



An
Bord
Pleanála

Inspector's Report ABP-303237-18

Development	Extension and change of use to restaurant and erection of signage.
Location	Waterford Shopping Centre, Lisduggan, Waterford
Planning Authority	Waterford City and County Council
Planning Authority Reg. Ref.	18669
Applicant	Noel Frisby
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party – v - Grant
Appellant	Serkin Yigit
Date of Site Inspection	14 th , February 2019
Inspector	Paddy Keogh

1.0 Site Location and Description

1.1. The site of the proposed development which has a stated area of .83 hectares is located at the western suburbs of Waterford City. The site contains Waterford Shopping Centre which has a stated gross floor area of 10,140 sq.m. The current application relates principally to an existing vacant unit (Unit No. 7) which has an area of c. 100 sq.m. (prior to extension). The unit is at the end of an existing retail mall and adjacent to a main entrance to the Shopping Centre. The external wall of the unit adjoins an existing area of surface car parking.

2.0 Proposed Development

2.1. The proposed development involves:

- the construction of an extension to Unit No. 7 and change of use of this enlarged unit from retail to restaurant,
- the provision of new signage,
- alterations to the main entrance doors on the northwest elevation,
- the erection of a 9m X 2.5m wall sign on the south west elevation and a 5.5m X 1.5m wall sign on the northwest elevation (both signs to be illuminated).

It is proposed to extend the floor area of Unit No. 7 by an additional 91.5 sq.m. The proposed extension will occupy c. 5 spaces (3 dedicated for use by taxis and 2 accessible) within the surface car park adjoining Unit No. 7.

3.0 Planning Authority Decision

3.1. Decision

Notification of a decision to grant planning permission for the proposed development subject to 12 conditions issued by the planning authority per Order dated 22nd, November 2018.

Condition No. 5 states:

Prior to the commencement of development, a revised site layout shall be submitted to, and agreed in writing with the planning authority indicating a revised location for the 'Accessible Car Parking' spaces which will be removed at the location of the new extension.

Reason: *In the interest of proper planning and sustainable development.*

3.2. Planning Authority Reports

3.2.1. Planning Reports

A report from the planning authority Area Planner dated 22nd, November 2018 includes:

- Lisduggan Shopping Centre has functioned as a District Centre in the city for in excess of 35 years providing a mix of convenience and comparison goods and other services.
- The proposed development is deemed to be in accordance with the zoning objective for the area.
- Having regard to the size of the overall shopping centre and the existing uses on site, it is considered that the change of use and extension to Unit No. 7 would not dilute the mix of retail offer available and would not impact on the city centre. The planning system should not be used to inhibit competition or preserve existing commercial interests.
- The proposed extension will necessitate the loss of 2 accessible car parking spaces and 3 spaces dedicated for use by taxis. There are currently 378 car parking spaces within the Shopping Centre site serving c. 10,140 sq.m. of development. Site development standards as set out in the current Waterford City Development Plan would suggest a requirement for 406 car parking spaces. However, there is a degree of dual usage between the various uses. Furthermore, the Shopping Centre is beside a public transport corridor and within easy walking distance of the surrounding residential area. It is considered that there is adequate car parking to serve the existing and intended users.

- Two new TESCO signs are proposed to the side elevation of the building. There is concern in relation to visual clutter arising from these signs. It is recommended that the sign proposed on the north west elevation be reduced in size and the sign proposed on the south west elevation be omitted.

The planning authority decision generally reflects the recommendation of the Area Planner. However, the attachment of a condition recommended by the Area (Executive) Planner in relation to signage (the omission of the sign proposed for the south west elevation and the reduction in scale of the sign proposed for the north west elevation) was deleted by the Area (Senior Executive) Planner and did not feature in the final grant of planning permission issued by the planning authority.

3.3. Third Party Observations

- 3.3.1. One third party observation objecting to the proposed development was received by the planning authority. The points of objection are reflected in the grounds of appeal.

4.0 Planning History

Reg. Ref. 18668 – Notification of a decision to grant planning permission for internal alterations to allow the amalgamation of Unit 4 and Unit 5 was issued by the planning authority per Order dated 22nd, November 2018. An appeal against this decision was subsequently withdrawn (Appeal No. ABP.303241-18).

Reg. 11/50094 - Planning permission for change of use of Commercial unit (former TSB Bank) to a restaurant at Unit No. 7A Lisduggan Shopping Centre was granted by the planning authority per Order dated 3rd, October 2011.

