



An
Bord
Pleanála

Inspector's Report

ABP-308259-20

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| Development | Change use of premises previously used as a financial institution to use as a Funeral Home. |
| Location | Unit 3 Ardlo Manor, Mullagh, Co Cavan |
| Planning Authority | Cavan County Council |
| Planning Authority Reg. Ref. | 20285 |
| Applicant(s) | Josephine Anne Gargan |
| Type of Application | Permission |
| Planning Authority Decision | Grant |
| Type of Appeal | Third Party |
| Appellant(s) | Shane P. and Elisha O'Reilly. |
| Observer(s) | None |
| Date of Site Inspection | 8 th December 2020. |
| Inspector | Barry O'Donnell |

1.0 Site Location and Description

- 1.1. The subject site comprises of a ground floor premises that forms part of a 3-storey block of apartments and commercial units, to the north of the junction of the R194 Virginia Road and the R191 Bailieborough Road. The unit, unit No 3, has a gross floor area 130sqm of addresses the junction and addresses both roads. It is currently vacant, having previously been used as a financial services institution.
- 1.2. The main front access to the unit is from the south-east and there is a service access and shared yard to the north-west, within the rear car park, which is itself accessed from the Virginia Road.
- 1.3. Other commercial units are in a mix of uses, including a barber shop and hairdressers, whilst are ongoing on a chapel of rest at the north-adjointing unit. There are also a vacant unit within the block. There is a petrol filling station to the north and a post-office/newsagent to the south, on the other side of the Virginia Road.

2.0 Proposed Development

- 2.1. Permission is sought for change of use of a commercial premises, previously in use as a financial institution, to a funeral home, the erection of associated signage and associated site works.
- 2.2. Existing floorplan drawings have not been provided as part of the appeal. The proposed floorplan drawing outlines that the funeral home would have a largely open layout, with a mourners' seating area provided in this open area. A number of rooms would be accessed from this space; a coffin store, family room, kitchenette and WC accessible from it.
- 2.3. The floorplan outlines that for funeral events, mourners would enter via the main entrance and would exit to the rear, through a shared yard which leads onto a private car park to the rear of the building.
- 2.4. The application documents outline that no embalming would take place on site.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On 31st August 2020 Cavan County Council granted permission for the proposed development, subject to 5 No. planning conditions. Of relevance to the current appeal, condition No. 2 required the submission and agreement of proposed signage and associated lighting. Condition No. 4 required that the embalming process shall not take place on the site.

3.2. Planning Authority Reports

- 3.2.1. Planning Report dated 31st August 2020, which reflects the Planning Authority's decision to grant permission. The report outlined that a funeral home is compatible with the Town Core zoning applying to the site and that proposed works would be internal only and are minor in nature. Regarding parking, the report outlined that the matter was dealt with previously, as part of the original grants of permission for the commercial development. The report also noted the central location of the application site and did not consider it would not be prejudicial to traffic safety. The recommended planning conditions are generally in accordance with the Planning Authority's decision to grant.

- 3.2.2. Other Technical Reports

Area Engineer - Report dated 17th August 2020 outlining no objection to the proposed development.

3.3. Prescribed Bodies

- 3.3.1. Irish Water submission dated 10th July 2020 outlining no objection to the development, subject to 2 recommended conditions.

3.4. Third Party Observations

1 letter of objection was received, the issues raised within which can be summarised as follows:

- The applicant's ownership of the site was questioned, including the provision of Land Registry extracts.
- The proposed development will interfere with other funeral director and undertaker businesses in the area, including the objector's business.
- The applicant's training or experience in relation to the funeral directing and undertaking industry was questioned.
- The extent of facilities offered as part of the proposed development was questioned
- It was pointed out that the current application seeks permission for a funeral home, whereas the objector sought permission for a chapel of rest, under Reg. Ref. 20285, and there is a difference between these uses; a funeral home normally has an area for embalming and has a contract with a licensed disposal company to dispose of harmful chemicals and waste. A chapel of rest is a place for reposal, with embalming and hygienic treatment done off site, with a registered embalmer. The objector observed that the application contained no evidence of a contract and no area is provided for embalming.
- It was highlighted that, whilst the applicant stated there is no other funeral home in the village at the time of the application, the objector had submitted a planning application for a chapel of rest. The objector also pointed out that permission had been granted previously for this development, but they were not implemented due to financial constraints.
- Proposed crowd control measures were considered inadequate.
- The development was considered speculative.

4.0 Planning History

991665 – Permission granted on 10th July 2000 for the construction of 12 No. 2-storey townhouses, 16 No. 2-storey semi-detached houses, 10 No. detached houses, corner unit comprising 2 retail units and 2 commercial units at ground floor and 5 No. 2-bed dormer type apartments above and 1 No. 2-bed corner unit at first and second floor and associated site

works. Condition No. 5 required the development to be set back along the Virginia Road to accommodate a 2m wide footpath and minimum clear carriageway width of 7m

031083 - Permission granted on 29th September 2003 for amendments to permission Reg. Ref. 991665, consisting of alterations to 3-storey corner unit, to accommodate 4 commercial units at ground floor and 7 2-storey apartments above.

