



An  
Bord  
Pleanála

## Inspector's Report ABP303840-19

---

<b>Development</b>	Demolish existing disused cinema and construct 4 storey apartment building.
<b>Location</b>	Broderick Street, Midleton, Co. Cork.
<b>Planning Authority</b>	Cork County Council.
<b>Planning Authority Reg. Ref.</b>	184908.
<b>Applicant</b>	GB Retrofit Limited.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant permission subject to conditions.
<b>Type of Appeal</b>	Third Party v. Decision.
<b>Appellant</b>	Marian Walsh.
<b>Observers</b>	None.
<b>Date of Site Inspection</b>	5 September, 2019.
<b>Inspector</b>	Brendan Wyse.

## **1.0 Site Location and Description**

- 1.1. The site is located on Broderick Street in the centre of Midleton, County Cork. It has a stated area of 0.106 hectares and comprises a disused cinema building and associated circulation/yard areas.
- 1.2. Broderick Street is a mixed commercial and residential street. There is a small shopping centre adjacent to the west of the site and street front retail outlets adjacent to the east. To the rear (north) the site adjoins a yard in use as a garden centre and a small scheme of residential cottages, Coolbawn Mews (north-east). Further to the north there is a substantial modern development of apartments and shops (The Square). The south side of the street is mostly residential and includes a terrace of three-storey Georgian houses almost opposite the site.

## **2.0 Proposed Development**

### **2.1 Application Lodged with Planning Authority 12 April 2018**

#### **2.1.1 Proposed development to comprise:**

- Demolition of cinema building.
- Construction of four-storey apartment block consisting of 17 no. apartments.
- Apartment comprising:
  - 10no. 2 bed units
  - 4no. 1 bed units
  - 3no. 3 bed units
- 17 no. car parking spaces (ground floor level).
- 1 no. Part 5 unit identified.
- Total floor area 1,907 square metres.

#### **Documentation included:**

- Irish Water Pre-Connection Agreement.

- Site Specific Flood Risk Assessment.

## **2.2 Further Information Lodged with Planning Authority 9 November 2018**

### **2.2.1 Included:**

- Heritage Building Survey of existing cinema building.
- Reduction to 16 no. apartments (gross floor area 1,900 square metres).
- Two street trees to be removed to facilitate the development.
- Environmental Construction and Waste Management Plan.
- Drawing illustrating sightlines at entrance.
- Car park and entrance details.
- Architectural/Design Response in support of proposed development approach, including changes to mitigate impacts on the adjacent Coolbawn Mews.

## **2.3 Clarification of Further Information Lodged with Planning Authority 7 January 2019**

### **Included:**

- Revisions to the front, street level, façade to provide for a more commercial appearance.
- Revised vehicular/pedestrian arrangements at entrance.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

3.1.1. The Planning Authority decided to grant permission subject to 16 no. conditions.

#### **Conditions include:**

1. Development to be as per revised proposals submitted on 9 November 2018 and 7 January 2019.

10/11. Detailed requirements re vehicular/pedestrian arrangements at development frontage.

13. Detailed requirements re external materials/finishes.
16. Supplementary development contribution re Cobh/Midleton – Blarney Suburban Rail Project.

## 3.2 Planning Authority Reports

### 3.2.1 Planning Reports – (Executive and Senior Planner Reports dated 5 June 2018, 30 November 2018, 28 January 2019 and 4 February 2019).

Basis for Planning Authority Decision. Include:

- Proposed development considered high density (equating to c.170 dwellings per hectare).
- Concerns re built heritage associated with existing cinema building (now listed on NIAH) and wider context, including Georgian Terrace opposite.
- Concerns re height/scale of proposed building in context of Broderick Street.
- Concern to achieve possible commercial use to street frontage.
- Concerns re residential amenity, particularly in relation to Coolbawn Mews.

### 3.2.2 Other Technical Reports

#### (i) Conservation Officer

- Issues as noted in Planning Reports. A case for demolition of the cinema could be made provided a strong rationale/architectural justification was submitted.

#### (ii) Area Engineer (dated 5 June and 28 November 2018)

- Following receipt of Further Information recommended permission subject to conditions.