In addition to the above cited cases, there has been a substantial history of planning authority decisions relating to Lisduggan Shopping Centre. These relate to signage, minor modifications to fenestration and elevations, change of use of units etc.

5.0 Policy and Context

5.1. Development Plan

- 5.1.1. The site of the proposed development is zoned 'General Business' in the Waterford City Development Plan 2013-2019. The stated objective of this zoning is 'To provide and improve General Business Uses'.
- 5.1.2. Lisduggan is identified as a 'District Centre' in the City Development Plan.

5.2. Natural Heritage Designations

The Lower River Suir Special Area of Conservation (SAC) (Site Code 002137) is c. 2 km north of the site.

The Johns River (a Tributary of the River Suir) runs c. 312 km to the south of the site.

The Tramore Back Strand Special Protection Area (SPA) (Site Code 004027) is c. 6.3 km south of the site.

5.3. EIA Screening

- 5.3.1. Having regard to the nature and scale of the proposed development, to the urban character of the area and to the nature of the receiving environment it is considered that it would not result in a real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

The submitted grounds of appeal can be summarised as follows:

- The submitted application documentation shows the entire shopping centre site outlined in red. It would have been more accurate to simply show Unit No. 7 outlined in red.

- The proposed development provides for a customer toilet and a less-able toilet. It may not be appropriate to have staff sharing the customer toilet facility.
- The proposed extension will result in the loss of 5 regular car parking spaces and a further 3 car parking spaces designed to cater for the needs of less-able bodies persons. These spaces are suitably located near the entrance to the centre. No proposal to relocate or compensate for the loss of these spaces has been indicated.
- The general area including the existing Lisduggan Shopping Centre is already well serviced by restaurant/food facilities. The proposed provision of an extra 191 sq.m. will result in an oversupply and may have a negative impact on existing food outlets.

6.2. Applicant Response

- The Appellant is a tenant in Waterford Shopping Centre and has operated a restaurant (T-junction) very successfully for the past 4 years. The Appellant formerly operated the restaurant from Unit No. 22 and Unit No. 22A. However, in recent years he has operated a Turkish barber Shop from Unit No. 22A.
- Tenants in Waterford Shopping Centre are in a continuous state of flux reflecting changing economic circumstances and retail trends. Management of the centre must work closely with changing trends to keep the centre occupied and are constantly on the lookout for new tenants that will add to the vibrancy of the centre.
- Experts forecast that the High Street must adjust in order to survive and one can expect to see more coffee shops, food outlets and other leisure experiences to draw people in. The same forecast applies to District Shopping Centres serving local communities.
- Unit 7 (previously occupied by the Appellant's Turkish Barber Shop) has been vacant for three years.

- Planning permission was previously obtained for the change of use of Unit No. 7 to a restaurant and take away in September 2011 (Reg. Ref. 11/94). However, this development never proceeded.
- The Applicant agrees with the comment of the planning authority Area Planner in the report on file which states that '*the planning system should not be used to inhibit competition, preserve existing interests.*'
- In addition to public toilets within the Shopping Centre dedicated toilets are provided for all staff of the various retail and service units.
- In the experience of the Management Company car parking provision within the centre is more than adequate to cater for demand. Dedicated taxi parking spaces were provided at the location of the proposed extension. However, these were not used by any taxi operators and will be no loss to the centre. The Applicant is quite happy to comply with the requirements of Condition No. 5 of the planning authority notification of decision to grant planning permission for the proposed development and provide for accessible car parking at an alternative location within the Shopping Centre.

6.3. Planning Authority Response

None

7.0 Assessment

7.1.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Loss of Existing Car Parking Spaces
- Nature of proposed Use
- Toilet Facilities
- Other Matters

- Appropriate Assessment

Loss of Existing Car Parking Spaces

- 7.1.2. The submitted grounds of appeal point out that the proposed extension to Unit No. 7 will cover existing car parking spaces including accessible car parking spaces.
- 7.1.3. The planning authority Area Planner has confirmed that a total of 5 car parking spaces will be lost as a consequence of the proposed development. 3 of these spaces are designated for taxi parking only. The Area Planner reports that these spaces are continuously vacant and there will be no consequences arising from their loss.
- 7.1.4. It is proposed to provide 2 accessible car parking spaces within the existing Shopping Centre car park to compensate for the 2 accessible spaces that will be lost. The applicant has indicated that they are happy to comply with the requirements of Condition No. 5 of the planning authority notification of decision to grant planning permission which addresses this matter. I consider that, subject to the attachment of a similar condition to any permission that issues from the Board, the revised car parking arrangement are acceptable.

