



An
Bord
Pleanála

Inspector's Report ABP-309168-21

Development

Permission for the change of use of the second floor, west wing section of Gorey Enterprise Centre (permitted under 20050201), the expansion of an existing commercial/ office use to include Educational/ Training usage. Also permission for the subdivision of open plan office accommodation to provide for teaching/ training suits.

Location

Ramstown Lower, Gorey Rural, Co. Wexford

Planning Authority

Wexford County Council

Planning Authority Reg. Ref.

20201257

Applicant

Waterford and Wexford Educational Training Board

Type of Application

Permission

Planning Authority Decision

Grant permission with conditions.

Type of Appeal

Third Party

Appellant(s)

Sean Doyle

Observer(s)	None
Date of Site Inspection	7 th April 2021
Inspector	Paul O'Brien

1.0 Site Location and Description

- 1.1. The subject site is located within a three-storey building located in Gorey Enterprise Centre, in Ramstown Lower, to the south western side of Gorey town centre. Gorey Enterprise Centre consists of a mix of light industrial units and this office block, located to the north west of a local road.
- 1.2. The subject unit is provided with extensive glazing on all elevations, but the front/ south east is characterised by a dominant glazing to wall ratio. The building has a pitched roof. The proposed development is located on the second floor/ upper level of this building and only on the north western half of this floor. The stated floor area is 380 sq m. The necessary floor area is greater than this as toilets, access lobby, fire lobby and lifts are excluded although these are already in-situ.
- 1.3. On the day of the site visit, car parking was easily obtained on site. The site is over 1.4 km from the main bus stops in Gorey town centre and a similar distance to the railway station.

2.0 Proposed Development

- 2.1. The proposed development consists of:
 - The change of use of the 2nd floor of this existing building from commercial/ office use to provide for educational/ training use.
 - Subdivision of the open plan office accommodation to provide for teaching/ training suites.

No external alterations are proposed to the existing building and no increase in floor area is proposed.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant permission subject to conditions. The conditions are generally standard, though I note that conditions in relation to surface water drainage and the storage of finished good/ raw materials may not be relevant to a change of use development for use as an educational facility.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Report reflects the decision to grant permission. The site is suitably zoned for the proposed development and no negative impacts to neighbouring properties are foreseen. Issues in relation to landownership were addressed and considered to not be a matter for the Planning Authority to address having regard to the Development Management Guidelines for Planning Authorities 2007.

3.2.2. Other Technical Reports

Disability Access Officer: Unable to prepare a report.

Fire Officer: No objection to subject to condition in relation to the provision of a Fire Safety Certificate.

3.2.3. Prescribed Bodies Reports

None.

3.2.4. Objections/ Observations

A letter of objection was received from Sean Doyle of Gorey Business Park (Ramstown) Ltd, the appellant of this development.

The following issues were raised in summary:

- Concern that the site notice was not the correct colour which may mislead the public.
- Gorey Business Park (Ramstown) Ltd are the owners of these lands and documentation is provided demonstrating this.
- Gorey Business Park (Ramstown) Ltd will not continue to allow for car parking on their lands without suitable arrangements being made.
- The building does not have an independent water supply, foul drainage system and surface water drainage system and relies on that of Gorey Business Park (Ramstown) Ltd. Access to these services will not continue without arrangement being made.
- A smoking shelter and parking of skips on land to the rear of the building will not be allowed to continue without prior arrangements with Gorey Business Park (Ramstown) Ltd.

3.2.5. A submission from Jim Osborne of Gorey Business Park set out to address the issues raised by Mr Doyle as follows:

- The site notice referred to a different part of the development site to that submitted under 20200743 and the Planning Authority had no objection to the site notices as erected.
- Mr Osborne states that he owns the site and has submitted documentary evidence demonstrating this.
- Mr Osborne has made malicious and vexatious claims which are legal matters and not a planning consideration.
- No observations have been made by Mr Doyle on the merits of the proposed development.

