



An  
Bord  
Pleanála

## Inspector's Report

### ABP-318045-23

#### Development

Retention of change of use from community use (with part medical use) to medical centre and different internal configuration to that permitted.

#### Location

Unit 5, First Floor, Southern Cross Neighbourhood Centre, Southern Cross, Bray, Co. Wicklow

#### Planning Authority

Wicklow County Council

#### Planning Authority Reg. Ref.

23206

#### Applicant(s)

Oranday Properties 1 Limited

#### Type of Application

Retention

#### Planning Authority Decision

Refuse

#### Type of Appeal

First Party

#### Appellant(s)

Oranday Properties 1 Limited

#### Observer(s)

None

#### Date of Site Inspection

17/02/2024

#### Inspector

Gillian Kane

## **1.0 Site Location and Description**

- 1.1.1. The subject site refers to the first floor of a two-storey building within a neighbourhood centre on the Southern Cross Road in southern Bray. On the grounds floor are three retail units, two of which are occupied, one is vacant. On the first floor, behind a locked gate and a locked elevator is a medical centre. To the east, is a two-storey creche. To the west, a large two-storey supermarket. The wider area comprises four x five-storey apartment blocks and a series of duplex, semi-detached and detached houses.

## **2.0 Proposed Development**

- 2.1.1. On the 2<sup>nd</sup> of March 2023, permission was sought to RETAIN a medical centre (426.7sq.m.) operating in Unit 5 of a building permitted by the Board under Ref. TA27.305058 for community use (with part medical use). The application for retention also involves a different internal configuration to that permitted, with no elevational changes to the unit as permitted.
- 2.1.2. The application was accompanied by a Planning Statement, a letter from the operators of the medical facility and a letter from the Property Rental Agent.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. On the 24<sup>th</sup> August 2023, the Planning Authority issued a notification of their intention to REFUSE permission for the following reason:
- 1 The proposal to retain the medical centre with a floor area of 426.7 sq.m. would result in the omission of the community space which was to be provided for the civic use and management of Wicklow County Council, as per the permitted Strategic Housing Development (ABP-305058-19). The medical centre is within a building that is located on land zoned for Neighbourhood centre in the Bray MD Local Area Plan 2018, where the objective is to protect, provide for and improve a mix of neighbourhood centre services and facilities which provide for the day-to-day needs of the local community. The permitted civic non-commercial community floor space is required to meet the day-to-day community infrastructure needs of the permitted development and the surrounded area. The proposed change of use results in the loss of the civic

community infrastructure and would seriously injure the amenities of the property in the area. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

### 3.2. **Planning Authority Reports**

- 3.2.1. **Chief Fire Officer:** Recommends inclusion of 5 no. conditions.
- 3.2.2. **Transportation:** No observations.
- 3.2.3. **Environment Report:** No objection.
- 3.2.4. **Planning Report:** During the SHD process, the Planning Authority recommended a refusal. One of the reasons referred to prejudicing the provision of neighbourhood centre uses. Proposed development to be retained results in the omission of the floor space originally envisaged for non-profit / civic community gain and its replacement with commercial floorspace. The CCSD section of WCC have indicated that community space is still sought after and needed for Youth Services. Refusal recommended.

### 3.3. **Prescribed Bodies**

- 3.3.1. **Uisce Eireann:** No objection.

### 3.4. **Third Party Observations**

- 3.4.1. None.

### 3.5. **Unsolicited Further Information**

- 3.5.1. The applicant submitted Unsolic.FI on the 23<sup>rd</sup> June 2023. The submission refers to a draft refusal of planning permission and purports to respond to each item raised by the planner.
- 3.5.2. Following that, **a second planning report** states that the CCSD section of WCC have confirmed that there is a demand for the permitted type of community infrastructure in the area and that a grant of permission would undermine the delivery of community social infrastructure required for the area. Refusal recommended.

## 4.0 Planning History

- 4.1.1. **ABP-305058-19:** Planning permission granted under SHD legislation for 208 no. residential units, creche and associated site works.

