



An
Bord
Pleanála

Inspector's Report ABP316072-23

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| Development | Retain change of use from betting office to restaurant use with take away and deli. Retain existing signage on temporary basis and permission to erect replacement hand painted signage |
| Location | Market Street, Kenmare, Co Kerry. |
| Planning Authority | Kerry County Council. |
| Planning Authority Reg. Ref. | 22/867. |
| Applicant(s) | Keith Moloney. |
| Type of Application | Retention and permission. |
| Planning Authority Decision | Grant of retention and permission. |
| Type of Appeal | Third Party |
| Appellant(s) | David Marsh (PP Andrew Marsh). |
| Observer(s) | None. |
| Date of Site Inspection | 17 th August 2023. |
| Inspector | Ann Bogan. |

1.0 Site Location and Description

- 1.1. The development is located on the ground floor of a two-storey corner building at the north eastern end of Market Street/The Square, Kenmare. The main entrance to the ground floor premises is on the corner, off the Square and there is a separate access to the upper floors, off Market Street. The premises also has frontage onto a gated lane to the west.
- 1.2. The building has an attractive dressed limestone façade to the Square, a plaster finish on the Market Street elevation and rubble limestone walls to the laneway and to the rear. The south west elevation adjoins a dwelling (the appellants'), which fronts onto Market Steet

2.0 Proposed Development

- 2.1. The development description initially submitted by the applicant was for:

'Retention of change of use of a shop to a restaurant as constructed and change of use of adjoining shop to restaurant with carry out facility ancillary to restaurant at Market Street Kenmare'.
- 2.2. Further information requested clarification of the use, as the permitted use of the ground floor was for a betting office, while on-site inspection showed the premises had been divided into a restaurant and a veterinary pharmacy/clinic, and an unacceptable sign had been erected for the restaurant for which no details had been submitted with the application.
- 2.3. A revised description was submitted, taking account of the fact that work had gone ahead on converting the veterinary pharmacy/clinic to a restaurant/takeaway in the meantime. Revised ground floor plans and revised elevation drawings, as well as first floor plans were submitted.
- 2.4. Details of the temporary and proposed permanent signage were also submitted and clarification that the first floor is in use as a separate apartment. Clarification was provided that a dehumidifier is to be installed to cool the kitchen area and that the skylight will no longer be opened.
- 2.5. The main aspects of the development under the revised description are:

- Retention of change of use from a betting office (permitted under Kerry County Council Planning Reg 04/4183) to a restaurant with take away and deli, with hours of operation from 10am to 10pm. Layout shows an entrance from the Square, which then divides into separate internal entrances to a sit-down restaurant area and a takeaway/deli area with some seating.
- The description also includes 'all ancillary site works'. A steel flue has been erected on the roof of the rear extension to serve the pizza oven and is indicated on the drawings submitted.
- Retention of existing signage on a temporary basis
- Planning permission to erect new replacement hand painted shop signage

3.0 Planning Authority Decision

3.1. Decision

Grant permission subject to 7 conditions.

- Condition 2 required removal of the skylight within 3 months of the date of permission,
- Condition 4 that the existing shop front signage be removed within 3 months of the grant of permission,
- Condition 5 opening hours to be confined to 10am to 10pm.
- Condition 7 required the new hand painted sign to be erected within 3 months of permission

3.2. Planning Authority Reports

3.2.1. Planning Reports

First Planning Report: Planning Officer noted the site is within an Architectural Conservation Area and has a mixed-use Town Centre Zoning and noted the submission from a third party. Further information was requested as outlined in Section 2.0 above.

Concluded that Appropriate Assessment is not required and an EIA or EIA screening was ruled out by way of preliminary examination.

Planning Report 23 February 2023: Further information received on 5th Jan 2023 and 31st Jan 2023 and the Planning Officer was satisfied that the further information response and the further clarification response addresses all the issues raised by the Planning Authority and that the development 'would not be visually obtrusive or seriously injure the amenities of the area' and recommended permission subject to conditions. The decision of the Planning Authority reflects the Planning Officers recommendation.

3.2.2. Other Technical Reports

Archaeologist – no mitigation required

3.3. **Statutory consultees**

HSE: no objection from a public health viewpoint. Applicant advised to contact Environmental Health Service

Uisce Eireann: No objection

TII: no issues raised

3.4. **Third party submission**

Submission by adjacent resident raised issues concerning level of noise created by the development coming from an open skylight in the kitchen area of the restaurant and also raised concerns re fire hazard. A second submission following receipt of further information was not accepted as it was late.