#### (iii) Housing

- Indicates satisfaction with social housing provisions.

**(iv) Environment** (dated 29 May 2018)

- Construction and demolition plan required.

**(v) Engineering Estates** (dated 31 May and 15 November 2018)

- No objection subject to conditions.

**3.3 Prescribed Bodies**

**3.3.1 Inland Fisheries Ireland**

- No objection subject to Irish Water confirming sufficient capacity in public sewer infrastructure.

**3.3.2 Irish Water**

- No objection to the proposed development.

**3.3.3 Third Party Observations**

Two observer submissions were received by the planning authority. The first was from Marion Walsh, the appellant in the appeal to the Board – see grounds of appeal at Section 6.0 below.

Issues raised include; impact on light (overshadowing) due to height and scale; overlooking from balconies and windows; noise/disturbance from apartments and car park; construction noise and disturbance, including asbestos removal and associated health implications; and inadequate parking.

The second was from Conor O’Flynn.

Issues raised refer to parking and traffic congestion; and architectural heritage, including submission that the existing building be retained.

## 4.0 Planning History

### **Planning Authority Ref. 09/56018, ABP Ref. 71.235739**

This was a 2010 permission for the renovation of the existing building for use as a multi-use music, dance and entertainment centre. The development was not carried out.

### **Planning Authority Ref. 07/56004**

This was a 2007 permission to demolish the cinema building and to construct a retail/commercial/residential building. This is the permission referenced on the application elevation drawings.

## 5.0 Policy Context

### 5.1. Development Plan

#### **The relevant plan is the Middleton Town Development Plan 2013**

The site is within the town centre and is zoned “Town Centre Mixed Uses”. Residential development is normally permitted.

The Strategic Aims for Middleton include the securing of strong growth in the population of the town council area.

Broderick Street is included within a designated Architectural Conservation Area (ACA) that applies to much of the town centre area. Objective HE 10-31 applies.

The site is located within an area identified as susceptible to flooding; Zone A.

It is noted that the cinema was added to the National Inventory of Architectural Heritage (NIAH) in 2014 – Ref. No. 20830108.

## 5.2 National Guidelines

Project Ireland 2040 – National Planning Framework (Government of Ireland/DHPLG 2018)

Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities (DHPLG, 2018).

Sustainable Urban Residential Development Guidelines (DEHLG, 2009).

Urban Design Manual – A Best Practice Guide (DEHLG, 2009).

The Planning System and Flood Risk Management – Guidelines for Planning Authorities (DEHLG/OPW 2009).

## 5.3 Natural Heritage

The Cork Harbour SPA (Site Code: 004030) and the Great Island Channel SAC (Site Code: 001058) are located approximately 0.3 kilometres south-west of the site (associated with the Owennacurra River).

These areas are also a pNHA (Site Code: 001058).

## 5.4 EIA Screening

Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity, 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.

## 6.0 The Appeal

### 6.1 Grounds of Appeal

The appeal is lodged by Marian Walsh of 4 Coolbawn Mews, the house located immediately to the north-east of the development site.

The appellant refers to her observations/submissions to the planning authority and indicates that the further information submitted by the applicants deal with her concerns in relation to privacy. However, she contends that it does not adequately address her rights to light.

## **6.2 Applicant's Response**

The applicants refer to the appellant's concerns being addressed in the further information submitted to the planning authority on 9 November 2018. Changes to the development cited include:

- Floor level adjustments to reduce the overall height of the building by 1.9 metres.
- The incorporation of a significant void to the building adjacent to Coolbawn Mews, resulting in the removal of one apartment and a reduction in size of another.
- The changed relationship to the appellant's house is illustrated on Drawing No. 1732-310A of the further information submission.

## **6.3 Planning Authority Response**

None received.

## **6.4 Observations**

Given the location of the development site within an ACA the Board referred the appeal to relevant prescribed bodies. No submissions were received.

## **7.0 Assessment**

- 7.1 The Board will note that the appeal in this instance has been brought in relation to just a single issue, namely, the impact of the proposed development on the appellant's rights to light (overshadowing) and that the applicant's response is also confined solely to this matter.



