



An
Bord
Pleanála

Inspector's Report ABP-318725-23

Development	Change of use of retail unit to two restaurant units with ancillary take-away facilities and alterations to front façade
Location	Countess Shopping Centre, Park Road, Killarney, County Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	2360219
Applicant(s)	Michael Hegarty
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First & Third Party
Appellant(s)	Michael Hegarty Michael Casey
Date of Site Inspection	11 Th April, 2024
Inspector	Kevin Moore

1.0 Site Location and Description

- 1.1. The existing shop unit the subject of the appeal is a vacant unit in the Countess Shopping Centre on Park Road in Killarney, County Kerry. It presents as a former retail unit. Other commercial uses in the centre include a betting office, a pharmacy, a take-away, a household goods shop, an entertainment centre, a dog grooming facility, and a gym. This shopping centre is located to the east of Killarney town centre at the junction of Park Road and Countess Road. The shopping centre is served by car parking around its perimeter. There is signage within the curtilage on the northern side. Other development in the vicinity includes an Aldi store on the opposite side of Park Road, a shopping complex to the north-east (which also includes a take-away), and a residential estate (Park Drive) to the east of the site.

2.0 Proposed Development

- 2.1. The proposed development would comprise the change of use of a retail unit to two restaurant units with ancillary takeaway facilities and alterations to the existing front facade. The gross floor space of the proposed works is stated to be 243 square metres. The development would be served by an existing mains water supply and public foul sewer.

3.0 Planning Authority Decision

3.1. Decision

On 23rd November 2023, Kerry County Council decided to grant permission for the proposed development subject to 9 no. conditions. The conditions included the following:

Condition 2

2. *Within three months of the date of this decision the developer shall pay a contribution of €6,075.00 to Kerry County Council (Planning Authority) in respect of Roads & Transport and Community & Amenity infrastructure benefiting the development.*

This contribution is broken down as follows:

Roads & Transport - €1,129.95

Community & Amenity - €1,057.05

Killarney Hub Levy - €3,888.00

The amount of this contribution is calculated in accordance with the Council's prevailing Development Contribution Scheme and may be increased from January 1st 2024 and annually thereafter (unless previously discharged) in line with the Wholesale Price Indices – Building and Construction (Capital Goods) as published by the Central Statistics Office unless the Scheme is superseded by a further Development Contribution Scheme adopted by the Council.

Reason: It is considered appropriate that the Developer should contribute towards the cost of public infrastructure and facilities benefiting the development, as provided for in the Councils prevailing Development Contribution Scheme, made in accordance with Section 48 of the 2000 Planning and Development Act (as amended) and that the level of contribution payable should increase at a rate in the manner specified in that Scheme.

Condition 4

4. *The existing totem sign associated with the Spar convenience shop shall be removed in its totality prior to the first opening of either of the proposed restaurant units.*

Reason: In the interests of visual amenities and to prevent visual clutter.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner noted the site's planning history and a third party submission received. It was considered that the proposal was not one which requires EIA or EIA screening and that there is no potential for significant effects on Natura 2000 sites. The mix of

uses in the shopping centre were noted and it was considered that the proposal would not impact negatively on the existing uses. It was submitted that a new Aldi store developed on the opposite side of the road may have impacted on the viability of convenience retail at this location. The change of use was seen to be acceptable within the shopping centre where there is already an existing Chinese restaurant with ancillary take-away facilities. It was further submitted that the restaurants with ancillary take-away facilities would not have an unduly negative impact on residential amenity and would be acceptable in terms of traffic safety. Reference is made to a large totem pole associated with the Spar unit being unsightly and requiring to be removed by way of a condition. A grant of permission was recommended subject to nine conditions.

3.2.2. Other Reports

The Environmental Health Service of the Health Service Executive referred to the need to notify the HSE of the new food business prior to its opening, with the notification including the layout details of the premises layout. Reference is made to the need to provide a mechanically aided system of intake and extract ventilation at each restaurant. Ventilation location requirements are specified. The HSE also refer to the need for a cleaning station and suitable bin storage.

3.3. Third Party Observations

An objection to the proposal was received from Michael Casey who preferred that the unit would remain a retail unit.

4.0 Planning History

I note the following planning history relating to the shopping centre from the Planner's report:

P.A. Ref. 16/235

Permission was granted for change of use of Unit 1 from financial services to retail, Unit 4 from financial services to restaurant, alteration of layouts of Units 2 and 3, and construction of car parking, traffic control measures, drainage and all ancillary works.

Permission was refused for the demolition of an existing office building and construction of a drive-through restaurant, construction of a service station and canopy, construction of a building containing four shop units and 12 no apartments.

P.A. Ref. 19/214

Permission was granted for change of use from existing retail unit to a fitness studio with associated office and reception areas.