4.0 **Planning History**

4183/04 Permission granted for change of use of ground floor of premises from hairdresser to licenced betting office, shopfront alterations, satellite dish and air conditioning unit.

5.0 Policy and Context

5.1. Development Plan

Kenmare is designated as a Regional Town in the Kerry County Development Plan 2022-2028 Core Strategy.

The subject building is located within the Kenmare Architectural Conservation Area and covered by the following Development Plan Objective:

Architectural Conservation Area (ACA) It is an objective of the Council to:

KCDP 8-44 Ensure developments in an ACA have a positive impact on the intrinsic character of the area, respect the existing streetscape and layout, and are compatible in terms of design, materials, traffic, views, and intensity of site use.

A new Kenmare Municipal District Local Area Plan is in preparation but not yet available. The site is zoned Town Centre in the Kenmare Municipal District Local Area Plan 2010-2016 and a wide variety of mixed uses appropriate to the town centre are permitted, provided they would not unduly affect the character, quality and amenity of the town. Hours of opening takeaways will be restricted and will be assessed in the context of the existing level of provision.

5.2. Natural Heritage Designations

None

5.3. EIA Screening

5.4. Having regard to the nature and modest scale of the proposed development, its location in a built-up urban area and the likely emissions therefrom it is possible to conclude that the proposed development is not likely to give rise to significant environmental impacts and the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

6.0 The Appeal

6.1. Grounds of Appeal

- Fire hazard due to chimney flue protruding through flat wooden roof adjacent to appellants property, and associated insurance complications
- Chimney flue rises 20 ft from ground, 8 ft from bedroom windows, concerns re its appearance and the health implications. Smoke from flue enters the bedroom on occasion, which is a health and safety issue
- Concern that metal chimney flue is not earthed, resulting in risk from lightning and enhancing fire risk, and such a fire might not be covered by insurance
- Noise pollution from kitchen area which intrudes on our living space in a residential area. Such noise should be strictly controlled, particularly in evening/night
- Don't object to restaurant, takeaway deli at this location per se, provided pedestrian traffic enters and leave the premises by the Square and not Market Street or laneway to rear of their house
- Refers to enforcement proceedings by Kerry Co Council in relation to the premises
- Copies of previous correspondence to Kerry Co Council and owner and occupier of the premises are enclosed with the appeal

6.2. Applicant Response

- None

6.3. Planning Authority Response

- None

6.4. Observations

- None

7.0 Assessment

7.1. Having considered the documentation submitted with the application and the appeal, the Development Plan and Local Area Plan policies and having visited the site I believe the main issues to be assessed are:

- Principle of the development
- Shopfront signage
- Impact on amenities of nearby properties
- Appropriate Assessment

7.2. Principle of the Development

7.2.1. The proposed development consists of a change of use from betting office to a sit - down restaurant with associated take away and deli, with its entrance off the Square, and it is within the Kenmare Architectural Conservation Area. I note the upper floors are in use for residential purposes, accessed from a separate entrance off Market Street. I consider the proposal acceptable in principle in this town centre location.

7.3. Shopfront signage

7.3.1. The premises has an existing timber shopfront with brackets and fascia. The signage erected on the front of the building for which temporary permission is sought consists of a wooden board, with metal or plastic letters affixed, superimposed on the timber fascia. It is out of keeping with the character of the building, is not acceptable in the Architectural Conservation Area and does not conform with the Kerry County Council Shopfront Design Guidelines 2018. In my opinion, the proposal to replace this with a name sign painted onto the existing fascia in keeping with the existing timber shopfront is acceptable.

7.4. Impact on amenities of nearby properties

7.4.1. The building is in the town centre commercial area however it is also adjoining residential uses on Market Street and has residential uses overhead. Inclusion of a

condition limiting the hours of operation of the restaurant and takeaway is recommended, to minimise potential negative impact on residential amenities.

