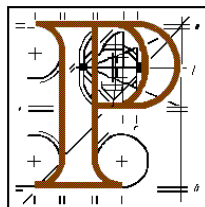


An Bord Pleanála



Inspectors Report

Development: Alterations to existing building with associated works and for change of use from public house and residential to use as a recreational facility / private members card club at Linenhall Street, Castlebar, Co. Mayo.

Planning Application

Planning Authority: Mayo County Council
Planning Authority Reg. Ref. 15/78
Applicant: John & Brian Moran
Type of Application: Permission
Planning Authority Decision: Refuse

Planning Appeal

Appellant(s): John & Brian Moran

Observers: None

Type of Appeal: First Party

Date of Site Inspection: 15/12/2015

Inspector: Gillian Kane

1.0.0 SITE LOCATION AND DESCRIPTION

1.0.1 The subject site comprises a three storey mid terrace structure located on the northern side of Linenhall Street, in the centre of the County Mayo town of Castlebar. The site is occupied by a vacant building, which previously had been in use as a public house on the ground floor and residential use on part of the first and second floor. To the immediate east and west of the building are similar buildings. The building to the east is in use as a pub, that to the west is a vacant former public house. The wider area is a traditional town centre street, with a mix of retail and non-retail uses at ground level.

1.0.2 Photographs and maps in Appendix 1 serve to describe the site and location in further detail.

2.0.0 PROPOSED DEVELOPMENT

2.0.1 Permission was sought for alterations to an existing building to facilitate the change of use from part residential and part public house to a recreational facility / private members card club. Proposed changes include external signage and internal alterations. The application form submitted to the Council states that the nature of the business will be identical to that currently operated under reg. ref. 08/913739 / An Bord Pleanála ref. PL46.235086

2.1.0 Reports on File following submission of application

2.1.1 **Road Design Office:** No objection

2.1.2 **Planning Report:** Additional information required.

2.2.0 Request for Additional Information

2.2.1 On the 9th of April 2015, the applicant was sent the following AI request:

1. Please clarify the opening hours and how membership of the card club will be controlled.
2. Please clarify how the applicant intends to comply with Part 11 section 4 &5 of the Gaming and Lotteries Act 1956 in terms of the games which will be played on the premises
3. Please provide details of the external signage (wording to be used)
4. In regards to car parking requirements, please calculate the required spaces in accordance with section 14.13 of the Castlebar & Environs Development Plan 2008 – 2014

The Applicant was advised that Mayo County Council had concerns that the proposed development could affect the amenity of adjoining properties.

2.3.0 Response to Request for AI

2.3.1 The Applicant responded to the AI request, stating that the proposed club will open from 19.00 to 04.00 seven days a week, and that membership will be controlled by a computerised system that restricts membership to over 18's. The proposed games are Texas Holdem poker tournaments with a registration fee to be collected from each entrant and prizes shared amongst players only. In response to the question about compliance with section 5 of the Gaming Act, the applicant states that entrance to the club is by membership only.

2.3.2 Proposed external signage shall be "Castle Card Club" on non-internally illuminated sign fixed to the shop front. Floor area of 280sq.m. requires 6 no. car spaces.

2.3.3 In response to the concern about impact on amenity, the applicant states that the proposed use will be quieter and more discreet than the established use of a public use. The applicant notes that no objections to the proposal have been submitted to the Council.

2.4.0 Reports on File following submission of AI

2.4.1 **Planning Report:** The applicant should be requested to clarify the card games to be played. The report notes that the Council has serious concerns regarding the location of the proposed development as it contravenes the policy of the Castlebar & Environs development plan which seeks to resist the conversion of ground floor premises on principal shopping streets to non-retail uses. The applicants should be advised to seek an alternative location.

2.5.0 Request for Clarification of AI

2.5.1 On the 8th July 2015 the applicant was requested to clarify the games to be played at the club and was advised of the Council's concerns regarding the location of the proposed club.

2.5.2 On the 14th August 2015 the Applicant responded to the CoAI request stating that the games to be played at the proposed club will be the poker game Texas Holdem, and variations of the game such as Omaha, Southern Cross and Mississippi Stud. In relation to the note regarding location, the Applicant states that Linenhall is

not a principal shopping street and therefore the policy of the development plan does not apply. Furthermore the established use of the premises is for a public house which is not a retail use.

