



An
Bord
Pleanála

Inspector's Report

ABP 316246-23

Development	Change of use of retail ground floor and part basement element of approved development (D18A/1118) to restaurant use.
Location	3 Kilbogget Villas, Old Bray Road, Cabinteely, Dublin 18.
Planning Authority	Dun Laoghaire Rathdown Co. Council.
Planning Authority Reg. Ref.	D22A/0526.
Applicant(s)	West Group Investments Limited.
Type of Application	Permission.
Planning Authority Decision	Refuse Permission.
Type of Appeal	First Party.
Appellant(s)	West Group Investments Limited.
Observer(s)	Andy Kirwan & Jack O'Callaghan
Date of Site Inspection	20 th day of January 2024.
Inspector	Ann O'Leary.

1.0 Site Location and Description

- 1.1.** The subject site is located within Cabinteely Village Centre on the North East side of Kilbogget Villas, Old Bray Road, and forms part of a terrace of commercial units on a corner to the southeast at the junction of the Old Bray Road, Brennanstown Road and Johnstown Road. The existing (vacant) property fronts onto the public footpath with outdoor dining facilities and public road and does not benefit from off street parking facilities. The site is bounded by a mix of residential and commercial units, a private gated laneway and yard to its rear which are accessed from the Johnstown Road.

2.0 Proposed Development

The proposed development involves a change of use of the retail ground floor (circa 464 m²) and part basement element of an approved development (planning reference (D18A/1118 Reg Ref 303723-19) to restaurant use.

3.0 Planning Authority Decision

3.1 Decision: Permission Refused for the Following 3 Reasons;

1. The proposed change of use from retail to restaurant would involve the loss of a significant quantum of permitted retail space within Cabinteely Village and would adversely impact on the variety of uses available within the Neighbourhood Centre;
2. The proposed ventilation system, given its location, would adversely impact on the residential amenity of the permitted and existing dwelling units;
3. The proposal is contrary to the 'NC' Zoning Objective and to Policy Objectives MFC 1 and RET 7 of the Dun Laoghaire Rathdown County Development Plan 2022-2028.

Planning Authority Reports.

Environmental Enforcement

Recommends requesting two items of further information;

- (1) Operational Waste Management; a detailed operational waste management plan is necessary together with an appropriate rodent / pest control plan.
- (2) Details of the proposed ventilation system and proposed measures to reduce noise and odour nuisance.

Transportation planning:

No objection to the proposed development subject to two standard conditions.

Drainage Planning:

No objection on condition that all drainage related conditions of the parent application apply.

Environmental Health Officer

Recommends that further information is sought in respect of Operational Noise and Waste Management. Report as follows:

(1) Operational Noise:

This should report on the potential impact of noise during the operational phase of the proposed restaurant. Clearly audible and impulsive tones at noise sensitive locations during evening and night should be avoided irrespective of the noise level.

(2) Waste Management:

The plan shall provide for adequate storage for waste disposal and recycling facilities on site to the satisfaction of the county council and should include estimates for each type of waste / recycling that the proposed restaurant will produce to ensure adequate facilities are provided. Storage facilities must be pest-proof and adequately serviced with the water supply, drainage and ventilation.

Other Technical Reports: None.

4. Planning History

(D18A/1118; ABP Ref. 303723-19) planning permission granted by An Bord Pleanála in September 2019 for demolition of the existing building on site and construction of a new building, part 2 storey / part 3 storey, to the rear with a ground floor retail unit and three 2 bed-roomed apartments above ground floor; an internal courtyard, roof terrace, private amenity space provided by balconies, refuse storage, cycle storage and all other ancillary works. The basement is proposed to provide ancillary storage and services to both retail and residential uses.

D20A/0571: Permission refused by the planning authority and ABP for the addition of two floors / two-bedroom apartments total area 190 m² with balcony front and rear to the rear of the three-storey section of the approved development (D18A/1118 – ABP 303723). The proposed development would increase the approved gross area to 1165 m² and apartment numbers from 3 to 5. Permission was refused for the following reasons: (1) The proposed development fails to respect the site context; (2) It would be overbearing and result in overshadowing to the adjacent residential property. (3) It would be contrary to the provisions of the DLR CDP 2016-2022 in respect of visual and residential amenity.