Nature of proposed use

- 7.1.5. The submitted grounds of appeal query the appropriateness of the proposed use. In this regard it is suggested that the proposed change of use to restaurant will result in an over dominance in restaurants in the Shopping Centre.
- 7.1.6. It has been pointed out on behalf of the applicant, in response, that the appellant currently operates a restaurant in the Shopping Centre. Furthermore, a schedule of existing restaurants and other retail and commercial uses in the centre has been provided by the applicant.
- 7.1.7. At the time of my site inspection I noted a range of retail and commercial uses in the Shopping Centre that I would consider to be typical of a development of this nature. There did not appear to be an over representation of restaurants or other dining outlets. Furthermore, I would concur with the view expressed by the planning

authority Area Planner and the applicant that the planning system should not be used to inhibit competition between different commercial interests.

Toilet Facilities

- 7.1.8. The submitted grounds of appeal suggest that it is not acceptable for staff and customers of the proposed restaurant to use the same toilet facilities. However, it has been pointed out on behalf of the applicant, in response, that all staff have access to dedicated staff toilets within the centre.

Other Matters

- 7.1.9. The submitted grounds of appeal query whether or not the application submitted to the planning authority constitutes a valid application in circumstances where the site outlined in red on the submitted drawings encompasses the entire Shopping Centre rather than simply Unit No. 7 and the adjoining area intended to accommodate the proposed extension.
- 7.1.10. I note that the completed planning authority Application Form states that the applicant is the owner of the Shopping Centre. Accordingly, I consider that the site as outlined in red complies with the requirements of the *Planning and Development Regulations, 2001*, as amended.
- 7.1.11. Furthermore, the proposed development includes new signage on the north western and south western elevations of the Shopping Centre and alterations to the entrance which would not be incorporated within a red line relating solely to Unit No. 7.
- 7.1.12. The submitted grounds of appeal make no reference to the proposed new signage. Given the scale of the proposed signs and the commercial character of the environment in which they will be located I consider that they would not seriously injure the visual amenities of the area and are acceptable.

Appropriate Assessment

- 7.1.13. The application was screened by the planning authority and the need for a stage 2 appropriate assessment was screened out. Having regard to the nature, limited scale and urban context of the proposed development and the separation distance 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.

8.0 Recommendation

- 8.1. I recommend that planning permission for the proposed development be granted for the reasons and considerations and subject to the conditions as set out below.

9.0 Reasons and Considerations

Having regard to the nature and limited scale of the proposed development within the context an existing Shopping Center it is considered that, subject to compliance with the conditions set out below, the proposed development would not detract from the existing Shopping Centre, would not seriously injure the amenities of the area, would provide for adequate car parking including car parking to cater for the requirements of mobility impaired customers and would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

- (1) The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

- (2) All new sections of footpath shall be constructed of paving materials to match those of the existing footpaths within the Shopping Centre details of which shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interest of pedestrian safety and visual amenity.

- (3) The two accessible car parking spaces which will be lost to facilitate construction of the proposed extension shall be replaced by two new spaces to be provided adjacent to the Shopping Centre entrance adjacent to Unit No. 7. A revised layout indicating the precise position of these accessible car parking spaces shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

Reason: In order to provide for an acceptable standard of development and to accommodate the requirements of mobility impaired customers.

- (4) Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Saturdays inclusive, and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

- (5) The proposed restaurant shall operate only between the hours of 07.30 and 23.30 Sunday to Thursday and between the hours of 07.30 and 00.30 on Friday and Saturday.

Reason: In order to safeguard the residential amenities of property in the vicinity.

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

Reason: To ensure adequate servicing of the development, and to prevent pollution.

- (7) The developer shall control odour and noise 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 commencement of development.

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

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

Reason: In the interest of visual amenity

- (9) No advertisement, advertisement structure or signage other than those shown on the drawings submitted with the application shall be erected or displayed on the building in such a manner as to be visible from outside the building, unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

- (10) Construction waste shall be managed in accordance with a construction waste management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the "Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects", published by the Department of the Environment, Heritage and Local Government in July 2006

Reason: In the interest of sustainable waste management.

- (11) The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall

be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Paddy Keogh
Planning Inspector

8th, April 2019