



An
Bord
Pleanála

Inspector's Report ABP-308000-20

Development	RETENTION of ventilation duct from cooking area on the SE elevation.
Location	The Pier Cafe, Junction of Newtown Road and, Cove Road , Tramore Co Waterford
Planning Authority	Waterford City and County Council
Planning Authority Reg. Ref.	20349
Applicant(s)	Sara Walshe
Type of Application	Retention Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant(s)	Charles and Ann Bradley.
Observer(s)	None
Date of Site Inspection	29 th January, 2021
Inspector	Stephen Kay

1.0 Site Location and Description

- 1.1. The appeal site is located c.1km to the south west of the centre of Tramore and comprises a corner site at the junction of Cove Road and Newtown Road. The site is currently occupied by a two storey building that operates as a café at ground floor and has residential accommodation above at first floor level. The floor areas of these two uses are stated to be 115 sq metres and 81 sq. metres respectively.
- 1.2. The existing building on the site fronts directly onto the public road and footpath on the north western side where it bounds Newtown Road, while to the south west there is a set back for parking along this frontage. To the south east, the building on the site is immediately bounded by a single storey house, and there are further residential properties located to the south on this side of Cove Road. To the north east, there is a significant set back from the road that was blocked off by metal bollards. The building at this location is in use as a dog grooming / dog day care commercial operation.
- 1.3. The stated area of the appeal site is 0.0183 ha.

2.0 Proposed Development

- 2.1. The development for which retention is sought comprises a metal ventilation duct that is located on the south east facing elevation of the building on site. This duct is located in close proximity to the adjoining house to the south east of the site and extends from a position in this south east facing wall at a height of c.2.1 metres above ground level, up to a height of c.350mm above the parapet height of the building. The ducting exits the side of the building in a small outside yard that is formed by a step back in the south east facing elevation.
- 2.2. The ducting serves a food preparation area that is located on the southern side of the ground floor floorplan and is stated to replace an existing internal ducting / ventilation arrangement. There is reference on the appeal file to an existing internal service duct which is not clearly indicated on the submitted plans.
- 2.3. The submitted drawings indicate that the duct is proposed to be encased in a cement casing where it extends up the side of the building, however at the time of inspection this finish had not been applied.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority issued a Notification of Decision to Grant Permission subject to three conditions including the following:

Condition No.2 – requires that within 3 months of the date of the permission, the applicant shall encase the duct in concrete.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the planning officer notes the significant planning history on the site and the objection received. Reference is made to an inspection undertaken by the Environments Section of the council, to the existing noise emissions not being considered to be very significant and to the fact that the duct is proposed to be encased in concrete which it is considered would significantly reduce noise emissions. A grant of permission consistent with the notification of decision which issued is recommended.

3.2.2. Other Technical Reports

None.

3.3. Third Party Observations

An observation received from the residents of the adjoining house to the south. The most significant of the issues raised can be summarised as follows:

- Noise and odour impact from duct,
- Negative impact on residential and visual amenity and enjoyment of property,
- Necessity of enlarged duct is not clear particularly to serve the permitted café use,
- History of non compliance with planning permissions on the site,

- That the development is inappropriate in a residential area. The site is zoned residential and has remained zoned for that use despite a number of attempts to change it.

4.0 Planning History

There is an extensive planning history on the site which is summarised in the report of the Planning Officer. The following planning history cases are particularly noted:

Waterford County Council Ref. 16/252 – Permission granted for the change of use of ground floor of existing off licence to café and first floor to apartment at The Pier, junction of Newtown Road and Cove Road. Permission was granted subject to 18 no. conditions, of which the following are particularly noted in the context of the subject appeal:

- *Condition No.10* requires that all plant and ventilation inlets and outlets should be sound insulated and / or fitted with sound attenuators to ensure that the noise and the façade of surrounding noise sensitive locations does not exceed background levels by more than 10 dB(A) during the daytime and shall not exceed the background level for night time.
- *Condition No.11* requires that the development shall be used solely for the purposes stated in the public notices ('change of use of existing off licence to café and apartment') and that the development shall not operate as a take away and hot food, excluding beverages, shall not be sold for consumption off the premises.
- *Condition No.,.14* specifies that noise levels shall not exceed LAeqT(15) value of 55 dB(A) at any point along the boundary of the site between the hours of 09.00 and 22.00 and an LAeqT(5) value of 45 dBA) at all other times.
- *Condition No.15* requires that the development shall be so operated that there will be no air emissions, emissions of malodours, fumes, dust, or other deleterious materials such as would give reasonable cause for annoyance to any person in any residence or public place.

