



An  
Bord  
Pleanála

## Inspector's Report PL91.247245

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<b>Development</b>	Demolition of party wall between units 1 and 2 to form 1 unit for use as a restaurant with take away facility, and revisions to external signage.
<b>Location</b>	1 & 2 Cornmarket Row, Limerick
<b>Planning Authority</b>	Limerick City and County Council
<b>Planning Authority Reg. Ref.</b>	16/185
<b>Applicant</b>	Hasib Mobin
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant subject to conditions
<b>Type of Appeal</b>	3 <sup>rd</sup> Party v. Grant
<b>Appellants</b>	Shamsul Rahman & Ashraf Uz Zaman
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	24/10/16
<b>Inspector</b>	Pauline Fitzpatrick

## 1.0 Site Location and Description

- 1.1. Nos. 1 & 2 Cornmarket Row comprise two ground floor units facing onto the Milk Market in Limerick City Centre. Both units are used as restaurants with takeaway facilities. The units form part of a larger scheme which extends from Cornmarket Row to Upper Denmark Street. The ground floor units are in commercial uses with a multi storey car park over. There are a further three restaurant/takeaways in addition to a licensed bar on the same elevation fronting onto Cornmarket Row.
- 1.2. Whilst the area has a mix of uses including residential and retail with the units within the Milk Market selling artisan foods and crafts etc. the predominant uses comprise of bars and nightclubs in addition to food/fast food outlets. The nearest residential units are in the Mungret Court complex c.90 metres to the north.

## 2.0 Proposed Development

- 2.1. The application was lodged with the planning authority on the **08/03/16** with further plans and details received **29/06/16** and **29/07/16** following requests for further information and clarification of further information dated 24/04/16 and 21/07/16 respectively.
- 2.2. The proposal is for the amalgamation of the two units to form one restaurant with take away facility. The works will involve the removal of an internal party wall and revisions to the frontage including closing one of the accesses and new signage. The unit will have a stated area of 300 sq.m.
- 2.3. The hours of operation are to be between 1200 and 0100 Monday to Thursday and 1200 to 0200 Friday to Sunday.
- 2.4. A noise assessment report was submitted by way of further information which concludes that the premises is located on a busy street and is therefore impacted by traffic and other noise sources associated with an urban setting.

## 3.0 Planning Authority Decision

### 3.1. Decision

The planning authority decided to grant permission for the above described development subject to 8 conditions including:

Condition 2: Within 3 months of the grant of permission the works outlined in the submission of 29/07/16 to be carried out.

Conditions 3 & 4: Noise requirements.

Condition 5: Control of odours.

Condition 6: Requirements in terms of signage.

Condition 7: Programme of litter control

Condition 8: Opening hours

### 3.2. Planning Authority Reports

3.2.1. The **1<sup>st</sup> Planning report** (countersigned) dated **26/04/16** recommends a request for further information on the status of an extant application on the site, amendments to the front elevation requiring removal of one of the access points, details of ventilation and extraction system and grease traps, signage, hours of operation and staff numbers, submission of a noise impact report and a planning statement as to how the proposal complies with development management requirements of the current Development Plan.

3.2.2. The **2<sup>nd</sup> report** (countersigned) dated **19/07/16** recommends a clarification of further information on the proposed shopfront alterations.

3.2.3. The **3<sup>rd</sup> report** (countersigned) dated **15/08/16** recommends a grant of permission subject to 8 conditions.

#### 3.2.4. Other Technical Reports

The report from the **Executive Engineer (Air, Noise & Water Pollution and Public Health)** dated **13/04/16** sets a series of conditions should permission be granted.

**Irish Water** in a report dated **25/03/16** has no objection subject to conditions.

The **Assistant Chief Fire Officer** in a report dated **04/04/16** states that fire safety and disability access certificates will be required.

A report from the **Executive Engineer, Environment Section** dated **15/07/16** recommends conditions setting out parameters for noise be attached should permission be granted.

### 3.3. **Prescribed Bodies**

None

### 3.4. **Third Party Observations**

Objections to the proposed development received by the planning authority have been forwarded onto the Board for its information. The issues raised are comparable to those set out in the 3<sup>rd</sup> party appeal summarised in section 6 below.

## 4.0 **Planning History**

**P15/850** - Reference is made in the planning reports on file to this application for change of use of premises for takeaway at No. 2 Cornmarket Row. The application was withdrawn consequent to the request for further information from the planning authority on this case.

**PL30.242334 (13/66)** – permission granted for change of use of part of restaurant (6 sq.m.) to provide for a takeaway facility at No. 3 Cornmarket Row.