P.A. 22/1077

Permission was granted for change of use of existing premises from financial services to indoor sports and recreation centre including internet café and console gaming stations.

5.0 Policy Context

5.1. Kerry County Development Plan 2022-2028

Volume 2 - Killarney Town Development Plan

The site is zoned Mixed Use. Restaurant and take-away uses are not prohibited in this zone.

Volume 6 – Development Management Standards and Guidelines

1.11 Takeaways/Restaurants/Kiosk/ Popup (Container) Trading Units

The Plan states:

In order to maintain an appropriate mix of uses and protect night-time amenities in a particular area and to promote a healthier and more active lifestyle, it is an objective of Kerry County Council to prevent an excessive concentration of takeaways and to ensure that the intensity of any proposed takeaway is in keeping with both the scale of the building and the pattern of development in the area.

The provision of such facilities will be strictly controlled, having regard to the following, where appropriate:

- The effect of noise, general disturbance, hours of operation, litter and fumes on the amenities of nearby residents.

- The developer will be requested to submit as part of the planning application an Odour Impact Assessment, prepared by a suitably qualified professional with sufficient expertise to demonstrate odour abatement solutions, through appropriate modelling and monitoring procedures when operational.
- The need to safeguard the vitality and viability of shopping areas and to maintain a suitable mix of retail uses.
- Traffic considerations.
- The number/frequency of such facilities in the area, particularly in close proximity to schools.
- The need to integrate the design of ventilation systems into the design of the building.
- That all takeaways provide and maintain a suitable waste bin outside their premises during hours of business.
- The number and frequency of such facilities within a 1km radius of the proposed development.
- The context and character of the street, where the aim is to maintain and improve the vitality of the shopping experience, by encouraging a range of convenience and/or comparison retail shops.
- Potential for impact on biodiversity and the environment, for example by way of wildlife disturbance, littering or trampling of sensitive vegetation.

5.2. EIA Screening

Having regard to the nature, scale and location of the proposed development, there is no real likelihood of significant effects on the environment. The submission of an EIAR is not required.

6.0 The Appeals

6.1. Grounds of First Party Appeal

The appeal is made against the attachment of Condition nos. 2 and 4 of the planning authority's decision. The grounds of appeal may be synthesised as follows:

Condition 2

- In the Development Contribution Scheme, it clearly states:

‘where the change of use does not lead to the need for new or upgraded infrastructure/services or where there is no additional demand placed on existing infrastructure (i.e. additional car parking), they shall be exempt from Development Contributions.’

The change of use does not require new or upgraded infrastructure nor does it place additional demand on existing infrastructure, having regard to the previous retail use.

Condition 4

- Permission was not sought to remove the sign and was not identified in the application. The Council has stepped outside of the remit of the application and the condition is contrary to Development Management Guidelines.
- The sign is associated with the shopping centre and the former shop was merely availing of the facility. The signage relates to wider development (a photo is attached).
- The sign received planning permission under Planning Ref. 06/4600 (copy attached).
- Similar signage exists in the area. Reference is made to same. Furthermore, there is a varying range of signage along Park Road.
- The sign's removal will have a negative impact on the existing businesses within the shopping centre.

- The condition is unreasonable as the sign is long established, the Council are permitting similar signage locally, and it has not been substantiated that it is injurious to the amenities of the area.

6.2. **Grounds of Third Party Appeal**

The grounds of appeal may be summarised as follows:

- There is a preference that the facility would remain a retail unit. Application details and drawings are lacking to properly understand what is proposed. The complex is retail and the change of use is not appropriate in the context of the overall use. The change of use will affect the viability of other retail and restaurant units in the vicinity.
- The availability of retail units in the area is in short supply and the unit should not be lost. It is an important retail centre with a good mix of smaller scale retail units providing convenience goods for the hinterland. The change of use will have adverse effects on the vitality and vibrancy of the area.
- Compliance with Building Regulations cannot be achieved through the design and a poor quality restaurant should not be permitted. The floor plans do not match the elevation. It is queried what unit represents the takeaway and what unit is the restaurant and where the kitchen areas are. The travel distances in the event of a fire seem compromised. No detail has been included as to extraction ventilation to the units.
- The proposal would represent an unacceptable proliferation of takeaway uses that would impact on the vitality of the retail centre and it would fail to maintain a suitable mix of retail uses in the centre. Another takeaway is disproportionate to the overall size and character of the area. The planning authority should protect against an over-concentration of certain uses and the proposed use should be discouraged in urban centres to maintain the integrity, quality and vibrancy of the existing retail centres.
- As fast food outlets have the potential to cause disturbance, nuisance and detract from the amenities of an area, proposals for new outlets need to be carefully considered and should be strictly controlled.

- The application should incorporate an application for retention as the overall building does not match planning permission drawings.

6.3. **Planning Authority Response**

I have no record of any response to the appeals from the planning authority.

