



An
Bord
Pleanála

Inspector's Report

ABP-313954-22

Development	Permission for A) change of use from former public house to restaurant incorporating take away facility at ground floor level and B) demolition of existing first floor level residential extension and permission to construct new residential extension at first floor level and all associated works
Location	The Former Continental Public House, Main Street, Portarlinton Co. Laois
Planning Authority	Laois County Council
Planning Authority Reg. Ref.	21835
Applicant(s)	Denisa Miraha
Type of Application	Permission
Planning Authority Decision	Grant with Conditions
Type of Appeal	Third Party
Appellant(s)	1. Brid Higgins, 2. Tom Kehmerk, 2. Elton Martini
Date of Site Inspection	24 th of July 2023
Inspector	Caryn Coogan

1.0 Site Location and Description

- 1.1. The site is a mid-terrace building on the Main Street of Portarlington town. The ground floor was formerly a public house called the Continental, (the sign is still along the façade), with upper floor used as residential.
- 1.2. At the time of inspection the property was vacant.
- 1.3. There is parallel parking to the front of the building.

2.0 Proposed Development

- 2.1. The following permission was applied for:
 - (a) Change of use from former public house to restaurant incorporating a take away facility at ground floor level;
 - (b) Demolition of existing first floor level residential extension and permission to construct a new residential extension at first floor level
 - (c) All associated works.
- 2.2. Following receipt of further information date stamped 19/04/2022 the applicant submitted the following:
 - The building has been vacant and fallen into serious disrepair. The proposal is in line with the Portarlington Regeneration Strategy and the Town Centre Living Initiative.
 - Revised ground floor plan showing seating for 22No. persons.
 - Anticipated parking is 7No. spaces.

3.0 Planning Authority Decision

3.1. Decision

Laois Co. Co. granted the proposed development by Manager's Order on the 10th of June 2022 subject to 17No. conditions. The conditions are standard planning conditions and those relevant to this appeal are as follows:

2. The proposed development shall be restricted to use as described in the description of works namely, restaurant incorporating take away facility at ground level and a residential unit at first floor level, the property shall not be used for any other use, without a prior specific grant of planning permission. The property shall not be used for any other use, without a prior specific grant of planning permission. The property shall not be used as a standalone takeaway facility.

Reason: In the interest of clarity and to regulate the use of the development in the interest of the proper planning and sustainable development of the area.

15. The existing residential unit and extension shall be jointly occupied as a single housing unit. The extension shall not be subdivided from the remainder of the residential unit or sold or let as a separate dwelling unit. The overall residential unit shall be used for domestic related purposes only, and not for any commercial, workshop, or non-domestic use.

Reason: In the interest of proper planning and orderly development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Main points raised in the planning report are as follows:

- It would appear to be a stand alone takeaway with ancillary seating.
- There are residential units in the vicinity of the site
- Site is vacant for the number of years and there has been a Derelict Site Notice served on it.
- Hours of operation are midday to midnight.
- Proliferation of take aways in Portarlinton
- Drawings of proposed extension may be inaccurate
- Further information required.

- Following receipt of further information and clarification of further information, a recommendation to grant was forwarded.

3.2.2. Other Technical Reports

None

3.3. **Prescribed Bodies**

Department of Housing, Local Government and Heritage : No objections. Bat Survey required on buildings requiring demolition.

3.4. **Third Party Observations**

- It will affect other restaurant/ take away businesses in the town.
- There are too many takeaways in a small town.
- There are only two tables it will not be a restaurant.
- Late night takeaways cause anti-social behaviour.
- Closing time.

4.0 **Planning History**

None

5.0 **Policy Context**

5.1. **Development Plan**

Laois County Development Plan 2017-2023 and Portarlinton Joint LAP 2018-2024

The site is zoned Town Centre.

The objective is 'to enhance the vitality and viability of the town centre through the promotion of retail, residential, commercial, office, cultural, public facilities and other appropriate uses in the urban core'. [To encourage the use of buildings and backlands in particular the full use of upper floors, preferably residential purposes.]

Within the zoning restaurant and hot food takeaway are normally acceptable.

Laois County Development Plan policy: **DM TC 6 HOT FOOD TAKE-AWAY**

The development of hot food take-aways will be strictly controlled and a proliferation of this use will not be encouraged. This type of development will generally only be considered in towns and villages where the development would not result in the loss of retail and office frontage. The Council may impose restrictions on opening hours. The opening of new fast food/takeaway outlets in close proximity to schools or children's play areas will be restricted so as to protect the health and wellbeing of children.