- *Condition No.16* requires that the operation of the proposed development shall at all times be carried out so that no injurious affection is caused to adjoining properties.

Waterford County Council Ref. 15/531 – Permission refused by the Planning Authority for the change of use of the ground floor of the existing off licence to restaurant and first floor to apartment at The Pier, junction of Newtown Road and Cove Road, Tramore. Permission was refused for a single reason relating to the proposal being located in an area that is zoned for residential use where a restaurant is not permitted and would materially contravene the Tramore LAP.

Waterford City and County Council Ref. 04/1774; An Bord Pleanala Ref. PL24.211142 – Permission granted by the Planning Authority and decision upheld on appeal by the Board for alterations to elevations and roofs - raising parapet level, new signage - two storey extension and change of use from vacant Centra shop to off-licence at Newtown/Cove Road, Tramore (planning permission previously granted for surgery Ref.02/879).

Waterford City and County Council Ref. 02/879 – Permission granted by the Planning authority for alterations to elevations and roof, raising parapet level, new signage, basement and two storey extension and part change of use from shop to Medical Surgery.

Waterford City and County Council Ref. 01/1438; ABP Ref. PL24.130266 – Permission refused by the Planning authority for a change of use from shop to public house and apartment, alterations to elevations and roof, raising parapet level, new signage, basement and two storey rear extension all at Centra Shop. This decision was the subject of a first party appeal that was withdrawn prior to a decision being issued.

Waterford County Council s.5 reference Ref. 2018/20 – A referral case with this reference is cited by the third party appellant, however there is no reference to this case in the report of the Planning Officer and it is not shown on the online planning search feature on the Council website.

5.0 Policy Context

5.1. Development Plan

The relevant development plan that was considered at the time of the notification of decision issued by Waterford City and County Council was the *Tramore LAP, 2014-2020*. This plan has now expired, however no new plan has been prepared to replace it and there is no draft plan for public consultation.

The Waterford County Development Plan, 2011-2017 was made by the Elected Members of Waterford County Council on 11th February 2011 and it is in this context that the review of the Tramore Local Area Plan was undertaken. The Waterford County Development Plan, 2011-2017 (as varied) is still in effect having been extended under s.11A of the Planning and Development Act. Preparation of a new City and County Development Plan will commence following the adoption of the Regional Spatial and Economic Strategy for the Southern Region.

Under the provisions of this Tramore LAP, 2014-2020 the appeal site is zoned 'Existing Residential' with a stated objective *'to protect the amenity of existing residential development and to provide for new residential development at medium density'*.

5.2. Natural Heritage Designations

The appeal site is not located within or close to any European sites. The closest European sites to the appeal site are as follows:

- The Mid Waterford Coast SPA (site code 004193) is located c.1.5 km to the south of the appeal site.
- The Tramore Dunes and Backstrand SAC (site code 000671) is located c.2km to the north east.

6.0 The Appeal

6.1. Grounds of Appeal

The following is a summary of the main issues raised in the third party grounds of appeal:

- That the decision contradicts the decision and 18 conditions attached to Ref. 16/252. In particular, the development is contrary to the submissions made regarding compliance with Conditions 10, 15 and 16.
- That the site is zoned residential despite two attempts to change the zoning in recent years.
- That the business operated at the site is licenced to serve coffee, sandwiches, salads, and some hot dishes.
- That the noise and odours from the equipment mean that they cannot use their garden or open windows.
- That the proposed encasement of the duct with cement will not solve the noise issue. It is the small air intake fitting (photograph submitted) which is the source of the noise. This feature is not shown on the plans and is not referred to in the report of the planning officer.
- That concerns expressed to the planning authority were dismissed as not related to the current application however they are directly related. If conditions attached to ref. 16/252 were complied with then there would not be the current situation.
- That the ventilation ducting has been in place since 19th May, 2019 despite being contrary to permission ref. 16/252.
- A solution to the issue could be that the ducting would be relocated from the current position on the south east wall to the opposite wall on the north west side of the building.
- Copies of previous submissions, photographs and warning letters issued copies with the appeal submission.

6.2. Applicant Response

No first party response to the grounds of appeal on file.

6.3. Planning Authority Response

No planning authority response to the grounds of appeal on file.

6.4. Further Responses

Details of the application was referred by the Board to An Taisce, the Development Applications Unit of the Department and the Heritage Council for comment. No responses to these referrals were received.

