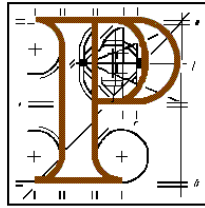


An Bord Pleanála



Inspector's Report

PL 61 245970

DEVELOPMENT: Permission for (1) Retention of basement food preparation kitchen and basement dining area; (2) Permission for subdivision of bin store area to the rear of ground floor into 'Area A' and 'Area B'; (3) Permission for retention for 'Area A' as a cold room/store and (4) Permission for a restaurant bin store at basement level and associated works and services.

LOCATION: Rockland Court, Salthill Road, Upper Salthill, Galway City.

PLANNING APPLICATION

Planning Authority: Galway City Council.
P. A. Reg. Ref: 15/101
Applicant: The Fisherman Seafood Bar and Grill Ltd.
Decision: Refuse Permission.

APPEALS

Appellant: The Fisherman Seafood Bar and Grill Ltd.
Type of Appeal: First Party against Decision to Refuse Permission.
Observer: Rockland Court Management Company Ltd.

Inspector: Jane Dennehy.
Date of Inspection: 12th February, 2016.

1.0 SITE LOCATION AND DESCRIPTION

- 1.1 The appeal site comprises a restaurant business based on the ground and basement levels known as “Unit 9” within a mixed use building at Rockland Court, Salthill facing towards the Promenade a short distance to the east of the intersection with Dalysfort Road. The former Rocklands Hotel on the site has been redeveloped into a four storey over basement building. The seafood restaurant and bar is based in the ground floor and at the basement level which also has a bar counter. Apartments are located on the upper floors and they include a penthouse at roof level. There is an enclosed yard area at basement level and a terraced area at ground floor level at the rear of the building. To the rear there a carpark and the local Garda station which is accessed from Dalysfort Road.
- 1.2 Salthill is a suburban coastal residential, commercial and primary destination close to the city centre for tourism and recreational amenity.

2. PLANNING HISTORY:

- 2.1 The following planning history is of relevance to the current application and appeal:

PL 61 240222/P. A. Reg. Ref. 11/184: The planning authority decision to grant permission for change to restaurant use from commercial use and associated alterations to include kitchen and wash up facilities at the rear of the ground floor was upheld following third party appeals. Condition 2 contains a requirement for hours of operation to be confined to 10.00 am to 10.00 pm daily. Condition No 5 (a) contains a requirement for insulation of the restaurant unit against noise and Condition No 5 (b) contains requirements for control of noise and vibration from the plant and extractor unit. Condition No 8 omits ‘take away’ use from the grant of permission.

PL 61 243598/P. A. Reg. Ref. 14/120: The planning authority decision to refuse permission for extension of the duration of the hours of operation from 10.00 am to 10.00 pm permitted under PL 61 240222/P. A. Reg. Ref. 11/184 to 10.00 am to 11.30 pm was upheld following appeal.

P. A. Reg. Ref. 14/297: Permission was refused for retention of the existing basement food preparation kitchen and basement dining area on grounds of overdevelopment and intensification of use resulting in substandard development and adverse impact on designated communal space intended for use by the occupants of the building.

2.2 Permission was originally granted for the demolition of the Rocklands Hotel and for construction of the existing building under P. A. Reg. Ref. 06/226. According to the planning officer's report and appeal submission, the site has an additional planning history under P. A. Reg. Refs: 05/816, 07/571 and 08/421. The latter two provided for a number of alterations and modifications to the permission granted under P. A. Reg. Ref. 06/226.

3. **DEVELOPMENT PLAN.**

3.1 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: "*C1: To provide for enterprise, light industry and commercial uses other than those reserved to the zone*".

3.2 According to section 9.3 it is the policy of the planning authority to enhance the role of Salthill as a recreational and coastal amenity area by encouraging high quality tourist and mixed use development. Policies and objectives for Salthill are in Section 11.7 and policies and objectives for the 'Established Suburbs' are set in section 2.4.