In dealing with applications for such developments the Planning Authority will have regard to the following:

- 1) The effects on the amenities of adjoining properties particularly as regards hours of operation, noise, odour and general disturbance;
- 2) The location; standalone take-aways not attached to restaurants will not be encouraged, where an existing residential unit is above or the proximity to a school or children's play area;
- 3) The anticipated levels of traffic generation (a traffic and car parking statement shall accompany any application);
- 4) The generation, storage and collection of waste; Quality signage proposals, plastic or neon signage will not be permitted.

It is located within an Archaeological Zone.

The site is within Flood Zone B

5.2. **Natural Heritage Designations**

River Barrow and River Nore SPA 250metres form the site.

5.3. **EIA Screening**

Having regard to the nature and scale of the development proposed, the site location within an established built-up urban area which is served by public infrastructure and outside of any protected site or heritage designation, the nature of the receiving

environment and the existing pattern of urban development in the vicinity, and the separation distance from the nearest sensitive location, 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

There are three third party appeals to Laois Co. Co. decisions to grant planning permission for the development.

6.1.1 *Brid Higgins, 19 Derrymore, Portarlinton, Co. Laois*

- This is a fast-food restaurant, the seats were just used to get planning permission
- When the planning authority requested additional information a few auxiliary seats were included to get it through planning.
- The further information states it would have weekly deliveries. No fast food outlet has deliveries once a week.
- There is no closing time conditioned to the permission.
- There are ample takeaways in the town, 13no. and this development is not needed.
- There is only one door onto the Main Street, making the development a fire hazard.
- Nobody has asked about the menu to see if it is a fast food outlet
- There is a Montessori school at the top of the road which generates a lot of traffic, and the kids don't need another fast food outlet beside it.

6.1.2 *Tom Kennerk, Flat 1, Beside Brian Whelan Electrical, Main St., Portarlinton.*

- The proposal will be used as a take-away business and not a sit down restaurant. The applicant and her partner are trading at Golden Grill Takeaway and have two other chippers in Lortlaois and Mountmellick.
- There is no time restriction which implies more anti-social behaviour.
- There are enough takeaways in Portarlington.

6.1.3 ***Elton Martini, Rios Takeaway, Main Street, Portarlington***

- A new takeaway business in the town can affect his business which is only a few steps from his shop.
- The proposal will affect other work places in the town.
- There are only two tables so it will not be a restaurant.
- This family has other fast food businesses.
- There are no hour restrictions.
- There were unauthorised works been done to the building on the inside and outside.

6.2. **Planning Authority Response**

There was no response to the appeals.

7.0 **Assessment**

7.1. I have read all the documentation attached to this file including inter alia, the appeal, the report of the Planning Authority, in addition to having visited the site. The primary issues, as I consider them, are (i) compliance with development plan policy, (ii) impacts on residential amenity, (ii) impacts on Town Centre.

7.2. **Compliance with Development Plan Policy**

The Laois County Development Plan 2017-2023 and Portarlington Joint LAP 2018-2024 are the relevant development plans for Portarlington town. The site is an old disused mid terrace building on the Main Street. According to the Planning Report on file, the property was served with a Derelicts Site's Notice. Therefore, policies

relating to the re-use and restoration of existing building stock are relevant as well as policies relating to Takeaways.

Firstly, the subject site was a former public house called the Continental. The signage is still on the front façade of the building, which is a two storey building. The building has remained vacant for many years and fallen into disrepair. It is proposed to reuse the building, to demolish and re-build the rear of the building for residential use on the first floor, with a restaurant/ takeaway on the ground floor. The principle of the development is in keeping with the **Town Centre** zoning objective, i.e. *'to enhance the vitality and viability of the town centre through the promotion of retail, residential, commercial, office, cultural, public facilities and other appropriate uses in the urban core. To encourage the use of buildings and backlands in particular the full use of upper floors, preferably residential purposes.'* According to the Zoning Matrix Table, restaurant and hot food takeaway are normally acceptable.

Secondly, according to the Laois County Development Plan policy: **DM TC 6 HOT FOOD TAKE-AWAY** *The development of hot food take-aways will be strictly controlled and a proliferation of this use will not be encouraged. This type of development will generally only be considered in towns and villages where the development would not result in the loss of retail and office frontage. The Council may impose restrictions on opening hours. The opening of new fast food/takeaway outlets in close proximity to schools or children's play areas will be restricted so as to protect the health and wellbeing of children.*

The proposed development is in keeping with this policy because the development will not result in the loss of office or retailing along the Main Street of Portarlinton. It will enhance the general area by reopening a property that has been vacant for years. It will provide residential accommodation in the town centre.