4.0 Planning History

P.A. Ref. 20050201 refers to a July 2005 decision to grant permission for:

- The retention of a 3-storey commercial/ office block, Block A and 3-storey commercial/office/enterprise-unit block, Block B.
- Retention of alterations to building plan outline and layout, alterations to facades, sections and roof profile as granted.
- Retention of the realignment of the Ramstown Road entrance, alterations to paths, services and associated site works as change to previously granted planning permission reg. no. 20000071.

P.A. Ref. 20200743/ APB ref. 308473 refers to December 2020 decision to dismiss an appeal as being without Substance/Foundation under S.138(1(a)(i)) of the Planning and Development Act 2000 as amended. Mr Sean Doyle made the appeal against the decision of Wexford County Council to grant permission for the change of use from commercial/office space to include Educational/ Training usage.

5.0 Policy and Context

5.1. Wexford County Development Plan 2013 – 2019 - Extended

- 5.1.1. Gorey is listed as a one of three larger towns in the Wexford Core Strategy. The Core Strategy states: ‘The development approach for Gorey Town is to accommodate more measured growth in the town, consolidating the existing pattern of development. The focus will be on encouraging and facilitating the further development of physical and social infrastructure for the town.
- 5.1.2. Chapter 6 of the plan refers to ‘Employment, Economy and Enterprise’ and Section 6.4.2 is relevant as it refers to ‘Educational – Third Level Institution and the Knowledge Economy’.

5.2. Gorey Local Area Plan 2017 - 2023

- 5.2.1. The site is located with the designated area of the Gorey Local Area Plan and is zoned ‘GBU’ for ‘General Business Use’ and ‘Education’ use is listed within the ‘Open for Consideration’ category of uses.
- 5.2.2. Chapter 11 refers to Development Management Standards.

5.3. National Guidance

- Project Ireland 2040 - National Planning Framework.
- Development Management – Guidelines for Planning Authorities (2007)

5.4. Natural Heritage Designations

None

6.0 The Appeal

6.1. Grounds of Appeal

Sean Doyle has appealed the decision of Wexford County Council to grant permission for the change of use from office/ commercial to education/ training use. The following issues are raised in the appeal:

- The site notice was incorrect, it should have been yellow. Application made under PA Ref. 20200743 on the 7th of July 2020 and the subject application on

the 29th of October 2020, made within six months of the first application. Both referred to similar development on the second floor of this building.

- Issue of ownership is raised. Mr Doyle claims that Gorey Business Park (Ramstown) Limited own the lands and this company has no connection to the applicant, Mr Osborne, in any way.
- Gorey Business Park (Ramstown) Limited have ownership of car parking and services and the applicant has no right to use these.
- The assessment of the site by the Planning Authority Case Officer, found adequate parking on site. This was during the pandemic when not all business were fully operational, and parking was not at capacity.
- The development does not comply with the planning regulations and cannot comply with the conditions applied by the Planning Authority; therefore permission should be refused.

In support of the appeal is a letter from Rory Deane Solicitors, copy of mortgage of property demonstrating ownership by the appellant and an application for land registry.

6.2. Applicant Response

Phil Sheedy of A4 Design, agent for the Waterford and Wexford Education and Training Boards, has made the following response to the appeal by Mr Doyle:

- Site notices are correct, they deal with separate parts of the building.
- The appeal under ABP Ref. 308473 was dismissed as 'Without Substance/ Foundation' as the issues 'relate solely to matters of the legal interest of the site and do not raise substantive planning issues. These matters are outside the remit of the board'.

6.3. Planning Authority Response

- None.

7.0 Assessment

- 7.1. The main issues that arise for assessment in relation to this appeal can be addressed under the following headings:

- Principle of Development
- Impact on the Character of the Area
- Legal Issues
- Appropriate Assessment Screening

7.2. Principle of Development

7.3. The site, which is located within the designated area of the Gorey Local Area Plan 2017 – 2023, is zoned for General Business Development and which allows for Education development. There are no other restrictions on development within this site that would prevent the change of use.

7.4. The need for this development is set out in the cover letter with the application, social distancing requirements under Covid 19 have revised the layout/ needs of educational facilities. The open plan nature of this second floor allows for flexibility in its use.

7.5. Impact on the Character of the Area

7.5.1. The proposed development does not require the construction of any additional floor area and there are no revisions proposed to the elevations. The development will not impact on the visual amenity of the area.

