



An
Bord
Pleanála

Inspector's Report PL93.246788

Development	Continuation of the use of a temporary car park for a period of 2 years at High Street and Exchange Street, Waterford City.
Planning Authority	Waterford City and County Council.
Planning Authority Reg. Ref.	16/273.
Applicant	W. G. O'Hare
Type of Application	Permission
Planning Authority Decision	To grant permission subject to conditions.
Appellant(s)	Bernie Rothwell
Type of Appeal	3 rd Party v. Grant
Observer(s)	None
Date of Site Inspection	16 September, 2016.
Inspector	B. Wyse.

1.0 Site Location and Description

- 1.1. The site, a surface car park, is located in Waterford City Centre on Exchange Street and High Street and within the main commercial/retail core of the city. It has a stated area of 0.18 hectares and can accommodate approximately 55 cars on a charge basis. The entrance is from Exchange Street and the exit is onto High Street.
- 1.2. Exchange Street is one-way southbound from Coal Quay/Custom House Quay and is the only route that provides access to the large City Square Shopping Centre car park on High Street – entrance/exit located opposite the head of Exchange Street. With the exception of a short two-way stretch, that facilitates egress from the subject car park, High Street is one-way eastbound and westbound from its junction with Exchange Street.
- 1.3. Maps and photographs in file pouch.

2.0 Proposed Development

- 2.1. The proposed development comprises the continuation of use of the car park for a further period of 2 years.
- 2.2. Application cover letter includes:
 - The impetus for the application is stated to be the expiry of the current temporary use on 3rd September, 2016 (planning permission ABP Ref. 238100).
 - While it is acknowledged that this is not a suitable long-term use for the land the applicant has been unable to secure a suitable long-term occupier due to the continued depressed nature of the retail market. It is the applicant's intention to release the land to the open market imminently.

- Given the lead-in time to any development proposal it is considered best management to continue the use as a temporary car park and to avoid vacancy, dereliction etc.

3.0 Planning Authority Decision

3.1. Decision

The decision to grant permission is subject to 4 conditions.

Conditions include:

2. This extends the temporary period to 3 years.
3. Financial contribution – Section 48.
4. De-exempts structures, signs etc.

3.2. Planning Authority Reports

3.2.1. Planning Report

Basis for Planning Authority decision.

Includes:

- While car parks are not specifically identified in the development plan in the schedule of acceptable uses on city centre commercially zoned lands, these schedules are not exhaustive and, as such, a car park use is not considered unacceptable solely by reason of omission.
- Reference to the planning history of the site.
- Recommendation for a 3-year period based on the parameters of the development contribution scheme.

- References to PLUTS (Waterford Planning Land Use and Transportation Study) and the Waterford City Council City Centre Parking Study Technical Report 2006.
- Reference to discussions with Transportation Department and conclusion that development is acceptable.
- Habitat Directive Screening Assessment – no requirement for Stage 2 AA.

3.3. **Observations to Planning Authority**

- 3.3.1. Submitted on behalf of Bernie Rothwell, the owner of the adjacent City Square Shopping Centre, the appellant in the appeal.

Issues raised similar to those raised in the grounds of appeal – see Section 6.1 below.

4.0 **Planning History**

P.A. Ref. 01/5252

c.2001 planning permission granted for demolition of offices and construction of a 5 storey mixed use development.

P.A. Ref. 08/5352, ABP Ref. 232504

c.2008 refusal of permission for a 5-7 storey mixed use development.

P.A. Ref. 10/95, ABP Ref. 238100

2011 grant of permission for use as a car park for 2 years.

P.A. Ref. 12/139, ABP 241966

September 2013 grant of permission for use as a car parking for a further 3 years. This permission also included boundary, paving, landscaping, lighting works etc.

5.0 Policy Context

5.1. Waterford City Development Plan 2013 – 2019

5.1.1. Site zoning: City Centre Commercial.

While 'car park' is not included in the schedule of permitted uses within this zone the plan advises that these schedules are guidelines and are not exhaustive (parag. 12.12). Site is located within the Core Shopping Area (Fig. 4) and within the area designated "Core Shopping Area Opportunity Sites".

Copy Zoning/Objectives map in file pouch.

City Centre policies include POL 5.4.18:

"To give consideration to appropriate 'meanwhile uses' and temporary commercial uses for vacant or under-utilised properties in as much as legislation and regulation allows".