4. **THE PLANNING APPLICATION.**

4.1 The application lodged with the planning authority indicates proposals for:

- (1) Permission for retention of basement food preparation kitchen (30 square metres) and basement dining area (55 square metres),
- (2) Permission for subdivision of bin store area to the rear of ground floor into 'Area A' and 'Area B';
- (3) Permission for retention for 'Area A' as a cold room/store and,
- (4) Permission for a restaurant bin store at basement level and associated works and services.

4.2 The application is accompanied by appendices that include copies of Land Registry details, documentation from City Bin, details of an ozone based odour neutralising equipment and acoustic design recommendations. The applicant has leased the Unit from the owner of Unit 9, Mr Chris McGrath.

4.3 Third Party Objections refer to concerns about waste and storage arrangements, the opening hours and takeaway element, noise and disturbance and difficulties in accessing communal areas at experienced by residents of the apartments in the building.

5. DECISION OF THE PLANNING AUTHORITY.

5.1 Following issue of requests for further information and clarification of further information to which responses were received from the applicant the planning authority decided, by order 30th November, 2015 to refuse permission and permission for retention for the proposed development on the basis of three reasons which are reproduced below:

1. *"In combination the retention of the basement kitchen and dining/seating area represents an unacceptable overdevelopment and intensification of uses within this site which has resulted in the displacement of dry, waste and cold storage areas. If permitted, this would facilitate the use of the communal areas for purposes detrimental to the residential amenity, would fragment and adversely impact upon the usability and functionality of an area specially designated as a communal open space intended to be used for the enjoyment of the occupiers of the building, and would be contrary to the proper planning and sustainable development of the area."*
2. *"The retention of the use of the external shed as a cold room and storage area contravenes a requirement of a previous permission, PL Ref. No 11/184 for this area to accommodate waste storage for the residential element of this building, the applicant has failed to adequately demonstrate that the use would not adversely impact upon the residential amenities of the area as its continued usage, due to its external location, divorced from the main restaurant, would require access to the rear communal area on a continuous basis for activities which would be detrimental to the residential amenities of the apartments."*
3. *"The proposed development in particular the retention of the use of the external store and the basement kitchen, if permitted, would facilitate an unauthorised development namely the vents, ducting and access holes through the communal area, these elements are considered to be invasive and would fragment the communal open space, while they have failed to demonstrate sufficient legal interest provided to provide consent for such works, in this case any consideration would be detrimental to the residential amenity of the communal open space."*

6. THE APPEAL.

6.1 An appeal was received from Padraic Hessian Associates on behalf of the applicants on 19th January, 2016. The attached appendices include:

- A statement by the owner of the property, Chris McGrath. He states that the communal area at ground floor level was never used as amenity space; that a build-up of methane gas was addressed at his own expense with ventilation and other equipment and, that there is an ongoing dispute about the control of the representation of owners by the management company.
- Copies of technical reports by the planning authority which include a handwritten note confirming satisfaction with the refuse storage arrangements.

6.2 .According to the appeal:

- A grant of permission is vital to safeguard the viability and survival of the business. Refusal of permission is excessive and punitive.
- The proposed development is fully consistent with policies and zoning and other objectives of the development plan for the area such as encouragement of services and facilities in suburbs and enhancement of Salthill) (Policy 2.4, Section 9.3)
- The principle of restaurant use at basement and ground floors was established under PL Nos. 243598, 240222, P. A. Reg. Ref. 14/297. The reasons attached to the planning authority decision are at odds with the planning officer reports in which the principle of the use of both floors is supported.
- Objections by the residents are mainly related to ownership issues and an ongoing legal dispute on management company matters.

6.3 With regard to Reason 1:

- Intensification of use does not arise. The residents may have become accustomed to the unoccupied ground and basement floors. 61% of the basement area is allocated to underutilised storage and lobby areas for the residential element. The proposed rearrangement for cold storage and bin storage does not infringe on the communal rear ground floor space. There is a reduced size staff toilet at basement level.
- There are thirty seats at basement level. It is used for occasional overspill from the ground floor and never at full capacity.
- The rear yard area does not function as an amenity for residents as communal open space. It is at best a north facing communal area with a concrete floor and it is overshadowed. Residential amenity is unaffected and is a wealth of public amenities at Salthill. The space can be kept clear of, 'restaurant structures' by condition.

