



An  
Bord  
Pleanála

## Inspector's Report ABP-304984-19

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<b>Development</b>	Change of use of first floor vacant Unit 19 from bar / lounge to gymnasium / fitness suite with associated signage.
<b>Location</b>	Unit 19, 1 <sup>st</sup> Floor, Charlesland Neighbourhood Centre, Greystones, Co. Wicklow.
<b>Planning Authority</b>	Wicklow County Council
<b>Planning Authority Reg. Ref.</b>	19/335
<b>Applicant(s)</b>	Longtown Partnership
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant subject to conditions
<b>Type of Appeal</b>	First Party v. Conditions
<b>Appellant(s)</b>	Longtown Partnership
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	10 <sup>th</sup> October, 2019
<b>Inspector</b>	Robert Speer

## 1.0 Site Location and Description

- 1.1. The proposed development site comprises a vacant first floor unit (Unit No. 19) within the existing Charlesland Neighbourhood Centre, which occupies a prominent corner siting at the junction of the R774 Regional Road with the local access road to the wider Charlesland residential development, in Greystones, Co. Wicklow. The neighbourhood centre itself consists of two principal mixed-use buildings, in addition to a multi-storey car park structure, with the subject site located within the northernmost, 'U'-shaped, three-storey construction which already accommodates a variety of uses including shop units, a health / nutrition store, takeaway food outlets, medical & dental services, a betting shop, and a creche / childcare facility. The unit in question extends the full length of the easternmost wing of the existing building and its principle elevation faces towards the regional road. Access is obtained via the existing vehicular entrance arrangement serving the wider centre with surface car parking provided along the perimeter of the property and additional parking available within the multi-storey facility located further south (beyond the adjacent supermarket / convenience store).

## 2.0 Proposed Development

- 2.1. The proposed development involves the change of use of a vacant first floor unit (floor area: 501.9m<sup>2</sup>) within the existing neighbourhood centre from its permitted use as a bar / lounge to a gymnasium / fitness suite (incorporating an open plan gym area, therapy room, personal training room, and changing / shower facilities etc.). Associated works will include the replacement of an existing window with the north-eastern corner of the unit with an opening section to provide for improved ventilation, the attachment of 2 No. wall-mounted air-handling units to the western elevation of the unit facing onto the adjacent service yard, and the erection of associated signage along the northern and eastern elevations of the unit.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. Following the receipt of a response to a request for further information, on 1<sup>st</sup> July, 2019, the Planning Authority issued a notification of a decision to grant permission for the proposed development subject to 5 No. conditions which can be summarised as follows:

Condition No. 1 - Refers to the submitted plans and particulars.

Condition No. 2 - Limits the duration of the grant of permission to 3 No. years.

Condition No. 3 – Refers to the implementation of the mitigation measures set out in the Acoustic Assessment Report received by the Planning Authority on 19<sup>th</sup> June, 2019.

Condition No. 4 – Refers to noise levels and associated monitoring requirements.

Condition No. 5 – Requires the details of all signage to be agreed in writing with the Planning Authority prior to the commencement of development.

### 3.2. Planning Authority Reports

#### 3.2.1. *Planning Reports:*

An initial report details the site context and states that the change of use proposed is acceptable in principle given its siting within an existing neighbourhood centre, however, it is recommended that further information be sought with regard to the potential noise emissions in order to establish that the proposed use will not have an adverse impact on adjoining developments, including childcare and medical services.

Following consideration of the applicant's response to the request for further information, and the recommendations of the Planning, Development & Environment Section of the Local Authority, a final report was prepared which noted the proposal to implement a series of mitigation measures as part of the development so as to avoid any adverse noise impact on adjacent premises or the amenities of the

surrounding area. It was subsequently recommended that the proposal be granted permission, subject to conditions, for a temporary period of 3 No. years in order to allow the impact of the use (in terms of noise and vibration) on other premises in the building to be monitored / re-assessed.

3.2.2. *Other Technical Reports:*

*Water & Environmental Services:* No comments.

*Roads Section:* No observations.

*Planning, Development & Environment:* No objection, subject to conditions.

