



An
Bord
Pleanála

Inspector's Report

ABP-305533-19

Development

Demolition of existing Legion of Mary building and a commercial building.
Construction of 3 storey building comprising new Legion of Mary meeting hall with ancillary services, 2 no. retail units with ancillary services and 6 no. apartments.

Location

8 East Douglas Street and a site at the corner of East Douglas Street and East Village, Douglas, Co. Cork

Planning Authority

Cork County Council

Planning Authority Reg. Ref.

19/4924

Applicant(s)

Kenmore Projects Limited

Type of Application

Permission

Planning Authority Decision

Grant Permission

Type of Appeal

Third Party V. Grant

Appellant(s)

Marcello Liotta

Observer(s)

None

Date of Site Inspection

2nd January 2020

Inspector

Elaine Power

1.0 Site Location and Description

- 1.1. The appeal site is located at the junction of East Douglas Street and East Village in the centre of Douglas Village approx. 3.5km south east of Cork City centre. The village is characterised by a variety of building heights and styles. To the north and east of the appeal site there are a variety of 3 – 4 storey, contemporary mixed-use buildings and to the south and west of the appeal site there are a variety of 2 – 3 storey traditional buildings.
- 1.2. The site has a stated area of 377sqm and currently accommodates 2 no. buildings. No. 8, East Douglas Street is a two-storey vacant commercial building with a gross floor area of 94sqm. this building fronts directly onto Douglas street . The ‘ Legion of Mary’ building is single storey with a gross floor area of 99 sqm. This building is located at the junction of East Douglas Street and East Village and is set back approx. 10m from East Douglas Street. There is an area of open space located to the side (south east) of no. 8 Douglas Street and to the front of the ‘Legion of Mary’ building.
- 1.3. There is an existing bus shelter located on the footpath on East Douglas Street which abuts the south western boundary of the site.
- 1.4. The applicants are also the owners of the adjoining 3 storey commercial building, no. 7/8 East Douglas Street, which does not form part of this application. There is an existing pedestrian gate to this building from within the appeal site.
- 1.5. The site is located on a prominent corner location in Douglas village and is located within the Church Street Architectural Conservation Area. There is a protected structure (ref. 00684) located on the opposite side of East Douglas Street, which is a two-storey former Garda Station.

2.0 Proposed Development

- 2.1. It is proposed to demolish the 2 no. existing buildings on site and construct a new 3-storey building comprising a new Legion of Mary meeting hall with ancillary services, 2 no. retail units with ancillary services at ground floor level and 6 no. apartments above.

2.2. The building has a contemporary design with large windows and a small projecting feature on the south eastern elevation, fronting onto East Village. The building generally follows the established building lines within the village. It is approx. 13.5m in height with a pitched roof. The external materials of the front elevation, onto Douglas Street, generally comprise of a rendered finish with large portions of glazing and a small feature of zinc cladding at second floor level. The side elevation, onto East Village comprised similar materials with the centre section of the elevation finished in a brick cladding and signage for the 'Legion of Mary'.

2.3. The 2 no. retail units have a stated gross floor areas of 79.8sqm and 58.1 sqm and front directly onto East Douglas Street. The Legion of Mary Hall has a stated gross floor area of 64.2sqm and fronts onto East Village.

2.4. It is proposed to provide 3 no. 2-bedroom apartments at both first and second floor level. Private open space is provided for each apartment in the form of a balcony. Access to the apartments is from the East Village elevation. Bin storage is also provided at ground floor level.

2.5. ***Unsolicited Further Information Lodged on 13th May 2019***

A site layout plan was submitted by way of unsolicited further information

2.6. ***Unsolicited Further Information Lodged on 28th May 2019***

In response to a submission on file revised floor plans and elevations were submitted indicating pedestrian access through the site to the neighbouring site.

2.7. ***Response to Further Information Lodged on 9th August 2019.***

The planning authority requested 8 no. items of further information. In response to concerns raised by the planning authority regarding the demolition of existing structures in an ACA, an Architectural Heritage Impact Assessments and a Structural Review of the existing structures on site were submitted. The applicant states that the development is an appropriate in-fill development having regard to the objectives of the Douglas Land Use and Transportation Study (DLUTS).

In response to concerns raised regarding the design approach the applicant has revised the window size and positing to provide an elevational treatment that reflects

the established and historical streetscape of East Douglas Street. Covered cycle storage has also been provided within the scheme.

