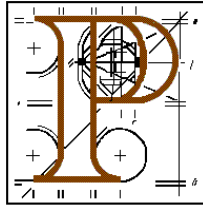


An Bord Pleanála



Inspector's Report

Appeal Reference No: PL21.246043

Development: Retention of change of use from open space to outside dining area and retention of boundary partitions and awning at No. 32 O'Connell Street, Sligo.

Planning Application

Planning Authority: Sligo County Council
Planning Authority Reg. Ref.: 15/383
Applicant: Nagnata Limited
Planning Authority Decision: Grant retention permission

Planning Appeal

Appellant(s): Amjad Hussein
Type of Appeal: Third party
Observers: None
Date of Site Inspection: 7th April 2016

Inspector: Donal Donnelly

1.0 SITE LOCATION AND DESCRIPTION

- 1.1 The appeal site is located on O'Connell Street within the commercial core of Sligo city centre. O'Connell Street extends on a north-to-south axis for a distance of approximately 200m. The southern half of the street increases in width and there are narrow footpaths on both sides along its entire length. Traffic is one way northbound. There are good levels of vibrancy and footfall along the street, aided by side connections to Johnston's Court Shopping Centre and Tobergal Lane. Properties on both sides of the street form part of the O'Connell Street Architectural Conservation Area.
- 1.2 The appeal site is located towards the northern end of the street on its eastern side. The site is in restaurant/ coffee shop use and forms part of a building of modern design with a set-back building line. The upper floor of the building is in single office use and the ground floor comprises (from north to south) an archway, the subject restaurant/ coffee shop and a commercial premises which appears to be closed. There are two concrete bollards to the front of the commercial premises and an outdoor dining space to the front of the restaurant/ coffee shop.

2.0 PROPOSED DEVELOPMENT

- 2.1 The proposal is for the retention of change of use from open space to outside dining area plus retention of boundary partitions and awning to the front of the restaurant/ coffee shop.
- 2.2 The subject area comprises two decked areas either side of the access route to the restaurant. The decked areas are enclosed to the side and front by timber panel and Perspex screens to a height of 1.78m. The area has seating capacity for approximately 16 customers.
- 2.3 The outdoor dining area can be covered over by a retractable canvass canopy. There is some small scale lettering on the canopy advertising the name of the business (Knox) and the words "coffee food wine".

3.0 PLANNING HISTORY

Sligo County Council Reg. Ref: 15/28

- 3.1 Nagnata Ltd. was granted permission in April 2015 for development consisting of change of use of ground floor from insurance office to

restaurant/coffee shop plus alterations to front elevation and provision of sanitary accommodation.

3.2 Condition 3 of this permission states as follows:

(a) No awnings, canopies or projecting signs shall be erected on the premises.

(b) No display of goods or advertising or storage of goods/ bins shall take place outside the premises.

(c) No permanent adhesive material shall be affixed to the windows of the unit.

(d) The windows into the shop unit shall not be obscured internally by permanent adhesive coverings, display units or otherwise.

Reason: In the interests of visual amenity.

3.3 Condition 6 also states that:

(a) Any works associated with the proposed development shall not obstruct the adjoining footpath or street.

(b) Any damage to the footpath or road shall be repaired to the satisfaction of the Planning Authority at the developer's expense.

Reason: In the interests of orderly development of the area.

4.0 PLANNING AUTHORITY DECISION

4.1 Planning and technical reports

4.1.1 Under the assessment of the application, it is considered that development of this nature would be acceptable in principle having regard to the C1 zoning objective and the established uses on site. It is also noted that outdoor dining areas add activity and vitality to city centre streets and compliment the retail function.

4.1.2 The Case Planner acknowledges that the proposal involves a modern building that does not contribute to the heritage/ streetscape value of the area, and furthermore, the building line is significantly set back compared to adjoining buildings.

4.1.3 It is therefore considered that the majority of heritage policies that apply to the ACA are not relevant. It is also stated that the proposal brings the

building line more in keeping with the existing streetscape and creates much needed street animation. No other private areas between the shopfront and public footpath exist on O'Connell Street and the Case Planner has no objection in terms of impact on the visual amenity and streetscape of the area. The proposal on a private area will also have no adverse impact on pedestrian movements.

- 4.1.4 It was the intention of a condition to a previous permission on site to prevent this type of development from taking place without proper assessment by the Planning Authority. The current application seeks to retain and regularise matters and the Case Planner consider that the proposal, including retention of canopy, etc. is acceptable.

