



An
Bord
Pleanála

Inspector's Report

ABP-314641-22

Development	Change of use from a butchers to a pizza and fast food takeaway and all associated site works.
Location	39 JKL Street, Edenderry, County Offaly.
Planning Authority	Offaly County Council
Planning Authority Reg. Ref.	22245
Applicant	Pauraic Groome
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant	Johanna Macari. Luigi Macari
Date of Site Inspection	31 January 2023
Inspector	Dolores McCague

1.0 Site Location and Description

- 1.1.1. The site is located in the middle of the town of Edenderry, on JKL Street facing towards O'Connell Square. The subject site is the ground floor of a three storey building with three commercial buildings at ground and residential accommodation above. A laneway adjoining the southern end of the building accesses a large parking area and yard to the rear, where businesses are established in outbuildings and sheds. On the opposite side of the laneway there is a two storey building in which there is a pub and nightclub.
- 1.1.2. The site is currently unoccupied but was last used as a butcher's shop.
- 1.1.3. Edenderry town centre has many empty premises at ground level and discount supermarkets are in evidence on roads on the outskirts of the town.
- 1.1.4. The site given as 0.025ha.

2.0 Proposed Development

- 2.1.1. The proposed development is the change of use from a butchers shop to a pizza and fast food takeaway. The floor area involved is 128 sq m.

3.0 Planning Authority Decision

3.1. Decision

- 3.2. The planning authority (PA) decided to grant planning permission subject to conditions, including:

2) hours of operation.

3) Shopfront

The proposed shopfront shall be in accordance with the following requirements:

Signs shall be restricted to a single fascia sign using sign writing or comprising wither hand painted lettering or individually mounted lettering, without internal illumination (backlighting or halo type lighting is permitted) lighting shall be by means of rear illumination.

The erection of any external roller shutters shall not be permitted.

No display of goods or advertising or storage of goods shall take place outside the premises

No adhesive material shall be affixed to the windows of the shopfront.

The entire shopfront shall be of timber construction

The proposed lighting in the shopfront cornice shall be omitted.

3.3. The decision was in accordance with the planning recommendation.

3.4. **Planning Authority Reports**

3.4.1. Planning Reports

3.4.2. There are two planning reports on the file. The first recommending a request for further information, which issued, includes:

Relevant provisions of the county development plan 2021-2027 are referenced.

Relevant provisions of the Edenderry LAP 2017-2023 are referenced.

3.5. Other Technical Reports

3.5.1. Water Services & Environment – no objection.

3.5.2. Road Design – FI - layout indicating adequate car parking per DMS 102 of the County Development Plan.

3.6. Further Information

3.6.1. A FI request issued 5th July 2022 on two points:

- 1) Referring to DMS 64 hot food takeaways, demonstrate that the proposed development would not: contribute to a proliferation of takeaways; be detrimental to the amenities of nearby residential properties; or, be within 200m distance of an educational establishment.

Additional information regarding:

Opening hours.

Location of vents and external services.

Baseline noise, projected noise, litter control.

Façade design and advertising.

2) Third party submissions; comment.

3.6.2. A FI response was received 28th July 2022, which includes:

Re. proliferation of takeaways – 4 active restaurants within 200m, 3 of which have seating; only one pizza takeaway.

Applicants have previously operated a butcher's shop, delicacy takeaway (hot and cold food), and a catering business to 9pm with no impact.

Traffic will not increase. Next door is a pub and nightclub and there have been no complaints regarding car parking. There is adequate parking in the area and no requirement for further parking.

Not within 200m of an educational establishment.

Opening Monday to Sunday 12 pm to 1 am.

Location of vents and external services side and rear of the building, fitted with an effective kitchen exhaust filtration system. Pre-filters will be fitted to prevent odours. Impact of noise / smell is minimal. Baseline noise and smell established by adjoining restaurant and public house and previous similar use.

Noise has not been an issue for 31 years of operation. The building was upgraded 5 years ago with a sound proof concrete ceiling. The nightclub next door operates until 2am Friday, Saturday and Sunday without complaints.

Litter control measures – reduce packaging where possible, offer incentives for using reusable packaging; keep the area around the premises clean, provide bins on the premises to allow customers dispose of waste responsibly and carry out litter picks regularly and daily.

Façade design matches existing, with a change of name sign.

