



An  
Bord  
Pleanála

## Inspector's Report PL 21.246943

**Appeal Reference No:**

PL 21.246943

**Development:**

Retention of covered smoking area and outdoor seating area alongside premises, 'The Swagman Bar & Restaurant' together with all associated site works at Wine Street, Sligo.

### Planning Application

Planning Authority:

Sligo County Council

Planning Authority Reg. Ref.:

16/172

Applicant:

Kudos Restaurant Ltd.

Planning Authority Decision:

Grant Retention Permission with conditions

### Planning Appeal

Appellant(s):

John McCrea & Nicolas Wilkinson

Type of Appeal:

Third Party – V - Grant

Observers:

(i) Geraldine Kelly & others  
(ii) Vincent Middleton

Date of Site Inspection:

19<sup>th</sup> September 2016

**Inspector:**

Tom Rabbette

## **1.0 SITE LOCATION AND DESCRIPTION**

The application site is located off Wine Street in Sligo. The site is bounded to the north by Wine Street, there is an archway in a terraced two-storey building providing access off Wine Street to an open yard area to the side and rear of a number of properties. This archway is the only access available to the rear of these properties off the public street. There is a bar and restaurant business in the building adjoining the site immediately to its west. This building has a number of doors that open out into the yard area. There is seating, benches and tables associated with this bar located in the yard area. There is also a timber and Perspex structure that provides cover over some of the tables and benches.

## **2.0 PROPOSED DEVELOPMENT**

The applicant, Kudos Restaurant Ltd., is seeking retention permission for a covered smoking area and outdoor seating area. The smoking area and seating area are located on the eastern side of a public house and restaurant known as 'The Swagman'. This bar has its main entrance off Wine Street which, as stated above, is located to the north of the site. There is an archway off Wine Street providing access to an open area to the rear of a number of properties. The Swagman Bar to the west of the open area has doors in its side (eastern elevation) leading out of its bar/lounge area and into the covered smoking area and seating area located in this open yard.

The covered smoking area consists of a timber frame with Perspex translucent roofing material over, it has no walls as such.

## **3.0 PLANNING HISTORY**

I am not aware of any directly relevant planning history pertaining to the site. Reference is made in the Planner's Report on file to an Enforcement File being opened but no Warning Letter or Enforcement Notice issuing.

## **4.0 PLANNING AUTHORITY DECISION**

### **4.1 Planning and technical reports**

Planner's Report dated 16/06/16:

- Permission recommended unconditionally.

Area Engineer Report dated 23/05/16:

- Permission recommended subject to conditions.

PP/3033 Record of Pre-Planning Consultation: Issues raised: Retention is required for outdoor smoking and associated covering canopy; Letter of

consent from landowner required; details regarding the use of the area should be submitted.

Objections/observations: Objections/observations on file addressed to the p.a. make reference to the following issues: encroachment on right-of-way; obstruction of right-of-way; development unlawful; diminish and affect access to adjacent property; affect the marketability of adjacent property; applicant has not provided any evidence of its title to the archway, laneway and yard; application invalid; roof height of canopy, and proliferation of glass on the street arising from outdoor seating.

## **4.2 Planning Authority Decision**

By Order dated 23/06/16 the planning authority decided to grant permission unconditionally.

## **5.0 GROUNDS OF APPEAL**

John McCrea & Nicolas Wilkinson c/o Ross House, Riverstown, Co. Sligo.

The contents of the third party grounds of appeal can be summarised as follows:

- Rights-of-way seriously impeded.
- The unauthorised development eliminates the adjacent workshop use, the occupants used to access the workshop via the archway and park their vehicles adjacent the workshop.
- Wine Street is one of the older streets in Sligo.
- 75% of the properties on the street were provided with rear access, this facility is very important in this era as parking for deliveries etc. can be a nightmare.
- Many of these rear accesses are still in daily use with some locked at night, others with security gates.
- There is a rear exit right-of-way out of the adjacent 'Rogers & Lyons'.
- The appellants question whether the Fire Officer has seen the application.
- The site map is in some areas misleading and in others lacks important detail.
- The appellants submit a copy of the map with relevant details marked in.
- The details on the amended map note that four doors are accessed by the gateway.
- The gateway would appear to be part of the 'Peter John' building (now 'Faith & Light Charity Shop').
- On a site visit it was observed that more tables were in evidence than the site map indicates.

