



An
Bord
Pleanála

Inspector's Report ABP-317837-23

Development	Change of use from disused public house to creche on the ground floor and from residential to creche on the first and second floors, and all associated development.		
Location	Main Street, Templemore, Co. Tipperary.		
Planning Authority Ref.	23/11.		
Applicant(s)	Lisgorm Services Ltd. (Rosaleen Dwyer)		
Type of Application	Permission.	PA Decision	To Grant Permission.
Type of Appeal	Third Party.	Appellant	John Bannon.
Observer(s)	None.		
Date of Site Inspection	15 th March, 2024.	Inspector	Aiden O'Neill.

Context

1. Site Location/ and Description.

The proposed development site is c. 0.0723ha in area and is an existing, vacant building (c. 557.3m²) located at the corner of Main Street and Bank Street in the town centre of Templemore, Co. Tipperary. The building extends to three storeys in height, with a single-storey section to the rear, with external fire escape stairs, a large rear yard and single-storey outbuildings. The building was previously occupied by a public house on the ground floor, with residential use on the first and second floors. A terrace of buildings to the west are also three-storey, with

ground floor town centre uses, with what appears to be upper floor generally residential use. There is a laneway access from Main Street to the rear yard area. The applicant is stated to have a right of way over this access. The terrace of buildings to the immediate south along Bank Street are two-storey and are primarily residential in use. There is a gated access to the immediate south of this terrace. On the opposite side of Main Street is an existing two-storey Town Hall building currently subject to renovation works, with an adjacent surface car park to the west. There is a pedestrian crossing from the Town Hall to the immediate west of the proposed development site. A primary school is located further south along Bank Street, and a secondary school is located to the east.

2. Description of development.

Permission is sought for the change of use of an existing disused public house to creche on the ground floor and from residential to creche on the first and second floors. It is stated that, due to the expiry of a lease, the applicant has to vacate an existing premises where she has provided a creche facility since 2019 and the proposed development site suits the applicant's needs. The total floor area subject to a change of use is c. 523.2m². The proposed creche will cater for childminding from 6 months to 15 years old, and will operate from 7am-6pm. The proposed works will include:

- (a) Demolition/removal of existing internal walls, external fire escape stairs, walls and roof from existing sheds, existing flat roof to rear
- (b) Construction of extension to rear to provide proposed fire escape stairs and lift (c. 55.7m²) in response to the requirements of the Fire Officer
- (c) Construction of new internal walls
- (d) Change of use of existing shed 1 to staff area
- (e) Change of use of existing shed 2 to toddler/sleeping area
- (f) Change of use of existing shed 3 to after school recreational area
- (g) Construction of extension to link existing building to shed 2
- (h) Block up existing door ways on the north and east elevations, and to create new door opening with external handrail on the east elevation
- (i) Erect proposed signage (2no. graphic signs as well as the creche name) to the north and east elevations and all associated site works.

The proposed development is to be serviced by existing and proposed combined sewers, with a grease separator to be installed. A right of way/wayleave is proposed (subject to the receipt of planning permission) from the existing gated access on Bank Street, for use as a fire escape, and a portion of the site is to be traded for this right of way. No car parking is proposed on site – the proposed development will avail of an existing car parking resource, and existing pedestrian connections, in the vicinity.

Tipperary Childcare Committee stated no objection to the proposed development in its submission dated 2nd February, 2023.

3. Planning History.

There is no recent planning history for the proposed development site, and no applications of note in the vicinity.

4. National/Regional/Local Planning Policy (see attached)

- The proposed development site is zoned Town Centre in the Templemore and Environs Development Plan 2012 (as extended). By reference to Table 10.1 of the Plan, a creche use is permitted in principle on Town Centre zoned lands. Table 10.2 states that the purpose of the Town Centre zoning objective is to provide for town centre mixed use facilities.
- The proposed development site is not a Protected Structure or listed on the NIAH. It is located in the Main Street/Patrick Street Architectural Conservation Area. The proposed development site is located within the Zone of Archaeological Potential of a Recorded Monument, Historic Town, ref: TN03042, which is located to the north-west.
- Section 4.11 of the Templemore and Environs Development Plan sets out the policies with respect to childcare. This states that having regard to both the emerging National Policy on Childcare, 2011 and the Childcare Facilities: Guidelines for Planning Authorities, 2001, the Council will seek to ensure that childcare facilities are provided in line with development proposals for residential development and significant employment developments.