Response to observations includes reference to noise impact from a premises which did not have sound proofing.

3.6.3. Second planning report, 18th August 2022, includes:

Satisfied with responses.

3.7. Prescribed Bodies

3.7.1. HSE, Environmental Health – no submission to make.

3.8. Third Party Observations

3.8.1. Third party observations on the file have been read and noted.

4.0 Planning History

None stated.

5.0 Policy Context

5.1. Development Plan

5.2. Offaly County Development Plan 2021-2027

Edenderry is a Self-Sustaining Town defined as:

towns which support the regional driver role of Tullamore, and act as important local drivers providing a range of functions for their resident population and their surrounding catchments including housing, employment, services, retail and leisure opportunities. These towns have experienced rapid population growth with high levels of commuter focused residential expansion without equivalent increase in jobs and services. They require consolidation and targeted 'catch up' investment in services, infrastructure, suitable transport options, amenities and local employment whilst balancing housing delivery and focusing on consolidation to become more self-sustaining.

Chapter 13 Development Management Standards refers to Hot Food takeaways under DMS-64.

The development of hot food takeaways will be strictly controlled and will not be permitted where;

- It would contribute to a proliferation or an overconcentration of these uses resulting in the loss of retail and office frontage in town centres;

- It would likely prove detrimental to amenities of nearby residential properties through noise, smell, litter, the visual amenity of the area, and/or give rise to traffic or car parking hazards, either individually or taken account of the potential cumulative effects with existing takeaways in the area; and
- It is within a 200 metres radius of educational establishments and parks. In addition, planning applications shall include:
 - Opening/operational hours of the facility.
 - The location of vents and other external services and their impact on adjoining amenities in terms of noise/smell/visual impact;
 - Existing noise baseline levels, projected noise emissions levels at the boundaries of the site and noise insulation measures proposed;
 - Litter control measures; and
 - Details of façade design, advertising signage and lighting shall respect the character of the street and the buildings.

This list is not exhaustive and the Council may consider other requirements contained in the chapter on a case by case basis with planning applications should the need arise.

DMS 102 – sets out car parking standards including: 1 space per 20m² gross floor area for convenience retail; restaurant / café / takeaway 1 space per 30m² gross floor area.

CSO-02 It is an objective of the Council to zone an appropriate amount of lands within the settlement areas to accommodate the projected population growth as set out in the Core Strategy, including the undertaking of variations or reviews of Portarlington Joint Local Area Plan and Edenderry Local Area Plan which will be prioritised to ensure consistency with the provisions of the Core Strategy.

CSO-03 Where any ambiguity arises between the Core Strategy of the County Development Plan and residential proposals on land zoned to accommodate residential development in Local Area Plans, the County Development Plan shall take precedence, including during the transitional period before the variation of Local Area Plans.

5.3. Edenderry Local Area Plan October 2017 – 2023

Zoned town centre/ mixed use.

G2.4 - Town Renewal and Regeneration Edenderry carries forward a legacy left from the economic downturn that is quite evident in the town centre area in the form of derelict sites and vacancy rates in prime retail and commercial units. Renewal and Regeneration are crucial to the town and this plan puts focus on a number of approaches to tackle these issues.

TCP3 - To encourage retail development including new forms of shopping, which relate to the revitalisation of the existing town centre. Proposals which would undermine the vitality and viability of the town centre because of their location at remove from the town centre area, will not be permitted.

TCP4 - In respect of shopfronts: a) To promote a high standard in design, quality and materials of new shopfronts and to preserve, retain traditional shopfronts of townscape importance and to prohibit facsimile replacement of existing historic shopfronts with mock traditional shopfronts. b) There will be a presumption against shopfronts where by their design, materials, quality or lighting scheme detract from the amenities of the area and do not make a positive contribution to the streetscape. c) Refer to 'Guide to Shops and signs' leaflet, Offaly County Council.

TCP5 - To prohibit the proliferation of any individual use within the town centre which would by way of increased presence and use, detract from the amenities of the area and work against the policy of encouraging appropriate development to contribute positively to the vitality and viability of the town centre.

TCP6 - There is a positive presumption for uses that make a positive contribution to daytime and night-time activities in the town centre including residential uses and cultural activities.