Taking account of the PLUTS Framework the plan identifies measures in relation to city centre parking. These include (parag. 6.2.5):

"A staged increase in the supply of public off-street parking to compensate for reductions to on-street parking and to service retail and tourism needs".

Site is also located within the General Conservation Area and the Zone of Archaeological Potential.

5.2. Natural Heritage Designations

Not relevant – given nature (continuance of existing use) and location (established city centre) of proposed development.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The appeal is lodged on behalf of Bernie Rothwell, the owner of the adjacent City Square Shopping Centre and car park.

Main grounds include:

- The 'City Square' car park provides c.500 short-term car parking spaces accessed solely via Exchange Street.

Traffic Congestion and Hazard

- Exchange Street also provides access from the Quays, via High Street, to the town centre, and is the only service vehicle (including HGV's) access to the City Square Centre (over 70 shops, including national multiples).
- Experience over the last 3 years shows that the car park leads to traffic congestion and hazard within the core shopping centre of the city. This arises, in particular, from queuing/stacking of cars at the car park entrance on Exchange Street during busy periods.
- A grant of permission is premature without the completion of a traffic impact assessment.

Delay to Redevelopment of Site

- The site has been derelict/vacant since c.2001, i.e. 15 years. It has been a visual blot on the streetscape and a disincentive to investors in the town.
- The Board has already given the landowner an opportunity to develop a temporary car park on two previous occasions.
- The Planning Authority has now sought to increase the period for a further 3 years.

Conservation

- The development has dis-improved the visual character of the city centre General Conservation Area.
- It gives rise to anti-social behaviour, littering etc.

Material Contravention of the Development Plan

- The provision of a surface car park is not listed in the development plan as a permissible use in the City Centre Commercial Zone.
- Modern planning policies in town centres tend to discourage stand-alone car parks.

Invalid Planning Decision

- The Planning Authority's condition 2 extending the period to 3 years was not advertised for public submission.

- It is not legal or possible to grant permission for a development that the applicant has not applied for.

6.2. Planning Authority Response

No further comment – reference to Planning Report.

6.3. Applicant's Response

Includes:

- Although first permitted for use as a temporary car park in March, 2011 it has only operated as such since April, 2014 – delay due to; applicant's involvement with NAMA; negotiations with car parking operator; and extensive operational works required.
- Despite efforts to secure a retail development for the site no retailer is as yet prepared to commit until there is clear evidence of a recovery in the city's retail market.

Traffic Congestion and Hazard

- The appellant's contention is unfounded. The car park removes cars from the street network. A vehicle counter system indicates when the car park is full so that customers can continue to an alternative parking location. There have been no traffic accidents attributable to the car park use.

Delay to Redevelopment of Site

- The retail market in Waterford City is still somewhat depressed. The site has been on the open market since April, 2016. Any new owner will require at least 12-18 months to work up a development proposal with the Planning Authority.
- The development of the site as a temporary car park has revealed its true extent and potential for redevelopment.

Conservation

- There are no protected structures on Exchange Street. There are some on Coal Quay and one on High Street.
- The development has had an overwhelmingly positive impact on this area of the city as a result of the paving, landscaping and lighting improvements and increased pedestrian activity.
- There is no evidence to the suggestion that the car park facilitates anti-social behaviour or littering.

Material Contravention of the Development Plan

- The schedule of permissible uses under the zoning objective is not exhaustive.
- It is not reasonable to suggest that car parks are not acceptable uses within a city centre context.
- Temporary uses can make a valuable contribution to city centres particularly at times of recession.

Invalid Planning Decision

- Previous permissions have also amended the time limit by way of condition.
- Third party rights have not been infringed.

Conclusion

Includes:

- The City Development Plan, incorporating the Waterford PLUTS, is strategic in nature with long-term views and objectives. This temporary proposal would in no way undermine this strategy.

6.4. **Observations**

None received.

Note: Submissions were invited from; The Heritage Council; An Taisce; DAHG; Failte Ireland; and An Chomhairle Ealaíon. No responses received.

7.0 **Assessment**

7.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment is also addressed. The issues can be dealt with under the following headings:

- Zoning and Related Issues
- Traffic Conservation
- Validity Issues
- Appropriate Assessment

7.2. **Zoning and Related Issues**

7.2.1. By reference to the city centre commercial zoning that applies to the site and to the guideline nature of the schedule of permitted uses for this zone as provided for in the city development plan (section 5.1 above) it is clear that there is no fundamental zoning based obstacle to the use of the site for car parking. Policy 5.4.18 of the plan is also of some relevance in this context. The issue of materially contravening the plan, therefore, does not arise.