5. Natural Heritage Designations

- The Kilduff Devilsbit Mountain SAC (Site Code 000934) (and pNHA) is located c. 5.8km to the north-west of the proposed development site. The Lower River Suir SAC (Site Code 002137) is located c. 11.6km to the south-west of the proposed development site. The Templemore Wood pNHA is located c. 0.5km to the north-west of the proposed development site.

Development, Decision and Grounds of Appeal

6. PA Decision.

The Planning Authority decided to grant permission by Order dated 28th July, 2023 subject to 9no. conditions.

This decision was reached after a Request for Further Information dated 8th March, 2023, a further Request for Further Information dated 14th April, 2023 on the basis that the response to the Request for Further Information dated 8th March, 2023 was deemed inadequate, and a Request for Clarification of Further Information dated 23rd May, 2023. The Planning Authority deemed the latter response to be significant and requested new notices by letter dated 28th June, 2023, which were received on 5th July, 2023. The planner's report is the basis for the Planning Authority's decision to grant planning permission.

Condition no. 6(a)-(e) requires that the proposed demolition and construction works are to be supervised by a Structural or Civil Engineer, or appropriately qualified individual, and the works certified and signed off by such individual, as well as measures to mitigate noise, dust and noise emissions.

Condition no. 8 requires the submission of a Construction Environmental Management Plan for the written agreement of the Planning Authority prior to the commencement of development.

Condition no. 9 requires the payment of a General Development Contribution, including a contribution in relation to the shortfall in car parking.

7. Third Party Appeal.

1no. Third Party appeal has been submitted, setting out the following grounds:

- The proposed development cannot be constructed as per the plans and particulars as it relies on property in the ownership of the appellant. The applicant has no legal interest in this property. No revisions to the site boundary have been made by the applicant.
- The proposed development required works including new window opes, structural steelwork, and roof works on the appellant's property for which there is no consent.
- The proposed development will have a significant negative impact on key rooms, including the kitchen, of the appellant's residence from a loss of light. The shadow study is technically deficient as it shows a reduced shadow in the morning despite a significant increase in building height and density adjacent to the appellant's home.
- The applicant does not have a right of way over the laneway. There is a restricted access right of way in favour of the occupier of the yard only and does not extend to customers or clients of the property. It cannot therefore be used as a general access for the proposed childcare facility, nor is it suitable as a fire escape due to its limited opening times. There is scant information in the Construction Stage Environmental Management Plan on how impacts will be avoided on the appellant's residence during construction.
- There is no existing connection between Manhole 1 and 2 for foul water. The existing sewer is owned by the appellant has is not capable of additional load. There is no agreement for the applicant to undertake any works on the laneway.
- There is no consent to undertake any works to the party wall between both properties. Such interference could affect the structural stability of the appellant's residence. There is scant information on the demolition of walls and roof of the sheds, which adjoin and abut the appellant's property. No structural assessment of from the applicant has been submitted.
- The proposed development has not adequately complied with the protection of the ACA. There has been no assessment of the impact of the

development on the ACA nor in relation to the archaeological potential of the site. The assessment by the Planning Authority is limited to the front elevation of the main building only.

- Refusal of permission is requested.

8. PA Response

- None on file.

Environmental Screening

9. EIA Screening

Having regard to the limited nature and scale of development and the absence of any significant environmental sensitivity in the vicinity of the site, 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.

10. AA Screening

Having regard to the modest nature and scale of development, and absence of connectivity to European sites, 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.

2.0 Assessment

2.1. Having examined all the application and appeal documentation on file, and having regard to relevant policy, I consider that the main issues which require consideration in this appeal are those raised in the grounds of appeal, and I am satisfied that no other substantive issues arise.