The applicant clarified that the proposed development would not have any impact on the existing bus shelter on the public footpath or on the pedestrian access through the site, to the adjoining restaurant use (within the applicant's ownership) and that a management company would be responsible for the management of the scheme. A detailed schedule of floor areas for the apartments, details of the proposed boundary treatments and bin storage have also been submitted.

The response to further information did not result in any amendments to the internal layout of the scheme.

3.0 Planning Authority Decision

3.1. Decision

Permission was granted subject to 16 no conditions. The relevant conditions are noted below: -

Condition 1 clarified that permission was granted for the scheme submitted by way of further information on the 9th August 2019.

Condition 2 required details of external finishes and signage to be agreed with the planning authority.

Condition 3 reduced the height of the scheme by 300mm and amended the eaves details of the East Douglas Street elevation to avoid a dormer roof.

Condition 4 required landscaping proposals to be agreed with the planning authority

Condition 5 required Construction Management Plan to be agreed with the planning authority.

Condition 15 related to a special contribution under section 48(2)(c) relating to the provision of car parking.

Condition 16 related to a development contribution.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The initial reports by the Area Planner and Senior Executive Planner raised concerns regarding the proposed development and recommended that further information be sought regarding the following:-

- Having regard to the location of the site within an ACA a justification for the demolition of the existing buildings should be submitted. A detailed survey and assessment of the buildings is required to fully assess the application.
- Concerns regarding the design approach which fails to draw on the local street context and siting within an ACA.
- A detailed schedule of the floor areas of the apartments
- The layout and siting should have regard to the DLUTS which identifies part of the site as potential for public realm improvements
- Details of pedestrian access to the adjoining restaurant.
- Clarify if a management company would manage the scheme and what areas would be taken in charge by the local authority
- Details of bin storage for the different uses on site.
- Details of proposed boundary treatments.

Following receipt of further information, the reports by the Area Planner and the Senior Planner consider that all items of concern had been fully addressed and recommended that permission be granted subject to the conditions outlined above.

3.2.2. Other Technical Reports

Public Lighting report: No objection subject to conditions.

Estates final report: No objection subject to conditions.

Traffic and Transport final report: No objection subject to conditions.

Engineering final report: No objection subject to conditions.

Architects final report: No objection subject to conditions. It is noted that the Architects initial report is not on the file.

Conservation Architect report: Recommends that permission be refused as the demolition of the existing 2-storey building would materially and adversely affect the character of the ACA which is contrary to objective HE 4-5 of the development plan.

3.3. Prescribed Bodies

Irish Water. No objection.

3.4. Third Party Observations

A third-party submission was received from Marcello Liotta whose restaurant adjoins the appeal site to the north west. The concerns are similar to those raised in the appeal.

4.0 Planning History

Reg. Ref. 14/5891: Permission granted in 2014 for the change of use of an existing shop to off-licence, the demolition of a corrugated iron shed and the construction of a rear extension at no. 8 Douglas Street.

Reg. Ref. 13/4708: Permission was granted in 2013 for the change of use of an existing shop to a café / takeaway restaurant, the demolition of corrugated iron shed and the construction of a rear extension at no. 8 Douglas Street.

5.0 Policy Context

5.1. Ballincollig Carrigaline Municipal District Local Area Plan, 2017

The Plan notes that Douglas is at the heart of the South Environs and is an important suburban centre that has grown very rapidly in recent years. It is a strategic aim of the LAP to support appropriate proposals for urban regeneration initiatives in Douglas. The site is zoned SE-T-04 which relates to a larger area of approx. 3.95 ha within Douglas village. The objective for the site is as follows: -

It is recommended that an Overall Planning or Development Scheme is prepared for the entire site... This shall include the provision of a comprehensive mixed-use

development with an additional 5,500sqm of non-residential floor space and 70 residential units... The new development will have active ground floor uses, an anchor store, office space and residential units on the whole site incorporating the cinema, the car park, vacant land and the old TSB site and the filling station site... This development is dependent on promoting smarter travel measures and achieving safer and more user-friendly access for pedestrians and cyclists. The above suggested quantum of development assumes that all existing vacancy will be filled before new building takes place.

