



An
Bord
Pleanála

Addendum Inspector's Report

ABP-318426-23

Development	Change of use of Unit 1 from retail to cafe use.		
Location	Unit 1 Cnoc Dubh, Main Street, Ballyboughal, Co. Dublin.		
Planning Authority Ref.	F23A/0399		
Applicant(s)	Richard Quinn.		
Type of Application	Permission	PA Decision	Grant
Type of Appeal	Third Party	Appellant	Cathal McGee
Observer(s)	Ballyboughal Community Council		
Date of Site Inspection	17/05/2024	Inspector	Terry O' Leary

Context

1. Site Location / and Description. The subject site is located to the northern periphery of Ballyboughal village in north County Dublin. The subject unit is situated in the south-western corner of the Cnoc Dubh development adjacent to the Naul Road (R108) and the declared site area is c. 0.0072Ha.

2. Description of development. The change of use from retail to café use in this unit that comprises of c. 72.4 sq. meters.

3. Planning History.

F22A/0138 – Permission granted for the change of use of ground floor unit from retail to veterinary physiotherapy treatment facility with hydrotherapy pool with associated alterations to the internal layout at Unit 4A The Square, Cnoc Dubh, Ballyboughal, Co. Dublin.

F17A/0184 & ABP Ref: PL06F.249179 – Permission granted for a mixed-use development comprising the subject unit of this planning appeal.

4. National/Regional/Local Planning Policy

4.1 National Planning Framework

Project Ireland 2040 comprises the National Planning Framework (NPF) and the National Development Plan (NDP). The NPF is the Government's high-level strategic vision for shaping future growth and development in the entire country over a 20-year period. The NPF sets out a targeted pattern of growth for the Eastern and Midlands Region and Dublin City and these growth figures inform the delivery of national policy expressed in the NPF and the delivery of the Regional Spatial and Economic Strategies.

4.2 Regional Spatial & Economic Strategy 2019 - 2031

Regional Spatial and Economic Strategy 2019–2031 The Regional Spatial and Economic Strategy (RSES) for the Eastern and Midland Regional Assembly area sets out a strategic plan and investment framework to shape development and manage planning in the Region. The RSES translates the NPF objectives and the growth and settlement strategy at the regional level, ensuring coordination between the NPF and each County Development Plan. The RSES identifies the region's challenges as the need to sustain economic growth whilst transitioning to a low carbon society and the requirement to align population growth with the location of homes and jobs whilst creating healthy attractive places and an enhanced quality of life. The RSES is underpinned by three cross cutting principles; healthy placemaking, climate action and economic opportunity, which is incorporated into all facets of our new Development Plan. The growth strategy for the Region supports the continued sustainable growth of Dublin and its transition to a low carbon, climate resilient and environmentally sensitive region in accordance with the Metropolitan Area Strategic Plan (MASP), which forms part of the RSES.

4.3 Fingal Development Plan 2023 – 2029 (Current Plan)

The subject site has a zoning objective as follows;

‘RV – Rural Village’ and this objective seeks to “Protect and promote the character of the Rural Village and promote vibrant community in accordance with and approved land use plan, and the availability of physical and community infrastructure”. The following policies and objectives from the Fingal Development Plan (2023-2029) are relevant to the assessment of this development;

Objective CSO68 – Rural Villages

Manage the development of Rural Villages within the RV zoning boundaries and strengthen and consolidate their built form providing a suitable range of housing as an alternative to housing in the open countryside.

Objective CSO79 – Promotion of Attractive and Vibrant Villages

Promote attractive and vibrant villages ensuring their sustainable expansion and development at a level appropriate to and integrated with the existing village while meeting the socio-economic and civic aspirations of the community and affording maximum environmental protection.

Policy CSP40 – Sustainable Expansion & Development

Objective DMSO6 – Change of Use in Urban & Village Centres

Objective DMSO8 – Contemporary Shopfront Design

Objective DMSO10 – Corporate Logos, Lighting, Design and Colour

5. Natural Heritage Designations

There are no protected structures / NIAH registered buildings or recorded national monuments within close proximity of the sites according to the Fingal County Council GIS system.

Development, Decision and Grounds of Appeal

6. PA Decision.

Fingal County Council granted planning permission for the proposed development on the 17th October 2023 subject to 11 conditions.