2.2. The main issues are as follows:

- Legal Matters
- Impacts on Amenities

- Impact on ACA

2.3 Legal Matters

- 2.3.1 The appeal raises matters in relation to the legal entitlement of the applicant to access the proposed development site over the existing laneway for construction, demolition, operations and maintenance, as well as access foul and water services, and fire escape purposes. The appeal also raises matters in relation to proposed works to structures which form a party boundary with the appellant's property.
- 2.3.2 As noted in the planner's report dated 27th July 2023, the applicant, in a response dated 28th April, 2023 to a 2nd Request for Further Information dated 14th April, 2023 (having received an incomplete response dated 29th March, 2023 to the 1st Request for Further Information dated 8th March, 2023), and a response dated 12th June, 2023 to a Clarification of Further Information dated 23rd May, 2023, has provided confirmation of an existing right of way over the laneway from Main Street as well as proof to use the laneway as a right of way, to include a Statutory Declaration in Relation to Established Easement from the Landowner of the proposed development site, evidence on the use of the laneway from previous occupants of part of the proposed development site and an adjoining residence, and a reference to a Circuit Court ruling upholding the use of the access as a right of way; and a proposed right of way, for use as a fire escape, including evidence of an agreement to use same, from the owner over a section of ground between nos. 5 and 6 Bank Street, by way of an updated Site Layout Plan Showing Right of Way & Wayleave, drawing no. 001RF Sheet No. 01R, dated 9th June, 2023. This drawing also illustrates a portion of the site within the red line boundary to be traded for the proposed right of way onto Main Street.
- 2.3.3 The appellant, however, maintains that the applicant does not have a right of way over the laneway, and that there is a restricted access right of way in favour of the occupier of the yard only and does not extend to customers or clients of the property. It is also stated that the laneway cannot be used as a general access for the proposed childcare facility, nor is it suitable as a fire escape due to its limited opening times. These issues were also raised in the initial submission made by the appellant received on 23rd February, 2023 and a further submission received on 17th July, 2023, on foot of the Planning Authority's request dated 28th June, 2023 to re-

advertise the response to the Clarification of Further Information, with both submissions including a letter from Nash McDermott & Co Solicitors.

2.3.4 I have considered the submitted documentation on file. While both existing and proposed rights of way are located outside the red line boundary of the updated Site Layout Plan Showing Right of Way & Wayleave, drawing no. 001RF Sheet No. 01R, dated 9th June, 2023, they are nevertheless identified in yellow as required by the Planning and Development Regulations, 2001, as amended, and this, together with the accompanying documentation, demonstrate sufficient legal interest over the access way and proposed fire escape for the purposes of the planning application. I also note that the Planning Authority has accepted same.

2.3.5 I also acknowledge Section 34(13) of the Planning and Development Act, 2000, as amended, which states that a person shall not be entitled solely by reason of a permission under this section to carry out any development.

2.3.6 I also note the appellant's concerns about the impact on party boundary walls. The applicant has submitted a Structural Report which states that, to ensure the stability of the building during the construction phase, a steel framework will be required to the four external walls of the building. It also notes that the party wall to the rear of the archway on the Main Street party wall is very stable, and that for the remainder, measures are proposed to ensure the stability of the party walls, including the installation of structural steel, a cast in-situ concrete floor at first floor and second floor levels, and support columns and beams from ground floor to second floor. The Planning Authority accepted this response, and has attached a condition requiring the proposed construction works to be supervised and certified and signed off by a Structural Engineer or equivalent, and I would recommend the attachment of same, in the event that the Board decide to grant planning permission.

2.3.7 I also note that the Executive Engineer, in his report dated 19th July, 2023 recommended conditional permission with respect to services.

2.4 Impact on amenities

2.4.1 The appellant has raised a concern that the proposed development will have a significant negative impact on key rooms, including the kitchen, of the appellant's residence from a loss of light.

2.4.2 Taking into account the removal of the existing fire escape walkway, I consider the proposed extension, which is part ground floor, 1st floor, part 2nd floor, to be relatively minor, at just 55.7m², accommodating proposed ground floor toddler space, a proposed escape stairs and a lift. The 1st and 2nd floor extensions do not extend to the full width of the ground floor. I also note that the 2nd floor of the minor extension will feature a window with obscured glass. The applicant's shadow study, drawing no. 001RF, indicates that the proposed extension will reduce shadowing of the appellant's residence over the existing situation. I do not consider this assessment to be technically deficient. For these reasons, I do not agree that there will be a significant negative impact on the appellant's property.