5.2. Douglas Land Use and Transportation Strategy 2013

The strategy aims to 'secure a successful vibrant urban centre with more efficient transport network for Douglas, that provides an improved public realm, reduces congestion, encourages greater levels of walking and cycling, and improves the quality of life for the community, thereby enabling sustainable future growth'.

5.3. Cork County Development Plan, 2014

The appeal site is located within the Church Street Architectural Conservation Area. Objective HE 4-5 (a – e): Architectural Conservation Areas states: -

Conserve and enhance the special character of the Architectural Conservation Areas included in this plan. The special character of an area includes its traditional building stock and material finishes, spaces, streetscape, shop fronts, landscape and setting. This will be achieved by;

a) *Protecting all buildings, structures, groups of structures, sites, landscapes and all features considered to be intrinsic elements to the special character of the ACA from demolition and nonsympathetic alterations*

b) *Promoting appropriate and sensitive reuse and rehabilitation of buildings and sites within the ACA and securing appropriate infill development*

c) *Ensure new development within or adjacent to an ACA respects the established character of the area and contributes positively in terms of design, scale, setting and material finishes to the ACA.*

d) Promoting high quality architectural design within ACAs.

e) Seek the repair and reuse of traditional shopfronts and where appropriate, encourage new shopfronts of a high-quality architectural design

Relevant policies of the plan are noted below: -

- HOU 3-1: Sustainable Residential Communities
- HOU 3-2: Urban Design
- HOU 3-3: Housing Mix
- HOU 4-1: Housing Density on Zoned Land.
- HE 4-6: Design and Landscaping of New Buildings
- SC 1-1: Social and Community Infrastructure
- TCR 8-1: Convenience Approach – Non-Metropolitan
- TCR 9-1: Vacancy and Regeneration
- TCR 12-1: Design and Innovation in Retail
- TCR 13-1: Shopfronts
- ZU 3-1: Existing Built up Areas
- ZU 3-8: Appropriate Uses in Town Centres / Neighbourhood Centres

5.4. **National Guidance**

- Architectural Heritage Protection – Guidelines for Planning Authorities, 2004
- National Planning Framework
- Design Standards for New Apartments - Guidelines for Planning Authorities (2018)
- Urban Design Manual, A Best Practice (DOEHLG, 2009)

5.5. **Natural Heritage Designations**

The subject site is located approx. 250m south of Cork Harbour SPA (004030).

5.6. **EIA Screening**

Having regard to the nature and small scale of the proposed development and the location of the site, it is concluded that 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

A third-party appeal was received from Marcello Liotta, who operates the restaurant located to the north west of the appeal site. The concerns raised in the appeal are summarised below: -

- The applicant has no objection in principle to the redevelopment of the site, however, he has some concerns regarding the impact of the development on his long-established restaurant use at the adjoining property, no. 7 and 8 East Douglas Street.
- The applicant is the owner of no. 7 and 8 Douglas Street. However, the appellant has a 20-year lease for the building. The conditions of the lease ensure the enjoyment of the property without interruption.
- The proposed development would result in the closure of an existing pedestrian gate from the appellants site to the appeal site. The location of the new access would require employees to pass through the appellants office area. This would have a negative impact on the operation of the restaurant. The appellant was not consulted regarding the revised location of the access.
- Concerns are also raised regarding the proximity of the proposed bin storage and the new access to the appellants site would restrict access.
- The construction phase would result in an unacceptable level of noise, dust and nuisance. This could result in the closure of the appellants business.
- The development could have a negative impact on the structural integrity of the adjoining sites.
- The development would have a negative impact on the Architectural Conservation Area and the proposed development would be out of character with the village.

6.2. Applicant Response

The applicant's response is summarised below: -

- The site occupies a prominent corner location with the village and is currently underutilised. The development is consistent with local and national policy to tackle dereliction and vacancy, intensifying uses and increasing population in existing built up areas.
- The proposed development includes a new access gate to the rear of the appellants site to facilitate deliveries and refuse collection. The development would result in the removal of an unsightly bin on the appeal site, which detracts from the quality of the streetscape. The development of this site would require an alteration to the existing access gate.
- The applicant has engaged with the appellant and considers that any disruption to the operation of the restaurant would be minimal. The issues raised constitute a legal issue and are not part of the planning process.
- Condition no. 5 required that a Construction Management Plan be submitted and agreed with the planning authority. The applicant would agree all methods with the planning authority and intends to minimise disruption, where possible.
- An Architectural Heritage Impact Assessment was prepared as part of the response to the appeal which notes that the existing 2-storey building cannot be considered to be an intrinsic element to the special character of the architectural conservation area. It is also noted that the Senior Planner had no objection to the demolition of the building.