I am satisfied that this is the main issue in the appeal. However, in the interests of completeness, I include below, reference to a number of preliminary matters prior to dealing with this substantive issue. I also address the matter of Appropriate Assessment. The issues, therefore, are considered under the following headings:

- Preliminary Matters
- Overshadowing
- Appropriate Assessment

## **7.2 Preliminary Matters**

7.2.1 The first of these refers to the proposal to demolish the cinema building. As indicated at Section 5.1 above the building was added to the National Inventory of Architectural heritage (NIAH) in 2014 and it is located within an Architectural Conservation Area (ACA). The NIAH entry (Ref. No. 20830108) indicates that the cinema was built c.1950 and is considered of regional importance. The appraisal describes it as an attractive cinema that is typical of mid-20<sup>th</sup> century architecture, simple yet stylish with interesting features including a canopy and narrow windows. It also refers it as a reminder of a period in social history when every sizable town had a cinema that was an important social venue before the arrival of widespread television.

7.2.2 In response to the planning authority's request the applicants submitted a Heritage Building Survey which includes an assessment of the buildings' historical and architectural merit. The report assessment refers to the cinema building as simple in design and as a modest example of Art Deco architecture in Ireland. It documents the poor condition of the building stating that, internally, the remaining building fabric has suffered much deterioration from water ingress, pigeon infestation and demolition works so that it has lost its integral arrangement as a cinema.

7.2.3 Having regard to the contents of this report, and to the comments of the planning authority's Conservation Officer (as reported in the first Planner's Report) I am satisfied that the demolition of the existing cinema structure can be justified.

7.2.4 The second matter is to note that the proposed development of residential apartments is in accordance with the town centre zoning of the site and that the

proposal would also be supportive of a key strategic aim of the Midleton Plan to secure strong population growth in the town.

7.2.5 The third matter is to note that I am satisfied that the proposed development complies with relevant local and national policies/guidance in relation to density, height, apartment size, layout, design and mix. I have some reservations about the extent of site coverage proposed, as illustrated by reference to the close proximity of the new building to the east, north and west site boundaries. However, given the town centre location and the nature of most of the adjacent uses, I consider the general approach proposed to be acceptable in this instance. I am also satisfied with the proposed parking provision, limited to 1 space per apartment, particularly given the location of the site in the town centre and its close proximity to the Midleton Commuter Rail Station.

7.2.6 The fourth matter refers to the issue of design, particularly in terms of the proposed street elevation and interface with the street. As indicated at Section 2.0 above this matter was pursued by the planning authority in requests for further information. The finalised approach is as illustrated on drawings submitted to the planning authority on 7 January 2019. While I find the overall design to be appropriate, given the site context, I am not fully convinced that the ground floor street interface is clearly resolved. The changes sought here by the planning authority were motivated by a desire to achieve a commercial use to the street front and which has not, it seems, proven possible. The result, therefore, seems to me to be something of a compromise that lacks clarity in design terms and in terms of the amenity value of the main living area of the two ground floor apartments (Apartments 1 and 2). The applicants indicated, in the cover letter to the further information submission, that the continuous glazed frontage on the drawings would comprise a mix of opaque and clear glazing. I am uncertain as to how this would work out in practice – noting also that this is a south facing façade. I consider that a condition should be attached to any permission granted requiring further details for this frontage to be agreed and which would allow for some further design flexibility to achieve a more satisfactory outcome.

7.2.7 The final matters to note are that the application documentation included a Site Specific Flood Risk Assessment, addressing issues arising from the location of the

site in a flood risk Zone A, and an Environmental, Construction and Waste Management Plan (all submitted as further information), addressing, amongst other matters, the removal of asbestos. I am satisfied, therefore, that these matters have been satisfactorily addressed.

### **7.3 Overshadowing**

7.3.1 This is the main substantive issue raised in the appeal.

7.3.2 4 Coolbawn Mews, the appellants' house, is immediately adjacent to the eastern boundary of the appeal site. The house is the last of a terrace of single storey dwellings (possibly purpose built accommodation for the elderly). It has a small rear garden, c.3 metres in depth, that abuts the eastern boundary of the appeal site, currently defined by a c.2.5 metre high stone wall. The cinema building is, in turn, in close proximity. While the appellant accepts that the design revisions to the proposed development deal with her concerns in relation to overlooking she submits that they don't adequately deal with the light issue. The applicants, in response, refer, in particular, to section drawing No.1732-301A, submitted to the planning authority as further information on 9 November 2018.