7.0 **Assessment**

7.1. Adequacy of Application Details / The Principle of the Proposed Development

Very limited details have been provided on the proposals to develop two restaurants / takeaways. There is no understanding of the layout of the proposed units. They are presented as two long, narrow spaces in the submitted plans. Unit 1 would have a toilet. Unit 2 would not. There are no counter details, no table layout details, no kitchen provisions, no ventilation details, no storage details, no servicing/delivery details, etc. One cannot reasonably adequately assess the merits of this proposal forming potentially viable restaurant/takeaway units, as well as their impact on the wider environment, where there is such a distinct lack of details.

I note the provisions of Kerry County Development Plan as they relate to restaurants/takeaways as follows:

The Plan states that it is an objective of Kerry County Council to prevent an excessive concentration of takeaways and to ensure that the intensity of any proposed takeaway is in keeping with both the scale of the building and the pattern of development in the area. I have observed on my site inspection that there is an existing takeaway within the small shopping centre at present and that there is another takeaway across the road from this shopping centre. Having regard to the long, narrow, four-metre-wide units proposed, I would be of the opinion that the potential for these units to be primarily takeaway units is significant in light of the lack of details on, and the evident need for, kitchens, floor area for tables, ancillary service provisions for customers such as toilets, storage, the need for ventilation infrastructure, etc. I consider that three takeaways within this small shopping centre is excessive and would not provide a balanced mix of units within such a retail centre. This location appears to be well served by takeaways.

The Development Plan refers to takeaways being strictly controlled, giving due regard to a range of issues. My considerations on the relevant issues are as follows:

- The oversupply of takeaways on this site has potential to effect noise, general disturbance, and litter at this location. The amenities enjoyed by other operators of units within the shopping may potentially be adversely affected by the fumes and functioning of takeaways where there is no understanding of how such matters are to be controlled.
- It is apparent that no Odour Impact Assessment has been submitted with this application. Indeed, there are no details on odour, ventilation, etc. and how this would affect the shopping centre and the wider environment.
- The Plan refers to the need to safeguard the vitality and viability of shopping areas and to maintain a suitable mix of retail uses. Reference is also made to the number and frequency of such facilities within a 1km radius of the proposed development. This is a particularly valid issue and I do not consider that three takeaways within a small complex provides a suitable mix within such a small centre. The other existing takeaway across the road exacerbates this problem.
- I do not consider that there would be any particular traffic concerns arising from the proposed uses as the shopping centre is well served by parking and access is well established.
- The Plan refers to the number/frequency of such facilities in the area, particularly in close proximity to schools. I repeat that there are already two established takeaways in the immediate vicinity. I note the locations of St. Oliver's Primary School to the south and Gaelscoil Faithleann to the north. Second level schools are primarily based within and to the west of the town centre. The effects on schools are not likely to be significant.
- The Plan refers to the need to integrate the design of ventilation systems into the design of the building. There is clearly no understanding of how the ventilation systems would be integrated with the shopping complex.
- The Plan indicates that consideration be given to context and character of the street, where the aim is to maintain and improve the vitality of the shopping

experience, by encouraging a range of convenience and/or comparison retail shops. The over-concentration of takeaways at this location with the introduction of two more would not maintain and improve the vitality of this shopping centre.

It is my conclusion that the proposed development would likely result in the provision of two additional takeaways primarily. I cannot see how two restaurants could function within the two long, narrow units in terms of the layout constraints of the units and the need to provide kitchens, counters, floor areas for tables, ancillary service provisions for customers such as toilets, the need for ventilation infrastructure, storage, etc. Furthermore, the basic provisions required to be provided in the application, as set out in the Kerry County Development Plan, are not provided. I observe that the planning authority did not appear to have addressed these issues of relevance in the assessment of the proposed development.

7.2. Third Party Appeal

My considerations on the third party appeal are as follows:

- The existing shopping centre has a mixed range of commercial units at present. The former shop proposed for the change of use was the only convenience shop within the complex. There are no retail outlets of this nature remaining. I understand the appellant's desire to retain such a retail use. However, I also note that a large Aldi store has opened across the road from this shopping centre and it is likely to have had impacts on this retail use. While other commercial uses, including restaurant use, could be accommodated at this location, the provision of two restaurants within this confined space would not culminate in the delivery of functional restaurants and would likely lead to their primary use as being takeaways. Getting an appropriate mix of commercial units must reasonably be pursued. Two takeaways would be excessive.
- I concur with the appellant that the details provided in this application are lacking.
- I concur with the submission that the proposed development would result in the loss of a retail use at this location. This in turn results in a decline in the variety

of retail outlets at this location, notably the small convenience shop. This culminates in a decline in the vitality and vibrancy of the area.