2.4.3 I also note that the Planning Authority requested the submission of a Construction Environment Management Plan prior to the commencement of development by condition, and I would recommend the attachment of same, in the event that the Board decide to grant planning permission.

2.5 Impact on ACA

2.5.1 The appellant has a concern that the proposed development has not adequately complied with the protection of the ACA, that there has been no assessment of the impact of the development on the ACA nor in relation to the archaeological potential of the site, and that the assessment by the Planning Authority is limited to the front elevation of the main building only.

2.5.2 I note that the proposed development site is located in the Main Street/Patrick's Street Architectural Conservation Area (ACA), and note section 7.11 of the Templemore and Environs Development Plan 2012, as extended, which states that the ACA derives its strength and character from a number of elements notably the 19th Century Victorian Streetscape of the Main Street. Policy BH1 of the Plan 2012 (as extended) notes that the Council will have regard to the impact of the proposed development on the existing amenities, character and heritage of the ACA and to retain important architectural elements, such as shop fronts.

2.5.3 In this respect, it is my submission that the Planning Authority is justified in focusing its attention on the elevational treatment of the main building. The existing buildings to the rear of the proposed development site do not form part of the streetscape for which the ACA is designated. It is also noted that the proposed buildings on the site

are not Protected Structures nor are they listed on the National Inventory of Architectural Heritage.

2.5.4 In addition, the works to the front and side (eastern) elevation of the main building are minimal, principally comprising signage and the blocking up of existing doors, and the works to the side (eastern) elevation comprise signage, the blocking up of the existing door and construction of a new door. The proposed extension reads as a minimal intervention at 2nd floor level on the side (eastern) elevation.

2.5.5 It is noted that the proposed development site is located within the Zone of Archaeological Potential of a Recorded Monument, Historic Town, ref: TN03042, which is located to the north-west. While it is noted that the proposed development relates to existing, vacant buildings, it is recommended that a condition is attached requiring supervision of the proposed construction works at external ground level be supervised by an archaeologist, in the event of a grant of permission.

3.0 Recommendation

3.1. I recommend that permission for the development be granted for the following reasons and considerations.

4.0 Reasons & Considerations

Having regard to the provisions of the Tipperary County Development Plan 2022-2028 and the Templemore and Environs Development Plan 2012, as extended, to the town centre zoning objective, to the existing, vacant buildings on the proposed development site, it is considered that, subject to compliance with the conditions set out before, the proposed development will not be seriously injurious to existing residential amenities, will not have an adverse impact upon the character of the area, and will not be prejudicial to public health. It is considered that the proposed development is in the interests of the proper planning and sustainable development of the area.

5.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on 20th January, 2023, 29th March, 2023, 28th April, 2023 and 12th June 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 proposed childcare facility shall not operate outside the period of 0700 to 1800 hours Monday to Friday inclusive except public holidays, and shall not operate on Saturdays, Sundays or public holidays.</p> <p>Reason: In the interest of residential amenity.</p>
3.	<p>(a) Details of all external shopfront/building signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>(b) No signage, advertising structures/advertisements, security shutters, or other projecting elements, including flagpoles, shall be erected within the site unless authorised by a further grant of planning permission.</p> <p>Reason: In the interest of visual and built heritage amenity.</p>
4.	<p>Prior to the commencement of development, the applicant shall submit for the written agreement of the Planning Authority, proposals for the safety barrier to be erected on Bank Street, including elevational drawings, details of materials and a site layout plan indicating the proposed location.</p> <p>Reason: In the interests of orderly development.</p>

5.	<p>The proposed demolition and construction works shall be supervised by a Structural or Civil Engineer, or appropriately qualified individual, who, upon completion of the works, shall submit confirmation the works have been certified and signed off by such individual.</p> <p>Reason: In the interests of orderly development.</p>
6.	<p>The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall -</p> <p>(a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,</p> <p>(b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and</p> <p>(c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.</p> <p>In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.</p> <p>Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.</p>
7.	<p>Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health.</p>
8.	<p>Prior to the commencement of development, the developer shall submit a Construction Environment Management Plan for agreement with the Planning Authority, to include details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels.</p>

	Reason: In the interests of public safety and residential amenity.
9.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
10.	<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, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable 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 An Bord Pleanála 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, as amended, 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>

Relevant Policies

Tipperary County Development Plan 2022-2028

Templemore is identified as a District Town in the Settlement Hierarchy (Table 4.1) of the Tipperary County Development Plan 2022-2028, with a population of 1,939 persons (2016) which is targeted to increase to 2,133 persons by 2028.

