



An
Bord
Pleanála

Inspector's Report ABP.303808-19

Development	Refurbishment of staff accommodation and change of use to climate change exhibition, refurbishment and change of use of stables to office space, reroofing and refurbishment of garden sheds.
Location	Powerscourt House, Enniskerry, Co. Wicklow
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	18/1335
Applicant(s)	Powerscourt Estates Ltd.
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First Party
Appellant(s)	As above
Observer(s)	None
Date of Site Inspection	22 nd June 2019
Inspector	Kenneth Moloney

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1.0 Site Location and Description

- 1.1. The subject site is located within the Powerscourt Estate, Enniskerry, Co. Wicklow.
- 1.2. Powerscourt House dates from the early eighteenth century and the overall estate is now a tourist attraction with amenities such as a hotel, golf, café, gardens and tours.
- 1.3. The appeal site relates to a former coach house(s) / stables located to the west of the main house.
- 1.4. The appeal site is effectively a courtyard with buildings / former coach houses facing towards the courtyard.
- 1.5. The subject buildings are labelled in the submitted site plan. The buildings in Block B are unoccupied and in relatively poor condition.
- 1.6. The subject building in Block C is used for offices and appear to be in relatively good condition.
- 1.7. Block A is located to the immediate west of Block B.
- 1.8. All the buildings are protected structures as they are located within the curtilage of a protected structure.

2.0 Proposed Development

- 2.1. The proposed development includes the following;
 - a. Refurb of existing staff accommodation and change of use to climate change exhibition
 - b. Refurb and change of use of existing stables to offices
 - c. Change of use of existing carriage house to staff dining and non-commercial kitchen
 - d. Reroofing and refurb of existing garden shed
- 2.1.1. Overall the proposed development would involve a single minor internal intervention to Block C. The proposal would involve ground floor internal alterations to the western building of within Block B. There are no significant alterations proposed to the remaining buildings within Block B.

- 2.1.2. The proposal involves significant internal alterations to the ground floor and first floor of Block A.

3.0 Planning Authority Decision

- 3.1. Wicklow County Council decided to **grant** planning permission subject to 6 no. conditions.

The conditions are as follows;

1. Standard condition
2. Development contribution
3. Single ownership
4. Bay survey
5. West Carriage Building – Option 2
6. Best heritage practice

3.2. Planning Authority Reports

- 3.2.1. The main issues raised in the planner's report are as follows;

Area Planner

- The previous application (L.A. Ref. 12/6733) granted permission for an adjoining courtyard for change of use of disused building to 461 sq. m. to office / research and development workshop use. It was considered that this proposal would bring benefits in terms regenerating original farm buildings of the protected structure.
- The current application is for refurb and change of use of adjoining courtyard buildings, the 'west stables.
- The proposed development relates to 1,467 sq. m. of office space, office staff dining and climate change centre.
- The change of use to the 'cool planet experience' is acceptable.
- The office space is to serve the existing 'cool planet'.

- The question arises whether the proposed development needs to be in a rural area.
- The proposal is small in scale relative to the size of the Powerscourt Estate.
- The repair and restoration of these conservation buildings is desirable.
- There is a precedent as the Planning Authority decided that a change of use of disused outbuilding to office / research use was acceptable as such the proposal is considered acceptable.
- The proposed works would not significantly compromise the character or setting of the protected structure.
- Car parking provided for within the existing estate grounds.
- No AA issues.

3.3. Internal Reports;

- Water Services; - No objections.
- Heritage Officer; - Proposals acceptable. Bat survey shall be carried out prior to commencement of works.

3.4. Third Party Observations

None

4.0 Planning History

Relevant 5-year planning history

- L.A. Ref. 17/1315 – Permission **granted** for change of use of agricultural shed to bonded warehouse for distillery.
- L.A. Ref. 17/321 – Permission **granted** for amendments to L.A. Ref. 15/1164 (small scale craft whiskey distillery and visitors centre).

- L.A. 16/1211 – Permission **granted** for change of use of Courtyard Building A, comprising 463.1 sq. m. of floor area from office / research and development workshop use to visitor / exhibition centre.
- L.A. Ref. 15/1164 – Permission **granted** for construction of new 2-storey building with floor area of 1,420 sq. m. and change of use of disused farmyard building (floor area 239 sq. m.) to provide for small craft distillery and visitor centre for the production of Powerscourt Distillery Limited.
- L.A. Ref. 12/6733 - Permission **granted** for change of use of disused Courtyard Building A, comprising 463.1 sq. m. of floor area from office / research and development workshop use.

5.0 Policy Context

5.1. Development Plan

The operational Development Plan is the Wicklow County Development Plan, 2016 – 2022.

The following policy objectives are relevant;

Chapter 5 – Economic Development

- EMP 2 – Direct all employment uses to zoned land.