D21A /0611 permission refused by the planning authority for amendments of a previous permission D18A/1118 and ABP – 303723–19 as follows:

- (1) The replacement of the ground floor retail space with 2 X 2 bed-roomed apartments. Reasons for refusal were; (1) The single aspect north facing unit would provide substandard residential amenity;
- (2) There would be significant overlooking from the balcony of apartment number three.

5. Policy Context

5.1 Development Plan

The subject site is located within an area zoned as a Neighbourhood Centre 'NC' in the Dun Laoghaire Rathdown Development Plan 2022-2028 under which restaurant use is permitted in principle; the main issues for consideration are compliance with development plan policy, visual impact, residential amenity, access, parking and drainage.

The following chapters of the county development plan 2022-2028, are relevant to the proposed change of use from retail unit to restaurant use.

Chapter 4: Villages and Neighbourhoods: Policy Objectives PHP 4:

Chapter 7: Towns Villages and Retail Development: Policy Objective MFC 1; Multifunctional Centres: Policy Objective RET 7. Neighbourhood Centres.

Chapter 12 Development Management: Section 12.2 Climate Action, 12.3 Neighbourhood, 12.6.5 Fast Food Outlets / Takeaways / Restaurants.

5.2 Natural Heritage Designations: None.

5.3 EIA Screening

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 The Appeal

Grounds of Appeal

- The planning authority has confirmed that the proposed change of use is acceptable in principle as restaurant use is permitted in this area zoned Neighbourhood Centre.
- Policy Objective RET 7 of the DLRCC's Development Plan 2022-2028 supports the provision of an appropriate mix, range and type of uses including retail and retail services in areas zoned objective NC subject to the protection of the residential amenities of the surrounding area. This clearly allows for a mix of appropriate uses *without setting any targets for particular uses* seeking to ensure that there is retail and retail service uses provided for.
- A survey of all uses within the Cabinteely Neighbourhood Centre undertaken in March 2023 confirms there is an existing appropriate mix of uses in the Neighbourhood Centre which includes retail and retail services uses complying with Policy Objective RET 7, combined these equate to 21% of all uses within Cabinteely Neighbourhood Centre
- Uses falling under the 'Other' category include the Church, Post Office, Garda Station, and Dentist, demonstrating that there is a wide variety of services and amenities within the Neighbourhood Centre.
- The proposed use as a restaurant, operating as a café / wine bar with intended hours of operation from 0800 to 2230 will result in Food and Beverage use making up only 21% of all uses within the Neighbourhood Centre.
- There is an existing diverse mix of retail and retail services within the Cabinteely Neighbourhood Centre which are complemented by the proposed development and these are consistent with policy objectives MFC 1 Multifunctional Centres and RET 7 Neighbourhood Centres which seek to provide for a variety of uses that meet the needs of the community they serve.
- A noise impact assessment report submitted in response to the planning authority's request for further information and an updated noise impact

analysis report submitted as part of this first party appeal state that there will be no unacceptable impact on existing and permitted residential properties in terms of noise from the proposed ventilation system.

- The noise report also considers an additional measure, should ABP deem it necessary, to secure nighttime noise levels compliance the use of fans could be restricted after 23:00 hours or restrict the use of the fans after 23:00 hours to a maximum of 30% RPM
- The premises has been vacant since 2017 and brings no economic or social benefit to the community; there has been no substantive interest in its use for retail as the internal configuration and size (464sqm) makes it unattractive for small retailers however these features make it ideal for restaurant use.
- Strong competition within walking distance from convenience and comparison stores diminish its attractiveness for retail use together with lack of footfall and parking.
- The proposal for change of use from retail to restaurant seeks to occupy vacant floor space and bring it into beneficial economic and social use.
- The proposed restaurant would provide a versatile service providing a café style ministry during the morning and afternoon and transitioning to a wine bar / restaurant in the evening with operating hours from 0800-2230hrs.
- The appeal site is well located in terms of public transport.
- Taking policy objective MFC.1 into consideration it is apparent that existing provision of retail in the area and diverse mix of uses within the Neighbourhood Centre meet the needs of the community.
- Policy objective RET 7 which requires the provision of an appropriate mix, range and type of uses including retail and retail services in areas zoned 'NC' is similarly supported by the proposed use as the Neighbourhood Centre
- It is therefore concluded that the Neighbourhood Centre benefits from an excellent mix, range and type of retail uses.

