



An
Bord
Pleanála

Inspector's Report ABP 304370-19.

Development

Permission for the amalgamation and change of use of the existing ground floor retail unit and first floor restaurant into a single café unit with seating at ground floor and first floor level with associated toilets, offices and staff facilities at first floor level and associated signage. This application relates to a Protected Structure which is in an Architectural Conservation Area.

Planning Authority

Kilkenny County Council.

Planning Authority Reg. Ref.

18787.

Applicant(s)

Cedarglade Ltd

Type of Application

Permission.

Planning Authority Decision

Grant permission with conditions.

Appellant(s)

1. Helen Clarke

Date of Site Inspection

30th August 2019

Inspector

Dáire McDevitt

1.0

Site Location and Description

- 1.1.** No. 84 High Street is located along the Medieval Mile in Kilkenny City, It is bounded to the north by The Tholsel (Town Hall) and forms part of a significant streetscape within the city. It is located within the Architectural Conservation Area. High Street is one of the main thoroughfare within the city located within close proximity of Kilkenny Castle. The immediate area is characterised by a mixture of commercial, financial, retail and tourism related businesses.
- 1.2.** The relevant structure, No. 84 High Street (a protected structure) is a terraced two bay three storey house dating from c.1800. It has been extensively renovated over the years with modern shopfronts at ground floor level. The structure is vacant at present. It was last used as a Spar at ground floor with a restaurant at first floor level. The ground floor and first floor levels are the subject of the current application. I note that the structure has another upper floor and a basement level.

2.0 Proposed Development

The amalgamation and change of use of the existing ground floor retail unit and first floor restaurant into a single café unit with seating at ground floor and first floor level with associated toilets, offices and staff facilities at first floor level and associated signage. This application relates to a Protected Structure which is in an Architectural Conservation Area.

Site: 1.012hectares.

Stated Areas:

Ground Floor (c.110sq.m), First Floor (c.195sq.m), Second Floor (c.195sq.m).

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant permission subject to 7 standard conditions

3.2. Planning Authority Reports

Planners Report (31st January & 15th April 2019)

The report of the area planner asserts that the loss of one retail unit would not affect the vibrancy of the area. The previous use of the structure included a restaurant at first floor level and the retail unit at ground floor level had a deli counter. The Area Planner concluded that a café at this location would not detract from proposals to redevelop The Tholsel, but add choice of eateries in the area, which potential visitors to The Tholsel (Town Hall) could avail of.

There no changes proposed externally, apart from new signage and replacement of downlights on the front façade.

Following the submission of further information and noting the outstanding concerns raised by the Conservation Officer. The Area Planner noted that no works were proposed to the rear and issues relating to ventilation/extraction could be addressed by condition. The projecting sign would replace an existing projecting sign. Overall, it was considered that in principle, from a planning perspective, there were no objections to the proposal which relates to a vacant unit. And recommendation to grant permission was made.

3.3. Other Technical Reports

Conservation Officer (24th January & 8th April 2019).

The current premises consist of a number of individual units which have been amalgamated on the 20th century. The ground floor interior is currently a large

open space, with services on the ceiling and dry lined walls. The first floor contains a number of timber sash windows of varying dates, some of which have horns. No works are proposed to these.

As the current premises extends through original party walls of the former residences much of the internal form of the original 18th century structures has been compromised and some of the original fabric lost.

The rear of the premises, facing Saint Mary's Lane, is currently in an extremely dilapidated state, the ground floor windows are positioned behind metal railings with one open is blocked by concrete blocks.

Further information was requested that an Architectural Impact Assessment be carried out, notwithstanding that the structure to date had been compromised internally by previous works. Following the submission of further information a recommendation that clarification of further information be sought to address outstanding concerns relating to the treatment of the rear of the premises along Saint Mary's Lane and details relating to the demolition of internal masonry.

EHO Report (21st December 2018). No objection

3.4. Observations

An observation was lodged by the current appellant. The issues raised are broadly in line with the grounds of appeal and are dealt with in more detail in the relevant section of this report.

3.5 Prescribed Bodies

Irish Water (12th December 2018). No objection.

4.0 Planning History

No recent applications in relation to the site.

PA Ref. No. 96/99037 refers to a grant of permission for signage in front window of premises and change of use from offices to restaurant at first floor level and retention of doorway.

5.0 Policy & Context

5.1 Kilkenny City and Environs Development Plan 2014.

The site is located in an area zoned “**General Business**”. The objective is to provide for general development. The site is also within the City Centre Architectural Conservation Area and No. 84 High Street is on the Record of Protected Structures.

5.1 Guidelines

Having considered the nature of the proposal, the receiving environment, and the documentation on file. I am of the opinion that the directly relevant **S.28 Ministerial Guidelines** are:

- Architectural Heritage Protection Guidelines 2011 (DAHG)
- Guidelines for Planning Authorities, Retail Planning. Department of the Environment Community and Local Government. April 2012

5.4 Natural Heritage Designations

- River Nore SPA (Site Code 004233) c.153m to the east.
- River Barrow and River Nore SAC. (Site Code 002162) c.156m to the east

6.0 The Appeal

6.1 Grounds of Appeal

A third party appeal has been lodged by Mrs Helen Clarke, The Fig Tree, 20 High Street, Kilkenny. The grounds of appeal are summarised as follows:

- Over development of the structure results in a development that is not balanced or diverse.
- Oversupply of eateries does not constitute sustainable development and has a negative impact on existing businesses due to oversupply.
- The retail unit at ground floor should be retained to maintain and strengthen the retail character of this principle shopping street within the city.
- The development of the building for a café would detract from the architectural character and beauty of the immediate area. In particular the impact of the character of the business and its impact on the Medieval Mile and on the adjoining Town Hall.
- Fire safety concerns.
- Adequacy of ventilation and refuse storage is questioned.
- Impact on the existing sewerage system.
- Oral Hearing request.

