



An
Bord
Pleanála

Inspector's Report PL28.247905.

Development	Retention of the change of use of 6 Paradise Place from Café to a seating area serving the existing takeaway restaurant. The interconnection of 4, 5 and 6 Paradise Place forming a single fast food takeaway.
Location	Units 4, 5 and 6 Paradise Place, South Main Street, Cork.
Planning Authority	Cork City Council.
Planning Authority Reg. Ref.	16/37128.
Applicant	Malay Kitchen.
Type of Application	Planning Permission for Retention.
Planning Authority Decision	Refuse Permission.
Type of Appeal	First Party versus Decision.
Appellant	Malay Kitchen.
Observer(s)	None.
Date of Site Inspection	18 April 2017.

Inspector

Stephen Rhys Thomas.

1.0 Site Location and Description

- 1.1. The appeal site is located at Paradise Place, at the junction of North Main, South Main, Castle and Liberty Streets in the centre of Cork City. The site comprises three ground floor units within an overall building which is a Protected Structure, the former CYMS Hall.
- 1.2. The ground floor units are narrow in width and characterised by a simple timber shopfront design with a single nameboard and large glazed areas. Externally the appeal site reads as two separate units, numbers 4 and 5 under the name of Malay Kitchen and unit 6, painted red and without a name. Advertising is affixed to the interior of windows associated with unit 5. Internally, units 4 and 5 are arranged as a takeaway with a queuing and informal dining area, unit 6 is devoted to dining tables and seating areas.
- 1.3. The ground floor of the former CYMS Hall; comprises; two bookmakers, a jewellers, a sandwich bar, two vacant units and two takeaways. The wider area around Paradise Place is characterised by independent retailers, coffee bars, restaurants, takeaways and public houses.

2.0 Proposed Development

- 2.1. Retention permission is sought for:
 - The change of use of number 6 Paradise Place from a café to a fully seated area serving an existing takeaway.
 - The provision of an interconnecting doorway between unit 5 and 6.
 - Signage at units 4 and 5.

3.0 Planning Authority Decision

3.1 Decision

The planning authority refused retention permission for a single reason, summarised as follows:

1. The change of use/intensification of use to takeaway/fastfood restaurant at this location would materially contravene the provisions of the Development Plan, specifically sections 16.88 to 16.91, because of the impacts to a protected structure, the Architectural Conservation Area, the viability of the area and the general disturbance to the amenities of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Basis for the planning authority decision. Report includes:

- The Planner's Report outlines the relevant planning history of the site, County Development Plan policies and an assessment of the need for EIA, AA and Flood Risk assessment.
- Concern is expressed at the incremental changes which have occurred in relation to the amalgamation of small units at the overall site. In addition, extended opening hours would clearly increase anti-social behaviour in the area. There is already an overconcentration of this type of use in the area.
- There is concern that the amalgamation of units and the takeaway use is not appropriate to the building, in an architectural conservation context. Nor would the amalgamation and use best fit the ACA and North Main Street Area and would detract from the historical/medieval value and significance of the site and in the vicinity.
- The proposed development would result in a greater intensity of an unsuitable takeaway use.

3.2.2. Other Technical Reports

Roads Design – no planning comments, a development contribution assessment is provided.

Drainage Division – the report raises not objections, though recommends surface water run-off and site specific flood risk assessment requirements.

Environmental Waste Management and Control – the report requires technical condition to ensure residential amenity.

3.3. Prescribed Bodies

Irish Water – observations relate to standard technical requirements.

3.4. Third Party Observations

There were two third party submissions, issues raised relate to the following:

- There are already a sufficient number of fast food takeaways in the area.
- The development may lead to the blockage of sewers.
- The development would result in a loss of retail frontage.
- The connection of the units could result in a fire risk.
- There are no disability access routes or facilities.

4.0 Planning History

Appeal site.

Planning authority register reference 12/35424, permission granted to retain the change of use from retail to a fast food takeaway at 5 Paradise Place and the interconnection of 4 and 5 Paradise Place to form a self-contained fast food takeaway. January 2013.

Planning authority register reference 03/27008, permission granted for change of use from a retail unit to a coffee dock with an awning to elevation. July 2003.

5.0 Policy Context

5.1. Development Plan

The appeal site is located within Zone 1 – City Centre Retail Area (CCRA).

The appeal concerns a ground floor unit within a building group which is listed on the Record of Protected Structures, reference number PS1011. According to the National Inventory of Architectural Heritage, the building is noted for architectural and social special interest and has a regional importance.

The appeal site is located within the North Main Street Architectural Conservation Area.