Relevant Nearby Planning History

20283 - *Unit 4 Ardlo Manor*. Permission granted on 9th October 2020 for change of use from beauty salon to chapel of rest, including proposed signage and associated site works. Condition No. 4 required that the embalming process shall not take place on the premises.

03851 - Greatgas petrol filling station site: Permission granted on 13th August 2003 for a petrol filling station, shop, storage, offices, forecourt and canopy and associated site works. Condition No. 2 of the decision required that the proposed access from the Virginia Road should not be developed and that a revised site layout plan should be submitted. Permission was subsequently granted under Reg. Ref. 041194 for retention and completion of alterations to the approved development, including sub-division of the ground floor shop into 3 units and conversion of part of the first floor office space to an apartment unit.

5.0 Policy Context

5.1. Development Plan

The site is zoned 'Town Core' under the Cavan County Development Plan 2014-2020 and is subject to the following objective:

'Establishes the extent of the town core and identifies the most suitable location for a mix of retail, commercial, residential, cultural and social uses. The overall aim is to strengthen the vitality and viability of the town core by actively facilitating the reuse of existing buildings, as well as, brownfield and Greenfield sites. The emphasis will be

on high quality urban design which does not detract from the existing urban framework.'

5.2. Natural Heritage Designations

5.2.1. The subject site is not located within or adjacent to any designated European Site.

5.3. EIA Screening

5.3.1. Having regard to the nature and scale of the proposed development, which falls below the threshold for mandatory environmental impact assessment, and the nature and character of existing development in the vicinity of the site, it is considered 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

6.1.1. The Grounds of Appeal can be summarised as follows:

- Mullagh does not have the capacity or need for two funeral homes.
- Traffic and pedestrian safety will be compromised, arising from the operation of the two adjoining funeral homes, particularly if there were two funerals held at the same time.
- All points raised regarding the lack of funeral industry knowledge raised within the original submission to the Planning Authority stand.

6.1.2. The appeal clarifies that the appellant is a serving Elected Member of Cavan County Council.

6.2. Applicant Response

No response received.

6.3. **Planning Authority Response**

Submission received dated 14th October 2020, the contents of which can be summarised as follows:

- The site is located within the Mullagh development boundary and a funeral home use is compatible with the Town Core zoning.
- The Planning Authority notes that car parking facilities are provided to the rear of the site and within the Ardlo Manor development and the Municipal District Engineer has recommended approval of the development.
- The remaining issues have been dealt with by the Planning Authority, in its assessment of the application, or are issues outside the consideration of the planning application.
- The proposed change of use is acceptable and would not be prejudicial to traffic safety.
- The Board is requested to uphold the Planning Authority's decision.

6.4. **Prescribed Bodies**

- 6.4.1. The appeal was circulated by An Bord Pleanála to An Taisce, The Heritage Council and the Department of Culture, Heritage and the Gaeltacht. No responding submissions were received.

7.0 **Assessment**

- 7.1. Having inspected the site and considered the contents of the appeal in detail, the main planning issues in the assessment of the appeal are as follows:

- Principle of development;
- Site ownership;
- Extent of the proposed use;
- Parking and access;
- Other issue; and

- Appropriate assessment

7.2. Principle of development

7.3. The proposed development is consistent with the 'Town Core' zoning objective, under which a 'funeral home' use is permitted in principle.

7.4. Site ownership

7.4.1. As part of the appellant's submission to the Planning Authority, and included as an appendix to the appeal, the applicant's ownership of the site was questioned, including the provision of Land Registry extracts, which outline that on 8th May 2018 the site was registered as in the ownership of Mr Eugene Ormiston, of Mullagh, Kells, Co. Meath.

7.4.2. Section 5.13 of the *Development Management Guidelines* (DOEHLG, 2007) provides detailed guidance on the issue of land ownership disputes within planning applications, outlining that the planning system is not appropriate for resolving land disputes and that these are ultimately matters for the Courts. Further, it is advised that permission should only be refused on the basis of land ownership, where it is clear that the applicant does not have sufficient legal title

7.4.3. The issue of ownership was noted by the Planning Officer's report on the application, but it was not addressed. The applicant has also not responded to this appeal.

7.4.4. In this instance, the applicant has asserted control over the lands and no third party made a submission to claim ownership of the site. I am therefore satisfied that there is a reasonable prospect that the development can proceed, should permission be granted.

7.5. Extent of the Proposed Use

7.5.1. The appellant cited a number of issues relating to the internal layout and extent of the funeral home use, including questioning the applicant's knowledge of the funeral industry.

7.5.2. Regarding concerns about the applicant's knowledge of the funeral industry or the capacity or need for two funeral homes in Mullagh, it is not the function or role of the planning system to adjudicate on the qualifications or suitability of an individual to undertake development or to restrict competition in the market. The proposed use is compatible with the zoning.

