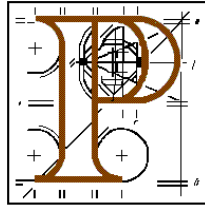


An Bord Pleanála



Inspector's Report

Reference: PL11.246169

P.A. Reference: 15/496

Title: Retention of smoking shelter in rear yard (protected structure).

Location: 106 Main Street, Portlaoise, Co. Laois

Applicant: Pat Lonegan

Appellants: John Bartley

Observer: None

PA: Laois County Council

Type of Appeal: Third party against decision to grant permission

Decision: Grant with conditions

Date of Site Visit: 6th July 2016

Inspector: Philip Davis

1. Introduction

This appeal is on behalf of a neighbouring resident against the decision of the planning authority to grant permission for the retention of a shelter structure for a smoking area to the rear of a public house in Portlaoise town centre

2. Site Description

Photographs of the site and environs are attached in the appendix to this report.

Main Street, Portlaoise

Main Street, Portlaoise, is the primary shopping street running through the historic core of the town of some 20,000 people. It is a relatively narrow, meandering road, characterised by haphazard terraces of mostly 2-3 storey 2-bay terraced buildings dating from the 19th Century onwards. The more recent bypass for the town centre, the James Fintan Lawlor Avenue, runs south and parallel to Main Street, with a shopping centre south of this. Main Street is largely commercial in nature, with little residential use on upper floors, but there are terraces of one and two storey dwellings on the roads and alleys leading off Main Street. The appeal site is at the eastern end of Main Street, as it transitions from a retail/commercial area to an older residential area. It is at the corner of Well Road, a street of mostly 19th Century single storey dwellings, some of which are in commercial use.

The site and environs

The appeal site is a two storey pub occupying the corner plot at the junction of Main Street and Well Road. The pub is a hipped roof building which appears to date to the mid-19th Century, a typical structure of the town centre – it is a protected structure. It fronts Main Street with a side gable and goods access to Well Road, and a yard extending down behind a number of single storey terraced dwellings on Main Road. Total site area is given as 0.05 hectares. The shelter for retention is located to the rear of no.1 Well Road within the rear yard of the pub.

3. Proposal

The proposed development is described on the site notice as follows:

Retention of smoking shelter constructed in rear yard.

The building is a protected structure.

4. **Technical Reports and other planning file correspondence**

Planning application

The planning application, with supporting documentation and plans, was submitted to the planning authority on the 30th November 2015.

Internal and External reports and correspondence.

The appellant to the appeal submitted an objection.

Central Area Office: No objections.

Fire Officer: No objections, but notes that kegs stored in the area appear to obstruct the escape route.

Inland Fisheries Ireland: No objection.

Planners Report: It is noted that it is within the area zoned 'Town Centre Primary' in the Portlaoise Local Area Plan 2012-18. It is within the Portlaoise Archaeological Zone. The use is considered acceptable having regard to the zoning matrix of the LAP. The objectors concerns are noted, but it is considered that issues relating to noise are to be expected having regard to the town centre location. A grant of permission was recommended.

5. **Decision**

The planning authority decided to grant permission for the retention of the smoking shelter subject to 7 generally standard conditions.

6. **Planning Context**

Planning permissions – appeal site

In June 2013 the planning authority decided to grant permission for the demolition of an existing single storey residential accommodation to the rear with the erection of a single storey bar extension and toilets (13/10).

A Warning Letter was issued in relation to the unauthorised structure.

Planning permissions – other relevant

No records on file.

Development Plan

The site is zoned 'town centre primary' in the Portlaoise Local Area Plan 2012-2018. The building is a protected structure. The site is

within an Architectural Conservation Area. Policy DCS 26 in the County Development Plan 2011-2017 with regard to canopies and smoking structures states:

Straight canopies are generally acceptable providing the footpaths are sufficiently wide and a clearing head height is provided. Dutch canopies may also be acceptable. Advertisements to canopies will not generally be accepted.

Outdoor dining to the front of premises either on private forecourt or subject to license on the public footpath is generally acceptable if sufficient space is available, though this may be restricted to daytime hours if the noise generated would affect the amenities of nearby residents. Outdoor dining can contribute to the vitality and vibrancy of a town centre. The provision of beer gardens to the rear of public houses or bars is generally acceptable, however the hours of use may be restricted to daytime hours if it is considered that the noise generated would adversely affect the amenities of nearby residents.

The provision of smoking shelters which conform to environmental health standards is acceptable.

Relevant extracts from the CDP and LAP are attached in the appendix to this report.

7. Grounds of Appeal

- It is noted that no attempt was made to get planning permission for the shelter before construction.
- It is argued that it is a health and safety concern as the appellant's sister (who lives in the adjoining house) has a felt roof and is concerned about stray cigarettes.
- It is argued that noise levels have risen significantly since the shelter was constructed, and no assessment was made of noise impacts.
- It is argued that it constitutes extra floorspace of the pub and as such should be subject to a development contribution.

8. Applicants response

- It is stated that the previous works as permitted removed the smoking shelter. The existing shelter was constructed in consultation with the EHO, but the applicant was unaware it required planning permission.

- It is claimed there was always a smoking area in the yard prior to it having been removed to facilitate the permitted extension works to the rear.
- It was designed with a double skin metal back wall and roof and insulated with fibreglass to reduce noise transmission.
- The planning authority's comments that noise would be expected within a town centre commercial area are noted.