6.3. Planning Authority Response

None

7.0 Assessment

- 7.1. The subject site is now sited within the jurisdiction of Cork City Council, having been subject to a boundary extension / transfer with Cork County Council. The relevant

Development Plan and Local Area Plan for the purposes of the assessment of this application remain as the Cork County Development Plan 2014 and the Ballincollig Carrigaline Municipal District Local Area Plan 2017. These plans will continue to apply in the 'transfer area' until such time as they are superseded by new plans, prepared by Cork City Council.

7.2. As indicated the appeal refers to the proposed development lodged with the Planning Authority on the 9th August 2019, by way of further information. The following assessment focuses on that proposal with reference to the original scheme where appropriate. The main issues in this appeal relate to impact on the ACA, access arrangements, construction practices, legal issues and economic issues. Appropriate Assessment requirements are also considered. I am satisfied that no other substantial planning issues arise. The main issues can be dealt with under the following headings:

- Architectural Conservation Area
- Access Arrangements
- Construction Practices
- Legal and Economic Issues
- Appropriate Assessment

7.3. ***Architectural Conservation Area***

7.3.1. The subject site is located within the Church Street Architectural Conservation Area and is on a prominent corner within Douglas village. The site is currently underutilised and accommodates 2 no. existing buildings. No. 8 East Douglas Street, which is currently vacant, and the 'Legion of Mary' building. Concerns have been raised in the appeal that the demolition of no. 8 East Douglas Street would have a negative impact on the ACA. There is no objection to the demolition of the 'Legion of Mary' building.

7.3.2. No. 8 East Douglas Street is a 3-bay, 2-storey former house that was constructed in the late 1800's / early 1900's. The interior of the building has been removed. The 'Legion of Mary' building, is a single storey structure, currently in use as a meeting hall. It was constructed in the early 20th century. Neither of the buildings are protected structures or listed on NIAH. It is noted that there is a protected structure

(RPS ref. 00684) located on the opposite side of East Douglas Street, which is a two-storey former Garda Station.

- 7.3.3. An Architectural Heritage Impact Assessment was submitted by way of further information. It states that the main contribution of no. 8 East Douglas Street, to the town centre is the manner in which it reinforces the traditional street line. The assessment concludes that the subject site is situated at the periphery of the Church Street Conservation Area and does not provide a strong contribution to the character of the wider area. It is also noted that it would be difficult to incorporate the building into the new development.
- 7.3.4. Objective HE 4-5: Architectural Conservation Areas aims to conserve and enhance the special character of the ACA's. It notes that the special character of an area includes its traditional building stock and material finishes, spaces, streetscape, shop fronts, landscape and setting. The Planning Authority's Conservation Architect recommended that permission be refused for the proposed development as the demolition of the existing 2-storey building would materially and adversely affect the character of the ACA, which is contrary to objective HE 4-5 of the development plan. It is noted that there was no objection to the demolition of the single storey 'Legion of Mary' building.
- 7.3.5. The 'Legion of Mary' building, is a single storey structure, currently in use as a meeting hall. It was constructed in the early 20th century and in my view the building has little architectural merit. It is set back from the street and is not consistent with the character of the village. Therefore, I have no objection to the demolition of this building.
- 7.3.6. Section 12.4.16 of the development plan states that the '*special character of urban areas generally stems from its collection of buildings and their setting as a whole rather than the presence of individual buildings in isolation*'. While it is acknowledged that no. 8 East Douglas Street is not a protected structure or listed on the NIAH it is my opinion that it, in conjunction with the adjoining properties, provides a valuable contribution to the distinct historic character of Douglas and to the ACA. The Architectural Heritage Guidelines for Planning Authorities (2004) note that '*Historic structures are a unique resource. Once lost, they cannot be replaced*'. Of particular

relevance to the proposed development, Section 7.9.1 of the Guidelines states:- *“It should be the aim of good conservation practice to preserve the authentic fabric which contributes to the special interest of the structure... Where a damaged or deteriorated feature could reasonably be repaired, its replacement should not be permitted”*.