6.2 Planning Authority Response

“It is considered that the grounds of appeal do not raise any new matters which, in the opinion of the Planning Authority, would justify a change of attitude to the proposed development”

Observations.

The proposed restaurant could potentially operate seven days per week from early morning to late evening which would adversely impact residential amenity for existing and future residents in respect of noise, odour and visual amenity.

- Additional noise from the restaurant during operational hours (0800-2230 hours) would adversely impact residential amenity of existing and future residents.
- Additional noise from the ventilation system would adversely impact residential amenity of existing and future residents.
- The proposed odour filtration system may not adequately eliminate cooking odours from seeping into existing and future residential properties.
- A visual impact assessment report was not submitted to enable a thorough appraisal of the visual impact of the roof plant.
- Roof structures to accommodate the kitchen ventilation system will adversely impact the visual amenity of the roofline detailed in the approved permission, D18A/1118 / ABP Ref; 303723.
- The kitchen extraction system which is a large unit will be higher than the second-floor flat roof parapet above the approved apartments, will be highly visible over the wider area and will create a much greater sense of overlooking and overbearing by the building as a whole.
- The proposed roofline will diminish the visual amenity of the ‘townscape’ from the public realm.
- The proposed change of use does not support the principle of promoting a variety of uses within the village in line with the county development plan as there are a number of vacant restaurants in the village centre.

Other Issues

The access laneway and retaining walls to the rear of the building and the drainage system are in private ownership.

- Additional traffic movement along the laneway together with the lack of a turning area within the application site would result in delivery trucks and vans reversing out onto the Johnstown Road which would endanger pedestrian and road traffic safety.
- The condition or capacity of existing drains for the additional loading associated with the proposed restaurant has not been established.
- Alternative options to reroute the drainage system have not been submitted.
- If the lift mechanism is not to be in conflict with condition 9 of the approved permission D18A/1118 / ABP Ref 303723 (*"no additional development shall take place above roof parapet level unless authorized by a further grant of planning permission"*) it may be necessary to provide a further basement excavation to accommodate a hydraulic lift.
- Car-parking spaces are not provided which will lead to an intensification of on-street parking and create an unsafe public area.
- Details have not been submitted on how the root system of street-trees and the water table will be protected from the adverse impact of excavation works.

6.1 Further Responses

- None.

7. Assessment

Planning permission was refused for the following reasons:

- The proposed change of use from retail to restaurant would involve the loss of a significant quantum of permitted retail space (464sqm) and would therefore adversely impact on the variety of uses available within the Neighbourhood Centre.

- The proposed ventilation system, given its location, would adversely impact on the residential amenity of the permitted and existing dwelling units.
- The proposal is contrary to the 'NC' Zoning Objective and to Policy Objectives MFC 1 and RET 7 of the Dun Laoghaire Rathdown County Development Plan 2022-2028.

The site is subject to zoning objective NC under which restaurant use is permitted in principle: the main issues to be considered are; compliance with policy, residential amenity, visual impact, access, drainage and parking.

Policy

The proposal comprises amendments to an approved development (D18A/1118 APB – 303723–19) for a change of use from retail to restaurant at ground floor level with associated ancillary areas including kitchen, storage and waste-storage areas at basement level. Cognisance was taken of the NC zoning objective of the site and the residential component permitted on the upper floors.

Concerns in respect of the impact of the proposed development on the existing mix of land uses and activities in the area arise as there are a number of existing restaurants / cafés / takeaways and a public house both in Cabinteeley Village Centre and within walking distance.

Policy objective MFC 1 states..." *it is the policy objective of the council to embrace and support the development of the county's major town centres, district centres and neighbourhood centres as multi-functional centres which provide a variety of uses that meet the needs of the communities they serve*".

Policy objective RET 7 Neighbourhood Centres states; " *It is a policy objective of the council to support the development of the neighbourhood centres as the focal point of the communities and neighbourhoods they serve, by way of the provision of an appropriate mix, range and type of uses– including retail and retail services – in the area zoned objective 'NC' subject to the protection of the residential amenities of the surrounding area*".