G2.3.1 - Retail - Edenderry is identified as being in the second tier in the retail hierarchy of the Offaly County Development Plan and has a role to provide an appropriate level of comparison and convenient retail for its surrounding hinterland. Enhancing the vitality of the town centre in Edenderry is a key objective of this plan. In this regard a strict approach will be employed on the application of the sequential approach to development to ensure the town centre is not overlooked easily as a

suitable location for retail development. Notwithstanding this, it is considered that no further large-scale out of town retail developments are required within the lifetime of this local area plan. This is consistent with the 2012 Retail Planning Guidelines. Given the nature of the buildings and the urban grain in the town centre area, developers and retailers should be flexible in their approach to the floor plate requirements and where possible adapt to a format suitable for the well established central part of the town.

In a town with notable vacancy rates, the sequential approach should take into consideration floorplate requirements by combining ground floor units.

G2.3.2 Shopfronts Edenderry has many examples of well designed shopfronts contributing positively to enhance the streetscape. Shopfronts provide colour and add variation to main streets, older shopfronts can contain clues of the history of commerce and the development of the town. New shopfronts may reflect a more traditional design or be more contemporary in approach but they should have regard to the features of the building that they front, particularly when they occur in protected structures. The design and materials used for shopfronts should be of high quality and the colour scheme should integrate successfully with that of existing buildings in the vicinity.

G2.4.2. A number of retail units in the town centre have closed while other new retail development has never been occupied. Consequently, retail vacancy rates in the town centre are evident as units take on derelict or neglected appearances, permanently pulled shutters or boarded up windows and doorways. This plan seeks to prioritise the re-occupancy of vacant retail and commercial units in the town centre and to encourage pro-active development initiatives to do this.

5.4. Natural Heritage Designations

- 5.4.1. The River Boyne and River Blackwater SPA (site code 004232) and SAC (site code 002299), c14km straight line distance, are the closest Natura sites.

5.5. EIA Screening

- 5.5.1. Having regard to the nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity 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

- 6.1.1. Two third party appeals, against the planning authority's decision to grant permission, have been received.
- 6.1.2. Jason P Mooney Energy and Planning Consultants submitted the appeal on behalf of Ms Johanna Macari.
- 6.1.3. Jason P Mooney Energy and Planning Consultants submitted the appeal on behalf of Mr Luigi Macari.
- 6.1.4. The grounds include:
- Further information was not uploaded onto the Council's website to allow third parties time to review and consider a reasoned appeal.
 - The lack of technical input from the further information response could not inform a thorough planning consideration.
 - The conditions are inadequate.
 - The third party has operated a takeaway and restaurant business in the adjoining premises.
 - The development without due detail will impact on the area.
 - An additional takeaway is located at 58 JKL Street. There may be oversupply at present.
 - A list of concerns are set out in an appendix to the appeal which include:
Traffic
Internal layout – WC opening into a service area, part M access for disabled, part B means of escape, The streetscape elevations, context of traditional

shopfronts, not sufficiently detailed or conditioned. Doesn't consider the masterplan for the area. Negative impact on residences over the units.

6.2. Applicant Response

6.2.1. The Applicant has not responded to the grounds of appeal.

6.3. Planning Authority Response

6.3.1. The planning authority have responded to the grounds of appeal referring the Board to the technical reports on file and requesting that its decision be supported.

7.0 Assessment

7.1.1. I consider that the main issues which arise in relation to this appeal are appropriate assessment, policy and need, and other issues, and the following assessment is dealt with under those headings.

7.2. Appropriate Assessment

7.2.1. Having regard to the nature and scale of the proposed development, I am satisfied that 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.

7.3. Policy & Need

7.3.1. Concerns raised under this heading include that the development, without due detail, will impact on the area; an additional takeaway is located at 58 JKL Street, there may be oversupply at present; a third party operates a takeaway and restaurant business in the adjoining premises.

7.3.2. The policy context acknowledges that out of town shopping has impacted the town centre. It was apparent from the site visit that numerous instances of vacant ground floor premises exist throughout the town. Services, specialist outlets and evening activities now appear to predominate in the outlets remaining active. A concentration of take-away outlets does not currently exist in the town centre.