Chapter 10 – Heritage

- BH 9 – to ensure protection of all structures on the RPS
- BH 10 – to positively consider proposals to improve alter, extend or change of use of protected structures to render them viable for a modern use.

Chapter 5

Section 5.6 is relevant 'Objectives for Wicklow's Rural Economy'.

6.0 The Appeal

6.1. The following is the summary of a first party appeal;

- The Board are requested to consider solely condition no. 3 rather than the scheme de novo.
- The red line boundary in the submitted drawings outlines the subject site whereas the blue line boundary outlines the entire estate.
- The applicant's site comprises of 0.9% of the overall site area.
- Section 7.3.2 of the Development Management Guidelines for Planning Authorities state that unless the requirements of the condition are directly relevant to the development to be permitted the condition maybe ultra vires and unenforceable.
- It is contended that condition no. 3 is ultra vires and should be removed. Condition no. 3 requires the lands of the subject application and the entire Powerscourt Estate shall be in single ownership.
- The wording of this condition provides an unnecessary restriction on the applicant in relation to lands outside the scope of L.A. Ref. 18/1335.
- The proposal is consistent with best conservation practice which keeps the existing buildings in use.
- The appeal submission includes a suggested wording for a revised condition no. 3.
- It is submitted that the requirement to limit the ownership of the lands subject to planning application to a single owner, to avoid their subdivision is appropriate as it is connected to the permitted development.

7.0 Response

7.1. The following is the summary of a response submitted by the Planning Authority.

- The Planning Authority would support an amended Condition no. 3 but would not support omitting condition no. 3.
- A revised condition no. 3 is set out in the submission.
- It is submitted that condition no. 3 is considered necessary to ensure the rationale for permitting employment development in rural area located on unzoned land.
- Condition no. 3 (or revised version) is also required to ensure the proposed development is controlled by a party who is in control of the privately owned and operated water and wastewater systems within the Powerscourt Estate.
- The Board is requested to uphold the Planning Authority decision and amend condition no. 3.

8.0 **Assessment**

- 8.1.1. The first party appeal relates solely to Condition no. 3 of the Local Authority permission. Therefore, the Board has the discretion to assess the condition alone or the proposed development de nova. I would consider and having regards in particular to the pattern of development within the Powerscourt Estate, the planning history, nature of the proposed development and the nature of the appeal that the consideration of the proposed development 'de novo' by An Bord Pleanála would not be warranted in this case.
- 8.1.2. Accordingly, I would consider the Board could use its discretionary powers under Section 139 of the Planning and Development Act 2000, and give to the Planning Authority directions to attach, remove or amend the conditions appealed against and/or other conditions. However, I will assess the proposed development de-novo should the Board take an alternative view and consider that a de nova assessment is appropriate.

The principal issues in this case are as follows;

- Principle of Development
- Architectural Conservation
- Condition no. 3

8.2. **Principle of Development**

8.2.1. The principle features of the proposed development provide for a change of use from existing staff accommodation and change of use to climate change exhibition in Block A. The proposal also includes the change of use of existing carriage house to staff dining with non-commercial kitchen in Block B.

8.2.2. The appeal site is not zoned and as such Section 5.6 'Objectives for Wicklow's Rural Economy' of the County Development Plan is relevant. Section 5.6 of the County Development Plan states that in a limited number of cases that employment generating uses, i.e. rural based enterprises, will be permitted in rural areas.

8.2.3. The proposed use is not essentially a rural based enterprise however the proposed use is, in my view, an ancillary use to the main Powerscourt House and would provide for a viable use for these conservation buildings which are currently vacant and may fall into disrepair. It is also important to acknowledge that the proposed uses would provide a revenue stream for the maintenance of the estate.

8.2.4. I would consider that the principle of the proposed development is acceptable.

8.3. **Architectural Conservation**

8.3.1. The buildings the subject of this application are protected structures. However, I would note from the submitted Conservation Statement, paragraph 5.05, which

states that the subject buildings, i.e. the stables, would not be considered worthy of Protected Structures status if they were isolated and not physically attached to Powerscourt House. The subject buildings are located within the curtilage of a protected structure and as such are protected structures.

8.3.2. I would consider that the principle of the proposed development is consistent with a key conservation principle as set out in Chapter 7 of the Architectural Heritage Guidelines, 2011, which states that it is a good conservation principle to keep a building in use.

8.3.3. The proposed uses would not involve any alterations to the external character of the subject buildings and I noted from my site inspection that some of the existing buildings are in poor condition internally which would require immediate repair work. Overall, I would conclude that the proposed development would not adversely impact on the architectural character of these conservation buildings.

8.4. **Condition no. 3**

8.4.1. Condition no. 3 in the Local Authority permission reads as follows;

The entire development consisting of the buildings that are the subject of this permission (as outlined by red site boundary) and the overall Powerscourt Estate (as outlined by blue site boundary) shall be held in single ownership and shall not be subdivided).