7(a). Third-Party Appeal of Cathal McGee

Cathal McGee of 3 The Square, Cnoc Dubh, Ballyboughal, Co. Dublin submitted a third-party appeal which was received by An Bord Pleanála on the 9th November 2023 against the decision of Fingal County Council to grant planning permission F23A/0339.

Grounds of appeal:

- Concerned that the Fingal County Council Chief Executive's Order notes that no submissions / observations were received on planning permission F23A/0339.
- Of utmost concern is the proposed kitchen ventilation system that faces onto the appellant's property and the associated odours and grease that will blow towards their garden rendering it unusable.
- Concerned about family health risks associated with the ventilation system discharges.
- There is no provision for waste storage and concerned about the potential for rodent and insect infestation.
- Suggests that a full Environmental Impact Assessment should be carried out.
- Outlines that no engineering design has been incorporated with the planning application to address increases in foul sewerage discharges emanating from the proposed café.
- Concerned about traffic volumes and lack of parking in the vicinity.
- Encloses a photo profile of parking issues in the area presently.
- Outlines that the proposed café will need to be served by one parking space per 15 sq. meters of floor area or five spaces in total and that this is not catered for in the vicinity.
- Suggests that ad-hoc and inappropriate parking will occur if a café is permitted in the subject property.
- Cites a lack of fire precautions in the planning permission application.

- Is concerned that additional noise will emanate from a café vis-a-viz what would be expected from a retail unit.
- Suggests that the location of the proposed bike rack will pose a significant health and safety risk to pedestrians.
- States that the planning permission drawings and maps submitted as part of the planning application do not accurately reflect the proposed development and should be checked against site location map provided.
- Does not request an oral hearing.

7(b). Submission by Ballyboughal Community Council

An Bord Pleanála received a submission from Ballyboughal Community Council on the 29th November 2023. The submission can be summarised as follows;

- The submission does not comment on the particulars of the appeal or on the merits of the planning application F23A/0399.
- Trusts that An Bord Pleanála will deal with any valid concerns raised in the appeal.
- Cites the concern of the Ballyboughal Community Council of the potential loss of the café in Ballyboughal village and the associated negative impact on employment opportunities.
- A café is essential for the social function of Ballyboughal village.
- The café provides an opportunity for passing patrons to stop and contribute to the village.
- References the negative impacts of the loss of the café in the nearby Naul village.
- Requests that An Bord Pleanála expedite the appeal in the interest of preserving the local amenity and employment opportunity.

8. PA Response

The Planning Authority submitted a written submission which was received by An Bord Pleanála on the 05/12/2023 and this submission confirmed the following;

- The planning authority has reviewed the documents lodged as part of the third-party appeal in relation to Planning Reg. No. F23A/0399.

- The contention by the appellant in their appeal that their objection / submission was not considered in the planning decision is factually incorrect.
- The third-party objection was received on foot of significant further information being lodged by the applicant as set out under Article 35 of the Planning & Development Regulations and that the matters raised in this objection were considered in full by the planning authority in the determination.
- The planning authority remains of the view that the proposed change in use is limited in nature and extent and subject to the compliance with the conditions attached to the grant of planning would not have a detrimental impact on the surrounding area or impact residential amenity.
- Requests that An Bord Pleanála upholds the decision to grant permission and in the event that the decision is upheld that a Section 48 Development Contribution Scheme should be applied thereon.

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 the 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

The main issues for consideration in this appeal can be considered under the following headings;

- Fingal County Council Chief Executive's Order
- Principle
- Impact on Surrounding Properties
- Other Issues

2.1 Fingal County Council Chief Executive's Order

The third-party appellant is concerned that the Fingal County Council Chief Executive's Order for Planning Permission Reference F23A.0399 states under the heading of Submissions/Observations that none were received and that it is not clear from the planning file if his submission was considered in the determination of planning decision F23A.0399. A written submission made to An Bord Pleanála on the 05/12/2023 by Fingal County Council has clarified this matter however as outlined in the PA Response on pages 5 & 6 of this Inspector's Report and it is clear that the third-party appellant's submission was indeed considered in the determination of planning decision F23A.0399.

