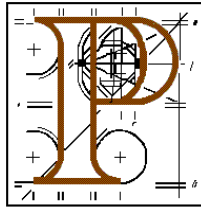


An Bord Pleanála



Inspector's Report

PL 61 245512

DEVELOPMENT:

Permission for retention of revisions to previous grant of permission (P. A. Reg. Ref.13/300) to include:

- (1) Retention of change of use of ground floor from retail and deli area to sandwich bar and seating area with revision to the internal layout,
- (2) Retention of alterations to the internal layout at first floor level to provide for sandwich bar seating area, preparation area and toilets.
- (3) Retention of projecting signage on front elevation and (4) Removal or variation to Conditions 2 and 3 (P. A. Reg. Ref.13/300) along with site development works.

LOCATION:

12 High Street, Galway City.

PLANNING APPLICATION

Planning Authority:

Galway City Council.

P. A. Reg. Ref:

15/164

Applicant:

Tolmur Ltd.

Decision:

Refuse Permission.

APPEALS

First Party Appeal:

Tolmur Ltd.

Observers:

None

Inspector:

Jane Dennehy.

Date of Inspection:

16th April, 2015.

1.0 INTRODUCTION

- 1.1 This file contains a first party appeal against the decision of the planning authority to refuse permission for Permission for retention of revisions to previous grant of permission (P. A. Reg. Ref.13/300) providing for a change of use from retail and delicatessen to a sandwich bar and seating area at No 12 High Street, Galway.

2.0 SITE LOCATION AND DESCRIPTION

The site is that of a three storey historic building within the mediaeval quarter at the centre of Galway at the corner of High Street, Main Guard Street and Shop Street. At the time of inspection the premises was in use as a "Subway" take-away and eat in food outlet with a serving counter, preparation area and seating at tables for customers. Most of the space in the first floor level which is accessed by an internal staircase is laid out as a small seating area along with a toilet and ancillary facilities. (The second floor level was not inspected.) There is a corporate signage on the shopfront and a projecting sign above the ground floor level on the façade.

3. PLANNING HISTORY:

- 3.1 **PL 244216/P. A. Reg. Ref. 13/300:** Permission was granted for, (1) change of use of the first floor to sandwich bar with seating, (2) Retention of change of use of second floor to service area and toilets, (3) Retention of alteration to the internal layout of premises at ground first and second floor levels, (4) retention and completion of ventilation and extraction equipment, (5) Replacement of fascia signage and projecting signage on front elevation and, (6) Conservation works to front elevation and sash windows and site development works and services. A development contribution condition was removed following appeal.

Condition No 2 confines the ground floor use to use as a shop as defined under Article 5 of the Planning and Development Regulations, 2001-2013. (The Regulations)

- 3.2 According to the planning officer's report the development on site has been subject to enforcement proceedings.

4. DEVELOPMENT PLAN.

- 4.1 The operative development plan is the Galway City Development Plan, 2011-2017 according to which the site location is within an area subject to the zoning objective County Council "County Council:" *to provide for*

city centre activities, and particularly those, which preserve the city centre as the dominant commercial area of the city.”

- 4.2 The building at No 12 High Street is included on the record of protected structures.
- 4.3 According to Section 11.4.5 *“The conversion of ground floors of premises on the principal streets from retail to non-retail use, including retail services shall not be permitted. For these purposes the principal shopping streets area Williamsgate Street, William Street, Shop Street, Main Gard Street, High Street, Quay Street and Eyre Square (north western side). Consideration will be given to allow for retail services on Eyre Square north (North western side) and for exceptionally small existing units of total gross retail floorspace of less than 20m²”*
- 4.4 According to Section 5.3.1 the city centre is a major town centre and a national gateway as provided for in the retail hierarchy and it is the policy of the planning authority to promote and protect the city centre as the prime retail area in the city.
- 4.5 According to Section 9.2: *“The large increase in the number of restaurants licensed premises and tourist related uses in areas such as Quay Street and cross Street has contributed to the vitality and atmosphere of the city centre. A mix of uses is an important element in maintaining the city’s vitality and diversity. The Council will ensure that this diversity is maintained and that no single use dominates.*