3.3. **Prescribed Bodies**

3.3.1. *Kildare National Roads Design Office:* No comments in relation to the N11 / M11 Junction 4 to Junction 14 Improvement Scheme.

3.4. **Third Party Observations**

3.4.1. A single submission was received from an interested third party and the principle grounds of objection contained therein can be summarised as follows:

- The inadequacy of the existing car parking arrangements.
- The exacerbation of existing traffic congestion at peak times.

4.0 **Planning History**

4.1. *On Site:*

PA Ref. No. 02/7340 / ABP Ref. No. PL27.202939. Was granted on appeal on 1<sup>st</sup> August, 2003 permitting Zapi Properties Ltd. permission for a retail/community centre comprising; (1) a single storey supermarket with three separate retail units and an ancillary service yard; (2) a three-storey retail/office building with 15 No. units which include a restaurant; (3) A three-storey crèche/community centre consisting of a ground floor and first floor crèche with a penthouse community centre with ancillary external play areas; (4) A three-storey bar/lounge with ancillary storage areas and service yard; (5) Ancillary services/delivery area, two-storey car park at basement and ground floor level and site landscaping.

PA Ref. No. 05/2329. Was granted on 8<sup>th</sup> June, 2005 permitting Zapi Properties Ltd. permission for the amalgamation of first floor retail unit nos. 7, 8 & 9 into one larger unit and the change of use from retail / office use to a fitness centre.

PA Ref. No. 17/1484. Was granted on 13<sup>th</sup> April, 2018 permitting the Longtown Partnership permission for the change of use of vacant ground floor unit from bar / lounge to 3 No. retail units, together with elevational alterations, signage, car parking, and associated site works.

PA Ref. No. 18/958. Was granted on 22<sup>nd</sup> November, 2018 permitting Boylesports Unlimited Company permission for a change of use of Unit 16 retail to betting office and a change of use of Unit 6 from betting office to retail in addition to the retention of 2 no. satellite dishes mounted on rear wall of building in service yard.

PA Ref. No. 18/1305. Was granted on 2<sup>nd</sup> May, 2019 permitting Little Explorers Childcare Ltd. permission for a change of use from restaurant use to pre-school and afterschool childcare facility, modification of car park, and related works.

## 5.0 Policy and Context

### 5.1. Development Plan

#### 5.1.1. *Wicklow County Development Plan, 2016-2022*

*Chapter 3: Settlement Strategy:*

*Section 3.2: County Wicklow Settlement Strategy:*

*Level 3 – Large Growth Town II: (2) Metropolitan Area: Greystones-Delgany*

*Chapter 6: Centres and Retailing:*

*Table 6.2: County Wicklow Retail Hierarchy. Level 4 Neighbourhood Centres:*

Greystones Area: Charlesland

**RT1:** To ensure the continued vibrancy and life of centres, to direct new development and investment into towns and villages in the first instance and to particularly prioritise actions that enhance business, retail, leisure, entertainment and cultural uses, as well as making town and village centres an attractive place to live.

**RT26:** Within neighbourhood centres, it is the objective of the Planning Authority to protect, provide for, and improve the mix of neighbourhood centre services and facilities, which provide for the day-to-day needs of the local community, to a degree that is akin to their role and function as outlined in the Retail Strategy.

#### *Appendix 1: Development and Design Standards*

#### **5.1.2. Greystones-Delgany & Kilcoole Local Area Plan, 2013-2019:**

##### *Land Use Zoning:*

The proposed development site is located in an area zoned as 'NC: Neighbourhood Centre' with the stated land use zoning objective 'To protect, provide for, and improve a mix of neighbourhood centre services and facilities, which provide for the day-to-day needs of the local community'.

##### *Other Relevant Policies / Sections*

##### *Section 4.1: Retail Strategy:*

Charlesland has been designated as a Level 4 'Neighbourhood Centre' in the Retail Strategy which is described as a location providing retail and other community services outside of the core town centre area.

