



An
Bord
Pleanála

Inspector's Report

ABP-308775-20

Development	Change of use from shop to café/bakery with a customer area of approx. 21m2.
Location	9 Fionoora , Kettle Street , Lahinch, Co Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	2014
Applicant(s)	Hugh Galloway
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Fionoora Management Company
Date of Site Inspection	23 rd February 2021
Inspector	Colin McBride

1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 0.0047 hectares, is located on the southern side of Kettle Street at the junction of it and Rue D'Arzon in the centre of Lahinch. The appeal site is occupied by a ground floor unit in use as café/bakery (Hugo's deli) and is the ground floor portion of a three-storey block with apartment units on the upper two floors. The northern boundary of the site is defined by Kettle Street and the eastern side by Rue D'Arzon. Adjoining uses include three-storey townhouses to the south along Rue D'Arzon and three-storey townhouses to the west along Kettle Street.

2.0 Proposed Development

- 2.1. Permission is sought for retention of change of use from shop to café/bakery with a customer area of approximately 21sqm.

3.0 Planning Authority Decision

3.1. Decision

Permission granted subject to 5 conditions. Of note are the following conditions.

Condition no. 3: Open hours specified.

Condition no. 5: Refuse control measures.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planning report (04/03/20): Further information required including details of bin storage measures, elimination of odours, health and safety measures, details of opening hours and the level and frequency of deliveries.

Planning report (16/06/20): Clarification of further information required including details of alternative bin storage measures and details regarding the system proposed for odour elimination.

3.3. **Prescribed Bodies**

HSE (04/03/20): Measures to be implemented in the event of a grant of permission.

HAS (04/03/20): No observations.

3.4. **Third Party Observations**

3.4 1 A number of third party observations were received. The issue raised were as follows....

- Inappropriate use of a permitted retail unit, inappropriate scale of unit for the intensity of use, adverse impact on adjoining residential amenity through disturbance noise, odours, insufficient provision for bin storage.

4.0 **Planning History**

4.1 P05/622: Permission for amendment to a development permitted under ref no. P04/578 consisting of reduction in permitting car parking level.

4.2 P04/578: Permission granted for the demolition of two dwelling houses and the construction of a three-storey mixed use development comprising of a retail unit, townhouses and apartment units.

5.0 **Policy Context**

5.1. **Development Plan**

The relevant development plan is the Clare County Development Plan 2017-2023. The appeal site is zoned 'mixed use'.

The use of land for 'mixed use' developments shall include the use of land for a range of uses, making provision, where appropriate, for primary and secondary uses e.g. commercial/ retail development as the primary use with residential development as a secondary use. Secondary uses will be considered by the local authority having regard to the particular character of the given area.

On lands that have been zoned 'mixed-use' in or near town or village centres, a diverse range of day and evening uses is encouraged and an over-concentration of any one use will not normally be permitted.

5.2. Natural Heritage Designations

5.2.1 None in the vicinity.

5.3. EIA Screening

5.3.1 Having regard to nature and scale of the development, which is the retention of the change of use of a retail unit to café/bakery, 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 A third party appeal has been lodged by the Fionoora Management Company. The grounds of appeal are as follows...

- The mixed use development (P04/578) the appeal site is part of was developed as a residential development with one small retail unit to ensure protection of the residential amenities of properties within the overall development. Condition no. 9 of this permission prohibits emissions (noise, odours etc.) that would be detrimental to residential amenity and such is part of leasehold terms and conditions for occupiers of the development.
- The change of use would have an adverse impact on the residential amenities of the existing residents and although zoned mixed use the context of its location within the existing residential scheme should be taken into account.
- It is considered that a bakery that is not a compatible use within the mixed use zoning. The early hours and odour are noted as being a concern in regards to its proximity to existing residential development.

- The proposal is likely to lead to noise, nuisance and odours for existing residential and be injurious to residential amenity. It is noted that the operation commences early (5:00am) and the nature of operations are as a bakery producing product for sale elsewhere as opposed to just the local area. The conditions are inadequate to deal with the issue of opening hours. There was inadequate assessment of the impact of noise. Clarification is required regarding the nature of the development including the provision of seating within the unit for customers.
- The footprint of the existing premises is insufficient for the proposed use with inadequate toilet facilities and insufficient space for bin storage. The condition regarding bin storage is contradictory of itself and there is inadequate provision or space for such.
- The change of use is a breach of leasehold conditions. The appellant notes that it is pointless to grant permission for a use that is contrary to leasehold conditions for the development it is located within. It is noted that there are very specific conditions prohibiting the use for which planning permission is being sought.
- There is a lack of clarity as to the exact use proposed and the conditions attached do not adequately reflect the planning assessment.

6.2. Applicant Response

6.2.1 No response.

6.3. Planning Authority Response

6.3.1 Response by Clare County Council.

- Based on its town centre location, revisions to production and altered operating hours, the impact on adjoining amenities would be satisfactory.

7.0 Assessment

7.1. Having inspected the site and associated documents the following are the relevant issues...

Principle of the proposed development/land use zoning policy

Adjoining amenity

Other issues

7.2 Principle of the proposed development/land use zoning policy:

7.2.1 The proposal is described as retention of change of use from a shop to a café/bakery with a customer area of 21sqm. The appeal site is zoned 'mixed use' under the Clare County Development Plan 2017-2023. The use of land for 'mixed use' developments shall include the use of land for a range of uses, making provision, where appropriate, for primary and secondary uses e.g. commercial/ retail development as the primary use with residential development as a secondary use. Secondary uses will be considered by the local authority having regard to the particular character of the given area.