6.4 With regard to Reason 2:

- It is reasonable for the shed space to be subdivided and shared as communal bin storage space for the residents and cold storage space for the restaurant. Storage capacity is adequate and there are frequent collections. The communal area between the ground floor and bin shed serving the mixed use building which was never intended to be confined to the residential use. (The floor layout submitted with the application P. A. 11/184 refers.) Retrospective designation of the area to residential use would be incorrect. A Land registry file designates the area to the ground floor unit and a right of passage through to the bin store is reasonable.

6.5 With regard to Reason 3:

- The current application includes details and information on the existing vents, air handling equipment and filtration that was deemed to be necessary for the proposal under PL 243598/P. A. Reg. Ref. 14/297 relating to the extension of hours of business. It is incumbent on the operator to provide this equipment as per HSE and HSA requirements. Basement ventilation has always been required.
- The applicant has sufficient legal interest in the area. A solicitor's letter to this effect is included (Appendix 4)
- Reluctantly, the applicant would accept a grant of permission exclusive of the basement dining area. The other elements of the proposed development are essential to the survival of the restaurant.

7. OBSERVER – Rockland Court Management Company Ltd.

7.1 A submission was received from John Gallagher on behalf of the Management Company for the apartments in the building on 26th January, 2016. Attached are Copies of Folio reference GY 116128F, documentation relating to the planning application and photographs of ventilation equipment, fire door and basement accommodation.

7.2 The submission includes a comprehensive account and commentary on planning and planning enforcement with remarks on the objections to the proposed restaurant under P. A. Reg. Ref. 11/184 including the installation of fire doors onto the communal areas.

7.3 According to the submission, the management company is the freehold owner of the building and communal areas exclusive of the areas transferred to the lessees of the apartment or commercial units. The area transferred to the commercial unit is outlined on the ground floor and basement plans and it extends to the inside of the external walls. There is no right of access or authorisation by the management

company for use of property that is fully under its control. There is no consent for the access door onto the basement communal area, no entitlement for use of the area for storage or passage across it to storage, ventilation system routes, extractor fans, new openings in the walls or for conduits for vent pipes and waste pipes and routing through the ground floor to the rear of the building towards the Garda station.

- 7.4 The Fisherman Seafood Bar and Grill sub-leased the premises in 2014 and the basement according to the previous grant of permission is an area for toilets and storage associated with the ground floor use. The kitchen and restaurant installed in the basement eliminating the storage area is unauthorised and it intensifies the use and hours of business have been extended to later in the night.
- 7.5 The applicant has shown scant regard for the amenity of the residents and; has flouted planning conditions, failed to maintain ventilation equipment to eliminate odours and failed to controlled noise. The intensification of use at the location is unwarranted.
- 7.6 The proposed development is an unacceptable overdevelopment and intensification of use. The final grant of permission excludes the basement and has a plot ratio of 2.26:1 which increases to 2.51:1 with the proposed development included. The permissible plot ratio for Salthill is 1.75
- 7.7 The basement kitchen and restaurant displace the dry waste and cold storage to the communal areas where they are divorced from the main restaurant. This common area is used indiscriminately by the applicant.
- 7.8 Residential amenity is affected by ongoing noise, nuisance and odours from extraction fans intensified by the use of the kitchen in the basement into night time. The extraction system should be designed inside the building to protect the residential areas. The garden of Apartment 1 is uninhabitable due to the discharges immediately below.
- 7.9 The use of the basement for private parties is incompatible with the closing time. It continues very late with access via the restaurant on the ground floor and encourages patrons to use the communal area outside the fire door.
- 7.10 The basement level is subject to flooding. Flooding occurred on 27th January, 2016 with water reaching 609 mm in parts of the basement.
- 7.11 The minimum height for restaurant use is 2.4 metres and for habitable use it is 2.5 metres. The 2.3 metre ceiling height in the basement is inadequate. Staff facilities are inadequate and refuse is being carried out in black bags to the communal area.

7.12 Sound insulation between the ground and first floor are not based on measurements from within the residential accommodation, noise from circulation, movement of bottles and barrels in communal spaces is a major problem.