2.6.0 Reports on File following submission of CoAI

2.5.3 **Planning Report:** Subject site comprises a disused public house on a site zoned town centre. Proposed business is currently in operation following a grant by An Bord Pleanála (reg. ref. PL46.235086 refers). Proposal would involve premises being dormant during the day. Subject site is classified as being main shopping street in Castlebar & Environs development plan 2008 – 2014 and so proposed development is in contravention of policy RP1 which seeks to restrict non retail uses on ground floors. Recommendation to refuse permission.

3.0.0 PLANNING AUTHORITY DECISION

3.0.1 By order dated 08/09/15 a notification of decision to **REFUSE** permission for the following reason:

“Having regard to the location of the premises on a main shopping street in Castlebar town centre and the late night nature of the proposed development and therefore the property is dormant during the day, it is considered that the proposed use would contravene policy RP1 of the Castlebar & Environs development plan 2008 -2014 to resist the conversion of the ground floor of premises on the principal shopping streets to non-retail uses. The proposed development therefore would by itself and the precedent it would set for similar such development in the town centre, would seriously injure the amenities, or depreciate the value of property in the vicinity and be contrary to the proper planning and sustainable development of the area.”

4.0.0 PLANNING HISTORY

4.0.1 Site on Market St Castlebar, where applicant is currently running the card club business. **PL46.235086** (Planning Authority reg. ref. P08/13739): Planning permission was granted for a change of use of office space / apartments on the first floor of a three storey building to a private member card club. Permission was granted subject to 3 no. condition, of which condition no. 2 stated: No unlawful gaming as defined under the Gaming and Lotteries Act 1956, as amended, shall be permitted to take place within the premises. The use hereby permitted shall not include the installation

of slot machines or similar devices. **Reason:** To clarify the extent of this decision to grant planning permission having regard to the terms of the planning application.

5.0.0 LOCAL POLICY

5.1.0 Castlebar & Environs Development plan 2008 -2014

5.1.1 The plan although passed the life of the plan, remains in operation until such time as a new plan is made for the administrative area (section 11A(2) of the Planning and Development Acts).

5.1.2 The subject site is zoned “**Town Centre**” with the stated objective: *“It is an objective to enhance the special physical and social character of the existing town centre and to provide for new and improved ancillary services.”* Recreational buildings are open for consideration within the town centre zone (Table 15.1 Land Use Zoning Matrix).

5.1.3 **Section 11.3** of the plan identifies the core shopping area of Castlebar as Main Street, Linenhall Street, Shambles, Street, Duke Street, Ellison Street and Hopkins Road. **Policy RO 1** states that it is an objective of the council to address leakage of retail expenditure for the town and its catchment by facilitating the strengthening of the range and quality of retail on offer. The plan states that it is a priority of the Council to maintain the town centre as the principal shopping area for the town and the wider region and as such the loss of retail uses and frontage will be resisted within the principal shopping areas and as such, **Policy RP 1** states “It is the policy of the Council to resist the conversion of the ground floor of premises on the principal shopping streets to non-retail uses”.

5.1.4 Chapter 12 of the plan relates to “Town Centre” Development. Policies and Objectives of notes include:

TCP 2 It is a policy of the council to facilitate, where appropriate, the development of entertainment uses at locations within the town centre. The town centre shall be promoted as the most appropriate location for such uses

TCO 1 It is an objective of the Council to facilitate, where appropriate, the provision residential uses within the town centre. A mix of upper floor uses including apartments over shops shall be encouraged.

TCP 4 It is a policy of the Council to encourage the reuse of underutilised sites and buildings within the plan area.

5.1.5 **Section 14.11.7** of the plan relates to Bars / Night-Clubs / Disco Bars / Amusement Centres. The plan states that the Council will prevent an excessive concentration of these uses in a particular area in order to maintain an appropriate mix of uses and protect night time amenities in the town.

6.0.0 **GROUNDS OF APPEAL**

6.0.1 The grounds of the first party appeal can be summarised as follows:

- The proposed use is consistent with the Town Centre land use zoning in the Castlebar & Environs development plan.
- The agent notes that there are 50 no. premises on Linenhall / Tucker Street with approx. 50% having a daytime use at ground floor. It is submitted that the established use of the premises as a public house where the main activity is during evening time and that this will not change with the proposed use.
- Only 22% of the premises on Linenhall / Tucker street have retail use at ground floor level. Evening / night time uses account for 30%, including the main nightclub of the Castlebar and late night bars. It is submitted that the proposed use will be quieter and more discreet than a public house and therefore the Council's reason for refusal is unfounded. It is submitted that a grant of planning permission will improve the amenity of adjoining owners.
- It is noted that policy TCP2 of the Castlebar development plan states that "It is a policy of the Council to facilitate where appropriate, the development of entertainment uses at locations within the town centre. The town centre shall be promoted as the most appropriate location for such uses".
- It is submitted that Linenhall Street cannot be considered to be a main shopping street.
- It is submitted that a public house and a private members club are not sufficiently different to apply a restriction where the latter cannot be facilitated at ground floor level.
- It is submitted that there is a precedent for a facility such as that proposed through the previous An Bord Pleanála decision.