The response includes photographs and attachments.

9. Planning Authority's Comments

The planning authority did not respond to the grounds of appeal.

10. Assessment

Having inspected the site and reviewed the file documents, I consider that the appeal can be addressed under the following headings:

- **Principle of development**
- **Design and location**
- **Noise**
- **Heritage issues**
- **Health and safety**
- **AA/EIS**
- **Financial contribution**

Principle of development

The proposed development is within the town centre of Portlaoise, where it is the policy objective (TC03) in the 2012-2018 Local Area Plan '*to protect and enhance the special physical and social character of the existing Town Centre and to provide for and improve retailing and commercial activities*'. There are no specific policies in relation to smoking shelters or the uses of open areas to the rear of pubs. The County Development Plan in relation to smoking shelters states (DCS 26) that they are generally acceptable if they conform to environmental health standards.

The applicant has claimed that there has been a smoking area to the rear since the tobacco regulations were introduced. I note that the ground floor plan submitted with planning application 13/10 does show a smoking area, with no replacement indicated in the plans for alterations, so I would accept this argument. While it obviously should have been part of the previous permission, I would accept that there is a past history of the use of the rear yard as a smoking area.

The shelter is a substantial structure, and appears to incorporate some noise insulation, although it is obviously open on two sides, so there would be significant noise leakage. The general layout however is clearly designed to ensure it is used for smoking only – not as a beer garden or smokers ‘extension’ to the pub.

While I would note and acknowledge that the very close proximity to residential properties will result in some noise and disturbance, I would concur with the planning authority that in areas zoned for town centre mixed use, a level of noise and disturbance which would not generally be acceptable in residential areas would be compatible with the zoning designation.

I would therefore conclude that the provision of a shelter in this location would in principle be acceptable subject to its design and layout not interfering excessively with amenities and being generally well designed within the context.

Design and location

The shelter is within a very restricted rear yard. The ‘open’ face of the shelter faces away from the residential properties – the back wall is apparently the shared rear wall with no.1 Well Road. As I have noted above, it appears to have been designed solely for smokers, it is not an area likely to be used as a beer garden. In this regard, I do not consider that there would be a reasonable alternative layout or design.

Noise

I have no reason to question the claims of the appellant’s that there has been late night noise and disturbance arising from the use of the rear yard. Notwithstanding this, having regard to the zoning designation and the past history of the use of the yard, I do not consider that this is a ground for refusal as I am satisfied that the design is a reasonable one to keep noise to a minimum.

Heritage

The pub at 106 Main Street is a typical two–storey mid-19th Century structure. The heritage appraisal submitted with the 2013 planning application indicates that it was built around 1860, but does not appear to be of the highest conservation status. Many internal features have changed, the main features of interest being the external elevations. It is described in the NIAH survey as follows:

‘A well-proportioned mid-nineteenth century former house, enhanced by the quality of the traditional style shopfront, with its finely painted nameboard. Situated at a prominent junction it has an imposing presence in the urban fabric and is a key feature of the architectural character of the historic core of Portlaoise.’

I note that the shelter is attached to what would seem to be an original mid-19th Century rubble stone wall. But I do not consider that the structure for retention would in any significant way interfere with the heritage value of the structure and as it does not involve underground works there would be no archaeological implications. As it is not visible from external areas I do not consider that it has any impact on the Architectural Conservation Area.

Health and safety

The appellant has expressed concerns about stray cigarettes. While lighted cigarettes can always constitute a health and safety issue, I note the comments of the Fire Officer on the planning file – I do not consider that there should be additional restrictions above and beyond the normal statutory duty of care in addition to building regulation requirements on the applicant.

Appropriate Assessment/EIS

The planning authority did not carry out a screening for AA. There are no Natura 2000 sites within or close to Portlaoise – the closest is the SPA at Slieve Bloom, more than 5 km from the town. Having regard to the nature of the proposal and the distance from any designated site I do not consider that a stage 2 AA would be required. The small scale of the proposed development and the absence of specific environmental sensitivities in the area indicate that no screening for EIS is required.

Financial contributions

The appellant has claimed that the floorspace of the smoking area should be counted towards the overall floorspace of the public house for parking requirements, and hence should be subject to a S.48 Development Contribution, but I note the comment on the planners report that open sided structures do not count towards floorspace. I therefore conclude that no Development Contribution is required.

11. Conclusions and Recommendations

I conclude that having regard to the town centre zoning of the site and the history of the use of the site as a storage and smoking area ancillary to the public house, the proposed development would be in accordance with the zoning designation and would otherwise be acceptable.

I recommend that subject to the conditions set out below, the proposed development for retention is **granted** planning permission for the following reasons and considerations.

REASONS AND CONSIDERATIONS

Having regard to the town centre zoning of the site, the past use of the site as a smoking area and the historic use of the site for a public house, it is considered that subject to the conditions set out below the proposed retention of the smoking shelter would not seriously injure the amenities of the area and would otherwise be in accordance 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. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Any lighting shall be cowled and directed away from the public roadway and adjoining properties. No flood lighting shall be erected on the site without prior planning permission.

Reason: In the interest of traffic safety and residential amenity.

Philip Davis,
Inspectorate.
12th July 2016