2.2 Principle

Section 14.4.4 of the Fingal Development Plan (2023-2029) requires that planning applications for change of use in all urban and village centres will be assessed on their positive contribution to diversification of the area together with their cumulative effects on traffic, heritage, environment, parking and local residential amenity. The concerns of the third-party appellant centre on a range of issues in relation to the change of use from retail to café as alluded to in Section 14.4.4 of the Fingal Development Plan (2023-2029). Notwithstanding the concerns expressed by the

third-party appellant, the points raised by the Ballyboughal Community Council highlight the need for a café facility in the area and the positive social and economic impacts that are attributable to such a facility. Having regard to the submissions by the third-party appellant and the Ballyboughal Community Council it is my considered opinion this proposed change of use of the subject building from retail to café use is minor in nature, justified and in compliance with Objective DMSO6 of the Fingal Development Plan (2023-2029).

2.3 Impact on Surrounding Properties

The issues raised by the third-party appellant centre on a range of concerns regarding the siting, operation and concept of a café at the proposed site and the associated operational issues of emissions, waste generation, traffic impact, lack of adequate parking, fire concerns, noise public safety as well as alluding to anomalies in the preparation of planning permission drawings and maps.

The third-party appellant has raised a very justifiable concern regarding emissions and possible odours from the mechanical ventilation system from the kitchen of the proposed café. Such odours and emissions could be a potential nuisance to the surrounding properties and endanger the quiet enjoyment of the residential amenity. Nevertheless the appropriate filtration of the emissions from the ventilation system will ensure that no negative impact will accrue onto adjoining properties and therefore I consider the appropriate management of the ventilation system will mitigate this particular risk. Similarly the concerns of the third-party appellant in relation to waste storage and possible rodent / insect infestation are justifiable in the absence of a robust management plan for such waste. Once again however the proper design for, and management of waste generated will ensure that no negative impacts occur on the surrounding residential amenity. The conditioning of these management plans in a grant of planning permission will ensure that no negative impacts occur and I believe that the scale of the proposed café will not generate excessive amounts of waste material. The requirement for a full Environmental Impact Assessment as proposed by the third-party appellant is not considered to be necessary, justified or warranted for the change of use of the building from retail to

café. In relation to concerns expressed about the lack of engineering design for wastewater generation from the proposed café I again do not believe that the scale or operation of the proposed café reaches a threshold where a site-specific engineering design would be required. Certainly however a suitable grease trap should be installed at the proposed café to prevent grease / oil discharging into the public wastewater network as is the case for all commercial kitchen installations as prescribed in Technical Guidance Document H – Drainage & Wastewater Disposal (2015) of the relevant Building Regulations.

The third-party appellant has expressed concerns about existing traffic issues in the area and that the 5 no. car-parking spaces required for a proposed café as stipulated in the Fingal Development Plan (2023-2029) are not provided for. The existing permitted use of the building as retail requires a parking provision of 2 no. car park spaces while the change of use to café will increase this requirement by 3 additional car spaces to 5 in total. The third-party appellant has as part of their appeal provided photographic evidence of ad-hoc parking in the vicinity of the residential Cnoc Dubh residential area and clearly there are issues of improper parking and the blocking of footpaths illustrated in the photographs. Notwithstanding this photographic evidence however the private car-park adjacent to the proposed café had a number of vacant car-park spaces on the day of my inspection and I believe the scale and size of the proposed café is unlikely to exacerbate parking issues in the area. I do not concur with the third-party appellant that the proposed café should be referred to as “high-volume” as this is a subjective assessment of an immeasurable trading potential for the proposed café if permitted.

The proposed change of use of the subject property from retail to café will activate a requirement to undertake a revision to the permitted Fire Certificate in the event that permission is granted. It is not a requirement under Building Control Regulations made pursuant to the Building Control Act, 1990 to undertake such a revision of the permitted Fire Certificate at planning permission application stage so I do not concur with the third-party appellant that there will no upgrade of fire precautions if the change of use is permitted.