7.0.0 **RESPONSES**

7.1.0 **Planning Authority Response**

7.1.1 No further comment subject to planning report on file.

8.0.0 OBSERVATIONS

8.0.1 None on file.

9.0.0 ASSESSMENT

9.0.1 On reading of all documentation submitted with the appeal, I consider the issues to be:

- Principle of the Proposed Development
- Retail Provision
- Impact on Amenities of Adjoining Properties
- Appropriate Assessment

9.1.0 Principle of the Proposed Development

9.1.1 Private members card clubs are not defined as a use class in the Plan. I note that in granting permission for the club in a different location (PL16.235086 refers) the Board considered the proposed use to be an entertainment and leisure use. In their decision to grant, the Board noted that such uses were encouraged in town centre areas in the development plan. As noted above, policy TCP 2 of the plan aims to facilitate, where appropriate, such uses within the town centre and to promote the town centre as the most appropriate location for such uses. The principle of the proposed use can therefore be considered acceptable within the town centre.

9.1.2 The building is currently vacant and as such the proposed development would accord with the policy (TCP 4 refers) of the Council to encourage the reuse of underutilised buildings within the plan area.

9.2.0 Retail provision

9.2.1 The Council quoted policy RP1, in their reason for refusal, noting that it is Council policy to resist the conversion of ground floor premises on the principal shopping streets to non-retail uses. The Applicant has appealed that reasoning, stating that Linenhall cannot be considered to be a principal shopping street, with only 22% of the premises have a retail use at ground level.

9.2.2 On the date of my site visit I noted the significant amount of vacancies on the street and those premises which are trading are not primarily retail at ground level. One could accept this as justification for the Council's policy: that the permission of a non-retail use will further the decline of non-retail business on the street. Or one could accept the established pattern of retail shopping in other areas of the town, and agree that Linenhall Street is not a principal shopping street. I am minded to agree that Linenhall

Street is not and has not been for some time, a principal shopping street in Castlebar. One must balance the likelihood of retail use re-emerging to make Linenhall St a principal shopping street against the welcome improvements proffered by the re-use of a currently vacant building. On balance I consider the re-use of a vacant building is preferable to the furtherance of non-retail use in an area not currently known for retail provision.

9.3.0 Impact on Amenity of Adjoining Properties

9.3.1 I accept and agree with the Applicants argument that the impact on adjoining properties, of a private members club will be similar or less intrusive than a public house. I do not consider that the proposed development will seriously injure the amenities, or depreciate the value of property in the vicinity of the site.

9.4.0 Appropriate Assessment

9.4.1 Having regard to the nature and scale of the proposed development, the nature of the receiving environment, and or proximity to the nearest European site, no appropriate assessment issues arise and it is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects, on a European site.

10.0.0 RECOMMENDATION

10.0.1 I have read the submissions on file, visited the site, and have had due regard to the provisions of the Mayo County Development Plan 2014 - 2020, Castlebar Town & Environs Development Plan 2008 -2014 and the planning history of the site. Having regard to the above, it is considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with principles of the development plan, would not injure the amenities of the area and would be in accordance with the proper planning and sustainable development of the area. I recommend permission be GRANTED subject to the following conditions:

11.0.0 REASONS AND CONSIDERATIONS

11.0.1 Having regard to the nature of the proposed private members' card club use, to the mixed-use nature of the existing building, to the location of the premises within the area zoned objective 'E' 'Town Centre', where entertainment and leisure uses are encouraged under the Castlebar and Environs Development Plan, it is

considered that the proposed development would not unduly injure the amenities of property in the vicinity, would be consistent with the policy of the planning authority regarding the development of the town centre and would accord with the proper planning and sustainable development of the area.

CONDITIONS

1. 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.

Reason: In the interest of clarity.

2. (a) No unlawful gaming as defined under the Gaming and Lotteries Act 1956, as amended, shall be permitted to take place within the premises.
(b) The use hereby permitted shall not include the installation of slot machines or similar devices.

Reason: To clarify the extent of this decision to grant planning permission having regard to the terms of the planning application

3. 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 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.

Gillian Kane
Planning Inspector
22/12/15