8.4.2. The appellant's concerns relate to the ownership part of the condition. The appellant argues that the said condition is ultra vires as it relates to the Powerscourt Estate which is outside the remit of this application. The appellant submits that the appeal site relates to the site enclosed in a red boundary whereas the area outlined in blue

reflects the overall ownership of the applicant. The appellant suggests a condition as follows;

The development consisting of the building that are the subject of this permission (as outlined by red site boundary) shall be held in single ownership and shall not be subdivided.

8.4.3. The Local Authority argues that an amended version of the condition would be possible. The amended version of the condition is required as it is a County Development Plan policy objective that employment generating uses must generally be located in areas of zoned land. The appeal site is not zoned for employment and I would note Section 5.6 of the County Development Plan which states that a limited number of employment uses will be permitted in rural areas through the development of rural based enterprises which are not detrimental to the character of the area.

8.4.4. The Local Authority, in their response submission, suggest a condition as follows.

The buildings the subject of this permission (as outlined by the site boundary), Powerscourt House and all adjoining existing buildings and associated water and wastewater infrastructure shall be held in single ownership and not subdivided.

8.4.5. Section 7.3.2 of the Development Management Guidelines for Planning Authorities, 2007, refer to ultra vires and states that '*unless the requirement of a condition is directly related to the development to be permitted, the condition may be ultra vires and unenforceable*'. I would note from the application documentation that Powerscourts Estates Ltd, are the owners of the appeal site and it is evident from the submitted 'Site Location Plan' that Powerscourts Estates Ltd., own the entire estate. I would share the Local Authority view that the proposal is acceptable provided the proposed use remains in the same ownership, as it is my view, that the proposed use is acceptable in principle given it is an ancillary use to the main use. Therefore,

on this basis I would consider that the proposed use must remain within the ownership of the parent owners could not be subdivided into individually owned sites and this would in my view, pave the way for independent uses run by independent owners which is not consistent with Section 5.6 of the County Development Plan. On this basis I would recommend the revised condition recommended by the Local Authority.

9.0 CONCLUSIONS AND RECOMMENDATION

10.0 Recommendation

10.1. I have read the submissions on the file, visited the site, had due regard to the County Development Plan, and all other matters arising. I recommend that planning permission be granted for the reasons set out below.

11.0 Reasons and Considerations

Having regard to the proposed development and the policy objectives of the Wicklow County Development Plan, 2016 - 2022, and the extent of the development, it is considered that subject to compliance with conditions set out below, the development proposed to be carried out would not seriously injure the amenities of the area and would be in accordance with the proper planning and sustainable development of the area.

12.0 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 points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. A conservation expert shall be employed to manage, monitor and implement the works on the site and to ensure adequate protection of the retained and historic fabric during the works. In this regard, all permitted works shall be designed to cause minimum interference to the retained building and facades structure and/or fabric. (b) All repair works to the protected structure shall be carried out in accordance with best conservation practice as detailed in the application and the Architectural Heritage Protection Guidelines for Planning Authorities issued by the Department of Environment, Heritage and Local Government in 2011. The repair works shall retain the maximum amount of surviving historic fabric in situ, including structural elements, and shall be designed to cause minimum interference to the building structure and/or fabric. Items that have to be removed for repair shall be recorded prior to removal, catalogued and numbered to allow for authentic re-instatement. (c) All existing original features, including interior and exterior fittings/features, shall be protected during the course of works.

Reason: To ensure that the integrity of the retained structure is maintained and that the structure is protected from unnecessary damage or loss of fabric.

3. An architectural impact statement and conservation plan for the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The development shall be carried out in accordance with this plan, and the relevant works shall be restricted to conservation, consolidation and presentation works.

Reason: To ensure that these elements of the historic structure are maintained and protected from unnecessary damage or loss of fabric.

4. A bat survey (prepared by suitably qualified person with professional indemnity insurance) shall be carried out on the existing buildings. The report shall be submitted for written agreement of the Planning Authority. The report shall ensure the protection of bats and shall include mitigation measures as appropriate. The agreed measures shall be implemented.

Reason: In the interest of Wildlife protection.

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

Reason: In the interest of public health and to ensure a proper standard of development.

6. Prior to the commencement of development, the developer shall submit a full and detailed construction management plan which shall include a construction programme for the works, hours of operation, a traffic management plan, noise and dust mitigation measures (including details of truck wheel wash at the site entrances) and details of construction lighting. A Construction Manager shall be appointed to liaise directly with the council. Details to be agreed in writing with the Planning Authority.

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

7. That all necessary measures be taken by the contractor to prevent spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.

Reason: To protect the amenities of the area.

8. 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. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 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.

Kenneth Moloney
Planning Inspector
28th June 2019