North Main Street ACA – The demand for ground floor retail space is growing but needs to be supported to ensure continued commercial vibrancy of the area. While narrow building frontages and the small-scale of buildings make some modern uses difficult to accommodate the overall identity of the area needs to be strengthened so that the area’s archaeological and architectural richness can be actively maintained.

The South Main Street is designated as a Strategic Pedestrian Link and Objective 13.17 to do with improvement and development of the City Centre applies.

Other relevant objectives of the County Development Plan include retail and architectural conservation as follows:

Objective 13.2 New and upgraded retail development.

Objective 9.22 Reuse and Refurbishment of Historic Buildings and Protection of Archaeological Resource.

Objective 9.25 Recording of Protected Structures.

Objective 9.32 Development in Architectural Conservation Areas.

Section 16.88 to 16.91 - Hot Food Takeaways/ Fast-food Restaurants

In order to maintain an appropriate mix of uses and protect night-time amenities in a particular area, it is the objective of Cork City Council to prevent new takeaways in inappropriate locations, to prevent an excessive concentration of takeaways and to ensure that the intensity of any proposed takeaway is in keeping with both the scale of the building and the pattern of development in the area. Hot Food takeaways and fast-food restaurants can also have an adverse economic impact by affecting the commercial viability of areas by affecting status and consequently rental levels, and also the attractiveness of upper floor occupation for other uses.

Within the City Centre applications for fast-food takeaway units will be assessed against the criteria below. A concentration of hot food premises will not be permitted within the City Centre Retail Area and Commercial Core Area and historic centre. The loss of prime retail space in the City Centre Commercial Core Area will be resisted.

In order to protect residential amenity in suburban areas fast-food takeaway units will only be permitted in district centres, neighbourhood centres and local centres and will be subject to the criteria below. These locations provide the focus for social and commercial activity in any area.

The provision of hot food takeaways/fast-food restaurants will be strictly controlled having regard to the following:

- Land use zoning and specific objectives contained in the plan (for example Objective 13.4: Protection of Prime and Key Secondary Retail Frontage);
- The potential impacts on buildings on the RPS, NIAH or in Architectural Conservation Areas;
- The impact on the economic viability of streets;
- The need to safeguard the vitality and viability of shopping areas in the city and to maintain a suitable mix of retail uses;
- The number/frequency of such facilities in the area;
- The effect of fumes, hours of operation, and general disturbance on nearby amenities and residents.
- The need for adequate ventilation systems which are to be integrated into the design of the building;
- Design of the unit in particular the shopfront and the need to avoid dead frontage onto the street;
- Any proposed advertising/lighting is suitable and unobtrusive. Any advertising/signage should be removed on the cessation of operation of the business;
- Traffic implications resulting from the proposed development including the need to service the business and provide for the parking needs of customers.

The Planning Authority may impose restrictions on opening hours of hot food premises where deemed necessary.

Objective 13.4 Protection of Prime and Key Secondary Retail Frontage

Objective 13.6 Amalgamation of shop units

Amalgamation of small retail units will be open for consideration in order to meet demand for medium size units to suit modern retailing needs, subject to the need to have regard to the protection streetscape and building character.

National Guidelines

Retail Design Manual - A companion document to the Retail Planning Guidelines for Planning Authorities, Department of Heritage Arts and the Gaeltacht, April 2012.

5.2. Natural Heritage Designations

None

6.0 The Appeal

6.1. Grounds of Appeal

A first party appeal prepared by McCutcheon Halley Planning Consultants on behalf of Malay Kitchen, has been lodged against Cork County Council's decision to refuse permission. The main grounds of appeal can be summarised as follows:

- The proposed use is in compliance with CDP provisions, including sections 16.88 to 16.91. The proposed uses will enhance the vibrancy of the city centre during the day and night. The applicant sets out a table to illustrate compliance with the CDP.
- The proposal will not materially contravene section 16.88 of the CDP, permission has already been granted for number 4 and 5 Paradise Place (12/35424) for a takeaway and a takeaway has been operating at 6 Paradise Place since 2010 (Chipsy Kings). The current application is for the change of use of 6 Paradise Place from café to seating area.
- The area in the vicinity is known for restaurants and bars.
- The change of use of the existing café to seating area will actually reduce the density of takeaways in the area.

- The proposed development will not impact upon the protected structure or North Main Street ACA. No alterations are proposed to the exterior of the building and therefore the development is in accordance with Objective 9.32 of the CDP. The proposed signage is an improvement on the previous form and type of signage affixed to the shopfronts. The applicant has supplied photographs showing the previous and current signage.
- In relation to the character of the ACA which is narrow and long plots, the applicant states that the exterior remains unchanged and that connections between units is made internally.
- The hours of operation for units 4 and 5 have not changed from those permitted under 12/35424. There will no impact from the change of use from café to seating area, which closes each evening at 10pm. By providing indoor seating, any potential for disturbances on the street will be reduced.
- The applicant lists other planning permissions on the site and in the vicinity; 12/35424 in relation to the appeal site, 02/26289 sandwich/pizza takeaway in the North Main Street ACA and 08/33419 expansion of a restaurant in a protected structure.