5. THE PLANNING APPLICATION.

- 5.1 The application lodged with the planning authority indicates proposals for Permission for retention of revisions to previous grant of permission under (P. A. Reg. Ref.13/300) comprising:
- (1) Retention of change of use of ground floor from retail and deli area to sandwich bar and seating area with revision to the internal layout,
 - (2) Retention of alterations to the internal layout at first floor level to provide for sandwich bar seating area, preparation area and toilets.
 - (3) Retention of projecting signage on front elevation and,
 - (4) Removal or variation to Conditions 2 and 3 (P. A. Reg. Ref.13/300) along with site development works.
- 5.2 The application is accompanied by a detailed supplementary report which includes an elaboration on the details of the proposed development and historical, conservation, architectural heritage impact and structural appraisals.

- 5.3 The internal reports of the Roads and Transport Section, Fire Authority, Water Section and Drainage Section indicate no objection to the proposed development.
- 5.4 The Environmental Health Officer report of 28th July, 2015 contains details of a number of requirements to be met regarding compliance with Food Safety legislation.
- 5.5 The planning officer in his report in addition to stating that the proposed development was in material contravention of Condition No 2 of the grant of permission under PL 244216/ P A. Reg. Ref. 13/300 refers to the Architectural heritage report submitted with the applicant. He states that the Coke sign referred to in the report (which is replaced by the proposed "Subway" projecting sign) was unauthorised development.

6. DECISION OF THE PLANNING AUTHORITY.

- 6.1 By Order dated, 24th August, 2015 the planning authority decided to refuse permission for the proposed development on the basis of the reasons which are reproduced below:

- (1) *Section 11.4.5 "Uses" of the Galway City Council Development Plan 2011-2017 restricts the conversion of the ground floor of premises on the principle streets of the City Centre from retail to non-retail uses. High Street is one of these principle streets. The change of use of the entire ground floor from a retail unit to a restaurant, a non- retail use, is considered unacceptable since it would materially contravene the Development Plan objective for the City Centre, and it would set an undesirable precedent for change of use of other retail premises which would have more significant implications for commercial viability and vitality of the City Centre. The development is therefore considered contrary to the proper planning and sustainable development of the area.*
- (2) *The proposal would materially contravene Condition No 23 of the Planning Permission Reference 12/300 granted on 9th March 2015 which states "The ground floor level shall be used for as a shop only under Article 5 of the Planning and Development Regulations, 2001-2013. No tables, chairs or seating shall be placed at ground floor level. The existing first floor "Subway" sandwich bar counter shall remain at first floor level as shown on drawings submitted on 18/10/13 and 28/5/14 and shall not be relocated to ground level.*

7. THE APPEAL.

7.1 A first party appeal against the decision to refuse permission was received from Ryehill Planning and Design on behalf of the applicant on 18th September, 2015.

7.2 The grounds of the appeal are outlined in summary form below:

- The ground floor is extremely limited in size (35 square metres) and configuration. It cannot operate successfully a viable retail unit with adequate display and storage. The applicant previously operated a Londis Shop for two years which failed and they have a long term lease on the property. The reason for the change of use is safeguard the tenancy and the viability of the unit. Non-use of the ground floor increases the inability to secure and main building fabric, the structure being a protected structure. The unit has been transformed into a vibrant, attractively refurbished commercial unit befitting the location.
- The ground floor was operated as a hot bread shop during the 1980s so the sandwich bar use is consistent with the historical use and the proposed use is vital to the future viability of the building.
- Reference is made to two prior appeal cases relating to change of use at protected structures located in High Street: They are:
 - PL 61.235318/ P. A. Reg. Ref. 09/355 where the planning authority decision to refuse permission for change of use from retail unit to betting office at No 1 High Street was overturned following appeal and,
 - PL 61 240064/ P. A. Reg. Ref. 11/209 where, following appeal, permission was refused for change of use of a retail unit to a bookmakers office including modification and changes at 22 High Street.
- Section 11.4.5 of the Development Plan is contradictory to Section 9.2 of the development plan and this was highlighted in the inspector's report on PL 61 235318. The inspector also identified exceptions available for protected structures where proposed changes of use may be acceptable and reference is made to section 7.2 of the Galway City development plan 2005/2011. The applicant does not agree that the proposed development is in material contravention of section 11.4.5 because the proposal can be justified under section 37 (2) (b) (ii) of the planning and Development Act, 2000 (as amended) which was the approach taken by the inspector on the appeal under PL 235318.
- The size and footprint of the ground floor renders the rear section a void space with the stairwell and access being a further constraint.