4.2 Planning Authority Decision

- 4.2.1 Sligo County Council issued notification of decision to grant retention permission for the development subject to 4 no. conditions.
- 4.2.2 Condition 2 states that no additional signage shall be erected on the premises, and under Condition 3 it is stated that the structure shall not encroach onto the adjoining public footpath in any way.

5.0 GROUNDS OF APPEAL

- 5.1 A third party appeal against the Council's decision has been submitted on behalf of the owner of a restaurant at No. 34 O'Connell Street. The grounds of appeal and main points raised in each submission can be summarised as follows:

- Proposal would be seriously injurious to the visual amenities of this architectural conservation area as was the earlier determination by the Planning Authority when imposing Condition 3 of Reg. Ref: 15/28.
- Proposal would result in a haphazard incongruous frontage development that would conflict with the Development Plan objectives to improve visual amenity in the central area, in particular Policy GP CC 12 which requires the installation of high quality shopfronts in the city centre.
- Development would set an undesirable precedent for other such developments, in particular on adjacent lands.

- Proposal is in direct conflict with the recent determination under Reg. Ref: 15/28 and would be a material contravention of this permission.
- Set back provides one of a few visual breaks and pedestrian/pram passing points, without having to move onto the roadway on this narrow one way section of O'Connell Street.
- Proposal would result in serious overdevelopment of a restricted site.

6.0 RESPONSES/OBSERVATIONS TO GROUNDS OF APPEAL

6.1 Planning Authority response

6.1.1 The Planning Authority submitted the following comments in response to the grounds of appeal:

- Heritage value of O'Connell Street is recognised; however, development involves a modern building that does not contribute to the heritage/ streetscape value of the area and the building line is significantly set back from the established building line.
- Vast majority of heritage policies that apply to the ACA are not relevant to the subject site.
- Subject development brings the building line more in keeping with the existing streetscape – previously vacant area did nothing for vitality and vibrancy of the city centre.
- Such areas between the shopfront and public footpath are extremely limited and development does not therefore set a precedent.
- Condition 3 of Reg. Ref: 15/28 was included as a standard condition to clarify that the permission did not include the provision of awnings, canopies, goods storage, advertising etc.
- No such apparatus was included in the previous planning application and retention application allows for appropriate consideration of the impact of the development.
- Development does not adversely impact on visual amenities and is not contrary to Development Plan policies in relation to shopfronts in the city centre.

- Development does not impinge on the public footpath or pedestrian movements.

6.2 First party

6.2.1 The applicants responded to the third party appeal with the following comments:

- Grounds of appeal do not have any substance apart from the contravention of condition 3 of Reg. Ref: 15/28
- Grounds of appeal are motivated by dispute between applicant and appellant regarding the previous temporary use of the space to the front of No. 33 between their businesses.
- Applicants wanted to utilise the space to the front of Knox to create a vibrant, cosmopolitan feel and to give customers the option to dine outside.
- Only breach of Condition 3 is that the proprietors have erected an awning – several other properties on O’Connell Street and neighbouring streets have awnings projecting over public open space.
- Permission under Reg. Ref: 15/28 did not exclude a change of use from open space to outside dining.
- Area referred to in the appeal is private property and is not part of the public footpath.
- There has been a recent announcement of funding allocation for significant improvement works to O’Connell Street, which applicant understands will include widening of footpaths.

7.0 POLICY CONTEXT

Sligo and Environs Development Plan 2010-2016

7.1 The appeal site is zoned C1 – city centre uses where the objective is to *“protect and upgrade the retail function, supported by a range of complementary functions, within the city’s commercial/retail core and encourage the establishment of commercial/retail activities in the areas reserved for the centre’s expansion.”*

- 7.2 The site is within the O’Connell Street Architectural Conservation Area.
- 7.3 It is an objective (PED-1) to *“pedestrianise O’Connell Street when the necessary funding to cover the costs of the pedestrianisation and enhancement of the street is provided by Government or other sources, and when the Borough Council by resolution deems it appropriate.”*
- 7.4 It is an urban design policy (P-CC-CC-2), *“on the ground floor of existing and proposed units, (to) promote uses able to generate activity and contribute positively to the pedestrian realm.”*

8.0 ASSESSMENT

- 8.1 In my opinion, the main issues to be addressed in this appeal are as follows:
- Development principle;
 - Design and visual impact;
 - Impact on streetscape.

