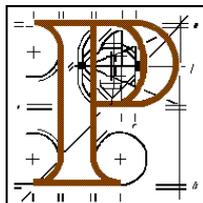


An Bord Pleanála



Inspector's Report

Development: Change of use to restaurant with ancillary office accommodation, storage, outdoor seating, signage and completion of extension to rear and associated site works at 121 – 122 Parade Quay, Waterford.

Planning Application

Planning Authority: Waterford City and County Council

Planning Authority Reg. Ref.: 14/500055

Applicant: Mc Learys Restaurant Ltd.

Type of Application: Permission

Planning Authority Decision: Grant Permission

Planning Appeal

Appellant(s): John Harris

Type of Appeal: Third Party V Grant

Observers: None

Date of Site Inspection: 10th September 2014

Inspector: Kenneth Moloney

1.0 SITE DESCRIPTION

The appeal site faces onto Parade Quay which is situated at the eastern end of the City Quays. The appeal property overlooks the recently renovated Millenium Plaza and this plaza adjoins the River Suir.

The appeal property is a 3-storey period property and at the time of my site inspection the front of the property was covered in scaffolding. The main entrance to the property is centrally located and there are two units either side of the main entrance. There is retail glazing business on the western side of the entrance and the unit on the eastern side of the entrance is currently vacant. The upper floors would also appeal to be vacant.

There is on-street car parking to the front of the appeal property.

2.0 PROPOSED DEVELOPMENT

The proposed development is for a change of use from mixed use (retail and restaurant) over two floors to a restaurant over two floors with ancillary office accommodation, storage and connections to public services. The proposal also includes outdoor seating, signage and the construction of a two-storey extension to the rear.

The floor plan of the proposed restaurant is to comprise of ground floor seating, both within the building and outdoor seating to the rear. The first floor level is to include seating and a kitchen. The floor plan on the second floor is to comprise of storage and office. The floor area of the proposed extension to the rear is approximately 36 sq. metres.

The front elevation is to include new shop front signage.

3.0 PLANNING AUTHORITY'S DECISION

The Planning Authority decided to grant planning permission subject to 7 conditions, all of which are standard.

Internal Reports: There are 4 internal reports on the file:

- Fire Safety Office: - No objections subject to conditions.
- Irish Water: - No objections.
- Water Services Section: - No objections subject to conditions.
- Waste Management Section: - No objections subject to conditions.

Objections: There is one third party objection on the planning file and the issues raised have been noted and considered.

4.0 PLANNING HISTORY

- L.A. Ref. 8 4/12 – Local Authority Part 8 works completed on the site i.e. no. 121 – 122 Parade Quay. The works include construction of three-storey extension to rear of property, provision of new courtyard and walkway, demolition of annex buildings / walls to the rear of property.

5.0 DEVELOPMENT PLAN

The operational development is the Waterford City Development Plan, 2013 – 2019.

The appeal site is zoned 'City Centre Commercial' and situated within a designated Special Area of Conservation and a Zone of Archaeological Potential. In accordance with paragraph 12.6 of the Waterford City Development Plan, 2013 – 2019, a restaurant use is a permitted use within the 'City Centre Commercial' zone.

6.0 GROUNDS OF APPEAL

Peter Thomson, Planning Solutions, lodged an appeal on behalf of John Harris, 121a The Quay, Waterford. The submission refers to the background of the case, development plan provisions, the proposed development and the grounds of appeal. The main grounds of appeal are summarised as relating to the following; -

Ground of Appeal 1

- The retail policies of the City Development Plan seek to retain and expand retail function and not to displace existing business.
- It is contended that should permission be granted that the future tenants of the appeal site will relocate from an existing restaurant quarter and therefore leaving a vacancy in the city centre.
- This will add to the number of existing vacancies in the city.

Ground of Appeal 2

- It is contended that the Viking Quarter of the city must retain a correct balance and mix of uses appropriate to a city centre.
- It is considered that vacancies will have an adverse impact on the Viking Quarter.
- Paragraph 5.4 of the City Development Plan deals with enhancing vitality and viability.
- There is a policy to prevent / control the spread of uses that would lead to a reduction in the attractiveness of the retail function of the principal shopping street.
- The plan attempts to protect the retail function to protect against permitting non retail uses on ground floor level.