As a result twenty nine square metres is usable commercial space. This is just sufficient for a sandwich bar but was not suitable for the Londis business. An area of twenty seven square metres is commercial space at 1 High Street. (PL 61 235318 refers.) The findings in the Inspector's report support the proposed development. Owing to the size and extent of the site there is no threat to the integrity of the main shopping street and the proposed use cannot be compared to a bookmakers' business.

- There is a very limited internal area on the ground floor that is allocated to seating associated with the sandwich bar.
- With regard to the second reason for refusal over material contravention of Condition No 2 of the prior grant of permission, the applicant was willing to pursue retail use and to operate the premises as a Londis shop so the condition was not appealed. The change of use arose from the failure of the business and was to safeguard the tenancy and viability of the unit. The application is specifically for the removal or for the variation of the condition so that current planning can supersede the prior grant of permission. The merits of this case should be assessed accordingly.

8. RESPONSE TO THE APPEAL BY THE PLANNING AUTHORITY.

8.1 A submission was received from the planning authority on 22nd October, 2015.

8.2 According to the submission,

Change of use of the ground floor of one the principal shopping streets constitutes a material contravention of the Galway City Council Development Plan 2011-2017 and,

Condition No 2 of the prior grant of permission expressly confirms that for the permitted ground floor use. The hot food counter must be ancillary to the prime retail unit in order for it to come within the definition of shop in Article 5 of the Planning and Development Regulations, 2001-2015. (The Regulations).

8.3 An outline of the rationale set out in the observations to support the above is set out below.

- Permission has been refused at No 22 High Street under PL 61 240064/P.A. Reg. Ref. 11/209 for change of use from retail to bookmakers and at No 1 High Street from retail to coffee shop under PL 61.235318/ P. A. Reg. Ref. 09/355. The Inspector pointed out the potential conflict in relation to policies under Section 11.4.5.

- The development plan has been reviewed and the Galway City Development Plan, 2011-2017 applies to the current application. There is no inconsistency or conflict in the current development plan in the policies which support café culture in the city centre but on seven principle streets including High Street. It is policy that is clearly reflected in Policy 11.4.5 to restrict further changes of use from retail to non-retail use.
- Policy 5.3.1 relates to retail hierarchy within the city as a national gateway having a major retail role with the strong tourist market supporting it. The policy reinforces the objective to promote and protect the city centre as the prime retail area in the city.
- The definition of 'shop' in Article 5 of the Regulations according to Article 5 (d) limits the sale of sandwiches or other food for consumption off the premises to the sale of such food where it is subsidiary to the main retail use.
- Change of use of ground floor use of premises on the principal shopping streets constitutes material contravention of the development plan and of Condition No 2 of the prior grant of permission. The previous shop use has been removed and the ground floor is laid out as a servery and seating area for customers
- The implementation of strong policy has preserved the primacy and quality of the city centre and the planning authority seeks to reinforce the role of the city as a dominant commercial area for shopping tourist and cultural activities. Diversity of uses including the increase in restaurants in the areas such as Quay Street and Cross Street contributes to the vitality and atmosphere in the city centre. In ensuring the primacy of the city centre, particular restrictions on types of uses are applied on some streets in the current development plan. It is critical to ensure that the retail nature of certain streets is protected with certain uses being discouraged. The legacy of some uses that predated the 2005-2011 development plan is acknowledged.

9. EVALUATION

- 9.1 The main issues to be considered relate to the proposed change use and considered below which are central to the determination of the decision are:

Material Contravention of the Galway City Development Plan 2011 – 2017.

Material contravention of Condition No 2 of the prior grant of permission under PL 244216/P. A. Reg. Ref. 13/300.

9.2 Material Contravention of the Galway City Development Plan 2011 – 2017,

The appeal relies for precedent on two prior grants of planning permission for change of use from retail units to bookmaker's offices and on comments made in an inspector's report as to potential conflict between sections 9.2 and 11.4. 5 in the (2005-2011) development plan. The planning officer in the observations on the appeal has clarified the retail strategy for the city centre and policy objectives of the current development plan, which support the restriction in section 11.4.5 on ground floor non retail use in the seven named principle shopping streets which include High Street. It is not accepted that the proposal can be justified under section 37 (2) (b) (ii) of the Planning and Development Act 2000-2014.