## 5.0 Policy Context

### 5.1. Wicklow County Development Plan 2022-2028

- 5.1.1. **CPO 7.19** To facilitate the development of healthcare uses at suitable locations, in liaison with the appropriate health authorities. Health facilities will be considered at all locations and in all zones provided that: ♣ the location is readily accessible to those availing of the service, with a particular presumption for facilities in towns and villages and in areas of significant residential development. Isolated rural locations will not generally be considered except where it can be shown that the nature of the facility is such that demands such a location; ♣ the location is generally accessible by means other than private car, in particular by public transport services, or by walking/cycling; and ♣ the location is accessible to those with disabilities.
- 5.1.2. **CPO 10.23** Within neighbourhood centres, it is the objective of the Planning Authority to protect, provide for, and improve the mix of neighbourhood centre services and facilities, which provide for the day-today needs of the local community, to a degree that is akin to their role and function as outlined in the Retail Strategy. Development which would undermine the role of the town centre will not be permitted.
- 5.2. **Bray Local Area 2018-2024**
  - 5.2.1. The Bray Municipal District Local Area Plan is the operative Development Plan for the site.
  - 5.2.2. Site is zoned neighbourhood centre and is designated as a neighbourhood objective under special local objective SLO9. The neighbourhood zoning objective is to protect, provide for and improve a mix of neighbourhood centre services and facilities which provide for the day-to-day needs of the local community. It is described as providing for small scale mixed use commercial/community/retail developments that serve only an immediate catchment or planned new areas of significant residential development with Southern Cross Road outlined as a location

for same. Uses generally appropriate within neighbourhood centres include residential development.

5.2.3. The LAP notes that SLO9 is located on Bray Southern Cross Road (SCR), with the 'Deerpark' road bounding the site to the west and measures c. 4 ha. The SLO is designated for the development of a new neighbourhood hub to serve the Bray SCR area, and provides an opportunity for both retail and community services as well as the development of new vehicular and pedestrian routes from the SCR to Boghall Road.

5.2.4. The specific requirements are as follows:

- A supermarket and not less than 5 smaller retail units, as well as provision for other non-retail / commercial / professional uses up to a total floor area of 2,500sqm (GFA) for the supermarket and of the order of 500sqm (GFA) for the smaller units / non retail uses;
- Provision of community / health / public services / wellbeing floor space of the order of 500sqm;
- Residential development, on the northern part of the site that is zoned R-Special, a higher density format of 40/ha shall be considered only where it is part of an overall project involving the completion of the neighbourhood centre in advance of any residential units;
- Vehicular access to the site from Bray SCR;
- Make provision for a car free green route from the south-eastern corner of the site adjoining the SCR, through to the Deerpark road at the north western corner of the lands.

### **5.3. Natural Heritage Designations**

5.3.1. The site is not located within any European site. It does not contain any habitats listed under Annex I of the Habitats Directive. The site is not immediately connected to any habitats within European sites. Bray SAC (site code 0714) is located 1.8km to the east of the site.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- 6.1.1. An agent for the applicant has submitted a first-party appeal against the decision of the Planning Authority to refuse permission. The submission includes a planning report submitted to Wicklow County Council, and a second planning statement responding to the issues raised in the first planning report.
- 6.1.2. The appeal submission (section 3.2.2) refers to the planning history on the site, namely the SHD application. The appeal notes that the public notices refer to “four community units including youth services centre and health care unit”. The appeal notes that Wicklow County Council recommended a refusal of permission but in the event that permission was granted, a condition requiring a 244sq.m. community unit should be provided for the use and management of WCC.
- 6.1.3. The appeal submission notes that a subsequent section 146B application involved amendments to the neighbourhood centre. The appeal notes that the Architects Design Rationale document submitted with the SHD stated “the 495sq.m. of community service uses will be provided on the basis of 4 no. units, accommodating a youth centre, medical and 2 no. multi-purpose spaces located at first floor level”. The drawing submitted with the SHD application shows an overall ‘Community Use’ 495sq.m. with 3 no. units (1, 2 labeled community multi-use) and no. 3 labelled community medical use. The appeal submissions provides an extract from the Area Schedule in the Design Rationale document which lists units 1,2 and 3 as retail, unit 4 as ancillary, units 5/6/7/8 as community service units, unit 9 as ancillary service and unit 10 as a creche. The submission provides an extract from a drawing submitted with the s146B showing ‘no change proposed to first floor level’.
- 6.1.4. The summary of the appeal is that it is somewhat difficult to establish exactly what planning permission was granted, with differences between the public notices, the drawings submitted, the architects Design Rationale, the table included in the area schedule and the planners report. The appeal concludes that “it appears that permission has been granted for 3 no. general community units and a medical unit”, that no condition restricting the use of the community units to a particular group was attached.