- 7.4.2. There is a large skylight in the flat roof of the kitchen to rear of the restaurant which was shown in plans for the previous planning permission (04/4183). I therefore assume it is pre-existing from when the room was part of the staff facilities for the betting office. I note the skylight is significantly larger in reality than shown on the plans submitted with the current application.
- 7.4.3. The appellant raises concerns about loud noise levels emanating from the kitchen when the skylight is open, impacting on residential amenity. The applicant under further information, indicated the skylight was sometimes opened to vent the heat in the kitchen and undertook to install an alternative mechanism internally to reduce heat and the skylight will no longer be opened. A condition requiring the skylight to be fixed in a permanently closed position is recommended to help to reduce the noise levels in the vicinity.
- 7.4.4. The appellants raised fire safety, health, insurance and appearance concerns about a steel flue which has been installed in the flat roofed rear extension, to take smoke from the pizza oven in the kitchen area. The flue is not referred to in the revised site notice, but could be considered to be included in the reference to 'all ancillary site works.'
- 7.4.5. The flue is free standing, approximately 6.5m in height and I estimate that it is approximately 3m to 3.5m from the adjoining house and a similar distance from the kitchen window of the first floor apartment above the restaurant. I note the drawings of the rear of the building (in particular the rear part of the first floor plan and flat roof plan and the rear and side elevation drawings) contain inaccuracies, and do not fully reflect the situation on the ground. I have estimated the skylight and flue's location from on-site observations and the location of the skylight from drawings accompanying the previous application on the site, 04/4183.
- 7.4.6. The flue is visually obtrusive when viewed from the adjoining dwelling, the upper floor apartment and the adjoining laneway which is used for outdoor seating for an adjacent restaurant, although is not visible from the Square. The site is within an Architectural Conservation Area and the free-standing flue, as situated, cannot be considered as a development which would have 'a positive impact on the intrinsic

character of the area', as required under Development Plan objective KCDDP 8-44. In my opinion, it has a negative impact and is out of keeping with the character of the Conservation Area. The flue would be less obtrusive if affixed to the rear gable of the property rather than free standing, and raised to the level of the chimney to dissipate smoke at a higher level. If permission were to be granted for the flue, a condition requiring its relocation with details to be agreed by the Planning Authority, would help address visual and residential amenity concerns.

7.4.7. However, it may be unsafe to grant permission for the flue due to the inadequacy of the drawings which show it further from the nearby dwelling than was observed on site. I recommend therefore that the flue be omitted by condition. It would need to be the subject of a separate planning application for retention.

7.4.8. Fire safety issues raised by the appellant are outside the remit of An Bord Pleanála and fall to be considered under separate legislation, and planning enforcement concerns are the responsibility of the Planning Authority.

7.5. Appropriate Assessment Screening

7.6. Having regard to the nature and scale of the proposed development, the nature of the foreseeable emissions therefrom, the nature of receiving environment as a built-up urban area and the absence of a pathway between the application site and any European site it is possible to screen out the requirement for the submission of an NIS and carrying out of an EIA at an initial stage.

8.0 Recommendation

8.1. I recommend permission be granted to retain the change of use to restaurant, deli and takeaway and that planning permission be granted to erect a new shopfront sign, subject to the conditions below.

9.0 Reasons and Considerations

Having regard to the town centre location of the development, the mixed use zoning of the site, the provisions of the Kerry County Development Plan and the Kenmare Functional Area Local Area Plan 2010-2016, and the location of the site in an Architectural Conservation Area, it is considered that subject to compliance with the

conditions set out below, the retention of the change of use to a restaurant, incorporating take-away and deli, and permission for the new proposed shopfront signage, would not seriously injure the visual or residential amenities of the area and therefore would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

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| 1. | <p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 5th of January 2023 and on the 31st January 2023, 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 development shall be operated only between the times of 10am and 10pm.</p> <p>Reason: In the interests of residential amenity</p> |
| 3. | <p>The skylight in the kitchen shall be fixed in a permanently closed position.</p> <p>Reason: In the interests of residential amenity</p> |
| 4. | <p>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</p> |

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| | <p>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.</p> <p>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.</p> |
| 5. | <p>The existing shopfront sign shall be removed within 3 months of the date of this grant of the retention permission.</p> <p>Reason: In the interests of the visual amenity of the area</p> |
| 6. | <p>The proposed new hand painted shopfront sign shall be erected with 3 months of date of this grant of permission and the planning authority shall be notified in writing when the works have been carried out.</p> <p>Reason: In the interests of the visual amenity of the area.</p> |
| 7. | <p>The retention of the chimney flue installed in the flat roofed rear extension is excluded from this permission.</p> <p>Reason: In the interests of visual and residential amenity and due to the inadequacy of the drawings as submitted.</p> |

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.

Ann Bogan
Planning Inspector

7th September 2023