Section 12.6.5 of the CDP states “The following criteria will be taken into account in the assessment of development proposals for Fast Food / Takeaway outlets, including those with a Drive Through facility, and where relevant, for Restaurants”.... “regarding the possible proliferation of certain premises that could cause disturbance or nuisance”.

Permission has been sought and refused for the change of use of the retail element of the ground floor and part basement of an approved development from retail to restaurant. The planning authority states that the proposed change of use from retail to restaurant is contrary to the provisions of policy objectives MFC 1 and RET 7 Neighbourhood Centres of the DLRCC Development Plan 2022-2028 which seeks to protect, provide for and / or improve mixed use Neighbourhood Centre facilities subject to the protection of residential amenities of the surrounding area.

The proposed change of use would significantly reduce the quantum of permitted retail space (by 464sqm) within Cabinteeley Village Neighbourhood Centre and this reduction would adversely impact on the variety of uses which would be available to meet community needs within the lifetime of the CDP; The proposed change of use would limit availability for future retail opportunities.

The appellant argues that the subject site has been vacant since 2017 due to changing shopping patterns, (online shopping), competition from nearby District Centres including Cornelscourt (a 15 minute walk) and a general lack of footfall within the village centre there is not a strong demand for retail.

The proposed change of use would bring the number of food and beverage premises within the village centre up to 21% of the total land-use and would serve community needs by providing a different type of ministry with further opportunities to socialize.

Cognisance must be taken of the nonspecific nature of policy objectives MFC 1 and RET 7 in that no targets have been identified for different uses and that the food and beverage sector in Cabinteeley Village Centre will reach a total of 21% of land uses if permission is allowed. The internal size and configuration of the retail unit has been identified by the appellant as ideal for restaurant use.

Notwithstanding the points made in the appeal I consider that the loss of retail space would significantly reduce the quantum of retail space available in the

neighbourhood centre and thereby reduce the centre's effectiveness as a retail destination in the village and for its hinterland. Furthermore, the planning authority's objective set out in the County Development Plan to maintain retail use as the primary land use in neighbourhood centres is reasonable and the proposed development would undermine that objective. I conclude, therefore, that the proposed development would be contrary to the objectives set out in the current County Development Plan.

Residential Amenity.

It is proposed to install the necessary infrastructure on the second-floor roof of the approved 'parent' development D18A/1118-ABP 303723-19. The planning authority states that these installations will adversely impact residential amenity by giving rise to (1) noise, impacting on recreational amenity space, and the visual amenity of the area. The proposed change of use necessitates the installation of a ventilation system, odour management unit and noise abatement fixtures.

A noise impact analysis report was submitted to the planning authority and updated for this appeal with mitigation measures and calculations offered for consideration. Both versions of the report conclude that with mitigation measures the noise impact on neighbouring premises will be below EPA thresholds and comply with EPA standards. With mitigation measures the proposed development would adversely impact upon future residents' enjoyment of the development's own second floor amenity space and courtyard area as the noise level will be marginally above the required EPA nighttime guidelines. The noise assessment report also considers an additional measure, should the Board deem it necessary, to secure nighttime noise levels compliance the use of fans could be restricted after 23:00 hours or restrict the use of the fans after 23:00 hours to a maximum of 30% RPM.

The submitted roof plan drawing details the provision of plant at roof level which includes an Odour Outdoor System with a stated dimension of 2420 (L) x1537W X 748H mm. This rooftop area was permitted as a roof garden area D18A/1118 - ABP 303723-19. The applicant has not sought permission for the material change in use of this permitted amenity area. The proposed siting of ventilation and other plant in an amenity area is unacceptable.

Changes necessary to accommodate the kitchen ventilation infrastructure and other fixtures to mitigate noise and odours would reduce residential amenity of future residents by their installation in the area designated 'roof garden' of the approved development.

The installation of plant with the dimensions noted above will be visible above the second-floor parapet from both the public realm and sections of the development's own units and could adversely impact visual amenity. Elevational drawings have not been submitted to facilitate a visual assessment. Nevertheless, I am satisfied that the proposed development would be intrusive in views from the public realm.

Notwithstanding the points made in the appeal I conclude that the positioning and proximity to residential uses of the equipment required by the proposed restaurant use would give rise to unacceptable levels of noise and odour that would seriously injure the residential amenity of nearby property.

Visual Impact.