6.2 Planning Authority Response

The Planning Authority has no further comment to make.

7.0 Assessment

Further to the appellant's request for an Oral Hearing, the Board issued a Direction dated 18th July 2019 that no Oral Hearing would be held.

I consider the key issues in determining this appeal relate to the principle of the proposed development and appropriateness of the proposed change of use.

Given the protected status of No. 84 and its location within a designated ACA,

architectural heritage is also considered. The issue of Appropriate Assessment also needs to be addressed.

7.1 Principle of development

7.1.1 The site is within the area zoned “General Business” as per the current Kilkenny City and Environs Development Plan. The objective is to provide for general development. The proposed use which provides for cafe use in combined first and ground floor units is consistent with this zoning and is therefore acceptable in principle.

7.1.2 The appellant is of the view that there is no need for another café/eatery at this location and that the proposed development will have a negative impact on established restaurant/cafe in the vicinity. I note that planning policy including the retail planning guidelines 2012 provides that the planning system should not be used to inhibit competition, preserve existing commercial interests or prevent innovation. I consider the proposed development will enhance the services available and support the existing range of activities and services along the High Street. On this basis I consider that the proposed use will have a positive impact on the vitality and viability of the area.

7.2 Architectural Heritage

7.2.1 No. 84 High Street is a protected structure that has been the subject of significant internal alterations over the years. The current proposal does not propose significant changes that would further detract from the fabric of the structure. Details relating to signage and its appropriateness for the prominent position of No. 84 within the designated ACA can be dealt with by condition.

7.2.2 The application refers to a change of use of an existing structure with minimal works proposed to its exterior. I consider the proposal acceptable in terms of protecting the character of the existing structure, the ACA and that of adjoining protected structures.

7.2.3 I consider that subject to appropriate supervision the proposed internal interventions are acceptable given the significant work carried out to date to accommodate previous uses of the structure.

7.2.4 As regards servicing, ventilation and refuse I consider the proposals to be reasonable and appropriate. Fire safety and access issues are matters addressed through the appropriate approvals. Details relating to signage can be dealt with by condition.

7.3 Appropriate Assessment

7.3.1 The application is for a change of use, with some internal alterations to an existing structure. The Site is c. 156m from the River Nora SAC, separated from same by existing urban streetscapes.

7.3.2 Having regard to the nature of the proposed development and the location of the site in a fully serviced built up urban area, 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 Reasons & Considerations

Having regard to the zoning objectives for the area and the pattern of land use in the vicinity it is considered that, subject to the conditions set out below, the proposed development will not unduly impact on the character of the Architectural Conservation Area or detract from character of the existing protected structure or those adjoining No. 84 and is therefore in accordance with the proper planning and sustainable development of the area.

9.0 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. Use of the premises shall be as in accordance with the details as submitted. No change of that use shall take place without a prior grant of planning permission notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001 and any statutory provision amending or replacing them.

Reason: To protect the amenities of property in the vicinity.

3.
 - a) Details of all external shopfronts, signage and lighting shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.
 - b) No external security shutters shall be erected on any of the commercial premises unless authorised by a further grant of planning permission.
Details of all internal shutters shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.
 - c) No awnings, canopies or projecting signs or other signs shall be erected on the premises without a prior grant of planning permission,
 - d) No adhesive material shall be affixed to the windows or the shopfront.

Reason: In the interest of protecting the character of the Architectural Conservation Area.

4. 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 amenities of property in the vicinity.

5. The developer shall control odour emissions from the premises in accordance with measures which shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

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

6. Litter in the vicinity of the premises shall be controlled in accordance with a scheme of litter control which shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development. The scheme shall include the provision of litter bins and refuse storage facilities.

Reason: In the interest of visual amenity.

7. Water supply and drainage arrangements, 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.

8. Prior to commencement of development the developer shall submit, and obtain the written agreement of the planning authority to, 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 the waste and, in particular, recyclable materials, and for the ongoing operation of these facilities.

Reason: To provide for the appropriate management of waste and, in particular, recyclable materials, in the interest of protecting the environment.

9. Prior to the commencement of development the following shall be submitted for the written agreement of the planning authority:

- (a) Details of the appointment of a conservation architect, who shall manage, monitor and implement works on the site and ensure adequate protection of the historic fabric during those works.
- (b) The submission of details of all finishes and of all existing original features to be retained and reused where possible, including interior and exterior fittings/features, joinery, fenestration, plasterwork, features (cornices and ceiling mouldings), roofs, staircases including balusters, handrail and skirting boards.

All repair/restoration works shall be carried out in accordance with best conservation practice as detailed in the application and the “Architectural Heritage Protection Guidelines for Planning Authorities” (Department of Arts, Heritage and the Gaeltacht, 2011). The repair/restoration works shall retain the maximum amount possible of surviving historic fabric in-situ including structural elements, plasterwork and joinery and shall be designed to cause minimum interference to the building structure and/or fabric.

Reason: To ensure that the integrity of the historic structures is maintained and that the structures are protected from unnecessary damage or loss of fabric.

10. 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.

Daire McDevitt

Planning Inspector

3rd September 2019