



An
Bord
Pleanála

Inspector's Report

ABP-313972-22

Development	Change of Use from retail use to betting office
Location	15B Old Youghal Road, Mayfield, Cork
Planning Authority	Cork City Council
Planning Authority Reg. Ref.	2241013
Applicant(s)	Boylesports
Type of Application	Permission.
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Boylesports.
Observer(s)	None
Date of Site Inspection	15 th of June 2023.
Inspector	Karen Hamilton

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1.0 Site Location and Description

- 1.1. The site, an existing retail unit, at No 15 Old Youghal Road, is located to the north of Cork City. The ground floor of the site has been previously divided into two commercial units, a small hair salon and a retail unit. The upper floor is in residential use. The adjoining site, to the west, is occupied by a Barbour, with residential over. There is carparking along the front of the site, directly from the Old Youghal Road.
- 1.2. The surrounding area is characterised as residential. There are pockets of neighbourhood facilities, local services, and commercial use along the Old Youghal Road, supporting the residents.

2.0 Proposed Development

- 2.1. Permission for change of use of 2 no. ground floor units at the premises known as 15B Old Youghal Road from retail use to betting office (Class 2 office) in order to facilitate the relocation of an existing betting shop currently located at 11 Old Youghal Road.
- 2.2. It is also proposed to carry out works to extend and alter the ground floor of No. 15B and these proposed works will include:
 1. The demolition of existing structures to the rear of No. 15B and the construction of a new single storey extension incorporating the footprint of said structures being demolished,
 2. Alterations to the fenestration and the erection of signage on the shop front elevation
 3. The erection of two satellite dishes to the rear of No. 15B and all associated works

3.0 Planning Authority Decision

3.1. Decision

Refuse permission for one reason as detailed below:

The subject property is located in an area zoned as Z04 Residential, Local Services & Institutional Uses, where it is an objective to “protect and provide for residential uses, local services, institutional uses, and civic uses, having regard to employment policies outlined in Chapter 3”. It is considered that the proposed change of use to a Betting Shop would result in a reduced level of retail and local service provisions of the Cork City Council Development Plan 2015-2021. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the planner reflects the decision to refuse permission. The report is summarised as follows:

3.2.2. Overcoming previous refusal

- The principle of development in the Z05 residential zoning as a key issue for a previous refusal on the site (Reg Ref 19/38576).
- The current Betting Shop is located on a site which was granted permission for the redevelopment for 13 no residential units (Reg Ref 21/40456). This is currently on appeal to the Board.
- It is not accepted that the proposal would make available a large unit for retail as this may also be developed for residential as proposed.
- While Boylesports may relocate their business, the current site may also be used by a competitor.
- Regardless of the outcome of Reg Ref 21/40456, the relocation of the Betting shop would lead to the potential loss of retail.

3.2.3. Proliferation of Betting Spaces

- Concern was previously raised (Reg Ref 19/38576) to the proliferation of Betting Shops.
- The report refers to the current use of the site (No. 11 Old Youghal Road) as a Betting Shop, the proposed development for a Betting shop at the subject

site (No. 15 Old Youghal Road) and the potential for two Betting Offices within the same area.

- Reference to a Betting Shop in the Mayfield Shopping Centre (c. 300m) is also available.
- The proliferation of Betting Shops in the area was a key reason for the refusal of a previous proposal on the site and it is not considered these issues have been overcome.

3.2.4. Vacant Floor space and Non- Conforming Uses

- The objectives in the development plan in relation to vacant floor space and non-conforming uses
- Where nonconforming uses currently exist, their development will be facilitated where they do not have a negative impact on the surrounding residential amenities.
- With regards the use of vacant floorspace for non-conforming uses it was not felt that the potential loss of retail is not justified for the use of the unit as a Betting Office.

3.2.5. Satellite Dishes

- Issues relating to the maintenance of satellite dishes have been overcome and they are accessible via a lane to the rear.

3.2.6. Potential for Impacts on Neighbouring Residents

- Concern was raised with regard to the impact on neighbouring properties in the previous application.
- The design has been amended and the height of the extension reduced.
- The proposed development will not have any overbearing impact on the residential amenities of the neighbour.
- It is unclear as to the use of the flat roof element on the first floor and the potential use as a terrace.

