



An
Bord
Pleanála

Inspector's Report ABP315626-23

Development	Change of use from office to retail
Location	River View House, Dublin Rd, Kilkenny
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	22710
Applicant(s)	International Systems and Equipment Ltd.
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party v Decision
Appellant(s)	International Systems and Equipment Ltd.
Observer(s)	None
Date of Site Inspection	19 th April 2023
Inspector	Brendan McGrath

1.0 Site Location and Description

1.1. The site is on a main road in the centre of Kilkenny City, overlooking the River Nore. The bulk of the site is occupied by a vacant, two-storey building facing Dublin Road. There is a narrow vehicular entrance to one side leading to a small parking area to the rear. The site is at the eastern extremity of the John Street Architectural Conservation Area which is predominantly a commercial area of the city that developed in the 19th Century.

2.0 Proposed Development

2.1. The proposal is for a change of use of a 300m² building from office to retail use. The building had been a Coillte office until five years ago and has been vacant since then. The proposal is for a bicycle shop with repair facilities. It comprises a workshop and sales/display area on the ground floor level and a display area on the first floor.

3.0 Planning Authority Decision

3.1. Decision

Refuse permission for the following reason:-

The proposed change of use from office to retail on a site zoned Existing Residential as per the Kilkenny City and County Development Plan 2021 – 2027 would be contrary to the stated objective to protect, provide and improve residential amenities in an area where the proposed retail use is neither a permitted use nor open for consideration within this zoning. The proposed development would therefore be contrary to the proper planning and sustainable development of the area and the residential amenities of the adjoining properties.

The planning authority has not stated that the proposal would contravene materially the development plan.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning report is the basis of the planning authority's decision to refuse permission. The planner's recommendation to refuse is entirely based on the zoning status of the site. The report states that the application was screened for Appropriate Assessment and the screening showed no likelihood of significant effects. The application was also screened for EIA and it was concluded that there was no likelihood of a significant impact

3.2.2. Other Technical Reports

The council's Architectural Conservation Officer notes that the site is in the John Street ACA but states no objection provided that samples of the proposed signage are submitted for agreement

A roads engineer notes that the application does not include any traffic or parking proposals and required details to be provided

4.0 Planning History

P49/90 Permission granted in 1990 for change of use from public hall to offices

5.0 Policy and Context

5.1. Development Plan

The relevant plan is the Kilkenny City and County Development Plan 2021 – 2027. The site is zoned 'Existing Residential' with the objective 'to protect, provide and improve residential amenities'. The Nore River and lands on the bank of the river, which are nearby, are zoned Amenity/Open Space. Retail is not a permitted or 'open for consideration' use in an 'Existing Residential' zone. However, the Plan does make provision for non-conforming uses as follows:-

'Throughout the City and Environs there are uses which do not conform to the zoning objectives for the area. Extensions and improvement of premises accommodating

these uses may be permitted where the proposed development would not seriously injure the amenities of the area or prejudice the proper planning and development of the area. In some cases the Planning Authority may encourage relocation of permitted incompatible uses.'

5.2. Natural Heritage Designations

The nearby River Nore is part of the River Barrow and River Nore SAC and also the River Nore SPA.

5.3. EIA Screening

The proposal is not a project that requires EIA screening

6.0 The Appeal

6.1. Grounds of Appeal

The appeal is lodged on behalf of the first party. The main ground of appeal is that the subject building has never been in residential use. It is asserted that the proposal is a change from one non-conforming use (Coillte offices) to another non-conforming use (bicycle shop) and that the city development plan contains no presumption against such a change of use. It is also asserted that a bicycle shop would generate less traffic than the Coillte offices and therefore have less impact on the local area.

The appeal argues that the site is a good location for a cycle shop as it is in the city centre, directly beside a cycle route and there is an existing cycle shop nearby in Maudlin St. The proposal would bring into active use a building that has been vacant for five years and this would be to the benefit of the security of adjacent houses.

The appellant is also asserting that, in the event of a grant of permission, a development contribution should not be payable as the change of use would not give rise to an increased demand for services.

6.2. Planning Authority Response

None received

7.0 Assessment

7.1. Having examined all the application and appeal documentation on file, and having regard to relevant policy and guidance, I consider that the main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The main issues therefore are:-

- The design and use of the building,
- The historic and aesthetic character of the building,
- Residential amenity and traffic
- Development contribution scheme
- Compliance with the Kilkenny City Development Plan and
- Appropriate Assessment

7.2. The design and use of the building

The building appears not to have been designed for residential use and has never been used for that purpose, It has been vacant for about five years. Other than the zoning objective there does not appear to be a valid reason for reserving the building for a residential use.

7.3. The historic and aesthetic character of the building

While the building is in the John Street ACA it does not feature in the description of the ACA in the development plan and the council's Architectural Conservation Officer has raised no objection to the proposal but requested signage detail to be agreed in the event of a permission.

7.4. Residential amenity and traffic

It is argued by the appellant that the bicycle shop would be a less intensive use than the former Coillte office by virtue of reduced levels of vehicular traffic at the site. But the scope for on-site parking is very limited, and in the event of a grant would have to be restricted to use by staff only. The appellant makes the reasonable argument that

permitting a new active use in place of a vacant building would create a more secure environment to the benefit of the residential amenity of adjacent housing.

7.5. Development Contribution

The applicant/appellant has asserted that, in the event of a grant of permission, there should be no requirement to make a development contribution. I agree that the change of use from offices to a cycle shop would not necessitate upgraded infrastructure. The current Kilkenny Development Contribution Scheme states:

Where a planning permission is issued for a change of use, the Planning Authority may consider a waiver of the development charge or part thereof where the change of use does no lead to the need for new or upgrade infrastructure/services.

7.6. Compliance with the Kilkenny City Development Plan

The local planning authority has refused permission solely on the ground of contravening the residential zoning objective of the city development plan. In my opinion this is not a sufficient reason to refuse permission when it concerns a building which is not designed as a residential building and has never been used for such purpose.

7.7. Appropriate Assessment

Having noted the council's planning report stating that a screening exercise had been undertaken and concluded that no significant environmental impact was likely and having regard to the nature of the proposal, its location in the city centre and the absence of direct hydrological connections, I consider the potential of likely significant effects on European Sites arising from the proposed development, alone or in combination effects, can be reasonably excluded.

8.0 Recommendation

I recommend that planning permission be granted for the reasons and considerations set out below and subject to the following conditions.

9.0 Reasons and Considerations

Having regard to the fact that the proposal relates to a non-residential building and to the nature of the use proposed, and notwithstanding its location within a residential zone, it is considered that subject to compliance with the conditions set out, the proposed change of use would respect the existing character of the area, would not seriously injure the residential or visual amenity of property in the vicinity and would be acceptable in terms of traffic safety. The proposed development would, therefore, 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 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>Details of signage shall be agreed in writing with the planning authority prior to occupation</p> <p>Reason: In the interest of the visual amenity of the Architectural Conservation Area</p>
3.	<p>On-site parking shall be for staff use only.</p> <p>Reason: in the interest of traffic safety</p>

Brendan McGrath
Planning Inspector

2nd May 2023