**PL91.244964 (14/1176)** – permission refused for change of use of ground floor from retail to restaurant and change of use of 1<sup>st</sup> floor from office to storage ancillary to restaurant at Denmark Street/Chapel Street/Cruises Street.

Reference is made in the submissions on file to a grant of permission for the change of use from retail to restaurant at unit F (immediately adjoining Unit No.1). The restaurant is now operating.

## 5.0 Policy Context

### 5.1. Limerick City Development Plan 2010 -2016

The site is within an area zoned Z01A City Centre Retail Area, the objective for which is to provide for the protection, upgrading and expansion of higher order retailing, in particular comparison retailing, and a range of other supporting uses in the city centre retail area. In such a zone restaurant/café is permitted in principle with takeaway open for consideration.

Chapter 16 sets out the development management requirements.

With respect to Takeaway/Off license/Amusement Centre/Gaming Zone:

In order to maintain an appropriate mix of uses and protect the amenities in a particular area, it is the objective of Limerick City Council to prevent an excessive concentration of takeaways, off-licences, amusement centres or gaming zones and to ensure that the intensity of any proposed use is in keeping with both the scale of the building and the pattern of development in the area.

The provision of such facilities will be strictly controlled, having regard to the following, where considered appropriate:

- The effect of noise, general disturbance, hours of operation, litter and fumes on the amenities of nearby residents.
- The need to safeguard the vitality and viability of shopping areas in the City and to maintain a suitable mix of retail uses.
- Traffic considerations
- The number of such facilities in the area
- Litter control measures
- With regard to takeaways the need to integrate the design of ventilation systems into the design of the building

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The submission by Planning Solutions on behalf of the 3<sup>rd</sup> party appellant which is accompanied by support documentation refers. I consider that the submission, as relevant to the proposed development, can be summarised as follows:

- The proposed takeaway restaurant would encourage late night drinking/entertainment and would hinder the long-term strategy for the city centre as established in the retail strategy/development plan and would materially diminish the prospect of attracting private sector investment into this area of the city centre.
- The removal of the established sit down restaurant will diminish the range of activities and services.
- The addition of another restaurant would create a serious imbalance to the detriment of retail outlets in the area while adding to traffic problems, noise and anti-social behaviour.
- Since the redevelopment of the Cruises Street/Cornmarket Area there have been 18 changes of use from shops to restaurant type development. Most of these are dependent on the late night takeaway market to survive. All these outlets are within 100 metres of the appeal site. The predominant business in the area is now restaurants/takeaway.
- The excessive amount of late night outlets detracts from the ambience of the area.
- The Board refused permission for a change of use from retail to restaurant on a nearby premises under ref. PL91. 244964 (incorrectly referenced in submission as PL91.244994).
- Permission was granted in 2015 for the change of use of unit F Cornmarket Row from retail to restaurant/takeaway (now operating).
- There is little confidence in terms of the enforcement of the conditions on noise pollution.

- A grant of permission will make the appellant's premises and other takeaways in the area unviable.

## 6.2. Applicant Response

The submission by Connellan & Associates on behalf of the applicant can be summarised as follows:

- Both units have permission for restaurant use and unit 1 has a permitted take away use. An earlier application for a takeaway facility in unit 2 (15/850) was withdrawn. There is no new use involved.
- The proposal is to demolish the party wall between the two units to form a combined unit and to use same as a restaurant with take away facility. It will not lead to any increased concentration of takeaways.
- The inclusion of the take away element in the application appears to have been done so to ensure that no legal issues arise at a later date due to the extended area involved with the units being amalgamated.
- While each of the units have a reasonable floor area their configuration is long and narrow and does not give much flexibility with respect to seating. The combined area will allow the provision for more seating which will make a more attractive sit down restaurant. There is no increase in floor area beyond that created by the demolition of the internal wall.
- The provision of the bigger area is likely to reduce the takeaway sales as people choose to eat on the premises, especially those coming from late night bars and nightclubs.
- There are no residential units close to the development.
- Whilst the site is within the area designated for City Centre Retail this does not mean that only retail units are to be permitted to the exclusion of other land use types.
- There is no particular worked out detailed land use objective for the area incorporated into the current Plan beyond a general land use zoning map.

- The area is recognised as a late night node in section 5.2.7 of the Limerick 30 Plan – An Economic and Spatial Plan for Limerick.
- There is a high percentage of night time uses which have been permitted to develop. The area now has an established night time vibrancy and character of its own. Therefore, at this stage there is an established pattern of development in the area. Such a pattern of development is a legitimate planning consideration and is quoted in planning decisions.
- The case quoted PL91.244964 is not comparable. There is no change of use or loss of retail floorspace.
- The proposal provides an opportunity to improve the visual amenity of the street frontage.
- The type of restaurant involved and the type of food served is not a legitimate planning consideration.
- Planning is not designed, nor should be used, to either inhibit competition or favour any particular commercial interest. Thus the impact on other businesses is not relevant.