Visual amenity of the streetscape / townscape would be compromised as changes to the skyline due to the installation of the ventilation, noise abatement and filtration system fixtures on the roof would be visually obtrusive and be in conflict with condition 9 of the approved development; elevational drawings have not been submitted for consideration.

Additional Issues considered.

Maturing trees on the Old Bray Road within the village centre together with the water table could be adversely impacted by excavation work for the basement element of the development. Further concerns relate to the mature trees at the boundary wall of the laneway; no report was noted from the Parks Department.

Access to the site during and post construction work, and to service the restaurant would be via a narrow-gated laneway (*in private ownership but over which the applicant claims a right of way*); there is no turning point for vehicles and these will have to reverse onto the public footpath and road on the Johnstown Road. Transport

Planning has no objection to the proposed change of use subject to the inclusion of two standard conditions.

The impact of excavation and construction on the party boundary wall (in private ownership) along the laneway has not been addressed.

There is no provision for off-street parking facilities for the proposed restaurant; a relaxation of rules in the CDP were applied for the approved development subject to conditions which are not transferable to the proposed change of use. Existing on-street parking spaces are inadequate to meet the requirements of the proposed restaurant.

It is proposed to discharge restaurant waste into the existing drainage system (*in private ownership*) and to connect these to the combined sewer on the Johnstown Road. Neither their condition nor their capacity to accommodate the increased load from the proposed restaurant have been established. Similarly, the increase in water supplies necessary to meet the needs of the kitchen, together with staff and customer toilets have not been established however there has been no objection from the Drainage Department to the proposed change of use subject to compliance with all the conditions attached to the parent permission.

The applicant's 'Right of Way' to traverse the private laneway for access to the rear of the proposed restaurant together with private ownership of the drainage system and boundary walls is considered a civil matter under the provisions of S.34 (13) of the Planning and Development Act 2000 (as amended) and is not considered in this assessment.

Cognisance is also taken of concerns regarding the party wall and access issues as raised by third party submissions. In this instance the principle of the development has been permitted under D18A/1118 – ABP 303723–19 and it is not under consideration in this appeal. The use of the laneway for refuse collections is noted and it is further noted that the applicant states he has a right-of-way over same. This use / ownership of the laneway is considered to be a civil matter under which the

provisions of S.34 (13) of the 2000 act (as amended) in respect of same are available for resolution of these issues.

8. Recommendation

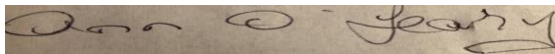
8.1 I recommend that planning permission be refused for the reasons and considerations set out below.

9. Reasons and Considerations.

1.	The proposed development is located in Cabinteely village in an area zoned NC – neighbourhood centre in the Dun Laoghaire Rathdown County Development Plan 2022-2028. It is an objective of the planning authority to support the development of neighbourhood centres as multi-functional centres which provide a variety of uses that meet the needs of the communities they serve and to support the provision of an appropriate mix, range and type of uses – including retail and retail services – subject to the protection of the residential amenities of the surrounding area. The proposed change of use from retail to restaurant would lead to the loss of a significant quantum of permitted retail space (464sqm) and would therefore adversely impact on the variety of uses available within the Neighbourhood Centre, would undermine the objectives of the planning authority to support the development of neighbourhood centres set out in the current Dun Laoghaire Rathdown County development Plan and would, therefore, be contrary to the proper planning and sustainable development of the area.
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2.	The proposed ventilation system, given its location, would seriously injure the residential amenity of the nearby residential uses.
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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 O'Leary
Planning Inspector

25th Day of March 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP 316246-23			
Proposed Development Summary	Change of use of retail ground floor and part basement element of the approved development (planning reference D18A/1118) to restaurant use.			
Development Address	3 Kilbogget Villas, Old Bray Road, Cabinteeley, Dublin 18.			
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes		
		No x	No further action required	
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?				
Yes		Class.....	EIA Mandatory EIAR required	
No	x		Proceed to Q.3	
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?				
		Threshold	Comment (if relevant)	Conclusion
No	x	N/A		No EIAR or Preliminary Examination required
Yes		Class/Threshold.....		Proceed to Q.4

4. Has Schedule 7A information been submitted?

No	x	Preliminary Examination required
Yes		Screening Determination required

Inspector: Ann O'Leary

Date: 23rd Day of February 2024