7.5.2. In the context of the size of the Gorey Business Park, this development will not impact on the character of the area which is primarily for employment related uses. As noted in the cover letter, demand for services and car parking is likely to reduce as a result of this development.

7.5.3. I have no objection to the proposed development in terms of impact on the existing business park and it will provide a use that is compatible with the area.

7.5.4. I note from the Planning Authority Case Officers report, that there are no levies/ contributions required for a development of this nature – change of use from retail/ commercial to education/ training facility.

7.6. Legal Issues

7.6.1. I note the decision under P.A. Ref. 20200743/ APB ref. 308473 to dismiss an appeal as being without Substance/Foundation under S.138(1(a)(i)) of the Planning and

Development Act 2000 as amended. I am not aware of the contents of that appeal, however the appellant in this case has not outlined any reasons as to why the development is not acceptable other than stating that legally the applicant has not got the right to make this application. The appellant does not claim ownership of Gorey Enterprise Centre but does claim ownership of the car parking areas and services for the centre.

7.6.2. I agree with the comments made by the Planning Authority Case Officer in their conclusion regarding landownership and that 'Such disputes/ issues do not preclude a recommendation being made'. I also agree that any such issues regarding access to service/ parking/ landownership will have to be resolved before development can commence. The assessment of an application/ appeal is done in good faith that the submitted information is correct and this applies to the site location/ layout maps which indicate the subject site in red and lands within the ownership of the applicant in blue.

7.6.3. The Development Management Guidelines (2007) state the following:

'The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not be (sic) entitled solely by reason of a permission to carry out any development. Where appropriate, an advisory note to this effect should be added at the end of the planning decision. Accordingly, where in making an application, a person asserts that he/she is the owner of the land or structure in question, and there is nothing to cast doubt on the bona fides of that assertion, the planning authority is not required to inquire further into the matter. If, however, the terms of the application itself, or a submission made by a third party, or information which may otherwise reach the authority, raise doubts as to the sufficiency of the legal interest, further information may have to be sought under Article 33 of the Regulations. Only where it is clear from the response that the applicant does not have sufficient legal interest should permission be refused on that basis. If notwithstanding the further information, some doubt still remains, the planning authority may decide to grant permission. However such a grant of permission is subject to the provisions of section 34(13) of the Act, referred to above. In other words the developer must be certain under civil law that he/she has all rights in the

land to execute the grant of permission'. Section 34 (13) of the Planning and Development Act 2000 as amended states 'A person shall not be entitled solely by reason of a permission under this section to carry out any development'.

7.6.4. Considering the history of the site, I am satisfied that the applicant has the right to make this application. Any issues in relation to access/ services will have to be resolved before the development can commence operations. Such requirements are not unusual, even in the case of industrial estates, as the ownership of roads/ services may change during the period of five years that an applicant/ developer has to carry out a permission and revised negotiations may have to take place during this time. Similarly, Section 34(13) protects the rights of a landowner as the issuing of a permission does not give the applicant the right to carry it out without complying with other requirements outside of planning.

7.6.5. I note the issues raised in the appeal in relation to the public site notices. It is not an issue for the Board to determine if procedures were correctly followed. I do note that the appellant was aware of the development and therefore the public notices did meet their primary objective which is to inform that a planning application has been made on this site.

7.7. Appropriate Assessment Screening – Natura Impact Statement

7.7.1. Having regard to the nature and scale of the proposed development and the location of the site in an established, serviced urban area and the separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the development would be likely to give rise to a significant effect individually or in combination with other plans or projects on an European site.

8.0 Recommendation

8.1. I recommend that permission be granted subject to the following conditions and reasons.

9.0 Reasons and Considerations

9.1. Having regard to the nature, extent and design of the proposed development and the provisions of the Wexford County Development Plan 2013 – 2019 as extended and

the Gorey Local Area Plan 2017 - 2023, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the character or visual amenities of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 29th 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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the Planning Authority for such works and services.</p> <p>Reason: In the interest of public health.</p>
3.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between the hours of 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the amenities of property in the vicinity.</p>

Paul O'Brien
Planning Inspector

12th May 2021