7.3.7. The Structural Report submitted by way of further information notes that no. 8 East Douglas Street has been vacant for approx. 10 years and is in a poor structural condition, and that any works to the building would have a significant financial cost. The report concludes that the building is not suitable to be incorporated into any future development. The findings of the applicants Structural Report are noted, however, having regard to location of no. 8 East Douglas Street within the Church Street ACA and its contribution to the special character of the village I consider that, in this instance, the refurbishment of the existing building, is both feasible and appropriate.

7.3.8. While I have no objection in principle to the re-development of the site with a high-quality mixed use scheme, I would have serious concerns regarding the demolition of a historical building located within the ACA, which in my opinion would materially and adversely affect the special character of the village and recommend that permission be refused on this basis.

7.4. **Access Arrangements**

7.4.1. There is an existing pedestrian gate located on the north western boundary of the appeal site which accommodates pedestrian access to the adjoining site, no. 7/8 East Douglas Street, which is also within the ownership of the applicants. Concerns have been raised in the appeal that the relocation of this access would have a negative impact on the operation of the adjoining restaurant use. It is noted that the existing gate provides access to a large commercial bin which is stored on the appeal site.

7.4.2. It is proposed to relocate the gate approx. 13m to the north east (rear) portion of the site. The revised location is adjacent to the bin storage and cycle storage associated with the proposed development. While it is acknowledged that the relocation of the access would result in minimal disruption to the appellant, it is my view that, it would

not restrict access to the site and would facilitate the redevelopment of an underutilised brownfield site on a prominent corner in Douglas village and, therefore, is acceptable in this instance.

7.5. *Construction Practices*

- 7.5.1. Concerns were raised regarding the potential negative impact on the economic viability of the adjoining restaurant use due to noise and nuisance arising from the construction phase. In response the applicant has stated that all construction work would be carried out in agreement with a construction management plan submitted to the planning authority and where possible the applicant would engage with the appellant. It is my view that having regard to the limited duration of the construction phase and as all works would be carried out within the boundaries of the site and in accordance with the relevant building regulations and best practices guidelines, it would not have a significant negative impact on the existing amenities of the adjoining restaurant use.

7.6. *Legal Issues*

- 7.6.1. The applicants are the legal owners of no. 7 and 8 East Douglas Street and the appellant has a 20-year lease (signed April 2014) for the building. It is noted that the lease agreement was with a previous owner of the site and that the applicants purchased the site with the lease in place. The applicant has stated that the proposed development which includes the relocation of an access gate, which facilitates deliveries and the movement of refuse and the construction phase of the development would contravene the terms of his lease agreement which ensures the 'enjoyment of the property without interruption'. The applicant has stated that the proposed development would not impact on the operation of the appellants business and that the concerns raised are legal issues. In my opinion, the details of the lease agreement between the two parties is not a matter that would be appropriate for the Board to adjudicate on.
- 7.6.2. Concerns were also raised regarding the potential negative impact on the structural integrity of the adjoining property during the construction phase. In my view the structural adequacy of the adjoining building is also not a matter that would be appropriate for the Board to adjudicate on. It is considered that the onus is on the

applicants and their contractors, to ensure that the construction phase is undertaken in a safe manner, in accordance with their obligations under separate codes.

7.6.3. I further note that the granting of permission would not relieve the applicants of their responsibilities in this regard. It should be noted that under section 34(13) of the Planning and Development Act 2000, as amended, a person shall not be entitled solely by reason of a permission to carry out any development.

7.6.4. In conclusion, I consider that the disputes between the parties in relation to matters of lease agreements, structural integrity, construction methods and resultant health and safety risks that may or may not arise are ultimately matters that would be dealt with more appropriately outside of the planning appeal process.

7.7. ***Appropriate Assessment***

The subject site is located approx. 250m south of Cork Harbour SPA (Site Code. 004030). Having regard to the nature and small scale of the proposed development within a serviced urban area and the distance from 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 refused for the reason stated in the attached schedule.

9.0 **Reasons and Considerations**

1. The proposed demolition of no. 8 East Douglas Street would materially affect the character of the Church Street Architectural Conservation Area and would thereby seriously injure the visual amenities of the area. The development would be contrary to Objective HE 4-5 of the Development which aims to conserve and enhance the special character of the ACA's. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Elaine Power

Planning Inspector

10th January 2020