8. RESPONSE TO THE APPEAL BY THE PLANNING AUTHORITY

8.1 There is no submission from the planning authority on file.

9 FURTHER SUBMISSION OF THE APPLICANT

9.1 A submission was received from the applicant's agent on 1st March, 2016. Attached are:

Copies of published restaurant reviews and photographs.

A statement by the applicant describing the business and confirming that a takeaway is not operated at the premises and that patrons and staff smoke outside the front entrance.

A statement by Chris McGrath that a motion was passed on 19th February 2016 the Rockland Court Management AGM: in support of the application provided that noise and odour concerns are addressed. Unintentional irregularities regarding the management company directorships in 2014 and 2015 were unrelated to the application.

A statement by KMG Mechanical Services on a review of ventilation and noise with additional mitigation proposals.

9.2 According to the submission:

- The Observer party's agent was not instructed by the Rockland Court Management Company but by some of the shareholders.
- The owner of the premises is The Tiger Trust SSAP.
- Plot ratio limits are not exceeded and the ratio is unchanged. 61% of the basement area remains allocated to underutilised residential storage and lobby areas. Ceiling height is 2.4 metres in the basement and staff facilities are adequate. No more than fifteen staff members are on the premises at any one time.
- Comprehensive waste management proposals were fully confirmed as satisfactory by the Environment section.
- It is unreasonable for unprecedented flooding of the basement in December, 2015 to be raised as a planning issue by submitting

photographs of the storage at that time in the communal area. The applicant is willing to accept a condition to restrict the hours of use of the external yard area as required for the restaurant under Condition No 2 (PL 240222)

- The ventilation equipment was required to serve the previously permitted restaurant/café developments. The route through the communal space and location on the wall are clearly shown on Drawing 201 of the original grant of permission. (PL 240222 refers) Following examination of the ventilation system more odour control measures were installed in 2015 and in addition, an ozone based odour neutraliser is now proposed.
- Following further assessment, an additional noise control measure consisting of Melinex duct silencers is proposed. A limited timeframe for implementation could be required by condition. The observer party refused access for measurements to be taken to confirm the performance of the acoustic ceiling during the busiest time at the restaurant.
- An accumulation of methane gas at basement level some years ago could only be addressed by ventilation.
- Matters of legal interest and encroachment are not planning matters, as has been stated previously in inspector's reports.
- Assertions about breaches of operational time restrictions are rejected. The restaurant is sometimes operated within reduced hours and it has been under intense scrutiny by some residents. The applicant would accept a condition for similar restrictions on hours of operation of the basement to those for the restaurant.
- The business is a high quality seafood restaurant befitting and benefitting the urban seafront location which has suffered dereliction and high vacancy rates. The restaurant could be forced to close.

10. EVALUATION

10.1 The main issues raised in the submissions and considered below are;

Legal matters,
Development plan zoning and specific objectives,
Intensity of development and,
Impact on Residential amenity

10.2 Legal Matters.

Issues raised relate to:

Access and use of communal space.
Encroachment and the authenticity of the Observer Party.
Communal Areas – Access and Use.

10.3 Access and use of communal space.

It is not fully clarified with documentary evidence that the applicant has sufficient legal interest to have enabled him to implement the proposed retention of the cold store use and subdivision within the ground floor communal area. There is no dispute that the communal area located between the store structure and the restaurant space is under the control of the Management Company as opposed to the sole control of the applicant. The cold store structure is stated to be in the applicant's ownership and this does not appear to be contested. It is necessary for the applicant to have the consent of the Management Company to cross the communal area to the storage/cold store unit. It is noted that the documentation submitted on behalf of the application in which the authenticity of the Observer party is challenged indicates no objection in principle subject to noise and odour control mitigation being satisfactorily addressed.

10.4 Encroachment.

It would appear details of some installations on the outer side of the walls were indicated amongst the plans and particulars lodged in connection with prior successful applications relating to the building as a single planning unit. The matter of possible encroachment without consent outside the site of the proposed development can be addressed through the legal process should any of the parties wish to pursue it.