- I note the reference to compliance with Building Regulations. The Board will understand that this is a different code, one to which the local authority is required to have due regard. I accept the deficiency in information received in this application.
- I concur with the submission that the proposal would result in an unacceptable proliferation of takeaway uses within the shopping centre and it would adversely impact on the character of the area. The need to protect against over-concentration of this use is understood and accepted.
- The potential for the takeaways to detract from the amenities of the area is accepted.
- The issue of a need for retention permission would derive from a determination from the planning authority that the building does not conform with planning permission(s) issued for the building.

7.3. First Party Appeal

Condition 2

The following is noted from the current Kerry County Council Development Contribution Scheme 2017:

- Development Contributions are made in respect of Roads & Transport and Community & Amenity. There is a further 'Levy' for Killarney which is designated a 'Hub Town' for the purposes of the Scheme.
- Part 6 of the Scheme relates to change of use and intensification of use. The Scheme states:

"Development contributions when applied to change of use applications in previous Schemes were reduced by 50%. In order to support the policies of Kerry County Council which promote development in our towns and villages, it is proposed to maintain this reduction for the redevelopment of

vacant sites and change of use applications within the development boundary of settlements (as defined in the Local Area Plans).

It is the policy of Kerry County Council to encourage and promote town centre living by facilitating proposals such as living over the shop and the redevelopment of brownfield sites. Development consisting of the conversion or renovation of upper floors of buildings into business/commercial or residential uses in areas zoned as Town Centre in Local Area Plans shall be exempt from the provisions of the Development Contributions Scheme.

Permission for a change of use in town centres where the change of use does not lead to the need for new or upgraded infrastructure/services or where there is no additional demand placed on existing infrastructure (i.e. additional car parking), they shall be exempt from Development Contributions.

All other change of use applications (including those where there is an increased demand for infrastructure/services) shall be subject to development contributions at the standard rate subject to a reduction of 50%.

For all applications, any net additional floor space (e.g. extensions) shall be charged at the standard rate of the proposed use.”

A Killarney and Environs Map is appended to the Scheme. The site of the proposed development falls within the ‘Town Boundary’ on this Map.

It is understood from the application that the proposed change of use would not lead to a need for new or upgraded infrastructure/services and that the proposed development would utilise existing public services. There is no understanding that the change of use from a retail outlet to restaurant use would place any significant additional demand on existing infrastructure, i.e. additional car parking, as the shopping centre has adequate parking to service the uses therein.

In the event the Board was to grant permission for the proposed development, a condition of this nature would not be appropriate and would not be in accordance with Kerry County Council’s Development Contribution Scheme.

Condition 4

The existing sign is an established sign which the appellant has indicated was subject to planning permission. The planning authority has not determined that it is unauthorised or that it is non-compliant with any planning permission. The sign is not subject to the application for this change of use of one of the units within the shopping centre. In the event the Board was to grant permission for the proposed development, a condition of this nature would not be appropriate and would go beyond the scope of the application.

Screening for Appropriate Assessment

I have considered the proposed development in light of the requirements S177U of the Planning and Development Act 2000 as amended.

The subject site is located in an established built-up, urban area within Killarney at significant distance from Killarney National Park Special Protection Area and Killarney National Park, Macgillicuddy's Reeks and Caragh River Catchment Special Area of Conservation which lie to the west of the town.

The proposed development comprises a change of use within an established shopping centre. No nature conservation concerns were raised in the planning appeal.

Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion is as follows:

- The small scale and nature of the development,
- The fully serviced nature of the proposed development, and
- The location and distance from the nearest European sites and lack of connections.

I conclude that on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects. Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

8.0 Recommendation

- 8.1. I recommend that permission is refused in accordance with the following reasons and considerations.

9.0 Reasons and Considerations

It is an objective of Kerry County Development Plan 2022-2028, in order to maintain an appropriate mix of uses and protect night-time amenities in a particular area and to promote a healthier and more active lifestyle, to prevent an excessive concentration of takeaways and to ensure that the intensity of any proposed takeaway is in keeping with both the scale of the building and the pattern of development in the area. Having regard to the siting of the proposed development within a small shopping centre within which there is an established takeaway unit and to the existence of another takeaway outlet in the immediate vicinity of the site, it is considered that the development of an additional two takeaway units at this location would constitute an excessive concentration of takeaways at this location and would be contrary to the objective of Kerry County Development Plan. Furthermore, it is considered that the scale, form and layout of the proposed development, with due regard to the lack of details provided on kitchens, counters, floor areas for tables, ancillary service provisions for customers such as toilets, the need for ventilation infrastructure, storage, etc., the proposed development would fail to provide two functional restaurants within the confines of a restricted plan area, leading to a substandard form of development. The proposed development would,

therefore, be contrary to the proper planning and sustainable development of the area.

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.

Kevin Moore
Senior Planning Inspector

24th April, 2024.