- It is sad to think that a relatively recent tenant to a property can construct an unpleasant development causing existing property owners deprivation of their rights-of-way.
- The appellants refer to photographs submitted with the appeal.
- Boundary area as marked for the applicant is questionable.
- Obstructions caused by canopy supports which restrict vehicular manoeuvrability.
- More tables exist than marked on the map.
- Doorways of other properties which had access through the gateway are not illustrated.

## **6.0 RESPONSES/OBSERVATIONS TO GROUNDS OF APPEAL**

### **6.1 Planning Authority response**

The contents of the planning authority's response to the grounds of appeal can be summarised as follows:

- In relation to the impact on access to a workshop to the rear of the site, the p.a. comments that this relates to private rights-of-way, it is a civil matter for resolution between the relevant parties.
- The appellant's contention regarding the impact on the amenity of properties is with regard to access restriction, again, this is considered a matter for resolution between the relevant parties if any rights-of-way have been obstructed.
- Matters regarding compliance with relevant fire regulations are covered by separate legislation and procedures.
- The site was inspected at the time of the application and it was considered that all relevant details and structures were adequately reflected in the details and drawings submitted.

### **6.2 First party response**

None on file at time of writing.

### **6.3 Observations on grounds of appeal**

#### **6.3.1 Geraldine Kelly & others, c/o Kilmacowen, Ballisodare, Co. Sligo**

The contents of the observer submission from the above can be summarised as follows:

- Object to the retention of outdoor seating area at back of 'Rodgers & Lyons' shop.
- This area was always open as a means of customers accessing the shoe repair area.
- This is a right-of-way that customers have used for decades getting shoes repaired.

- For over a 100 years ‘Rodgers & Lyons’ shoe shop received deliveries of shoes to the rear of the premises through this yard.
- It was always open and kept completely clear as a passage way to the shoe repair shop.
- At present you are not able to access the rear of the shop on foot because of the amount of tables and canopies.
- The tables and canopies have left the yard impassable with no regard for the existing right-of-way.
- The observers also object on a public liability issue that the yard is unsafe for the general public.
- If there was a fire the exit would be blocked, a lot of people use it as a smoking area.

### 6.3.2 Vincent Middleton, Buenos Aires Drive, Strandhill, Co. Sligo

The contents of the observer submission from the above can be summarised as follows:

- The observer objects to the beer garden as he has a right-of-way to his shoe repair shop in the yard.

## 7.0 POLICY CONTEXT

The operative plan for the area is the Sligo and Environs Development Plan 2010-2016. The site is located within an area where the land use zoning objective is ‘C1 – city centre uses - 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.’ The archway that forms part of the northern boundary of the application site forms part of a protected structure, Ref: RPS No. 229 ‘Peter John – Carriage arch to the rear. Projecting shopfront with decorative cresting above’. (See attached appendix.)

## 8.0 ASSESSMENT

- 8.1 I have examined all the plans, particulars and documentation on file. I have carried out a site inspection. I have had regard to relevant provisions of the statutory development plan for the area. In my opinion the main issues arising are those addressed hereunder.

### Right-of-way

- 8.2 The primary concerns raised in the grounds of appeal, and also in submissions to the planning authority in the first instance, relate to impact on access to the rear of properties. The issues raised relate to perceived obstruction of, and encroachment on, a right-of-way.