7.0 Assessment

7.1. The following are considered to be the main issues in the assessment of this appeal:

- Land Use Zoning and Rationale for Development,
- Visual Impact,
- Impact on Amenity,
- Appropriate Assessment

7.2. Land Use Zoning and Rationale for Development

7.2.1. The appeal site is located on lands that are zoned Existing Residential under the provisions of the Tramore LAP 2014-2020. This LAP expired on 10th February, 2020 however the plan was prepared under the Waterford County Development Plan, 2013-2017 which has been extended under s.11A of the Planning and Development Act, 2000 (as amended). It is therefore considered that the effective zoning of the appeal site remains Existing Residential.

- 7.2.2. The ventilation ducting for which retention is sought is stated to be to serve the permitted use of the site under Ref. 16/252 as a cafe serving scones, cakes, teas and coffees and this use is permitted under the zoning objective.
- 7.2.3. The cover letter submitted with the application does not in my opinion provide a very clear rationale for the proposed development. Specifically, it states that *'the extractor fan was always located on the roof of the building but the duct serving this was located internally. This needed to be modified and was relocated on the exterior of the building as it would no longer fit in the designated service space.'* The reason why the extraction system needed to be upgraded to serve a café rather than a restaurant use is not clearly explained. Similarly, it is not clear why the ducting could not be accommodated internally within the building with an exit at roof level. In making these observations, it is my opinion that given the residential zoning of the site, the onus is on the applicant to clearly set out a rationale for the proposed development and how it is consistent with the stated objective *'to protect the amenity of existing residential development and to provide for new residential development at medium density'*.

7.3. Visual Impact

- 7.3.1. The appeal site is located at a visually prominent corner site within Tramore where there is significant passing traffic. The location of the ventilation duct on the south east facing elevation is partially screened by a step in the south east facing elevation of the building which means that the ventilation equipment is not clearly visible when viewed from the front of the building on Cove Road or when viewed from the Newtown Road. The equipment is however visible from locations to the south of the site on Cove Road where views of the side elevation of the building are available. The equipment installed is also clearly visible from the rear garden of the third party appellants (adjoining residential property to the south east) and photographs of the structure from the appellants property are on file.
- 7.3.2. The submitted drawings indicate that the ventilation equipment is proposed to be encased in cement, however as at the date of inspection of the site this work had not been undertaken. It should also be noted that the element of the ventilation equipment that projects above the parapet of the building would not be enclosed and

would remain visible. In my opinion, the encasing of the ducting, if undertaken well, would significantly mitigate the existing adverse visual impacts of the structure, including from the appellant's garden. In stating this, I do not consider that these works would have any material impact on the noise emissions and potential noise and odour impacts arising from the development. As highlighted in 7.2 above, in my opinion it is also not clear from the information available why the existing ventilation ducting within the building could not be reused or an alternative internal route for the ducting found that would mitigate any potential visual impacts.

7.4. Impact on Amenity,

- 7.4.1. The basis of the case put forward by the third party appellants relates to the negative impact that the ventilation equipment has on their residential amenity in terms of odours and particularly in terms of noise.
- 7.4.2. In my opinion, the first issue of note in this case is the residential zoning objective of the appeal site and the adjoining house which is the property of the third party appellant. As set out at 7.2 above, the stated zoning objective for this area including the appeal site is '*to protect the amenity of existing residential development and to provide for new residential development at medium density*'. Given this zoning objective, it is in my opinion incumbent of the first party to firstly set out a clear rationale for the location and design of the new ventilation equipment and secondly, to clearly demonstrate that this new equipment doesn't have a negative impact on the residential amenity of surrounding properties. On the basis of the information submitted and on file, I do not consider that the first party has clearly complied with either of these requirements. No rationale for the installation of the new equipment has been presented and on this issue it is specifically noted that permission had previously been refused for the use of the site as a restaurant (Ref. 15/531) and that the extant permission on the site relates solely to the use of the site as a café serving scone, teas, coffees, salads and some hot dishes. The need for significant new extraction / ventilation equipment is not clearly set out.

