



An  
Bord  
Pleanála

# Inspector's Report

## ABP-303995-19

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<b>Development</b>	Change of use from residential to commercial
<b>Location</b>	Fitzpatrick's Shop and the Great O'Neill Public House, Lackenroe, Glounthaune, County Cork
<b>Planning Authority</b>	Cork County Council
<b>Planning Authority Reg. Ref.</b>	18/7369
<b>Applicant(s)</b>	Keta Products Limited
<b>Type of Application</b>	Retention Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Mona O'Sullivan
<b>Date of Site Inspection</b>	25 <sup>th</sup> July, 2019
<b>Inspector</b>	Kevin Moore

## **1.0 Site Location and Description**

- 1.1. The site is located to the west of Glounthane village centre in County Cork. It lies on the northern side of the former N25 Cork-Waterford Road. There is an existing public house and shop with ancillary stores and offices and residential accommodation at first floor level. The public house is closed. There is an informal parking area to the front of the site and the site is bounded to the rear by an inclined rock face.
- 1.2. The site is bounded to the east by an apartment complex and the entrance to the 'Ashbourne Walkway', an amenity facility. It is bounded to the west by the appellant's detached dwelling. The Cork – Midleton/Cobh railway line is located beyond the road frontage to the south.

## **2.0 Proposed Development**

- 2.1. The proposed development would comprise the retention of the change of use of the first floor of Fitzpatrick's shop from residential to food preparation, storage, offices and staff facilities which are ancillary to the main retail use of the existing shop. The gross floor area to be retained would be 200.83 square metres
- 2.2. This application resulted from consideration given by planning authority on how to address retention issues associated with a proposed development on the overall site where the requirement for a Natura Impact Statement arose during the determination of that application (P.A. Ref. 18/6250 / ABP-304427-19).

## **3.0 Planning Authority Decision**

### **3.1. Decision**

On 20<sup>th</sup> February 2019, Cork County Council decided to grant permission for the proposed development subject to 12 conditions.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The Area Planner noted the site's planning history, development plan provisions, reports received, and third party submissions made. It was submitted that, having

regard to the existing retail use at ground floor level and the zoning, there is no objection to retention of the first floor use. A grant of permission was recommended and a schedule of conditions was included.

The Senior Executive Planner concurred with the Area Planner's recommendation.

### 3.2.2. Other Technical Reports

The Area Engineer had no objection to the proposal and recommended the attachment of a schedule of conditions.

The Environment Section had no objection to the proposal and recommended the attachment of a schedule of conditions.

The Ecologist had no issue of concern.

### 3.3 Prescribed Bodies

Irish Water had no objection to the proposal.

### 3.4 Third Party Observations

A submission from Liam Luddy raised concerns relating to parking, plant noise and odours.

The grounds of the appeal reflect the principal planning concerns in the submission from Mona O'Sullivan.

Letters of support were received from Erins Own Hurling & Football Club and Glounthane Sustainable Development.

## 4.0 Planning History

I note there is extensive planning history relating to the site. This includes the following:

P.A. Ref. 91/1381

Permission was granted for a first floor extension to residential accommodation at Fitzpatrick's shop. Condition 1 required the first floor area to be used solely as residential accommodation.

## **5.0 Policy and Context**

### **5.1 Cobh Municipal District Local Area Plan 2017**

#### Glounthane

Glounthane is designated a 'Key Village' in the LAP. The site lies within the village's settlement boundary. There are no distinctive zoning provisions within the village.

The Map associated with the village plan within the LAP refers to 'Areas Susceptible to Flooding: Zone A' and 'Areas Susceptible to Flooding: Zone B'. The site does not fall within either of these areas according to this Map. There are no general or specific objectives applicable to the site.

### **5.2 Appropriate Assessment**

It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on any designated European Site and a Stage 2 Appropriate Assessment and submission of a NIS is not therefore required.

### **5.3 EIA Screening**

Having regard to the nature, size and location of the proposed development, there is no real likelihood of significant effects on the environment. No EIAR is required.