The third-party appellant cites a concern about potential noise emanating from two sources, the kitchen installations and from the patrons attending at the proposed café. Once again the café is described as “high-volume” and again I do not believe that the proposed development comprising c. 72.4 square meters measured on a gross floor area has the capacity to generate noise to an extent that would endanger the quiet enjoyment of the residential amenity of the area. The adoption of noise management parameters in a grant of planning permission would adequately address any such concerns. The third-party appellant questions if an external area to the front of the building is to be used for seating but this is not provided for in the design plans as submitted with the planning application. Therefore no noise impact can be assessed from such external areas that would not be permitted if the proposed development was granted permission. Drawing No. P4497-A001 as submitted for planning permission by the applicant does not make provision for any external seating at the proposed café.

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The proposed public bicycle rack is cited as being a major health and safety risk for pedestrians and that cyclists will have to cross multiple public pathways to access the bicycle rack. Drawing No. P4497-A001 illustrates a bicycle rack for both patrons and staff but it does not illustrate the access routes for cyclists to approach from. I am satisfied that a proper management plan for the bicycle racks will mitigate the potential risks expressed by the third-party appellant in their submission and ensure that there is not a risk to either pedestrians or bicycle users.

The Ballyboughal Community Council have highlighted in their submission dated the 29th November 2023 that a café is essential for the social function and vitality of Ballyboughal village and cite the negative impacts that the absence of a café would have such as in the case of nearby Naul village. I concur with the Ballyboughal Community Council that the preservation of a café facility is fundamental and critical for the sustainable social function of the village. The application of robust planning conditions to manage and mitigate potential negative impacts of the proposed café will ensure that proper planning and sustainable development principles are achieved in my opinion.

2.4 Other Issues

I have reviewed the plans and particulars submitted for planning permission F23A/0399 and have not found them to be inaccurate or inconsistent with the site layout plan as alluded to by the third-party appellant. All drawings and plans are to a defined and dimensioned scale and accurately reflect the proposed development.

3.0 Recommendation

Having regard to the foregoing I recommend that planning permission be granted for the reasons and considerations set out below.

Reasons & Considerations

1. The proposed development is in accordance with Objective DMSO6 of the Fingal Development Plan (2023-2029) and is in accordance with the proper planning and sustainable development of the area.
2. The proposed change of use does not require an Environmental Impact Assessment.

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.

4.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>During the operational phase of the proposed development, the noise level arising from the development, as measured [at the nearest dwelling] [at the nearest noise sensitive location] or [at any point along the boundary of the site] shall not exceed:-</p> <p>(i) An Leq,1h value of 55 dB(A) during the period 0800 to 2200 hours from Monday to Sunday inclusive.</p> <p>(ii) An Leq,15 min value of 45 dB(A) at any other time. The noise at such time shall not contain a tonal component.</p> <p>Reason: In the interest of residential amenity.</p>
3.	<p>A maintenance agreement shall be entered into for the mechanical ventilation system that will emit vapour and emissions from the kitchen area of the development to ensure that noxious odours are emitted into the nearby residential houses.</p> <p>Reason: In the interest of public health.</p>
4.	<p>The management and maintenance of the waste generated from the proposed development following completion, shall be the responsibility of the café operator. A management scheme, providing adequate measures</p>

	<p>for the future waste storage facilities including rodent / insect mitigation measures shall be submitted to and agreed in writing with the planning authority, before the café is made available for occupation. A grease trap should also be installed on the kitchen waste outlet pipework and this grease trap should be managed and maintained by a competent contractor appointed by the café operator.</p> <p>Reason: In the interest of public health.</p>
5.	<p>No deliveries shall be taken at or dispatched from the premises outside the hours of 08.00 am and 06.00pm, Monday to Saturdays, nor at any time on Sundays or public holidays.</p> <p>Reason: To protect the [residential] amenities of the area.</p>
6.	<p>A valid Fire Safety Certificate reflecting the change of use from retail to café use shall be obtained prior to the commencement of trading in accordance with the Building Control Act, 1990.</p> <p>Reason: In the interest of public health.</p>
7.	<p>A revised layout and demarcation of bicycle spaces shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development providing an illustration of measures to ensure that the bicycle stand does not create a hazard for pedestrian traffic and demonstrating the pathway to the bicycle spaces from the surrounding catchment areas.</p> <p>Reason: To ensure that adequate bicycle parking provision is available to serve the proposed development, in the interest of sustainable transportation and in the interest of public safety.</p>
8.	<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</p>

	<p>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 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>
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Terry O' Leary

Planning Inspector

17/12/2024