3.2.7. Signage

- The signage has been amended from the previous proposal (banner style sign on eastern elevation removed).
- The signage is appropriate.

3.2.8. Roller Shutters

- Internal roller shutters are proposed and in compliance with development plan policy.

3.2.9. Operating Hours

- There is no objection to the operating hours.

3.2.10. Waste Details

- A dedicated bin store has been identified.
- There is no objection from the environment section.

3.2.11. Other Matters

- It is not possible to install windows in the staff and disabled WC and no details of mechanical extraction have been submitted.

3.2.12. Carparking/Pedestrian Safety

- No changes proposed to the carparking area.

3.2.13. Other Technical Reports

Urban Roads & Street Design (Planning) Report: No objection subject to conditions.

Drainage Report: No objection subject to conditions.

Infrastructure Development Report: No objection subject to conditions.

Environment Report: No objection subject to conditions.

3.3. **Prescribed Bodies**

Irish Water: No objection to proposal.

3.4. **Third Party Observations**

None submitted.

4.0 Planning History

4.1. Subject Site

Reg Ref 19/38576

Permission refused for a change of use from retail to betting shop (similar proposal) for one reason as listed below:

The subject property is located in an area zoned as Z04 Residential, Local Service and Institutional Uses, where it is an objective “to protect and provide for residential uses, local services, institutional uses and civic uses, having regard to employment policies outlines in Chapter 3”. It is considered that the proposed change of use to a Betting Shop would result in a reduced level of retail & local service provision to residents in the local area, particularly having regard to the fact that a bookmakers already exist in the local area, and it would have a detrimental impact on the adjacent southern neighbour, as well as conflicting with the policies and objectives of the Cork City Council Development Plan 2015-2021. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

4.2. Nearby Site (No 14 and 15 Old Youghal Road) and current location of the Boylesports Betting Office.

Reg Ref 21/40456

Permission granted for the refurbishment and extension of two no 1 bed cottages and the demolition and change of use of an existing public house and bookmakers. The proposal includes the construction of 13 no residential units.

The proposal is currently on appeal to the Board (ABP 313551-22) and no decision has been made to date.

5.0 Policy Context

5.1. Cork City Development Plan 2022-2028

The Cork City Development Plan 2015-2021 was the development plan in place at the time of the planning application decision (June 2022).

The Cork City Development Plan 2022-2028 came into effect on the 08th of August 2022.

5.1.1. Zoning

The site is zoned as Sustainable Residential Neighbourhood, ZO 01, where it is an objective *“To protect and provide residential uses and amenities, local services and community, institutional, educational and civic uses.”*

Objective ZO 1.1: The vision for sustainable residential uses will be central to proposed uses.

Objective ZO 1.2: Development in the zone will respect the character and scale of the neighbourhood, other uses will be resisted.

Objective ZO 1.3: Primary uses are residential uses.

Objective ZO 1.4: Uses permitted but not restricted to include local convenience store, community facilities etc.

Objective ZO 1.6: Office based industry and major retailing are generally not permitted in this zone.

5.1.2. Betting Offices

Section 11.19.: The City Council will seek to protect residential amenity and the provision of a viable mix of uses within designated centres by ensuring that the quantum of betting shops- particularly within smaller centres- is not disproportionate to the overall size and character of the area.

It is an objective to prevent the concentration of betting offices, thereby ensuring the number of units in the City Centre, District or Neighbourhood/ local Centre is not disproportionate to the overall number of shops, community, and other uses.

1. The provision of betting offices will be controlled having regard to the following, where appropriate:
2. The need to safeguard the vitality and viability of mixed-use centres in the City and to maintain a suitable mix of retail and other uses;
3. The number/ frequency of such facilities in the area;

4. The effect on the amenities of the area by reason of noise, hours of operations and litter;
5. The external appearance and design of the betting office (including any satellite dishes advertising and TV screens displayed) shall not detract from the streetscape.

5.2. Natural Heritage Designations

The site is located 2.1km east of the Glanmire Wood p NHA (site code 001054), Cork Harbour SPA (site code 004030) and c. 2.6km to the northeast of the Dunkettle Shore (site code 001082) and Douglas River Estuary (site code 001046).