10.5 Observer Party – Legal Status.

The status of the Observer party submission has been contested on grounds that it was submitted on behalf of some of the residents. It is the applicant's case that subject to a satisfactory solution to concerns about odour and noise impact on residential amenity, the Management Company can confirm, (a Motion having been passed by AGM) that there is no objection to the proposed development. The observer party could be invited to respond to this claim but it may be appropriate for the parties to have the matter clarified and addressed, through the legal system. As there is no dispute as to the authenticity of the appeal itself it has been decided that it is appropriate to proceed with the evaluation.

10.6 Development plan zoning and specific objectives.

The case made in the appeal as to consistency with the zoning objective and with the policy and specific objectives for the Salthill area is fully acknowledged. It is agreed that the applicant's restaurant use on the seafront can contribute positively to encouragement of regeneration and enhancement of the vitality and viability of Salthill which also has a particular need to reverse a high vacancy rate.

10.7 Intensity of development.

The planning officer's view, as reflected in the reasons attached to the planning authority's decision to refuse of permission is supported. It is noted that the basement level dining and bar and kitchen facilities are suitable for independent self contained use, possibly for private parties as well as a spill over area from the ground floor restaurant. Notwithstanding the necessity for patrons to access the basement level via the ground floor restaurant, it is considered that proposals for the basement level amount to significant intensification of use. This is demonstrated by the resultant necessity for the proposed external cold storage arrangement because cold storage has been displaced from the space under the sole control of the restaurant within unit 9.

10.8 The location on the far side of the communal amenity and utility space serving the residential units which must be crossed is a substandard arrangement arising from overdevelopment. As a consequence the arrangement adversely affects the amenity and quality of the residential units. The under-utilisation of storage space and lack of use of the communal space irrespective of the attainable amenity of the space is not justification for change of a permanent nature such as that proposed. It is arguable that an element of change of use is involved, in that the cold storage is accessed via the communal space and facilitated by direct access from Unit 9. To this end, the view as reflected in the reasons attached to the planning authority decision, there is no doubt as to conflict with the original grant of permission in that the shed is designated a waste storage facility for the residential units within the building.

10.9 **Impact on Residential Amenity.**

As discussed above, the proposed cold storage arrangements give rise to diminution of residential amenities and potential residential amenities of the residential units. An intensification of use, notwithstanding the location of additional restaurant facilities at basement level would lead to or exacerbate conflict with protection of residential amenity.

10.10 Ventilation equipment especially given night time operation for restaurant use involving use of or encroachment onto communal space serving residential units is potential source of conflict. The mitigation measures proposed are noted along with the planning history in so far as it relates to ventilation and noise control measures. Intensification of use gives rise to concern as to exacerbation of adverse impacts, notwithstanding provision for additional amelioration.

10.11 **Appropriate Assessment:**

Having regard to the nature, scale and location of the proposed development it is considered that the proposed development would not be likely to have significant effect, individually or in combination with other plans and projects on European sites.

11. CONCLUSION AND RECOMMENDATION.

- 11.1 In view of the foregoing, the planning authority decision to refuse permission is supported and it is recommended that permission be refused on grounds of excessive intensification of use and substandard overdevelopment development which diminishes the existing residential amenities and future residential amenity potential of the apartments within the building. There is some uncertainty as to whether the applicant has an issue of encroachment by use of the external walls for ventilation and as to consent to access across the communal space to the cold storage unit having regard to the submissions on file and the planning history. In the event of possible favourable consideration of the proposal it would be necessary for these matters to be resolved.
- 11.2 A draft order is set out overleaf.

DECISION

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

REASONS AND CONSIDERATIONS

Having regard to the planning history for the site and the mixed use and subdivision of the building in multiple apartments and restaurant use with shared use of communal areas it is considered that the proposed retention of the restaurant and kitchen use in the basement level in addition to the existing restaurant use results in an excessive intensity of development and substandard overdevelopment necessitating displacement of ancillary food and waste storage to an external location accessed via an area designated as communal space for use by all the occupants of the building in the grant of permission for change of use to restaurant under P. A. Reg. Ref. 11/184. (PL61 240222.) As a result the proposed development would be seriously injurious to the residential amenities of the apartments on the upper floors of the building. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

**Jane Dennehy,
Senior Planning Inspector.
7th March, 2016.**