



An
Bord
Pleanála

Inspector's Report

ABP-308778-20

Development	Construction of extension (for use as DPD parcel sorting unit) to side of Unit 9 (currently being used as DPD parcel sorting unit).
Location	Kilbrogan Business Park, Kilbrogan, Bandon, Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	205529
Applicant(s)	Barry Lordan.
Type of Application	Permission.
Planning Authority Decision	Grant Permission with conditions
Type of Appeal	Third Party
Appellant(s)	Justin Galvin.
Observer(s)	None.
Date of Site Inspection	4 th February 2021.
Inspector	Bríd Maxwell

1.0 Site Location and Description

- 1.1. This appeal relates to an established industrial estate Kilbrogan Business Park located in the northern outskirts of Bandon in Co Cork. Kilbrogan Business Park comprises a single industrial type building sub-divided into 8 industrial units. Access is off the R589 Macroom Road. There are a number of mixed uses in the area with a meat factory to the south, a petrol filling station on the opposite side of the regional road to the west and agricultural lands adjoining to the east. There is road frontage residential development adjacent to the north with the dwelling immediately adjacent to the north of the entrance in use for the out of hours doctor service (Southdoc). The building was last used as a DPD (courier) parcel sorting unit. The adjacent unit is occupied by CK2 Kitchen and Bedroom Centre.

2.0 Proposed Development

- 2.1. The proposal involves permission for the construction of an extension (for use as DPD parcel sorting unit) to the side of Unit no 9. The proposed extension follows the same format as the existing building and will provide an additional floor area of 253m² to existing unit 9 - 186m².

3.0 Planning Authority Decision

3.1. Decision

By order dated 3rd November 2020 Cork County Council issued notification of decision to grant permission and 17 conditions were attached including Condition 2, Development Contribution €4,128.96 in accordance with the Development Contribution Scheme.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planner's initial report recommended a deferral for further information request in relation to legal interest right of way with respect to access road, parking proposals, and signage. It was also noted that development contributions were outstanding in relation to parent permission. Final report notes that contributions have been paid and recommends permission subject to conditions.

3.2.2. Other Technical Reports

Environment report - no objection subject to conditions.

Area Engineer – Confirmation required regarding right of access. Requirement for five car parking spaces. Following submission of additional information report recommended permission subject to conditions.

3.3. Prescribed Bodies

No submissions

3.4. Third Party Observations

Submission from Barnes Murray de Bhail, Consulting Engineers and Planning Consultants on behalf of Mr Justin Galvin, Moneens, Bandon Co Cork. The access road to the site is in joint ownership and there is no agreement to allow access over the road.

4.0 Planning History

07/10053 Permission for removal of glasshouses and ancillary structures and construction of 2 no warehouse blocks comprising of 7 no warehouse units and associated site works.

08/9686 Permission for construction of 1 no warehouse block comprising of 4 no warehouse units and associated site works.

5.0 Policy Context

5.1. Development Plan

Cork County Development Plan 2014.

Bandon Kinsale Municipal District Local Area Plan 2017. The site is partially zoned BD-B002 while part of the site is within the existing built-up area.

The BD-B-02 Objective relates to an substantial area of 11.97 hectares and the objective is for business development suitable for small to medium sized industrial units. Site shall be served by a single access. In depth screen planting to be provided along the northern, eastern and southern site boundaries.

5.2. Natural Heritage Designations

None relevant

5.3. EIA Screening

Having regard to the nature and scale of the proposed development there is no real likelihood of significant effects on the environment. 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 grounds of appeal are submitted by Barnes Murray de Bháill, Consulting Engineers & Planning Consultants on behalf of Mr Justin Galvin, Moneens, Bandon. Grounds of appeal are summarised as follows:

- The private access road is in the ownership of two parties. The southern half is owned by Mr Barry Lordan (the applicant). The northern half of the road is owned by Mr Justin Galvin (the objector). There is no agreement in place between Mr Lordan and Mr Galvin to allow access over Mr Galvin's, section of road. Accordingly, there is no viable access to the site.