- 6.1.5. The appellant submits that it is not unreasonable to consider a health / medical service serving the local community to be a community type use. The appellant submits that only someone with an indepth planning knowledge would understand the difference between a community and a health use. Therefore the fact that the applicant assumed that planning permission was not required is reasonable.
- 6.1.6. The appellant notes that the Planning and Development Act, Part III refers to hospitals and healthcare facilities when dealing with Community Facilities. On the other hand the Regulations put a health centre / clinic in a different class (class 8) to a community centre (class 9).
- 6.1.7. The appeal notes that Chapter 7 'Community Development' of the 2022 Wicklow County Development Plan has a section on Health and Care, with CPO7.19 referring to healthcare uses.
- 6.1.8. The appeal notes that the site is Bray MD LAP zones the site as neighbourhood centre, for which the zoning objective is 'to protect, provide for and improve a mix of neighbourhood centre services and facilities which provide for the day-to-day needs of the local community'. In the list of uses considered appropriate, health is include. SLO9 of the LAP requires the neighbourhood centre to provide non retail / commercial / professional uses as well as a supermarket and 5 no. smaller retail units. The SLO states that the development shall include "the provision of community / health / public services / wellbeing floor space"..
- 6.1.9. The appeal states that the small unit that has permission for a community use (46.45sq.m.) is not part of the application. The appellant states that there is a strong demand for the medical facility, it being the only one serving the southern side of Bray. The appellant notes the shortage of GP services around the country.
- 6.1.10. It is submitted that the change of use was undertaken with the belief that it was compliant and that health is a permissible use under the NC zoning and SLO9. It is accepted that youth services and community services were granted permission but these were speculative uses with no end user. The development to be retained is commercially viable, provides critical social infrastructure and employment.
- 6.1.11. The appeal notes that the sole reason for refusal is the omission of community space. The appellant submits that a confirmed community demand by the Councils Community Culture and Social Department misses the point that the unit is not user-

restricted. The appellant also notes that the unit was vacant for over a year and that there was no contact from the CCSD of the Council.

6.1.12. The grounds of the appeal can be summarised as follows:

- There is no reference to a material contravention in the Planning Authority decision, therefore the Board are not restricted by section 37(2)(b).
- The conditions of the Boards decision do not restrict the use of the subject unit to civic use and management by WCC and no evidence has been submitted to that effect.
- There is no restriction on the community use of the three units (45sq.m., 59sq.m. and 244sq.m.).
- A medical centre is a permissible use under the Neighbourhood Centre zoning.
- It is accepted that the use to be retained is not the type of community use the Council would prefer but this does not permit the restriction of use of the unit.
- Permission is sought to retain an increase in the permitted medical use. While this is at a loss to community use, it provides another needed community use.
- Part of the unit remains available for community use.
- The Board is requested to grant permission.

## **6.2. Planning Authority Response**

6.2.1. None on file.

## **6.3. Observations**

6.3.1. None on file.

## **7.0 Assessment**

7.1.1. I have examined the file and the planning history, considered national and local policies and guidance, the submissions of all parties and inspected the site. I have assessed the development to be retained and I am satisfied that the single issue raised is the principle of the development.