7.3.3 It seems to me inevitable that the proposed building, even as modified, would give rise to some further overshadowing of the appellants' property when compared to the existing situation. The new building would be of substantially greater bulk than the existing cinema building and, like that building, would be located to the west/south-west of the appellant's house and in close proximity. However, the modified design, which removed a central section from the block directly opposite the appellants' house, should ensure that any increased overshadowing is quite minimal and not beyond what can reasonably be expected in a town centre location. The likely impact can be appreciated with a reasonable degree of confidence by reference to the applicants' section drawing No. 1732-301A.

7.3.4 In my view, therefore, the proposed development, as modified, would not give rise to any excessive loss of light to or overshadowing of the appellants' property.

### **7.4 Appropriate Assessment**

Having regard to the nature and scale of the proposed development, being a relatively modest residential development within a serviced urban area, and the 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

I recommend that permission be granted subject to conditions.

## 9.0 Reasons and Considerations

Having regard to the location of the site in the town centre of Middleton and the assessed value and deteriorated condition of the existing cinema building it is considered, subject to compliance with the conditions set out below, that the demolition of the building is acceptable and that the proposed development would not seriously injure the residential amenities of property in the vicinity 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, as amended by the further plans and particulars submitted on the 9 November 2018 and 7 January 2019, 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 the materials, colours and textures of all the external finishes to the building shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenity.

3. Further details of the Broderick Street ground floor elevation (street frontage to Apartments 1 and 2), including possible revisions to the elevational treatment that might improve the amenity value of the apartments, shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

**Reason:** In the interest of clarity and to ensure adequate levels of residential amenity.

4. Water supply and drainage arrangements, including the attenuation and 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.

5. The developer shall enter into water and waste water connection agreements with Irish Water, prior to commencement of development.

**Reason:** In the interest of public health.

6. The entrance and parking area, including vehicular aisles, parking spaces, and pedestrian areas shall be in accordance with the detailed standards of the planning authority for such works.

**Reason:** In the interest of amenity and of traffic and pedestrian safety.

7. Bicycle parking spaces shall be provided within the development. Details of the number, layout and marking demarcation of these spaces shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To ensure that adequate bicycle parking provision is available to serve the proposed development, in the interest of sustainable transportation.

8. The developer shall replace the entire public footpath to the front of the development to the planning authority's public realm standard. Details of the design, including layout and materials, and providing for pedestrian

priority across the vehicular entrance, shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of the development.

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

9. Site development and building works shall be carried out only between the hours of [0800] to [1900] Mondays to Fridays inclusive, between [0800] to [1400] hours on Saturdays 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.

10. Construction and demolition waste shall be managed in accordance with a construction waste and demolition 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. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

**Reason:** To comply with the requirements of Part V of the Planning and

Development Act 2000, as amended, and of the housing strategy in the development plan of the area.

12. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company. A management scheme providing adequate measures for the future maintenance of public open spaces, roads and communal areas shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To provide for the satisfactory future maintenance of this development in the interest of residential amenity.

13. (a) A plan containing details for the management of waste and, in particular, recyclable materials, within the development, including the provision of facilities for the storage, separation and collection of waste for each apartment unit, and for the ongoing operation of these facilities, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

(b) This plan shall provide for screened communal bin stores, the locations and designs of which shall be included in the details to be submitted.

**Reason:** In the interest of residential amenity, and to ensure the provision of adequate refuse storage.

14. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of roads, footpaths, watermains, drains, open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

**Reason:** To ensure the satisfactory completion of the development.

15. 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

16. The developer shall pay to the planning authority a financial contribution in respect of the Cobh/Midleton–Blarney Suburban Rail Project in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 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 Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.



---

Brendan Wyse,  
Assistant Director of Planning.

30th September, 2019.