## 6.0 The Appeal

### 6.1 Grounds of Appeal

The appellant resides to the west of the appeal site. It is noted that the appellant has also appealed the proposed development at this site for the demolition of an existing public house and the redevelopment of the existing shop for retail purposes (ABP-304427-19 / P.A. Ref. 18/6250). The grounds of the appeal may be summarised as follows:

- The application does not fully declare the extent of the historic unauthorised development. The Board is asked to confirm if the planning procedure adopted by the applicant to overcome the accepted difficulty with Section 34(12) of the Planning and Development Act, with regard to retention permission and appropriate assessment, is in compliance with planning legislation. The Board is also asked to decide if the decision by the planning authority to grant permission for P.A. Ref. 18/6250 with conditions relating to the whole project is appropriate or premature.
- There is historic and ongoing flooding at the site, with flood waters flowing regularly from the embankment on the north boundary of the site. There is a concern that there may be a landslide which would undermine and damage the appellant's property. The applicant has not provided for a retaining wall to deal with embankment floodwaters.
- The applicant has not designed and detailed measures and works required to deal with pollution that would affect the nearby SAC and SPA.
- The applicant has not applied for permission to remove unsafe mature trees necessary to enable the works. Retention permission should not be granted for a building which is potentially unsafe for use.
- There are several other unauthorised works which were carried out on the site in the past which do not have the benefit of planning approval – a two-storey extension built to the rear of the dwelling to the west currently used as a retail area, a refrigeration building and maintenance to the west of the shop,

building works for alterations to two dwellings without the benefit of change of use from domestic to retail, development to the rear of the shop and the embankment, an infill two-storey structure for retail access to the east face of the rear of the shop, and development works and the conversion of an existing two-storey outbuilding used for retail purposes to the east of the shop to the rear. Retention permission should be sought for these developments also.

- The applicant has not revised public notices despite the change in the boundary of the site.
- The retention permission should not be granted until such time as the parking and traffic arrangements are addressed at this location.

## 6.2 Applicant Response

The applicant's response to the appeal may be summarised as follows:

- The grounds of the appeal do not relate to the development proposed, namely the retention of a first floor area. The subject site's existing and established development context require to be taken into consideration and given due weight. A substantial period of time (30 years) has elapsed since the decision was made restricting the use of the first floor to residential. The retention of the change of use does not involve any construction or demolition works and cannot be considered to give rise to impacts on the environment.
- Regarding procedural matters, the application was submitted in accordance with section 34 of the Planning and Development Act and complies with the requirements of the Planning and Development Regulations. The application is fully in keeping with appropriate legislation.
- Regarding flooding, the site is not within a flood risk zone and, as the development relates to the retention of a change of use, with no construction or demolition works, the proposal does not give rise to any flood risk.
- A retaining wall is not part of the proposed development and the majority of the embankment is not in the applicant's ownership. This issue is not relevant to the appeal.

- A Natura Impact Statement is not required in this instance. No construction or demolition works are proposed and the application does not give rise to any environmental issues.
- The removal of trees is not necessary to enable works under this application. Furthermore, the trees in question are not in the applicant's property but rather are in the ownership of the appellant. The issue of boundary lines is the subject of legal dispute. Planning permission is not required for the felling of unsafe trees.
- Regarding the issue of unauthorised development, the shop has been operating over 70 years, it has a long planning history and the site has been changing incrementally over the years. The elements considered to be unauthorised in the appellant's submission are generally not considered significant or material having regard to the established and permitted use. Furthermore, a concurrent planning application (P.A. Ref. 18/6250) was issued with a decision to grant permission by the planning authority and this regularises all other unauthorised development on the site.
- The applicant has not made any change or alterations to the site boundary since the application was lodged with the planning authority.
- The issue of parking is not applicable to the appeal at hand. Issues in relation to traffic and planning authority proposals for pedestrian and cycling infrastructure on the N25 were addressed in the application P.A. Ref. 18/6250.

### 6.3 **Planning Authority Response**

I have no record of any response to the appeal from the planning authority.

## 7.0 **Assessment**

- 7.1 The proposed development comprises the retention of the use of first floor area over a shop from residential use to ancillary uses associated with the shop, namely for food preparation, storage, offices and staff facilities. The proposed development

does not consist of any works. Therefore, there would be no construction, demolition, excavations, extensions, or other works arising from this proposed development.