9.3 The proposed change of use from retail unit to a ("Subway") restaurant serving hot and cold food for eat in and eat out is therefore in material contravention of the Galway City Development Plan 2011- 2017as the premises is a ground floor unit on one of the seven named principle streets in section 11.4.5.

9.4 It is the applicant's case that the configuration and size of the ground floor is not suitable for a viable retail use, the previously permitted 'Londis' shop business having failed. While the scope for retail use may be limited it is not accepted that there is no scope for a viable retail use to be located on the ground floor of the premises. The strength of the area as tourism and leisure destination may be favourable to some retail opportunities suitable to a small unit with limited configuration which may be viable and may contribute to the vitality of the area. It is not accepted that to continued use and viability of the premises, which is located within a protected structure is dependent on non-retail use at ground floor level. There is no scope for setting aside the development plan policy to allow for the proposed development can be identified.

9.5 Material contravention of Condition No 2 of the prior grant of permission under PL 244216/P. A. Reg. Ref. 13/300.

Condition No 2 attached to the prior grant of permission is reproduced below:

"The ground floor level shall be used for as a shop only, as defined under Article 5 of the Planning and Development Regulations, 2001-2013. No tables chairs or seating shall be placed at ground floor level. The existing first floor "Subway" sandwich bar counter shall remain at first floor level as shown on drawings submitted on 18/10/13 and 28/5/14 and shall not be relocated to ground level. Reason To ensure the development complies with the policies of the City Development Plan and in the interest of proper planning and sustainable development of the area."

9.6 The permitted use comes within the meaning of 'shop' within Article 5 of the Regulations. The permitted retail use as a Londis convenience shop includes incorporation of a deli counter ancillary to the main retail use at ground floor level as a shop. Non retail use on the upper floor, is not in conflict with the development plan policy 11.4.5 the restrictions of which are confined to the ground floor of premises on the named principle streets.

9.7 The proposed change of use does come within the meaning of 'shop' Article 5 of the Planning and Development Regulations 2011-2015 because it is excluded under Article 5 (d) according to which the sale of sandwiches or other food for consumption off the premises comes within the description of 'shop' where "*the sale of such food is subsidiary to the main retail use but does not include a restaurant..... or the sale of hot food for consumption off the premises.*"¹ The proposed change of use to a ground floor use as a restaurant with seating and provision for the sale of hot and cold food for consumption on or off the premises is not an ancillary to a principle retail use as provided for in Article 5 (d) of the Regulations. It is therefore concluded that the proposed development is therefore in material contravention of Condition No 2 of the prior grant of permission under PL 244216/P. A. Reg. Ref. 13/300.

9.8. **Appropriate Assessment.**

Having regard to the nature and location of the proposed development and to the receiving environment which is an urban and fully serviced location, it is considered that the no appropriate assessment issues would arise.

13. **CONCLUSION AND RECOMMENDATION.**

13.1 In view of the foregoing, it is recommended that the planning authority decision to refuse permission on the basis of two reasons be upheld and the appeal rejected. A draft order is set out overleaf.

¹ Article 5 (d) of the Planning and Development Regulations 2001 – 2015 although amended in 2015 is unchanged with regard to exclusion of use as a sandwich bar from the description of "shop".

DECISION

**Refuse Permission on the Basis of the Reasons and Considerations
Below:**

REASONS AND CONSIDERATIONS.

1. It is the policy of the Galway City Development Plan, 2011-2017 not to permit change of use of the ground floors of premises from retail use to none retail use on seven named principle shopping streets which include High Street. This policy which seeks to preserve the streets as main shopping streets in accordance with the retail strategy for the city centre is considered reasonable. The proposed development would materially contravene this policy and would be contrary to the proper planning and development of the area.
2. The proposed change of use from retail to a sandwich bar and seating area would materially contravene Condition No 2 of the prior grant of permission under PL 244216/P. A. Reg. Ref. 13/300.

**Jane Dennehy,
Senior Planning Inspector.
24th December, 2015.**