## **7.2. Principle of Development to be retained**

- 7.2.1. Permission is sought to retain the use of an amalgamated unit on the first floor of a neighbourhood centre, permitted under an SHD application in 2019.
- 7.2.2. Both parties to the appeal make much of the planning history of the site, what was intended on the site, what was granted on the site, what is wanted on the site and what is needed on the site. Ultimately, it matters not. The appellant is entitled to seek permission to retain the existing change of use, knowing it differs from what was granted permission. Likewise, the Planning Authority are entitled to recommend a refusal of permission, knowing what they intended the site to be used for and what their understanding of the needs of the community are.
- 7.2.3. The use of the upper floor of the neighbourhood centre for community uses / non-profit uses would be very welcome. Such services are sorely lacking in the area and the applicant sought an SHD permission knowing the gain arising from the provision of such a use to the surrounding community. The loss of these units to a commercial operation is regrettable.
- 7.2.4. However, the provision of a large, modern, evidentially busy medical practice within walking distance of a dense population is a significant planning gain. The appellants clients provide detail of the services provided to the immediate neighbourhood and that submission is compelling. The use of the units for a medical facility is in accordance with both the County Development Plan and the Bray LAP and I am satisfied that the development to be retained is in keeping with the proper planning and sustainable development of the area.
- 7.2.5. I raise a concern that the entire first floor was inaccessible on the date of my site visit. The appellant states that one unit on the first floor remains vacant and free to use as a community service. However, that service would not benefit the community if the unit is not accessible. It is not clear who installed the locked gates, they not forming part of the permission either at SHD or s146B stage. Should the Board decide to grant permission, a condition restricting the locking of the first floor should be attached.

### 7.3. Appropriate Assessment

- 7.3.1. Having regard to the nature and scale of the proposed development in a fully serviced built-up urban area and proximity to the nearest European site, no appropriate assessment issues arise and it is considered that 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.

### 8.0 Recommendation

- 8.1. I recommend permission to retain be GRANTED for the following reasons and considerations and subject to the following conditions.

### 9.0 Reasons and Considerations

- 9.1.1. Having regard to the nature and scale of the development to be retained, to the pattern of development in the vicinity, to the planning history of the subject and adjoining sites, and to the policies of the Wicklow County Development Plan 2022 – 2028 and the Bray Municipal District LAP 2018-2024, it is considered that, subject to compliance with the conditions set out below, the development to be retained would not seriously injure the amenities of the area or of property in the vicinity. The development proposed to be retained would, therefore, be in accordance with the proper planning and sustainable development of the area.

### 10.0 Conditions

1.	The development shall be retained 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.  <b>Reason:</b> In the interest of clarity.
2.	Access to the units on the upper floor of the Neighbourhood Centre shall not be restricted by locked gates or otherwise, unless otherwise authorised by a prior grant of planning permission.  <b>Reason:</b> In the interests of accessibility

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.

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Gillian Kane  
Senior Planning Inspector

19 February 2024

## Appendix 1 - Form 1

### EIA Pre-Screening

[EIAR not submitted]

<b>An Bord Pleanála</b> <b>Case Reference</b>			
<b>Proposed Development Summary</b>	Retention of change of Use		
<b>Development Address</b>	Unit 5, First Floor, Southern Cross Neighbourhood Centre, Southern Cross Road, Bray, Co. Wicklow		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)			
		<b>No</b>	No further action required
<b>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?</b>			
<b>Yes</b>		n/a	
<b>No</b>		n/a	
<b>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]?</b>			
		<b>Threshold</b>	<b>Comment (if relevant)</b>
<b>No</b>		n/a	
<b>Yes</b>		n/a	

**4. Has Schedule 7A information been submitted?**

<b>No</b>	n/a	<b>Preliminary Examination required</b>
<b>Yes</b>	n/a	<b>Screening Determination required</b>

**Inspector:** \_\_\_\_\_**Date:** 19 February 2024