7.2.2 Based on the information on file the proposed development for retention operates as a bakery making baked goods that are for sale in the unit and also supplied to other businesses in the area. The unit also sell hot drinks and for takeaway and there is some limited seating available on site. The appeal submission raises concerns regarding the clarity of the use proposed and the nature of such, with the appellant being of the view the bakery use is industrial in nature and inappropriate at this location. As noted above the proposal is located in an area zoned mixed use. I would consider that the use proposed for retention is an acceptable use within this zoning, which provides for commercial uses. I would consider that principle of the proposed development is acceptable and subject to the proposal being acceptable in the context of physical impact and adjoining amenities, is an appropriate use at this location.

7.3 Adjoining amenity:

7.3.1 The existing unit is part of an overall development that consists of apartment units on two floors above the ground floor unit and three-storey townhouses on either side along the Kettle Street and Rue D'Arzon road frontages. The information on file

indicates that the existing operation begins at 5am and outlines the level of production of baked goods and the opening hours to customers/operating hours. The information outlined details regarding the outside businesses that the development supplies with products. The main issues raised by the appellant concern the disturbance caused by the development including early operating hours, noise and odours caused in close proximity to existing residential development.

7.3.2 In response to further information and clarification for further information requests the applicant outlines potential mitigation measures in form of alterations to production with two scenarios Option A and Option B. Option B entails removal of some production off site. In addition the proposal entails the provision of a new filtration system using carbon filters to deal with emissions/odour. In relation to bin storage the applicant has obtained consent from another business to use their off-street bin storage facilities. In granting permission the Planning Authority restricted the operating hours to 06:00-17:00 from Monday to Friday and 07:00-17:00 on Sunday and Bank Holidays.

7.3.3 The appeal site is within the mixed use zoning, which is the zoning that defines town centre and as such there is expectation that residential development in this zoning will be at close quarters with commercial development with residential above shop units and commercial premises commonplace. The nature and scale of the operation would not be out of proportion relative to the adjoining development and to a degree is limited by the size of the unit itself. I would consider that subject to appropriate operating hours and the measures proposed to prevent odours, the proposal would be satisfactory in the context of adjoining residential amenity. The proposal for a carbon filtration extraction system to prevent odours is a welcome proposal and the specifications of such have been outlined including details of the location of its output. The applicant has specified that the operating hours start at 5am however the condition applied by the Council restricts operating hours to 6am on weekdays and 7am on Sundays and Bank Holidays. I would consider that the operating hours specified by the Council are appropriate in this regard.

7.3.4 In relation to bin storage there is an external laneway with access from Kettle Street (louvered doors). There is objection to use of such for bin storage for the unit in question. I would be off the view that this laneway is suitable for bin storage for the unit in question and given the unit is part of overall development at this location it reasonable to use such for bin storage. I would consider subject to use appropriate bins with secure lids that use of laneway for the unit would be acceptable. It is notable that the applicant has procured consent from a nearby business to use their bin storage (not specified where such is in relation to the unit), which is also acceptable.

7.4 Other issues:

7.4.1 The appeal submission raises the issue of leasehold arrangements and restrictions that such place on the nature and type of activities that be carried out or operated within the overall development at this location. It is indicated that the development proposed for retention would not conform to such and that it is pointless to grant permission for development that would be in breach of such terms and conditions. I would acknowledge that the development is within a building where tenants lease properties and that there are terms of conditions regarding such and that there is Management Company in place to implement and enforce such. I would however note that this is not a relevant planning consideration and that the proposal is being assessed on its merits in the context of the proper planning and sustainable development of the area. The terms and conditions of any leasehold agreement relating to the unit is not a matter to be considered or determined by the Board and such is an issue for the Management Company to deal with.

7.4.2 The issue of provision of adequate sanitary facilities for customers on the premises is raised. The plans indicate a customer area including seating around the perimeter of the unit. This would appear to cater for a degree of on site of consumption of goods. The sanitary requirements for food establishments is not subject to planning regulation and the onus is on the applicant to provide for adequate sanitary facilities in line with the relevant public health regulations. Notwithstanding such there are

sanitary facilities on site. This is not a matter of consideration in terms of the proper planning and sustainable development of the area.

8.0 Recommendation

8.1. I recommend a grant of permission subject to the following conditions.

9.0 Reasons and Considerations

Having regard to the location of the site in town centre on lands zoned mixed use in the Clare County Development Plan 2017-2023 and the pattern of development at this location, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area and adjoining properties. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 05th day of October 2020, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Operation hours including baking shall be carried out only between the hours of 06.00 to 17.00 Mondays to Saturdays inclusive, between 07.00 to 17.00 on Sundays and public holidays.

Reason: In order to safeguard the amenities of property in the vicinity.

3. The applicant shall install a carbon filtration system as specified in the documents submitted to the Planning Authority on the 05th October 2020.

Reason: In order to safeguard the amenities of property in the vicinity.

4. The mitigation measures listed under Option A (apart from operating hours) set out in the documents submitted to the Planning Authority on the 05th October 2020 unless specified otherwise by the conditions attached.

Reason: In order to safeguard the amenities of property in the vicinity.

5. Bin storage shall be by way of fully enclosed bins with secure lids.

Reason: In the interest of orderly development and adjoining amenity.

6. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Colin McBride
Planning Inspector

04th March 2021