5.3. EIA Screening

The subject development does not fall within a class for which EIAR is required.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal is submitted by an agent on behalf of the applicant in relation to the refusal by the PA. The submission is summarised below:

6.1.1. Background

- The reason for refusal is listed.
- A historical background of the site includes reference to the previous refusal (Reg Ref 19/38576).
- The betting shop has been operating under another address since 2007 and must vacate that property as the lease is up.
- This vacant property is located 70m from the existing premises.
- This site was originally a post office (Class 2) before being sub divided into two units. It was assumed the Class 2 use still existed; therefore, the betting office was acceptable.

- The applicant believed the planning department understood the accommodation problem and it was considered the second application would be favourably received.

6.1.2. Reason for refusal

- The planners are unreasonable in applying the principles of the Z04 zoning to a business which has operated within the same zoned area.
- The planner has raised irrelevant and misleading issues relating to proliferation and amalgamation of two small sized subunits.
- The applicant is relocating an existing business rather than setting up a new business.
- The applicant pays rates and employs seven people in the local area.

6.1.3. Wording of the Refusal

- The reason for refusal refers to the change of use to a betting shop rather than the relocation of an existing betting shop at No 11 Old Youghal Road.
- The failure to fully state the development description in the reason for refusal disconnects the existing Boylesports business.
- There is no intention to set up a second business.

6.1.4. Rationale of the Zoning Issue

- The report of the area planner implies that the betting office use is not appropriate in the Z04 designation and generally in City Centres, District Centres, Neighbourhood Centres and Local Centres.
- The planner has a narrow interpretation of the change of use.
- The planner discounts the fact that the applicant currently operates in a property on Z04 zoned lands.
- The planner did not consider the operation of the property as a “non-conforming use” as per Objective 15.1.
- The planner has no evidence that the proposal would lead to a reduction in retail and local provision.

- The Development Management Guidelines for Planning Authorities 2007 states that the decision should be informed, clear, unambiguous.
- The applicant's own survey indicates no shortage in retail or local space in the area.
- The council reduced the local services in the area by granting permission Reg Ref 21/40456 as an application for residential only.
- Aside from the zoning, Boylesports is operating a successful business as established under Reg Ref 04/288377.
- The applicant has no control over the use of their current premises as it has been granted permission to demolish.
- Boylesports cannot be responsible for the anomalies within the Z04 area.
- The Old Youghal Road is mixed, varied in character with many uses and the relation of the betting office will not impact on the visual character of the area.

6.1.5. Proliferation Issue

- The issue of proliferation was also raised in the previous refusal.
- The reference to proliferation is inaccurate, unreasonable, unsupportable, and unwarranted.
- The previous planner referred to "possible" proliferation rather than being fully convinced there would be proliferation.
- The proposal by the applicant for No.11 (the applicant's current property) indicates the intent of the current owners to remove the betting shop use.
- The current owner has confirmed that the lease for the bookmakers will cease.

6.1.6. Amalgamation of Retail Units

- No. 15b was initially occupied as one retail unit, occupied by the post Office.
- The building was subdivided into 2 retail units, both unoccupied and not a success

- The title deeds do not refer to the use as a hair salon unit, as insisted by the planner.

6.1.7. Minor Issues

- The report of the area planner considers the current proposal is similar to the previous refused proposal.
- There are many differences between the proposal and previous refusal including, *inter alia*, the number of satellite dishes, inclusion of a pitched roof, different signage, internal roller door instead of external, clarification of operating hours, bin store and acknowledge support from neighbours.

6.2. Applicant Response

The applicant is the appellant.

6.3. Planning Authority Response

No response received.

6.4. Observations

None received.

7.0 Assessment

The planning application was decided June 2022 under the Cork City Development Plan 2015-2021. The Cork City Development Plan 2022-2028 came into effect on the 08th of August 2022. I have assessed the proposal under the policies and objectives of the current development plan. This aside, the Board will note, in my opinion, there are no significant differences with regards to the policy and objectives for Betting Shops.

