compliance with policy objectives for the area

7.2.1. The site is zoned BT C-01 in the West Cork Municipal District LAP, the Specific Development Objective for which is 'Community with specific objectives for healthcare and community facilities'. This is just one of two areas with this zoning within the Bantry Development Boundary, the other being C-02 which is reserved for hospital use. The main Community related policy objectives are contained within Chapter 5 of the County Development Plan, the overall aim of which is to meet the needs of the community, be accessible to people of all ages and abilities, to improve their quality of life and to support vibrant and sustainable communities. Objective SC 6-1 seeks to encourage, promote and facilitate the provision of healthcare facilities to all sections of the community and SC 6-2 seeks to support the provision of PHCs in appropriate locations.

- 7.2.2.** The current application relates to a unit within a permitted Primary Healthcare Centre, which is under construction. It is not considered necessary, therefore, to assess whether the site is suitable as a PHC, but merely whether a Dispensary is appropriate within the confines of the PHC. Paragraph 5.6.6 states that 'Primary Health Care' refers to the wide spectrum of health services which should be provided at community level, which were previously traditionally provided in hospitals, clinics and GP services. The applicant has confirmed the nature of the use as being a 'dispensary', which is for the dispensing of prescriptions. Dispensaries can be located within a hospital, which is staffed by pharmacists, or within a retail pharmacy unit. Thus, it is clearly a healthcare related use. As the site is directly adjacent to the Bantry Regional Hospital and the unit is within a Primary Healthcare Centre which will provide a range of healthcare services to the community, it is considered that the use is an appropriate one within both the zone and the permitted PHC development.
- 7.2.3.** Objective SC6-2 seeks to provide PHCs in appropriate locations, which it is stated (5.6.8) as being in town centre locations in the first instance, with a sequential approach being applied where an alternative location is required. Notwithstanding my view expressed above that as the PHC is already permitted and under construction it is not necessary to apply such a sequential test, it is considered that the co-location of the PHC with the hospital and other community uses within the built-up area of the town, creates an established community node, which is markedly different to an out of town or green-field location. It is considered, therefore, that the proposed development would be in accordance with the policies and objectives and the aim of the Plan to provide for the needs of the community in an accessible and sustainable manner.

7.3. Impact on Bantry Town Centre

- 7.3.1.** The retail policy for the area is to protect the vitality and vibrancy of the town centre, which includes directing retail uses in the first instance to the town centre. The appellant has argued that the proposed dispensary use is in effect a retail pharmacy use, and that all such retail units should be located in the town centre. The first party has pointed out that the Board has recently established (RL2637) that both a dispensary and a pharmacy fall within the definition of a 'shop', and that the use of the term 'dispensary' was not intended to avoid consideration as a retail unit.

However, it has also been confirmed that the nature and extent of the proposed use will be limited to dispensing prescriptions and it is not intended to sell cosmetics etc. I note from the permission granted for the PHC, (16/743), that the range of uses comprises 2 GP clinics, a sports injury clinic and a range of HSE services such as Occupational Therapy, Speech and Language Therapy and Audiology etc. The permitted use of the unit in question was for the sale of medical mobility equipment, which is also a retail use. Thus, the use as a dispensary, as opposed to a fully commercial retail pharmacy unit, would be complementary to the overall use as a Primary Healthcare Centre.

- 7.3.2.** The proposed unit is quite small with 114sq.m in total available. Within this space, the unit will also absorb a disabled access WC and a consulting room, as well as the area for dispensing medicines, with little space available for the display and retailing of other goods. Thus, the nature and scale of the use is such that it would be unlikely to compete with existing pharmacies in the town centre. It is also noted that there has been no objection from any other existing pharmacy businesses in the town. It is considered, therefore, that there is insufficient evidence that the vitality and vibrancy of the Town Centre would be affected, as there is very little likelihood that any significant level of trade would be diverted from the existing pharmacies in the town centre.
- 7.3.3.** The appellants have also challenged the P.A.'s view that the proposed development would be more sustainable, and in particular, that it had relied on an assumption that all customers would be clients of the PHC and vice versa. It is considered, however, that by presenting the option of having a prescription filled within the centre upon exiting a health service, together with the co-location of the PHC with other healthcare facilities and services, would be likely to reduce car-dependent travel journeys. It would, therefore, be in accordance with the Development Plan policies to make such centre and healthcare facilities more accessible to the communities it serves and with to promote development which is sustainable. It is considered, therefore, that the proposed development would be in accordance with the retail and healthcare policies contained in the Development Plan (and Local Area Plan), and with the proper planning and sustainable development of the area.