6.2. Planning Authority Response

The planning authority have no comments to make in relation to the subject appeal.

6.3. Observations

None.

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 also needs to be addressed. The issues can be dealt with under the following headings:

- Compliance with the City Development Plan
- Development Description
- Architectural Conservation Area (ACA) Protected Structure
- Operational Hours and Street Disturbance
- Appropriate Assessment

7.2. Compliance with the City Development Plan

- 7.2.1. The applicant contends that there has been no material contravention of the City Development Plan, because the permitted use remains unchanged in relation to units 4 and 5. Unit 6 had been operating as a separate fast food takeaway (Chipsy Kings), prior to the change to a seating area and therefore the proposal actually reduces the amount of takeaways in the area. This area of South Main Street is characterised by bars, restaurants and takeaways, as well as retail units. The proposed development cannot be considered to contravene City Development Plan policies with regard to hot food takeaways and fast food restaurants.
- 7.2.2. I note that this area of Cork City at the junction of North and South Main Street with Castle and Liberty Street is characterised by a wide variety of ground floor uses. In addition, there is a combination of commercial, office, storage and some residential uses at first and upper floors. The type, form and complexity of uses in the vicinity is common to other Cork City centre locations which are at the interface with the principal retail core around Patrick Street and connected streets. Consequently, it is not useful to quantify the mix between retail and other uses. My experience of the immediate area is one of a variety of independent retail uses, bars, new restaurants, vacant units and takeaways. I note that the area is not designated as a primary or secondary retail frontage in the City Development Plan. I conclude that it is not therefore relevant to quantify each land use and derive a snapshot of existing uses.

This is because of the transitional nature of this precinct of Cork City which would appear to benefit from the continued use of units rather than vacancy and less active street frontages. In this context, I consider that the development adds to the economic viability of the street.

7.2.3. However, the Hot Food Takeaways/ Fast-food Restaurants policy of the City Development Plan demands the prevention of new takeaways at inappropriate locations, or excessive concentration and ensure the intensity of a takeaway is in keeping with the building and the area. Specifically, within the City Centre Retail Area, the concentration of hot food premises will not be permitted. In my opinion the proposal is not for a new takeaway, it will not further concentrate or intensify takeaway uses, rather it amalgamates units and introduces a sit down restaurant use. This is a different type of development to the intensification or introduction of a new takeaway and therefore not in contravention of Council policy. In addition, this is precisely the type of location where daytime and night time uses coexist. The immediate vicinity of the appeal site is characterised by restaurants, bars and takeaways, as well as retail uses. This is recognised in the City Development Plan which identifies North Main Street as the 'alternative' Old Town retail and leisure mix area and is therefore the type of street where a mix of retail and other uses is appropriate and encouraged.

7.2.4. Given the location of the appeal site within a retail and leisure mix area, I can see no reason why the provision of a seated area in conjunction with a permitted takeaway facility could possibly be inappropriate. The applicant has created by way of planning permission and unauthorised development a restaurant and takeaway use. I therefore consider that the change of use of an existing cafe unit to a seated area associated with a permitted takeaway would not materially contravene a stated policy of the City Development Plan.

7.3. **Development Description**

7.3.1. The applicant disputes the analysis presented by the planning authority that the development would result in an increase of intensity of use. It is stated that the development proposal is to retain the change of use from café to seating area, amalgamate units 4, 5 and 6 and thus create a seating area associated with the

permitted takeaway unit. In addition to the retention of signage across the front elevation of units 4 and 5.

7.3.2. I have examined the drawings submitted with the planning application and visited the premises. All three units have been amalgamated, by the lack of any partition between units 4 and 5, and by a doorway between units 5 and 6. Unit 4 is used as an over the counter serving area, unit 5 is an incidental window bar dining area and que overflow area, whilst unit 6 operates as a formal dining area. I have also examined the drawings associated with the previous application which permitted the original change of use to takeaway and amalgamation of units 4 and 5. The key question to answer in relation to the extent of the development already undertaken is to what degree does the addition of a seating area result in an intensification of use.

7.3.3. The existing serving area, informal stand up dining and queuing area remains unchanged. The kitchen and food preparation area also remains unchanged. Therefore, the takeaway has not physically increased its capacity to prepare additional food and serve additional patrons. Unit 6, a separate café/takeaway unit no longer operates. The Malay Kitchen takeaway, has however annexed unit 6, providing a seating area for patrons to consume their purchases and therefore a change of use has occurred rather than an intensification of use.