##### *Section 4.2: Objectives:*

##### *Neighbourhood Centres:*

**RT9:** To provide for the development of a mix of uses within the neighbourhood centres of Blacklion, Bellevue Road, Mill Road (spread over two sites) and Charlesland, which provide for the day-to-day needs of the local community, to a degree that is akin to their designation as Level 4 centres.

## **5.2. Natural Heritage Designations**

5.2.1. The following Natura 2000 sites are located in the general vicinity of the proposed development site:

- The Murrough Wetlands Special Area of Conservation (Site Code: 002249), approximately 1.8km southeast of the application site.

- The Glen of the Downs Special Area of Conservation (Site Code: 000719), approximately 2.6km west of the application site.
- The Murrough Special Protection Area (Site Code: 004186), approximately 2.7km southeast of the application site.

### 5.3. EIA Screening

5.3.1. Having regard to the minor nature and scale of the development proposed, the site location within an existing built-up area outside of any protected site, the nature of the receiving environment, the limited ecological value of the lands in question, the availability of public services, and the separation distance from the nearest sensitive location, 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 imposition of Condition No. 2 serves to reduce the commercial viability of the project due to the short duration (3 No. years) of the grant of permission.
- The applicant has an agreement in principle with a potential tenant to operate the proposed gym facility, subject to planning permission, however, the tenant's financial institution is unwilling to provide the necessary monetary support for the proposal due to the 3-year restriction on the use of same.
- By way of precedent, the Board is advised that permission was previously granted under PA Ref. No. 05/2329 to amalgamate Unit Nos. 7, 8 & 9 at first floor level in the existing neighbourhood centre into a single premises and to change its use from retail / office to a fitness centre. That grant of permission was not subject to any restriction on the period of operation or any other constraints / controls. Whilst the aforementioned grant of permission was never implemented, it has established the principle of an unrestricted gym use within the centre.

- The Noise Assessment Report submitted in response to the request for further information concluded that, subject to certain mitigation measures, *'any potential noise nuisance as a result of a fitness suite on the middle floor vacant unit at Charlesland retail centre can be avoided on a permanent basis'*. The case planner subsequently acknowledged the conclusion from the acoustic consultants that *'the proposed fitness suite shall not result in adverse noise impact on adjacent premises or the amenities of the area'* subject to a best practice noise level being maintained in the unit. The decision to grant permission thus included 3 No. conditions relating to noise control / monitoring, including the implementation of mitigation measures set out in the Acoustic Assessment Report, however, it has also limited the duration of the grant of permission in order *'to assess the impact in terms of noise and vibration on other premises in the block'*.
- The attachment of 3 No. separate conditions relating to the control and monitoring of potential noise levels would seem to be excessive considering the conclusion of the Noise Impact Assessment that there would be little, if any, impact from the proposed development once reasonable and best practice mitigation measures are put in place.
- It is considered that the inclusion of Condition No. 3 regarding mitigation measures, Condition No. 4(a) restricting noise levels, and Condition No. 4(b), which allows the Planning Authority to request a survey of noise levels from the development at any time, is sufficient to ensure the control of noise from the gym facility and thus the attachment of Condition No. 2 is both superfluous and detrimental to the viability of the permitted development.
- Condition No. 3 requires the implementation of Mitigation Measure Nos. 1-4 of the Noise Assessment Report with the carrying out of same to be certified by an engineer / architect prior to occupation of the development. The acoustic consultants have concluded that the mitigation measures, if implemented, would eliminate potential noise nuisance *'on a permanent basis'* and thus there is no requirement to impose a time limit on the operation of the gym.
- In the event the Local Authority were to receive any complaints as regards noise levels from the gym facility, it could order the completion of a noise level



survey at any time pursuant to Condition No. 4(b) with the results to be submitted within one month. Moreover, should that survey indicate that the noise levels are in excess of the limits imposed by Condition No. 4(a), the proposed development would be in breach of the conditions of the grant of permission and, therefore, the Planning Authority could issue a Warning Letter with regard to the breach. A subsequent noise survey(s) could then be undertaken to assess whether appropriate measures had been put in place to reduce the noise level from the development. Any continued breach of noise levels could then be subject to enforcement action by the Planning Authority.