- 8.3 The archway off Wine Street and the associated laneway and open space, where the covered smoking area and outdoor seating area subject of this retention application are located, provides access to the rear of a number of properties. The appellants object to the retention of the smoking area and seating area. Likewise, the observers to the appeal have raised concerns about the impact the proposed development will have on a right-of-way. While it appears most of the properties that have access to this rear yard area also have frontage onto Wine Street, one of the properties, a shoe repair shop, does not have separate access onto Wine Street, this can only be accessed via the archway and rear yard area.
- 8.4 I would note that the furniture, benches, tables and seating, in the yard area are movable. I would also note that the timber and Perspex canopy is of a similar height above ground (clearance) as the archway into the yard off Wine Street.
- 8.5 I consider that the main grievances here relate to civil matters pertaining to a right-of-way and questions over legal interests in the subject land to carry out the development. In that regard I refer the Board to section 5.13 of the 'Development Management Guidelines for Planning Authorities' (DoEHLG 2007) where it states, *inter alia*, the following: "*The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not be entitled solely by reason of a permission to carry out any development. Where appropriate, an advisory note to this effect should be added at the end of the planning decision.*" I note that the p.a. did add such an advisory note on its Chief Executive Order of the 23/06/16.
- 8.6 I would not recommend that the Board issue a refusal of retention of permission in relation to this issue, it is a civil matter pertaining to title to land and not an issue pertaining specifically to the proper planning and sustainable development of the area. Should the Board grant retention permission I would recommend that they consider attaching an advisory note reflecting the provisions of s.34(13) of the Planning & Development Act 2000 (as amended).

Principle of development

- 8.7 In terms of the proper planning and sustainable development of the area, I would note that there does not appear to be any residential units immediately bordering the open yard area. There is no reference on file, either in the appeal submission, observers' submissions, or in the submissions to the p.a. at application stage, voicing concerns about impact on residential amenities arising from such matters as noise generated, light pollution or impact on privacy. This is a town centre location, commercial uses are well-established in the area and the area is zoned for such uses. The proposed covered

smoking area and the seating area is linked to the bar and restaurant use in the property adjoining to the west. I do not consider that the proposed covered smoking area and outdoor seating area associated with the established public house to the west conflicts with the statutory development plan for the area where the land use zoning objective is C1 (as indicated under s.7.0 above). I do not consider that the proposed uses are contrary to the proper planning and sustainable development of this town centre location.

#### Protected structure

- 8.8 The archway forms part of the application site. This archway, in design terms, does not form an integral part of 'The Swagman' three-storey building adjoining to the west. This archway is an integral part of the two-storey structure to the east along Wine Street but only the archway forms part of the application site, the rest of that associated two-storey building is not part of the application before the Board. The two-storey building incorporating the archway is a protected structure (RPS Ref. No. 229 – see appendix attached to this report). The protected structure does have a doorway exiting out onto the rear yard area that is the subject of the application. That door is located in a later extension to the protected structure, it is not contemporaneous with the original protected structure, including the archway. I am satisfied given the nature of the development before the Board that the character and setting of that protected structure, including the archway, will not be adversely impacted upon by the development.
- 8.9 The public notices did not mention that a protected structure forms part of the application site. There is no actual work being proposed to the original protected structure (having regard to the specific wording in art.18(1)(d)(iii) of the Planning & Development Regulations). The canopy that is part-subject of the application does abut a later extension to the rear of the original building that gave rise to the protected structure status, the extension is not contemporaneous with the original protected structure. In the circumstances the Board may consider the omission of a reference to the protected structure in the public notices as *de minimis*. However, should the Board consider it necessary, it is still open to the Board to request amended public notices indicating that the application site includes a protected structure.

#### Appropriate Assessment

- 8.10 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 I recommend the Board grant retention permission as sought subject to one condition as indicated below.
- 9.2 In the event of a grant of retention permission as recommend here, I would further recommend that the Board consider attaching an advisory note reflecting the provisions of s.34(13) of the Planning & Development Act 2000 (as amended).

### **REASONS AND CONSIDERATIONS**

Having regard to the zoning objective for the area and the pattern of development in the vicinity, it is considered that, subject to compliance with condition below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health, and would not adversely impact on the character or setting of the protected structure ref. RPS 229 ('Peter John'). The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

### **CONDITION**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application.

**Reason:** In the interest of clarity.

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Tom Rabbette  
Senior Planning Inspector  
22<sup>nd</sup> September 2016