The main issues of the appeal can be dealt with under the following headings:

- Principle of Development
- Compliance with the Cork City Development Plan 2022-2028

- Other
- Appropriate Assessment

7.1. Principle of Development

Introduction

- 7.1.1. The proposed development includes a change of use of an existing commercial premises from retail/ hairdressers to Betting Shop. The applicant, Boylesports Bookmakers, is currently located in a premises c. 70 m to the east of the subject site. A similar development was refused on the site (Reg Ref 19/38576) for reasons like this appeal.
- 7.1.2. The reason for refusal relates to the principle of development at this location, *inter alia*, the removal of retail and the non-compliance with the ZO4 residential zoning on the site.
- 7.1.3. The applicant has appealed the decision of the Planning Authority (PA) as it is considered the rationale for the development, being the relocation of the Betting Shop from the existing premises (No. 11 Old Youghal Road) to this new location (No. 13 Old Youghal Road) will not have a significant negative impact on the residential amenity. The grounds of appeal consider the reason for refusal is not clear, the proposal complies with the development plan and will not lead to a proliferation of Betting Shops in the area.

Land Use Zoning

- 7.1.4. The site is located on lands zoned ZO 01, Sustainable Residential Neighbourhoods, where it is an objective “*To protect and provide residential uses and amenities, local services and community, institutional, educational and civic uses.*” Whilst the primary uses in this land use zone are residential Objective ZO 1.4 of the development plan details other uses permitted such as local convenience store, community facilities etc. Objective ZO 1.6 states that office-based industry and major retailing are generally not permitted in this zone.
- 7.1.5. Betting Shops are not classified as a local service or community use such as that of a hairdresser or shop. In general, the location of betting shops on residential zoned

lands is not considered applicable. The development plan provides specific guidance for betting shops proposals and other non-conforming uses, further discussed below.

- 7.1.6. The subject site is located within a large residential neighbourhood. The proposed development would lead to the removal of a hairdressers and retail unit, both of which support sustainable residential communities. The removal of these uses has the potential to have a negative impact on the local services surrounding residential area. The applicant states that these are currently vacant and too small for efficient use. I have addressed this issue below, in relation to the vacancy of the unit.

Conclusion

- 7.1.7. Having regard to the location of the subject site on lands zoned for residential and the potential loss of local services, I am concerned that the proposed development is not in compliance with the objectives of the sustainable residential neighbourhood land use zoning. Other planning considerations in relation to the location of Betting Offices on residential zoned lands are further detailed below.

7.2. Compliance with the Cork City Development Plan 2022-2028

Introduction

- 7.2.1. The development plan provides guidelines for the appropriate development of Betting Shops in the City. In addition, the plan includes guidelines for proposal in vacant sites and for non -conforming uses, as detailed below.

Betting Offices

- 7.2.2. Section 11.189 of the development plan includes guidance for locating betting offices in the city. The quantum of betting shops is required to be proportionate to the overall size and character of the area, to ensure the protection of residential amenities. The provision of betting shops will be controlled having regard to:

- a suitable mix of retail and other units,
- the number/ frequency of such facilities in the area,
- the proliferation of other similar facilities (i.e., off-licences, hot-food takeaways etc),
- the effects on the area by reason of noise, hours of operation and litter and,

- the external appearance and design of the betting office.

- 7.2.3. With regard the suitable mix of retail and other units, I note the proposal will remove an existing hairdressers and retail unit. Whilst these were not vacant during site inspection, I noted no other similar uses in existence in the immediate vicinity.
- 7.2.4. In relation to the quantum of such facilities in the area, the report of the area planner notes the current facility, the potential for two betting offices beside each other and the existing betting shop in Mayfield shopping centre, c. 300m from the site. The grounds of appeal note the current permission at No 11 Old Youghal Road (existing betting shop) which includes the redevelopment of the site for 13 residential units and the removal of the betting shop. The proposed development relates to the relocation of this betting shop, rather than an additional betting shop.
- 7.2.5. The proposed development granted by the PA (Reg Ref 21/40456) is currently on appeal (ABP 313551-22) and is undecided. In addition, even should this proposal be granted by the Board, there is no obligation on the application to undertake the development. Therefore, this proposed development has the potential to create 2 betting shops within c. 70m area. I consider this quantum of betting shops in addition to the existing betting shop in Mayfield Shopping Centre can be reasonably defined as a proliferation of uses.
- 7.2.6. Therefore, having regard to the potential for three betting shops within the same area and the loss of local services, I do not consider the proposal complies with the guidance as set out in the development plan for betting offices.