### 6.3. **Planning Authority Response**

It is considered that the incorporation of a vacant unit into an existing facility and the extension of the existing restaurant is acceptable given the zoning on site. The proposal includes the redevelopment of the shopfronts on both units and will result in an overall improvement in the streetscape.

### 6.4. **Observations**

None

## 7.0 **Assessment**

- 7.1. The proposal before the Board essentially entails the amalgamation of two units for use as a restaurant with a takeaway facility with no increase in floor area save that arising from the removal of the internal wall. No.1 has permission for a restaurant



with takeaway and is currently operating whilst No.2 has permission for a restaurant. It would appear from correspondence on file that No.2 also provided for a takeaway element but it is stated that the restaurant has been closed for a year. As can be seen from the plans accompanying the application a large seating area is to be provided in the front section of the premises with the serving area to one side. Effectively there is no new use involved.

- 7.2. The general area of Cornmarket Row is dominated by leisure/entertainment uses with a high concentration of bars, nightclubs, restaurants and nightclubs. The units to which the appeal refer are two of five restaurants/takeaways on this side of the street with the appellant's premises immediately adjoining.
- 7.3. As noted above the two units, subject of the appeal, have permitted restaurant uses. The proposal would not result in a loss or have any adverse impact on the retail component in the area, nor would it diminish the existing range of uses. In this regard I note the reference to the appeal case PL91.244964 pertaining to a premises at the corner of Chapel Street and Denmark Street. In that instance the proposal sought a change of use from retail to restaurant and is therefore not directly comparable to the current appeal.
- 7.4. As there is no additional provision proposed the development would not have any material impact on the area amenities of the area in terms of noise, litter, traffic generation etc. The nearest residential units were noted to the south within the Mungret Court complex with a number of other leisure and food outlets in closer proximity to same. In this context, therefore, I submit that conditions 3 and 4 attached to the planning authority's decision would be difficult to monitor and enforce in terms of isolating the noise arising within the subject premises from that generated by other premises in the immediate vicinity. I therefore recommend that such conditions be omitted should the Board be disposed to a favourable decision. I would also submit that the operating hours as detailed would be comparable to those applied by the Board on file reference PL30.242334 on the adjoining premises.
- 7.5. In my opinion the proposed amalgamation would not alter the character of the street frontage. Indeed I would submit that the proposal offers an opportunity to secure a more appropriate shop frontage than is already the case.

- 7.6. I note the appellant's concerns regarding the impact of the proposed development on the viability of the existing provision in the area but, as noted by the agent for the applicant, planning is not designed, nor should be used, to either inhibit competition or favour any particular commercial interest.
- 7.7. In conclusion, therefore, I consider that the proposal would be in accordance with the development plan provisions and zoning objectives for the area and would not be contrary to the proper planning and sustainable development of the area.

#### *Appropriate Assessment*

- 7.8. Having regard to the nature and scale of the development within Limerick 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. Having regard to the documentation on file, the grounds of appeal, the responses thereto, a site inspection and the assessment above I recommend that permission for the above described development be granted for the following reasons and considerations subject to conditions.

## **9.0 Reasons and Considerations**

Having regard to the existing restaurant uses within the two units to be amalgamated, one which has a takeaway facility, the city centre location, the pattern of development in the vicinity and the zoning objectives for the area, it is considered that, subject to compliance with the conditions below, the proposed development would not seriously injure the amenities of property in the vicinity and 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 [as amended by the further plans and particulars submitted on the 29<sup>th</sup> day of June, 2016 and the 29<sup>th</sup> day of July, 2016, 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. The shopfront, including signage and lighting, shall be carried out prior to the occupation of the amalgamated unit and shall be strictly in accordance with the details submitted to the planning authority on the 29<sup>th</sup> day of July, 2016.

**Reason:** In the interests of clarity and the visual amenities of the area.

3. No external security shutters shall be erected on the premises unless authorised by a further grant of planning permission. Details of all internal shutters shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenity.

4. The hours of operation shall be between 1200 hours and 0100 hours Monday to Thursday and between 1200 hours and 0200 hours Friday to Sunday.

**Reason:** In the interest of the amenities of property in the vicinity.

5. Litter in the vicinity of the premises shall be controlled in accordance with a scheme of litter control which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the provision of litter bins and refuse storage facilities.

**Reason:** In the interest of visual amenity.

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**Pauline Fitzpatrick**  
**Senior Planning Inspector**

**December 2016**