- In considering restaurants the plan sets out criteria which includes assessing the effect of the proposed development on the amenities of the area including residential amenity. Also assessing the impact on existing land-uses including retail function and assessing the size, scale and location of existing restaurants in the vicinity.
- In relation to residential amenities the proposal will further erode residential amenities in the area and this therefore would be contrary to policy paragraph 5.1 of the City Development Plan which promotes higher levels of city centre accommodation.
- The erosion of residential accommodation diminishes the level of security and surveillance for residents within the City Centre.
- In relation to retail function there has been a sharp increase in seasonal / tourist restaurants / café at the expense of mainstream retail.
- It is contended that permitting change of use from vacant retail to permanent non-retail uses erodes the vitality and viability of commercial areas. The proposal will push out existing retail uses.
- The land-use map included in the appeal submission demonstrates that there is a severe lack of vibrant daytime uses and a dependence on night time and seasonal tourist businesses within the Viking Triangle.
- Lessons can be learnt from John Street in the City Centre which suffers from an under provision of day-time uses and an over provision of night-time uses.
- In relation to scale and size it is contended that there is no reason why the proposal cannot occupy a single shop unit and extend to the rear as this would retain the appellants retail unit in situ. The restaurant could occupy the upper floors and the rear extension.

Ground of Appeal 3

- It is contended that given the appellants interest in the subject property and also have regard to transparency that details of the rental agreement between the applicant and the local authority should be sought.

Ground of Appeal 4

- There will be inadequate car parking provision, including disabled car parking, for the proposed use.
- This is a disadvantage to retailers along the quays who depend on the short-term parking spaces.

Ground of Appeal 5

- Given the location of the appeal site adjacent to a protected structure and within an ACA it is considered that full details of the extraction fans should be provided at planning stage. This equipment will be very prominent in the context of Greyfries Art Gallery.

Conclusion

- The proposed development will exacerbate the existing over dependence on night time and seasonal tourist businesses in the area.
- The Viking Triangle while catering for tourists must also cater for a vibrant quarter by achieving a balance mix of uses.
- Should the existing retail use have to relocate there is no reason why the restaurant and retail use cannot be accommodated.

7.0 RESPONSES

Second Party Response

The following is a summary of a response submitted by the local authority;

Frivolous Appeal

- It is submitted that the appeal submission is frivolous and should be dismissed.
- It is contended that the appeal property was the subject of a CPO process and subsequently acquired by the Council on 05/12/2012.
- There is an ongoing dispute between the Council and the appellant and the details of this dispute are sensitive.
- It is considered that the purpose of the appeal is to delay the proposed development and the subsequent redevelopment of a prominent city centre property.

Proposed Development

- The Board is advised that the redevelopment of the quays and the Viking Triangle is a key objective for the Council over the past 5 – 6 years. Many policies set out in Chapter 5 of the Waterford City Development Plan, 2013 – 2019, seek to ensure regeneration in a sustainable manner.
- It is submitted that the investment of public funds in around the historic city centre have acted as a catalyst for private investment.
- The current refurbishment, extension and repair works to no. 121-122 Parade Quay are been undertaken pursuant to Part XI of the Planning and Development Act, 2000 (as amended), and Part 8 of the Planning and Development Regulations, 2001.

Response to Appeal

- In relation to the ground of appeal no. 1 it is submitted that the proposed Mc Learys restaurant at the appeal site is an additional restaurant to the established restaurant on High Street.
- The proposed restaurant at Parade Quay will cater for both daytime and night-time dining with a different dining experience than the restaurant on High Street.
- It is submitted that the existing retail outlet on the appeal site is a small glazing business which has a low level of footfall and this is the only issue of displacement.

- In relation to the ground of appeal no. 2 it is contended that the proposal will result in both daytime and night-time activity and therefore enhance the attractiveness of the area for visitors and residents alike.
- The appeal site is not located within the core shopping area and therefore a non-retail use at ground floor level is acceptable.
- It is submitted that Parade Quay is not comparable with John Street which is the main entertainment quarter of the city.
- In relation to ground of appeal no. 3 it is submitted that the terms of the rental or lease agreement is not relevant to the planning process. A change of use planning application must be determined on its own merits.
- It is submitted that in relation to car parking this is relevant to each individual property and not a substantive ground of appeal.
- In relation to the ground of appeal no. 4 it is submitted that the issue in relation to extraction ducting is normally dealt with by planning condition.