- 7.5.3. Regarding the appellant's claims that the operation of two funeral homes concurrently may impact on pedestrian and traffic safety, the proposed crowd management arrangements for the subject development provide for safe entry and exit and would not, in my opinion, prejudice pedestrian or road safety. I also note that the site is centrally located within the village and is served by wide footpaths both along the R194 Virginia Road and the R191 Bailieborough Road, should a queueing situation arise outside either funeral home.
- 7.5.4. To ensure there is a safe environment for mourners and to ensure there is protection in place for adjoining residential properties which look onto the car park, I consider it appropriate that details relating to public lighting within the car park should be agreed with the Planning Authority.
- 7.5.5. I note that the Planning Authority's decision included condition No 4, which required that the embalming process shall not take place on the site. The proposed layout shown on the application drawings makes no provision for such a facility on the site. In the absence of any information in relation to the process or the ability of the site to accommodate it, I consider it is reasonable to stipulate that embalming should not take place on the site.

7.6. **Parking and Access**

- 7.6.1. Regarding parking arrangements, the development plan requires the provision of 15 car parking spaces per funeral home development.
- 7.6.2. Planning records for the Ardlo Manor development indicate that the car park layout approved as part of the original grant was amended as part of Reg. Ref. 03851, which effectively severed the through-route to the petrol filling station from the Virginia Road and reduced the level of dedicated parking provided to serve the subject site and other adjoining commercial premises. The rear car park now provides approx. 17 car parking spaces and is separated from parking within the filling station development by a raised kerb and planting. It was also evident on my visit to the site that informal parking takes place, adjacent to the shared boundary with the filling station site.
- 7.6.3. Taken together with the funeral home use permitted at Unit 4, under Reg. Ref. 20283, there is a shortfall in parking to meet the cumulative development requirement, however I note that Objective PI048 makes provision for reduced

parking to be provided, where it is demonstrated that there is no impact on traffic safety and where it is in the interests of the proper planning and sustainable development of the area.

- 7.6.4. In this central location, where there is alternative on-street parking available and the site is accessible on foot, I am satisfied that adequate provision has been made for car parking. I also note that the Planning Authority considered parking proposals were adequate.

7.7. Other Issue

- 7.7.1. In relation to a financial contribution under the adopted Development Contribution Scheme, I note that exemption (j) at Section 4.1 provides an exemption for changes of use where the development does not lead to new or upgraded infrastructure/services or significant intensification of demand placed on existing infrastructure. I consider the proposed change of use falls within the parameters of exemption and therefore do not consider a financial contribution is warranted in this instance.

7.8. Appropriate Assessment

- 7.8.1. The subject site is not within or adjacent to of any Natura 2000 site, the nearest designated site being Killyconny Bog (Cloghbally) Special Area of Conservation (Site Code 000006), which is approx. 2km south-west. There are no other Natura 2000 sites within a 15km search zone.
- 7.8.2. Having regard to the nature and scale of the proposed development, a change of use on urban, zoned and serviced lands, 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

- 8.1.1. I recommend that permission for the proposed development be granted, subject to conditions as set out below.

9.0 Reasons and Considerations

- 9.1.1. Having regard to the 'Town Core' zoning which applies to the site under the Cavan County Development Plan 2014-2020, under which funeral home uses are permitted in principle, together with the nature and scale of the proposed development, the accessible location of the site and the pattern of development in the vicinity, it is considered that, subject to compliance with the conditions below, the proposed development would not be prejudicial to pedestrian and traffic safety and would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

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| 1. | <p>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.</p> <p>Reason: In the interest of clarity.</p> |
| 2. | <p>Prior to the commencement of development, the developer shall submit, for the written agreement of the Planning Authority, proposals for public lighting within the rear car park, which shall provide adequate protection for adjoining residential properties from lightspill.</p> <p>Reason: In order to protect the amenity of adjoining residential occupiers</p> |
| 3. | <p>Details of proposed external signage and associated lighting shall be submitted to the Planning Authority and agreed prior to the commencement of development.</p> <p>Reason: In the interest of visual amenity.</p> |
| 4. | <p>The embalming process shall not take place on the site.</p> <p>Reason: In the interest of clarity.</p> |

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| 5. | <p>(a) Where the applicant proposes to connect to a public water/wastewater network operated by Irish Water, the applicant shall sign a connection agreement with Irish Water prior to the commencement of the development and adhere to the standards and conditions set out in that agreement.</p> <p>(b) Irish Water infrastructure capacity requirements and proposed connections to the Water and Waste Water Infrastructure will be subject to the constraints of the Irish Water Capital Investment Programme.</p> <p>(c) All development shall be carried out in compliance with Irish Water Standards codes and practices</p> <p>Reason: In the interest of public health and environmental sustainability.</p> |
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Barry O'Donnell
Planning Inspector

11th December 2020