- A standard clause within all tenant's leases prohibits '*any noisy or offensive trade or business or occupation*' and '*any musical instrument gramophone radio television loudspeaker or similar apparatus to be played or used thereon so as to be audible from outside the Demised Unit*' and '*vibrations or other undesirable effects to emanate from the Demised Unit or from any installation or equipment therein*' (please refer to Appendix 'C'). Therefore, any tenant of the neighbourhood centre could contact the Centre Management (i.e. the applicant) should they feel there is an issue as regards noise levels or other emanations from the fitness suite. Centre Management would then raise the matter with the fitness suite tenant and ensure that they control noise levels to within the limits set out in the grant of permission at all times (which is also a condition of the lease).
- Should any occupant of the centre feel that there are continuing breaches of noise levels which are not being adequately addressed, a complaint could be made to the Local Authority which could take appropriate action.
- Section 108 of the Environmental Protection Agency Act, 1992 allows for any person to make a complaint directly to the District Court regarding any noise which gives reasonable cause for annoyance.

## 6.2. Planning Authority Response

None.

### 6.3. **Observations**

None.

### 6.4. **Further Responses**

None.

## 7.0 **Assessment**

7.1. From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issue raised by the appeal relates to the inclusion of Condition No. 2. Furthermore, in accordance with the provisions of Section 139 of the Planning and Development Act, 2000, as amended, I am satisfied that this appeal should relate only to the merits of the inclusion of the aforementioned condition.

### 7.2. **Condition No. 2:**

7.2.1. This condition, as imposed by the Planning Authority, limits the duration of the grant of permission for the proposed change of use to a period of 3 No. years in order to monitor the noise impact of the proposed development on adjoining properties (in addition to other unspecified impacts, although these likely refer to possible vibrational impacts as referenced in the report of the case planner). In this regard, I would advise the Board that the rationale for the inclusion of this condition would seem to stem from the likely nature and source of noise levels arising from activities associated with the proposed use (such as the playing of amplified music, physical exertion by patrons, the dropping of weights & vibrational impacts from class activities etc.) and the potential impact of same on more noise-sensitive uses within the neighbourhood centre such as medical services and, in particular, the existing creche / childcare facility located directly overhead on the floor above the proposed gymnasium / fitness suite.

7.2.2. In its assessment of the subject application, the Planning Authority sought the submission of a noise impact assessment by way of a request for further information with a view to establishing whether the proposed use would have an adverse impact on adjoining developments, including other commercial uses within the

neighbourhood centre, in addition to any mitigation measures proposed. In response, the applicant submitted an 'Acoustic Assessment Report' compiled by 'iAcoustics Integrated Acoustic Solutions' which details the site context (the background noise levels are dominated by road traffic), the relevant sound insulation parameters (including the *in-situ* acoustic performance of the separating floors within the centre and the target performance values for airborne and impact sound insulation), and the potential impact arising from likely noise sources (i.e. amplified music, the collective voices of instructors and patrons, and the proposed air handling units). This assessment concludes that whilst the current levels of airborne sound insulation offered by the separating floor between the proposed gym / fitness suite and the overhead childcare facility would appear to be reasonable, these could be improved upon through the installation of a suspended metal-frame, perforated plasterboard ceiling thereby minimising sound transmission. It is further stated that impact sound insulation of the floor separating the proposed development from the less sensitive retail units below (i.e. a betting shop, health / nutrition store, and a tanning shop) could be improved to within acceptable levels by way of the installation of a floating floor system within general 'gym' activity areas with resilient matting to be provided in low-activity areas e.g. the treatment rooms. It has also been submitted that the proposed fitness suite will take advantage of a mechanical ventilation system in order to ensure that windows within the 'classes' area can remain closed whilst the proposed air handling units will be located on that elevation facing onto the rear service yard which is characterised by several other such units of similar specification.