- 7.3.3. Policies which seek to avoid the proliferation of any individual use within the town centre, and to restrict take-away use for a distance of 200 metres radius of educational establishments and parks are not breached by this proposal. Policy TCP6 of the Edenderry Local Area Plan October 2017 – 2023, states that there is a positive presumption for uses that make a positive contribution to daytime and night-time activities in the town centre including residential uses and cultural activities. In my opinion the proposed use, of this currently vacant premises, would make a positive contribution to night-time activities.
- 7.3.4. The previous use as a retail outlet (convenience) has a greater parking demand, per DMS 102, than that proposed.
- 7.3.5. In relation to concerns regarding oversupply, a proliferation of take-away use does not exist in the town centre, it is not the role of planning to regulate competition in the market place.

7.4. Other Issues

- 7.4.1. Procedural - It is stated that the further information response was not uploaded onto the Council's website to allow third parties time to review and consider a reasoned appeal. The validity of the process is a matter for the planning authority. There is nothing to suggest that the proper procedure and processes have not been adhered to. Providing access to the paper document remains the principal manner in which a planning application is made accessible to the public.
- 7.4.2. Standard of Development - It is stated that the lack of technical input from the further information response could not inform a thorough planning consideration. The planning authority was satisfied that the proposed development would not impact on the amenities of the area and that information was not required in relation to noise etc in those circumstances. It is stated that there will be a negative impact on residences over the units. This was addressed in the further information response, wherein it is stated that the refurbishment carried out has provided sound proofing for overhead apartments; it is pointed out that the existing context is a public house / nightclub and take away; and that complaints have not been made about these outlets. Having regard to the existing night-time activities in the immediate vicinity of

the site, I am satisfied that there will be no significant impact on the residential amenities of adjacent area.

- 7.4.3. It is stated that the conditions are inadequate, but no specific inadequacy is referred to. In my opinion the conditions have addressed the relevant issues: compliance with the documents submitted, hours of operation and the shopfront.
- 7.4.4. The internal layout has been raised as an issue – the WC opening into a service area, part M access for disabled, part B means of escape. No concerns were raised in any of the planning authority reports on these issues. Building control is a separate process to planning.
- 7.4.5. It is stated that the streetscape elevations, in the context of traditional shopfronts, is not sufficiently detailed or conditioned. In my opinion condition number 2 addresses this matter adequately.
- 7.4.6. It is stated that the development does not consider the masterplan for the area; no details are supplied in this regard. In my opinion the proposed development accords with adopted policies for the area.
- 7.4.7. Traffic / parking is raised as an issue. This was addressed in the further information response, wherein it is stated that there will be no increase in demand for parking over that pre-existing.

8.0 Recommendation

- 8.1.1. Having regard to the foregoing assessment it is considered that the proposed development should be granted for the following reasons and considerations, and in accordance with the following conditions.

9.0 Reasons and Considerations

The proposed change of use, of the former butcher's shop, currently an unoccupied premises, in the centre of the town Edenderry would be in accordance with the policies for the area as set out in the Offaly County Development Plan 2021-2027 and the Edenderry Local Area Plan October 2017 – 2023; would not be within a 200 metres radius of an educational establishment or a park or contribute to a proliferation of take away uses in the town centre or detract from the amenities of the

area; would make a positive contribution to the vitality of the area, in particular to night-time activities; and would be in accordance with the proper planning and sustainable development 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, as amended by further plans and particulars submitted on the 28th July 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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The take-away facility shall not be operated between 01.00 hours and 08.00 hours on any day.</p> <p>Reason: In the interest of the residential amenities of property in the vicinity.</p>
3.	<p>The proposed shopfront shall be in accordance with the following requirements:</p> <p>Signs shall be restricted to a single fascia sign using sign writing or comprising wither hand painted lettering or individually mounted lettering, without internal illumination (backlighting or halo type lighting is permitted) lighting shall be by means of rear illumination.</p>

	<p>The erection of any external roller shutters is not part of the development hereby permitted.</p> <p>No display of goods or advertising or storage of goods shall take place outside the premises</p> <p>No adhesive material shall be affixed to the windows of the shopfront.</p> <p>The entire shopfront shall be of timber construction</p> <p>The proposed lighting in the shopfront cornice shall be omitted.</p> <p>Reason: In the interest of the visual amenities of the area.</p>
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Planning Inspector

27 February 2023

Appendix 1 Photographs

Appendix 2 Offaly County Development Plan 2021-2027, extracts.

Appendix 3 Edenderry Local Area Plan 2017-2023, extracts.