In terms of the proliferation of takeaways in the town, I did note there are a number of take aways in the general vicinity of the site along Main Street and off Main Street. The third-party appellants have expressed this concern, in particular existing takeaway operators in the town. However, takeaways of all varieties have increased

nationwide in particular since the pandemic. There is no evidence to suggest that Portarlington is any different to other town in Ireland. It is not the planning system's function to regulate competition between various take away operators. The floor plan includes seating for 22No. patrons, therefore the take away is ancillary the restaurant, which will enhance the vitality of the Main Street and it is different to stand alone takeaway outlets.

In dealing with applications for such developments the Planning Authority will have regard to the following:

- 1) The effects on the amenities of adjoining properties particularly as regards hours of operation, noise, odour and general disturbance;
- 2) The location; standalone take-aways not attached to restaurants will not be encouraged, where an existing residential unit is above or the proximity to a school or children's play area;
- 3) The anticipated levels of traffic generation (a traffic and car parking statement shall accompany any application);
- 4) The generation, storage and collection of waste; Quality signage proposals, plastic or neon signage will not be permitted.

The proposed development is in keeping with these parameters.

7.3. Impacts on Residential Amenity

The subject site is located in a town centre location where there are a variety of uses, and opening hours associated with various properties. The planning application states the business will operate from midday to midnight. This can be conditioned as part of the decision. Condition No. 2 of the planning authority's decision states the property cannot be used as a stand alone takeaway, that the development permitted is a restaurant incorporating a takeaway facility. This is commonplace nationwide, and I consider the condition to be reasonable.

7.4. Impacts on Town Centre

- The proposed development will generate parking, according to the planning application documents at a rate of 1No. space for the residential use and 1No. space per table i.e. 6No. spaces. The former use was a public house with a

residential unit on the first floor. There is ample public parking to the front and rear of the site.

- The waste management will be to the rear of the building.
- Deliveries will take place on a weekly basis at designated loading bays on the Main Street.
- Having regard to the demolition works involved I consider it appropriate to include a condition requiring a Construction Management Plan.

7.5. Appropriate Assessment

Having regard to the nature and scale of development proposed and to the nature of the receiving environment, namely an urban and fully serviced location, 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. I recommend the planning authority's decision to grant planning permission for the proposed development be upheld.

9.0 Reasons and Considerations

Having regard to the zoning objectives for the area and the pattern of land use in the vicinity it is considered that, subject to the conditions set out below, the proposed development will not unduly impact on the amenities of the area or property in the vicinity and is therefore 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 plans and particulars received by the Planning Authority on the 19th of April 2022, 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. Use of the premises shall be as in accordance with the details as submitted with the planning application for a restaurant with an ancillary takeaway facility. No change of that use shall take place without a prior grant of planning permission notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001 and any statutory provision amending or replacing them.

Reason: To protect the amenities of property in the vicinity.

3. The developer shall control odour emissions from the premises in accordance with measures which shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

Reason: In the interest of public health and to protect the amenities of the area.

4. Litter in the vicinity of the premises shall be controlled in accordance with a scheme of litter control which shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development. The scheme shall include the provision of litter bins and refuse storage facilities.

Reason: In the interest of visual amenity.

5. A waste management plan including the provision for the storage, separation and collection of all waste, shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of the permitted use.

Reason: In the interest of public health and the amenities of the area.

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

Reason: In the interest of public health and to ensure a proper standard of development.

7. The hours of operation shall be between 12:00hours and 24:00 hours.

Reason: In the interest of the amenities of property in the vicinity

8. No advertisement or advertisement structure (other than those shown on drawings submitted with the application) shall be erected or displayed on the building (or within the curtilage of the site in such a manner as to be visible from outside the building unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

9. That all necessary measures be taken by the contractor to prevent the spillage or deposit of clay, rubble, or other debris on adjoining roads during the course of the works.

Reason: To protect the amenities of the area.

10. The construction of the development shall be managed in accordance with a Final Construction and Environmental Management Plan, which shall be submitted to, and agreed in writing with the planning authority prior to commencement of development.

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

11. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0900 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.

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

12. 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

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Caryn Coogan
Planning Inspector

28th of July 2023