Section 4.4 of the Tipperary County Development Plan 2022 defines District Towns as one of six towns in the Core Strategy Map that have important roles in supporting their hinterlands and the Key Towns, and in particular in supporting local economic strengths, and in providing housing and services. It is stated that the District Towns will accommodate approximately 20% of total population growth over the lifetime of the Plan. Specifically,

District Towns will continue to grow as part of a balanced urban structure, with an expected population increase of between 15% and 20% for each town in line with Section 2.5.3 Population Growth and Distribution. The residential function of these centres will be strengthened and improved, and they will be promoted as desirable places in which to live and work, noting the economic specialties of each town as outlined above. The District Towns will continue to perform an important role in the county by providing employment opportunities, high quality retail choice, regional transport services and community services for their hinterlands in line with their capacities for growth and expansion. The Council will work with the community to support more sustainable transport patterns, active travel and modal shift. The Core Strategy has outlined a population and housing projection and a maximum residential land zoning allocation for the towns. A detailed assessment and review of land zoning will be carried out in line with the NPF Methodology for a Tiered Approach to Land-zoning to inform the preparation of new LAPs or review of existing for each of these towns in line with Table 4.2: Framework of Town Plans and LAPs.

Table 4.2 of the Tipperary County Development Plan notes that the Town is currently subject to the provisions of the Templemore and Environs Development Plan 2012 (as extended).

Templemore and Environs Development Plan 2012 (as extended)

Strategic Objective 4 of the Templemore and Environs Development Plan 2012 seeks To regenerate the Town Centre of Templemore, to ensure it is a centre which is viable and vibrant by enhancing and promoting retail, business and other service provision.

Policy SC9 of the Plan 2012 in relation to Community states that it is the policy of the Council to assist, where feasible, in social, community and cultural development in Templemore and to co-operate with any person/organization that wishes to expand the provision of social facilities in the town.

Policy SC10 of the Plan 2012 in relation to Childcare Facilities states that It is the policy of the Council to encourage the provision of nurseries, crèches and other childcare facilities in association with housing, commercial and industrial development. Developments for Childcare Facilities will be assessed having regard to the Childcare Facilities: Guidelines for Planning Authorities, 2001 as published by the DEHLG.

Section 9.6 of the Plan 2012 states that the Council will assess proposals for childcare development having regard to the Childcare Facilities: Guidelines for Planning Authorities, 2001. Applications for childcare facilities should be accompanied by the following information:

- Nature of the facility, e.g. full day care, sessional, drop in, after school.
- Number and age of children being catered for and number of staff.
- Proposed hours of operation.
- Open space provision in the form of play areas and measures for management.


Section 7.11 of the Plan 2012 describes the Main Street/Patrick's Street Architectural Conservation Area (ACA) as follows:

This ACA derives its strength and character from a number of elements notably the 19th Century Victorian Streetscape of the Main Street and the underlying local history. This area possesses a period townscape and features of a high quality and architectural integrity that is unique to the town.

Policy BH1 of the Plan 2012 in relation to Architectural Conservation Areas states that it is the policy of the Council to ensure the conservation and enhancement of the Architectural Conservation Areas. The Council in assessing proposals for re-development will have regard to: a) the impact of the proposed development on the character and appearance of the Architectural Conservation Area in terms of compatibility of design, colour and finishes, and massing of built form; b) the impact of the proposed development on the existing amenities, character and heritage of these areas; and c) the need to retain important architectural and townscape elements, such as shop fronts, sash windows, gutters, down pipes, decorative plasterwork etc.

The proposed development site is located at the end of the identified Bradleys Row town approach vista. This states that the easterly edge of Bradleys Road is predominantly defined by industrial buildings when approaching from the train station. Agricultural land and hedgerows form a soft edge on the western side which leads into residential housing estates drawing closer to the town. Mature trees line only the eastern edge and pedestrian footpaths lie on both sides of the approach.

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.



Aiden O'Neill
Planning Inspector

22nd March, 2024