Development principle

- 8.2 The appeal site has a “C1 – city centre uses” zoning where the objective is to *“protect and upgrade the retail function, supported by a range of complementary functions, within the city’s commercial/retail core and encourage the establishment of commercial/retail activities in the areas reserved for the centre’s expansion.”*
- 8.3 In my opinion, the proposal to change the use of an underused area of private open space to an active outdoor dining area would be in compliance with the zoning objective. The use could be considered a complementary function to the main restaurant/ commercial use, which I consider to be acceptable in principle.
- 8.4 It is noteworthy that a condition was attached to a previous change of use application preventing awnings/ canopies and the display/ storage of goods outside the premises. This change of use application from ground floor insurance office to restaurant/coffee shop did not include any proposals for the use of the space to the front and I would be satisfied that the Planning Authority attached

this condition as standard for the purposes of assessing any prospective proposals for the use of this area.

Design and visual impact

- 8.5 In terms of actual appearance, I would be of the view that both the structures that have been erected and the use contained therein represent an improvement to the previously vacant space at this location.
- 8.6 The enclosed outdoor dining area comprises of Perspex and wooden panel screening with canvas awning overhead. Internally, stainless steel tables and varnished wooden chairs sit on green carpeted decking.
- 8.7 I am satisfied that the contemporary structures/ furniture and finishes complement and improve the appearance of the existing contemporary shopfront. The screens also reflect the panelling and fenestration at first floor level and the colour scheme is consistent with the rest of the building. Advertising on the awning is unobtrusive and the device can be retracted; this can also add variety to the streetscape.
- 8.8 The development has the positive visual benefit of creating animation on what was previously a hard surface with shopfront detached from the street edge. I also acknowledge that a building set-back can have the effect of providing visual relief and interest along the street frontage. However, on balance, I consider that the edge of street activity generated by the structure outweighs the loss of an area of publicly accessible private open space.
- 8.9 It should be noted that the structure does not impinge upon the public realm, with the footpath width, albeit narrow, being maintained along this side of the street. The Board's attention is also drawn to Development Plan Objective PED-1, which seeks to *"pedestrianise O'Connell Street when the necessary funding to cover the costs of the pedestrianisation and enhancement of the street is provided by Government or other sources, and when the Borough Council by resolution deems it appropriate."*

Impact on streetscape and ACA

- 8.10 The appeal site is within the O'Connell Street Architectural Conservation Area where it is recognised that there are many fine shopfronts from a variety of periods and styles that create a sense of vibrancy and interest. It is also noted in the Statement of Character for the ACA that the street line is consistently maintained and that the lower floors help to define the character of the area.

- 8.11 The completion of environmental improvement works associated with the pedestrianisation of O'Connell Street is considered to be critical to maintaining the street's position as Sligo's primary retailing area. In addition, a number of management policies are outlined relating to building line, streetscape and paving. Policy P_ACA-OC-11 seeks to *"retain the character of continuous building lines and terraces"* and Policy P-ACA-OC-14 aims to *"introduce good quality, modern street furniture, which respects the historic setting without being neo-traditional."* Furthermore, it is the aim of Policy P-ACA-OC-16 to *"ensure that any paving being laid out in conjunction with the pedestrianisation of O'Connell Street uses suitably-coloured materials that are sensitive to the historic setting."*
- 8.12 I concur with the Planning Authority that the proposed outdoor dining area at this particular location does not impact detrimentally on the ACA and that the majority of heritage policies applicable to the ACA are not relevant to the subject site. The outdoor dining area essentially brings the building line more in keeping with the existing streetscape and the structures to not conceal a shopfront of historic significance. Furthermore, there is no overhanging of public space or visual obtrusiveness and the structures cover over a concreted area rather than any high quality surfacing. Finally, I would of the view that this type of development would contribute to any future pedestrianisation or footpath widening by attracting footfall, activity and passive surveillance.

Appropriate Assessment

- 8.13 Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely an urban and fully serviced location, no appropriate assessment issues arise.

9.0 CONCLUSIONS AND RECOMMENDATION

- 9.1 It is considered that the development should be granted retention permission for the reasons and considerations hereunder.

REASONS AND CONSIDERATIONS

Having regard to the city centre zoning objective, and to the design and appearance of the outdoor dining area on private open space in front of a building of modern design, it is considered that, subject to compliance with conditions below, the development would not seriously injure the visual amenities of the Architectural Conservation Area, and would be contribute to the vitality and viability of core retail streetscape. The development would, therefore, be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

- 1 The development shall be retained 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 Notwithstanding the provisions of the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, no advertisement signs, advertisement structures, banners, canopies, flags, or other projecting elements shall be displayed or erected on the building or within the curtilage of the site, unless authorised by a further grant of planning permission.

Reason: To protect the visual amenities of the area.

- 3 The outdoor dining area shall not encroach onto the adjoining public footpath in any way.

Reason: In the interests of pedestrian safety.

- 4 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.

Donal Donnelly
Planning Inspector
Date: 11th April 2016