First Party Response

The following is the summary of a response submitted by the applicant's agent;

- It is submitted that the general principle of the appeal submission appears to be a civil matter between the owner of the property and the appellant.
- In the interest of clarification it is submitted that the existing Mc Learey's restaurant on High Street will not close.
- The proposal will not result in any loss of jobs and in fact the proposal will result in the creation of additional jobs.
- Contrary to the appeal submission the existing Mc Learey's restaurant is not an anchor tenant in the restaurant quarter.
- In relation to the ground of appeal no. 1 it is submitted that the residential element of the appeal property has been unoccupied for over 6 years. Following the Council's development in 2008 (ref. P8 – 04/12) the bed-sits / apartments are now open spaces. There is a significant number of residential units in the immediate area.
- In relation to ground of appeal no. 2 it is important to note that the tourist offering in the area is not seasonal.
- It is submitted that the ground of appeal no. 3 is contrary to ground of appeal no. 1 as it does not contain any provision for residential development.
- In relation to ground of appeal no. 4 it is submitted that there are hundreds of public car parking spaces in the area within a short walking distance of the appeal site. These car parks also contain ample disabled car parking spaces.
- The ventilation system will be agreed with the local authority prior to commencing development.

8.0 ASSESSMENT

The main issues to be considered in this case are: -

- Principle of Development
- Impact on City Centre
- Impact on Residential Amenities
- Car Parking Provision
- Built Conservation
- Other Issues

Prior to considering this assessment it is important to note that the local authority, in their response to the appeal submission, contends that the appeal submission is frivolous. I have examined the appeal submission and I am of the opinion that the submission has raised valid planning issues and therefore I would not recommend, to the Board, to dismiss the submitted appeal on the grounds that it is frivolous.

Principle of Development

The appeal site is zoned 'City Centre Commercial' in accordance with the provisions of the Waterford City Development Plan, 2013 – 2019. I would note that a restaurant use is a permissible use within this zoning objective and therefore I would consider that in general the principle of the proposed change of use from retail / residential to restaurant is acceptable.

Impact on City Centre

I note that the appellant argues that the proposed change of use from retail and residential to restaurant will result in a vacant unit in the city centre commercial core and therefore will have an adverse impact on this area. The appellant also argues that the loss of a retail use from the appeal site will result in the loss of day time uses in the city centre.

A key component of the retail strategy for the city is the definition of the retail core shopping area for the city centre. This is defined in Section 4.8 of the Waterford City Development Plan, 2013 – 2019, and importantly for the purpose of this appeal assessment the appeal site is located outside the retail core shopping area. It is a policy (POL 4.3.3) of the Waterford City Development Plan, 2013 – 2019, to protect the retail function of the core shopping area. I would acknowledge that the loss of a retail outlet within the retail core shopping area would be a significant planning issue however given the location of the appeal site I would not consider that the replacement of a retail unit with a restaurant use would materially contravene any objective or policies of the Waterford City Development Plan, 2013 – 2019. Furthermore I noted from a visual observation of the area that the established ground floor uses on Parade Quay is a mix of both non-retail and retail use but are predominately non-retail uses.

The appeal site is located on the edge of the Viking Triangle which is a major cultural and heritage destination within the city. The Development Plan (section 5.3.2) outlines that a restaurant quarter has already established at High Street and Henrietta Street within the city. I would note that the applicant's response submission states that the proposed restaurant use is an additional restaurant and will not impact on the existing restaurant use, owned by the applicant, situated on High Street.

I would consider that the proposed restaurant would not unduly impact on the city centre objectives as set out in the Waterford City Development Plan, 2013 – 2019.

Impact on Residential Amenities

I would concur with the local authority that the proposed development will not adversely impact on established residential amenities in the area. Although the change of use will result in the loss of the residential units, which are currently vacant, however I would consider that given the zoning objective of the appeal site that the proposed change of use is acceptable in terms of impact on residential amenity.

Car Parking

I would consider that on the basis of the car parking standards set out in Section 13.28 of the Waterford City Development Plan, 2013 – 2019, that the proposed change of use from retail and residential to restaurant would result in a intensification in demand for car parking. In accordance with my calculations and based on Section 13.28 of the Waterford City Development Plan, 2013 – 2019, I have estimated that as a consequence of the change of use the car parking requirements would rise from that of currently 3 to approximately 7 spaces.