6.2. Applicant Response

The response on behalf of the first party by C.W Ashe &Co Solicitors is summarised as follows:

- Refute the claim that there is no viable access to the site.
- Copies of land registry documents provided.
- Correspondence from Sheehan Land Surveys Ltd with copies of Maps 1 and 2 attached outline the legal boundary and access road ownership.
- First party owns most of the access road, has owned units 8 and 9 for approximately 3 years and in that period there have been no complaints regarding the entrance road.
- There is no known legal impediment to access existing unit 9 or proposed enlarged unit 9.

6.3. Planning Authority Response

The Planning Authority did not respond to the grounds of appeal.

7.0 Assessment

7.1 I note that the grounds of appeal relate to the question of legal entitlement with respect a section of the roadway accessing the site. In the case of the principle of development, I am satisfied that in light of the established industrial use on the site and the zoning objective pertaining, the principle of the proposed development to provide for an extension to the existing unit is acceptable. The design and layout of the proposal is in keeping with the existing structure and can be successfully accommodated on the site. The site is not locally prominent however I consider that landscaping measures would aid integration of the building into the landscape. The proposal is to connect to public piped water and foul water services and the technical reports on the file raise no issues in this regard. As regards traffic it is proposed to provide additional car parking on the site to cater for the extension in accordance with development plan standards. I am satisfied that the level of traffic arising is not

likely to be significant and no road safety or capacity issues arise. I am satisfied that no other substantive planning issues arise.

7.2 On the matter of legal entitlement, it is the submission of the third-party appellant that the first party does not have the agreement of the co-owner of a section of the access road to the site with respect to access. The first party has disputed this and provided land registry folio documentation demonstrating ownership of access road width 6.4m at the entrance. It is noted that the first party has owned units 8 and 9 for approximately 3 years and in this time there has been no complaints with regard to the entrance. Letter submitted by CW Ashe & CO Solicitors outlines that they know of no legal impediment to access to the existing unit 9 or the proposed enlarged unit 9. Having considered the documentation submitted I am satisfied that the applicant has demonstrated sufficient legal interest to make the application. I note that it is not a matter for the Board to adjudicate on the opposing claims with regard to legal entitlements. I would note that issues regarding legal interest are essentially civil matters between the parties and are not strictly matters for determination within the scope of planning legislation. In this regard I would refer the parties to Section 34(13) of the Planning and Development Act 2000, as amended as follows: *“A person shall not be entitled solely by reason of a permission under this section to carry out any development.”*

7.3 On the issue of appropriate assessment having regard to the nature and scale of the proposed development in a fully serviced built up urban area, no appropriate assessment issues arise and it is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects, on a European site.

8 Recommendation

I have read the submissions on file, visited the site, and have due regard to the provisions of the Cork County Development Plan 2014, the Bandon Kinsale

Municipal District Local Area Plan 2017 and all other matters arising. I recommend that permission is granted subject to the following conditions.

Reasons and Considerations

Having regard to the nature and scale of the development, to the provisions of the Cork County Development Plan 2014 and Bandon Kinsale Municipal District Local Area Plan 2017, and to the established pattern of development in the area, it is considered that the proposed development would not seriously injure the amenities of the area, is acceptable in terms of traffic safety and convenience and is in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by further plans and particulars submitted on 13th October 2020 except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity.

2. Details of the materials, colours and textures of all external finishes to the proposed buildings shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interest of the visual amenities of the area.

3. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours

of working, noise management measures and off-site disposal of construction / demolition waste.

Reason: In the interest of public safety and residential amenity.

4. No advertisement or advertising structure (other than those shown on the drawings submitted with the application) shall be erected or displayed on the site unless authorised by a further grant of permission.

Reason: In the interest of visual amenity.

5. The site shall be landscaped in accordance with a comprehensive scheme of landscaping details of which shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interests of visual amenity.

6. Water supply and drainage arrangements, including the attenuation and disposal of surface water shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

7. All goods including raw materials, manufactured foods, packaging crates etc. shall be storey or displayed only within the enclosed building.

Reason: In the interest of visual amenity.

8. 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.

Bríd Maxwell
Planning Inspector
1st March 2021