- 7.2 It is evident from the appeal submission that many of the issues raised are not related to the retention of the proposed change of use but rather are more focused on the redevelopment of the overall commercial premises on this site, which is now before the Board concurrently under Appeal Ref. ABP-304427-19.
- 7.3 The Board will note that the existing first floor area the subject of retention in this application would be subject to substantial change under the proposed development concurrently under appeal in Appeal Ref. ABP-304427-19. The outcome of permitting both proposed developments would result in the floor area associated with the retention being subject to change with the undertaking and completion of the other proposed development if it is pursued.
- 7.4 My considerations on the issues raised in the third party appeal submission are as follows:
- The plans, details and other information provided which form the planning application meet with the requirements of section 34 of the Planning and Development Act and comply with Part 4 of the Planning and Development Regulations. There is nothing precluding the applicant from making separate planning applications relating to proposed development on this site. I further note that both the proposal for retention and the development that comprises the overall redevelopment of this site are now both before the Board. Therefore, the Board is in a position to appropriately adjudicate on the planning and environmental impacts of the full extent of development proposed for this site.
  - The proposed development for retention at first floor level would not be subject to flooding. The change of use at first floor level would have no impact on the flooding status of this site.
  - The proposed development, being the retention of a change of use of a first floor in the existing building, would of itself not necessitate the provision of a retaining wall associated with an embankment on the site.



- The proposed development constitutes the retention of a first floor use (no works) and this change of use would not necessitate the undertaking of an appropriate assessment. The existing site is fully serviceable and any such continuing use would not alter any discharges from this premises.
- The removal of trees are not necessitated in the retention of a first floor retail ancillary use in this building.
- The appellant provides an extensive schedule of development that is claimed to constitute unauthorised development. I note that the planning authority has not concurred with the view that there is extensive unauthorised development on this site and I have no record of any conclusive enforcement proceedings pursued in relation to this development. Further to this, I must again acknowledge that this application has arisen from the attachment of a condition associated with a proposed development dating back to the early 1990s and that it is a separate planning application arising from an application which seeks the complete redevelopment of the commercial premises on this site. It must also be noted that this redevelopment, if permitted, seeks the removal of the referenced 'unauthorised' developments and works so specified by the appellant.
- I note that the applicant has not made any change or alterations to the site boundary since the application was lodged with the planning authority. There is no necessity to revise public notices.
- The proposal constitutes the retention of the first floor area of a structure for uses ancillary to a ground floor retail use. This retention does not generate parking or traffic arrangement issues.

7.5 Overall, it may reasonably be concluded that the proposed retention of the change of use relating to ancillary uses associated with a long established retail use at this location would not result in any significant planning or environmental concerns.

## 8.0 Recommendation

I recommend that permission is granted in accordance with the following reasons, considerations, and conditions. It is evident that the attachment of the specified

conditions would be appropriate to the existing development on this site and would be unrelated to the proposed redevelopment of the overall premises.

## 9.0 Reasons and Considerations

Having regard to the long established shop use on the site, it is considered that, subject to compliance with the conditions set out below, the proposed retention of uses ancillary to the shop use would not seriously injure the residential amenities of the area and would otherwise 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. Water supply and drainage arrangements, including the disposal of surface water and the management of fats, oils and greases, shall comply with the requirements of the planning authority for such works and services.

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

3. (a) During the operational phase of the proposed development, the noise level arising from the development, as measured at any point along the boundary of the site shall not exceed:-
  - (i) An Leq,1hour value of 55 dB(A) during the period 0700 hours to 1900 hours from Monday to Sunday inclusive.

- (ii) An Leq,1hour value of 50 dB(A) during the period 1900 hours to 2300 hours from Monday to Sunday inclusive.
- (iii) An Leq,15 minutes value of 45 dB(A) at any other time. The noise at such time shall not contain a tonal component.

(b) All sound measurement shall be carried out in accordance with ISO Recommendation 1996:2007: Acoustics - Description and Measurement of Environmental Noise.

Procedures for the purpose of determining compliance with these limits shall be submitted to, and agreed in writing with, the planning authority within one month of the date of this Order.

**Reason:** To protect the residential amenities of property in the vicinity of the site.

- 4. The developer shall control odour emissions in accordance with measures which shall be submitted to, and agreed in writing with, the planning authority within one month from the date of this Order.

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

- 5. 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.

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Kevin Moore

Senior Planning Inspector

29<sup>th</sup> July 2019