Vacant units

- 7.2.7. The grounds of appeal note the site has been vacant before they purchased same in 2019. It is considered the proposal will occupy this vacant unit. Whilst I note the premises are currently vacant, the application contains no details on the demand and/or provision of similar services in the vicinity.

Non-conforming Uses

- 7.2.8. The grounds of appeal refer to the no-conforming uses and the operation of the Boylesports premises at No 11 for over 15 years with no significant negative impacts.

7.2.9. The development plan provides guidance for non-confirming uses (Section 12.8 & 12.9) where such uses already legally established may be reasonably expanded or improved where there will be no serious negative impact on the primary land use. I consider this guidance relates to existing uses, i.e., would be applicable to the applicant's current premises at No.11 rather than the proposed change of use at No 15 B. Therefore, I do not consider the proposed development relates to any non-confirming uses.

Conclusion

7.2.10. Having regard to the proposed relocation of a betting office into a retail unit and that guidance in Section 11.189 of the development plan for the appropriate location of betting shops, I do not consider the proposal adequately justify the removal of a retail unit within a neighbourhood centre and the proposal would not comply with that guidance.

7.3. **Other**

Reason for refusal

7.3.1. The grounds of appeal consider the reason for refusal is unambiguous and not in line with the Development Management Guidelines for Planning Authorities 2007.

7.3.2. The reason for refusal refers to the land use zoning and the proposed change of use to a Betting Shop. The refusal considered this proposed change of use would result in a reduced level of retail and local service to the residential and conflict with the policies and provisions of the development plan.

7.3.3. It is my opinion that this reason for refusal clear in so far as it indicates that the proposal does not comply with the policies and objectives of the development plan. Whilst I note the refusal does not specifically refer to specific policies and objectives, the Board will note the land use objective has been stated in the reason for refusal. In addition, I consider the supporting text in the planner's report, clearly sets out the background for the reason for refusal.

7.3.4. Section 7.5 of the Development Management Guidelines for Planning Authorities states that a "*reason for refusal must, as far as possible, bring out the reasonableness of applying the provisions of a plan in a particular case.*" Having

regard to the reference to the land use zoning and the impact on the retail and local service provision within the area, I consider reference to the development plan land use zoning a reasonable reason for refusal. In this regard I do not consider the reason for refusal is unclear or unambiguous and complies with the national guidance.

Previous Reason for Refusal

- 7.3.5. The grounds of appeal refer to the previous refusal on the site Reg Ref 19/38576 and consider the proposal overcomes those issues raised in the previous planner's report. These issues are considered as minor issues i.e., location of satellite dishes, signage, rear extension etc. I note the report of the area planner has addressed those issues and determined the amended design adequately addressed any issues previously raised.
- 7.3.6. The Board will note my assessment above and those substantive reason for refusal. In this regard, I do not propose to examine those minor issues in detail. The Board will also note the reason for refusal in the previous application related in the most part to the principle of development.

7.4. Appropriate Assessment

- 7.4.1. The proposed development is for a change of use and alterations to an existing property. There are currently no pathways between the site and any European Sites and having regard to the scale of the proposal I do not consider there is any potential for any significant effects on any European Site.
- 7.4.2. Having regard to nature, scale, and location of the proposed development it is concluded that no Appropriate Assessment issues arise as 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.

8.0 Recommendation

- 8.1. I recommend the proposed development is REFUSED, for the reasons and considerations listed below.

9.0 Reasons and Considerations

The site is located on lands zoned as ZO 01, Sustainable Residential Neighbourhood, in the Cork City Development Plan 2022-2028, where it is an objective to “*To protect and provide residential uses and amenities, local services and community, institutional, educational and civic uses.*” The proposal includes the removal of local services for use as a betting shop which does not comply with these land use objectives. It is not considered the proposed development can adequately justify the removal of existing local services and is therefore not in compliance with the guidance for betting shops in Section 11.189 of the development plan. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

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.

Karen Hamilton
Senior Planning Inspector

21st of June 2023