- 7.4.3. The third party appeal specifically notes the planning history of the site, including the refusal of permission for a restaurant under Ref. 15/531, and highlights the fact that the permission granted for the use of the appeal site as a restaurant was only granted following detailed consideration of the impact of the proposal on residential amenity and subject to a number of specific conditions that sought to limit the impact of the development on residential amenity. Conditions 10, 15 and 16 relating to noise limits / attenuation, avoidance of annoyance and complaints from surrounding properties (see summary at section 4.0 above) are specifically referenced by the third party appellants in this regard.
- 7.4.4. I note the fact that the report of the Planning Officer states that there was a verbal consultation held with the Environment Section of the council and that, as part of enforcement proceedings Environment Section had undertaken an inspection of the premises which indicated noise readings of 47-51dB at the site. The report of the Planning Officer states that these recorded noise measurements are not considered to be excessive particularly in the context of a location close to a relatively busy road and corner. On this issue I would note that there is no formal report from the Environment Section on file. Secondly, it is not clear what the exact measurements taken are (LAeq etc.) or where they were taken and how this relates to the appellants property. Finally, while the location is likely the subject of some traffic noise, it is the proximity of the installed equipment to the appellants house and rear garden that is of particular concern as well as the potential for a tonal or other noise sensitive component of the noise profile, including that which may be generated from the air intake referenced by the appellant (photograph submitted with appeal) and which is located much lower down the gable of the building on the appeal site and therefore closer to the appellant's property. It is also noted that this air intake is not shown on the submitted drawings.
- 7.4.5. It could be argued that the stated recorded noise readings of 47-51dB are such that they could be compliant with the requirements of Conditions 10 and 14 of the main permission for the café use (Ref. 16/252) and which require that the noise and the façade of surrounding noise sensitive locations does not exceed background levels by more than 10 dB(A) during the daytime and shall not exceed the background level for night time (Condition No.10) and that noise levels shall not exceed LAeqT(15) value of 55 dB(A) at any point along the boundary of the site between the hours of

09.00 and 22.00 and an LAeqT(5) value of 45 dBA) at all other times, (Condition 14). On the basis of the information presented however it is not in my opinion clear that this is the case. As set out above, I also have concerns regarding a tonal component to noise emissions from the ventilation equipment the subject of appeal, and the proximity of the site to the appellant's property. Fundamentally, I consider that given the nature of the development for which retention is sought, the planning history of the site and particularly the fact that both the appeal site and the appellants property are zoned 'Existing Residential' that there is an onus on the first party to clearly demonstrate that no adverse impacts on the amenity of the third party appellant will arise. This has not been provided and is not facilitated by the lack of a first party or planning authority response to the grounds of appeal.

- 7.4.6. I note the fact that the third party appeal suggest that a solution to the issue could be that the ducting would be relocated from the current position on the south east wall to the opposite wall on the north west side of the building. This would however mean that the ducting would be facing directly onto the Newtown Road elevation where it would be very visually prominent. Such a solution would not therefore in my opinion be acceptable in terms of visual amenity. From an inspection of the site and the submitted plans, it appears to me that firstly justification needs to be provided as to why suitable equipment cannot be sourced that could be accommodated within the existing internal ducting within the building. If this is demonstrated not to be feasible, alternative proposals for an internal duct or possibly an exit for the ventilation ducting on the north east elevation of the building may be feasible, subject to assessment of the potential noise impacts arising.
- 7.4.7. For the reasons set out above, it is recommended that permission would be refused for reasons relating to the lack of justification for the proposed development and assessment of the noise and odour impacts arising with the result that it has not been satisfactorily demonstrated that the development for which retention is sought would not have a significant negative impact on residential amenity due to noise.

7.5. Appropriate Assessment

- 7.5.1. Having regard to the nature and scale of the proposed development and its location relative to Natura 2000 sites, no appropriate assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. Having regard to the above, it is recommended that permission be refused based on the following reasons and considerations:

9.0 Reasons and Considerations

1. The site which the subject of appeal is located on lands that are zoned 'Existing Residential' under the provisions of the Tramore LAP, 2014-2020 with a stated objective '*to protect the amenity of existing residential development and to provide for new residential development at medium density*' and in a location that immediately adjoins existing residential properties. On the basis of the information presented with the application and during the course of the appeal, the Board is not satisfied that a clear rationale for the design and layout of the ventilation equipment for which retention permission is sought has been established and that no information indicating compliance with the noise conditions set out in Waterford City and County Council Ref. 16/252 has been presented. The Board is not therefore satisfied that the development would not seriously injure the amenities and depreciate the value of surround properties and such that it would be contrary to the 'Existing Residential' zoning objective of the site and adjoining land and contrary to the proper planning and sustainable development of the area.

Stephen Kay
Planning Inspector

5th February, 2021