7.2.3. The report thus asserts that any potential noise or vibration nuisance attributable to the operation of the proposed gym / fitness suite from within the middle (first) floor level of the neighbourhood centre can be avoided on a permanent basis by way of adherence to the following mitigation measures:

1. The installation of a floating floor system in the general areas prescribed in Section 3.4 of the report (i.e. within the gym / workout areas, excluding treatment rooms, walkways, reception and office spaces).
2. The installation of a suspended plasterboard ceiling to improve airborne sound insulation and to reduce reverberation times within the space.

3. Employing the use of 'bumper-plates', deadlift dampers, low-noise machinery and lifting platforms where necessary to ensure that the impact of dropped weights can be minimised at source.
4. The control of amplified music at source so as not to exceed  $85\text{dB(A)}_{\text{LAeq,15 mins}}$  within the space, with no strong low frequency components below 250Hz.
5. Maintaining the external façade glazing in good condition.
6. Preserving good relations with adjacent business owners.

7.2.4. These findings were subsequently reviewed and accepted by the Planning, Development & Environment Dept. of the Local Authority which recommended the implementation of the mitigation measures proposed and the inclusion of a 'standard' noise condition on that the basis that this would be sufficient to address any noise nuisance arising from the operation of the gym / fitness suite. Notably, it did not recommend any limitation on the duration of the grant of permission in order to monitor and / or reassess the noise impact (if any) of the proposed use.

7.2.5. In the grounds of appeal, the applicant has sought to emphasise that the proposed development will not result in any adverse noise impact on the amenity of adjacent premises / properties provided the mitigation measures set out in the Noise Assessment Report are implemented accordingly. In this regard, particular reference has been made to the inclusion of Condition No. 3 in the notification of the decision to grant permission which specifically requires that the implementation of Mitigation Measure Nos. 1-4 be certified by a qualified professional (with Mitigation Measure Nos. 5 & 6 having been deemed insufficiently precise / unenforceable). Furthermore, it has been asserted that the imposition of Condition No. 2 as a mechanism by which to monitor the noise impact of the proposed development is unnecessary in light of the provisions of Condition No. 4 which not only impose noise limits but also provide for the completion of noise surveys as and when required by the Planning Authority so as to ensure compliance with the noise emission levels. By way of further comment, the applicant has also referenced the prospective operator's obligations under any leasehold agreement in addition to the noise complaint protocols available to both the Local Authority and the District Court.

7.2.6. Having conducted a site inspection, and following a review of the available information, it is of relevance to note that Section 7.3 of the *'Development*

*Management, Guidelines for Planning Authorities, 2007'* published by the Department of the Environment, Heritage and Local Government sets out certain basic criteria which have often been suggested as a guide for deciding whether or not to impose a condition. These include whether the condition is necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable.

- 7.2.7. On consideration of the totality of the terms and conditions of the notification of the decision to grant permission as issued by the Planning Authority, in my opinion, the imposition of Condition No. 2 is unnecessary in light of the protections already afforded to the amenity of neighbouring premises by way of Condition Nos. 3 & 4 through adherence to the mitigation measures set out in the Acoustic Assessment Report and the requirement to comply with specified noise emission limits which can be subjected to on-going monitoring by way of noise survey. Therefore, I would recommend the omission of Condition No. 2 from any decision to grant permission for the proposed development.

### 7.3. **Appropriate Assessment:**

- 7.3.1. Having regard to the minor nature and scale of the development under consideration, the site location within an existing built-up area outside of any protected site, the nature of the receiving environment, the availability of public services, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

## 8.0 **Recommendation**

- 8.1. Having regard to the nature of the condition the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and, based on the reasons and considerations set out below, directs the said Council under subsection (1) of Section 139 of the Planning and Development Act, 2000, as amended, to **REMOVE** Condition No. 2 as follows for the reasons set out below:

## 9.0 Reasons and Considerations

- 9.1. Having regard to the inclusion of condition numbers 3 and 4 in the notification of the decision to grant permission, and in light of the findings and noise mitigation measures detailed in the Acoustic Assessment Report received by the Planning Authority on the 19<sup>th</sup> day of June, 2019, it is considered that the attachment of condition number 2 is not necessary as regards the preservation of the amenity of adjoining premises / properties.

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Robert Speer  
Planning Inspector

11<sup>th</sup> October, 2019