The local authority argues that there is adequate car parking provision in the immediate area. However I would consider and recommend to the Board, should they favour granting permission, that a condition is attached requiring a financial contribution to address the shortfall in car parking provision.

I would note that condition no. 7 of the local authority permission requires a financial contribution of €1,623. The adopted Development Contribution Scheme requires a payment of €2,246 per car parking space and therefore given that there are, in my opinion, a shortfall of 4 car parking spaces I would recommend that the overall financial contribution is amended to €10,607.

Built Conservation

I would acknowledge that the appeal site is situated within a designated ACA however I would accept that the detail of any extraction duct can be agreed with the local authority prior to the commencement of

development. I would not consider that the provision of an extraction duct on the external envelope of the building, and which the details shall be agreed with the local authority, will adversely impact on the character of the area.

Other Issues

The appellant has raised the point that the rental agreement between the applicant and the local authority (owner of the property) should be made available to the public in the interest of transparency. However I would not consider this relevant in the consideration of this planning appeal.

9.0 RECOMMENDATION

I have read the submissions on the file, visited the site, had due regard to the development plan and all other matters arising. I recommend that planning permission be granted for the reasons set out below.

REASONS AND CONSIDERATIONS

Having regard to the 'City Centre Commercial' zoning objective of the of the site, the proposed development and its location in the city centre, it is considered that subject to compliance with conditions set out below, the proposed development would not seriously injure the amenities of the area. The development would not, therefore, be contrary to the proper planning and sustainable development of the area.

CONDITIONS

1. The development shall be carried out 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 points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The permitted development shall not be used as a premise for the sale of hot food for consumption off the premises, nor as restaurant incorporating such a service, notwithstanding the provisions of the Planning and Development Regulations 2001, as amended.

Reason: In the interest of city centre residential amenity, and as permission for such uses has not been sought in this application.

3. Prior to commencement of development, details of any external signage shall be submitted to the planning authority for agreement.

Reason: In the interest of orderly development and the visual amenities of the area.

4. Security shutters, if required, should be located behind the windows and shall be of the lattice see-through type. Full details shall be submitted to the planning authority for agreement.

Reason: In the interest of visual amenity.

5. The requirements of the Environment Health Authority shall be ascertained and adhered to in the development.

Reason: In the interest of public health.

6. Prior to the commencement of development a scheme shall be submitted to, and approved in writing by the Planning Authority for the effective control of fumes and odours from the premises.

Reason: In the interests of the amenities of both the immediate neighbours and general surroundings.

7. (a) Prior to the commencement of development full details of all associated extraction and ventilation equipment and ducting including internal route and location of screening details shall be submitted to the Planning Authority for written agreement. (b) No plant or equipment, including air conditioning units, fans or condensers, nor any water storage tanks, other than the plant specifically identified and detailed in this application, shall be erected without a prior and separate planning permission, notwithstanding the exempted development provisions of the Planning and Development Acts and Regulations.

Reason: In the interest of visual amenities.

8. Prior to the commencement of development details of the hours of operation of the development hereby permitted and details for the hours for the loading/unloading or servicing operations shall be submitted to the planning authority for written agreement.

Reason: In order to limit the hours of operation and servicing of the development, in the interest of protecting the residential amenity in the area.

9. Prior to the commencement of development a litter management scheme for the proposed development shall be submitted and agreed in writing by the Planning Authority.

Reason: In the interest of protecting the amenities of the area.

10. The construction of the development shall be managed in accordance with a Construction Management Plan which shall be submitted to, and

agreed in writing with the planning authority prior to the commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interest of amenities and public safety.

11. Prior to the commencement of development the developer shall submit, and obtain written agreement of the planning authority to, a plan containing details of the management of waste (and, in particular, recyclable materials) within the development including the provision of facilities for the separation and the collection of the waste and, in particular, recyclable materials, and for the ongoing operation of these facilities.

Reason: To provide for appropriate management of waste and in particular, recyclable materials, in the interest of protecting the environment.

12. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health and to ensure a proper standard of development.

13. The developer shall pay to the planning authority a financial contribution of €10,607.00 (ten thousand, six hundred and seven euro) 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 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.

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.

Kenneth Moloney
Planning Inspector
12th September 2014