7.4. Restrictions on the use

7.4.1. The appellants have raised issues relating to requirements of the Pharmacy Act 2007, such as restrictions on pharmacies and medical practices in the same premises. However, the first party has pointed out that the intention of this restriction is to prevent co-location where the pharmacy and medical practice would be in the same ownership with mutual financial benefits. It was confirmed that the dispensary would be operated independently from the PHC and that they would adhere to the requirements of the Pharmacy Act.

7.4.2. The P.A. decision included a condition (No. 5) which imposed the following restrictions on the use:

- Use restricted to use directly associated with a Primary Healthcare Centre as permitted under 16/743
- Use to include a dispensary unit on the ground floor as indicated on Drawing No. 22003
- Dispensary shall not be sold separately from the Primary Healthcare Centre
- Dispensary shall not be used for an independent purpose under Class 2 of Part 4 of the Planning and Development Regulations 2001-2015 unless otherwise permitted by a further permission notwithstanding the exempted development provisions of the said regulations.

It is unclear, however, whether the prevention of the sale of the unit separately from the PHC is either necessary or enforceable, given that the first party has advised the Board (response to grounds of appeal) that it is intended to operate it separately from the PHC.

7.4.3. From a planning and land-use perspective, it is considered that the main objective here is to prevent a use which might undermine the retail policy for the area and/or be contrary to the CDP policies for the provision of community healthcare and the proper planning and sustainable development of the area. It is considered, therefore, that should the Board be minded to grant permission, a restriction should be placed on the use as specified by the first party in its response to the grounds of appeal (3/10/18), i.e. restricted to dispensing prescriptions, and that any further changes of use would require separate planning permission. It is further considered that a

condition should be attached to any such permission restricting the amalgamation of the unit with any other unit without a prior grant of planning permission. These conditions would restrict the nature and scale of the use to one appropriate to this location in the interests of protecting the vitality and vibrancy of the town centre.

7.5. Environmental Impact Assessment

- 7.5.1.** Having regard to the nature and scale of the 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.

7.6. Appropriate Assessment

The closest European sites are Glengarriff Harbour and Woodlands SAC (000090), which lies approx. 10km to the northwest, Derryclogher Bog SAC (001873), which lies approx. 8km to the northwest, and Cahal Mountains SAC (000093) which lies approx. 11km to the north. Sheeps Head SAC (000102) also lies c. 12km to the southwest across the bay. Given the distances involved, that the site is located in an established area, on serviced lands, it is considered that no appropriate assessment issues are likely to arise.

8.0 Recommendation

- 8.1.** It is recommended that planning permission be granted for the reasons and considerations set out below.

9.0 Reasons and Considerations

Having regard to the provisions of the Cork County Development Plan 2014 and of the West Cork Municipal District Local Area Plan 2017, to the previous planning history on the site, to the nature and scale of the development and to the existing pattern of development in this location, it is considered that subject to compliance with the conditions set out below, the proposed development would not adversely affect the vibrancy and vitality of Bantry Town Centre, would not seriously injure the amenities of

the area, or of property in the vicinity and 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, and by the further plans and particulars received by the Board on the 3rd day of October 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. The development shall comply with the terms and conditions of Planning Permission Reg. no. 16/743 which governs the overall development of the lands of which the site forms part, save where amended by the terms and conditions herein.

Reason: In the interest of clarity.

3. Notwithstanding the exempted development provisions of the Planning and Development Regulations 2001, and any statutory provision amending or replacing them, the unit shall be operated as a dispensary as specified in the lodged documentation, unless otherwise authorised by a prior grant of planning permission.

Reason: In the interests of protecting the vitality and viability of the town centre.

4. The unit shall not be amalgamated with any other unit unless authorised by a prior grant of planning permission.

Reason: In the interests of protecting the vitality and viability of the town centre.

5. Details of all external shopfronts and signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

Mary Kennelly
Planning Inspector

19th March 2019