7.3.4. Given that there has been no increase in serving area and no additional floor area devoted to food preparation, I do not consider that the permitted use has been intensified within the confines of the building as it now stands. A change of use at unit 6 has occurred and it is this that the applicant has applied to retain.

7.4. Architectural Conservation Area (ACA) and Protected Structure

7.4.1. The Council refused permission based upon the impact of the development on the ACA and the Protected Structure. The principal concern was to do with the amalgamation of units over time. However, permission was granted for the recent amalgamation of units 4 and 5, without concern for the impact upon either the ACA or the Protected Structure, 12/35424 refers. I do note that the three units have a narrow configuration when compared to modern and other traditional floorplates in the vicinity. Externally, the amalgamation is barely noticeable, as unit 6 keeps its narrow shopfront, paintwork and fascia. This retains the narrow building frontage and

in my mind reinforces and maintains the architectural richness of the area, a key issue identified in the North Main Street ACA.

7.4.2. Internally, the amalgamation of unit 5 with unit 6 is facilitated by a doorway. The impact to the Protected Structure by the introduction of an interconnecting door has not been adequately addressed by either the planning authority or the applicant. In the absence of a report prepared by a Conservation Architect in this regard, I note that the internal fixtures and fittings associated with all three units is unlikely to be original and has probably been changed many times over the years. Therefore, the insertion of an interconnecting door is unlikely to be a major intervention into the fabric of the Protected Structure. However, should the Board consider it necessary, it may be appropriate to require the applicant to prepare an architectural conservation impact assessment of the works already carried out and submit it for approval to the planning authority.

7.4.3. I consider that minor works have already been carried out to a Protected Structure. The existing ground floor character of the premises is that of multiple shopfronts and their respective traditional design appearance. I do not consider that the development has adversely impacted upon either the Protected Structure or degraded the character of the ACA. However, to ensure the character of the area is maintained, the applicant should be required to removed contact film advertising affixed to windows and submit proposals for shopfront signage to the planning authority for approval.

7.5. Operational Hours and Street Disturbance

7.5.1. The applicant states that the operating hours of the takeaway have not changed since permitted by a previous permission. The seating area closes down each evening by 10pm. The provision of an indoor seating area will reduce the potential for disturbance.

7.5.2. I can see no documentation or planning conditions in the previous permission (12/35424) that outlines opening hours. The applicant states that current opening hours are 12pm to 10pm Tuesday to Thursdays and Sunday, with 12pm to 3am operation on Fridays and Saturdays. It is very likely that extended opening hours provides an incentive for patrons to linger longer in the area which in turn can lead to loud and disruptive behaviour late into the night. However, I have already concluded

that this area of Cork City combines both daytime and night time activities and this is evidenced by a combination of restaurants, public houses and takeaways. In addition, the proposed development is not a new or intensified takeaway and therefore there is no more or less likelihood of impact to existing amenities such as they are.

- 7.5.3. I can see no potential for an increased level of general disturbance to the nearby amenities, simply as a result of a seated area. The applicant has indicated that the seating area closes to patrons at 10pm each evening. However, the development applied for does not state opening hours. In this instance it is not necessary to impose limits to opening hours as this would be difficult to control and not warranted given the predominantly leisure orientated character of the area.

7.6. **Appropriate Assessment**

- 7.6.1. Having regard to the nature and scale of the proposed development within an established urban environment, 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 as set out below.

9.0 **Reasons and Considerations**

Having regard to the provisions of the Cork City Development Plan 2015-2021, and to the nature and scale of the amendments it is intended to retain, and to the pattern of retail and leisure development in the area, it is considered that subject to compliance with the following conditions, the proposed development would not seriously injure the amenities of the area or the economic viability of the streets in the vicinity. 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 retained 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 within three months of the date of this order and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The shopfront of units 4, 5 and 6 shall be in accordance with the following requirements: -

(a) Signs shall be restricted to a single fascia sign using sign writing or comprising either hand-painted lettering or individually mounted lettering,

(b) no awnings, canopies or projecting signs or other signs shall be erected on the premises without a prior grant of planning permission,

(c) external roller shutters shall not be erected,

(d) no adhesive material shall be affixed to the windows or the shopfront.

Reason: In the interest of visual amenity.

3. The developer shall control odour emissions from the premises in accordance with measures including extract duct details which shall be submitted to, and agreed in writing with, the planning authority within three months of the date of this order.

Reason: In the interest of public health and to protect the amenities of the area.

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, as amended. The contribution shall be paid within three months of the date of this order 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, 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.

Stephen Rhys Thomas
Planning Inspector

2 May 2017