7.2.2. It is also clear on the basis of the documentation on file that there is agreement amongst all parties to the appeal that surface car parking is not the ideal use for the site and that its redevelopment is the ultimate goal. The key issue is the length of time that it is reasonable to allow the car parking use to continue for pending redevelopment.

- 7.2.3. As indicated by the applicant the car park has only been in operation since April 2014, notwithstanding the earlier grant of permission for such use in 2011. In this regard I accept the applicant's explanation for the delay in terms of lead in times for both operations and works.
- 7.2.4. I am also inclined to accept the applicant's arguments in relation to the difficulties in achieving a redevelopment proposal for the site. The national economy is still in the process of recovery from what has been a deep and prolonged recession. The proposition that the retail sector in Waterford City is still somewhat depressed is entirely plausible.
- 7.2.5. In this context, I consider the proposal to continue the temporary use for car parking for a further 2 years to be reasonable.
- 7.2.6. As indicated at section 3.2.1 above the Board will note that the Planning Authority's decision to extend (by condition) the period to 3 years is solely based on the parameters of the development contribution scheme. I do not consider that this is a substantive basis for so doing. The permission, in my view, should be limited to that applied for, namely 2 years.

7.3. Traffic

- 7.3.1. While being cognisant of the narrow one-way traffic circulation system in the area, and the entrance/exit arrangements for the City Square Shopping Centre car park and service area in close proximity at the head of Exchange Street, I am nevertheless inclined to accept the applicant's arguments in relation to this matter.
- 7.3.2. As suggested the appellant has not provided any substantive evidence of congestion or hazard. The car park includes a vehicle counter system and clear signage as to capacity for approaching vehicles along Exchange Street. The alternative of parking at the City Square Centre is also clearly identified for such traffic both by signage at

the turn from Coal Quay/Custom House Quay onto Exchange Street and by line of sight to the entrance to the car park itself. It is not obvious, therefore, why vehicles would queue at the entrance to the subject car park in such a manner as to cause significant congestion or hazard.

7.3.3. As indicated at Section 5.1 above, I have had regard, in considering this matter, to relevant development plan provisions and which include reference to the Waterford PLUTS. I would also note, in this context, that the subject car park, accommodating approximately 55 cars, is relatively small in scale.

7.3.4. I do not consider, therefore, that there is any traffic related basis for denying the proposed development.

7.4. Conservation

7.4.1. As acknowledged at section 7.2 above the ultimate goal is to secure the redevelopment of the site. This is the appropriate response to the conservation issue. In the meantime, the continued short-term use of the site for car parking as proposed would not, in my view, have any significant impact in terms of the conservation of the area within which it is located.

7.5. Validity Issues

7.5.1. It is somewhat unusual to extend the scope of a permission beyond that applied for – as is effectively done in this case by way of Condition 2 to the Planning Authority decision and which extends the temporary car parking use period out to 3 years. It should be noted, for example, that under permission P.A. Ref. 12/139, ABP Ref. 241966 the period was restricted to 3 years where the application was for a 5-year period. Whether or not this renders the subject decision invalid is another matter and is, ultimately, for the Courts to decide.

7.5.2. In any case, I have already dealt with the substantive issue here under Section 7.2 above (parag. 7.2.6). For the reasons indicated I consider that in the event of the Board granting permission this should be limited to the 2-year period as sought in the application.

7.6. **Appropriate Assessment**

7.6.1. Having regard to the nature (continuance of use) of the proposed development and the nature of the receiving environment (established city centre) , no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 **Recommendation**

8.1. I recommend that planning permission should be granted, subject to conditions, for the reasons and considerations set out below.

9.0 **Reasons and Considerations**

Having regard to the temporary nature and relatively small scale of the development, the location of the site within the City Centre Commercial Area and the pattern of development in the vicinity, it is considered that, subject to compliance with conditions set out below, the proposed development would not adversely affect the amenities of the area and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 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 to 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 the 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. This permission is for a period of 2 years from the date of this order. The use of the car parking shall cease following the expiration of this period.

Reason: In the interest of clarity.

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.

Brendan Wyse,
Assistant Director of Planning.
17 October, 2016.