



An
Bord
Pleanála

Inspector's Report PL61.248016.

Development

Retention of additional floor area at ground floor with first floor infill over, outdoor bar/ smoking area, kitchen lounge and retractable roof, 2 no openings on the ground and 2 no openings at first floor, covered access, fire escape and audio speakers on the first floor. Four of the buildings are protected structures.

Location

34, 36, 38, 40 & 42 Upper Abbeygate Street, Galway.

Planning Authority

Galway City Council.

Planning Authority Reg. Ref.

16/180.

Applicant(s)

DM Properties.

Type of Application

Retention.

Planning Authority Decision

Grant.

Type of Appeal

Third Party

Appellant(s)

Rory Collins.

Observer(s)

None.

Date of Site Inspection

16th of May 2017.

Inspector

Karen Hamilton.

1.0 Site Location and Description

- 1.1. The site is located within No 34,36,38,40 &42 Upper Abbeygate Street, off the main shopping area of Galway City. The units are located along the north-eastern end of the street and comprise of a range of three and three and half storey commercial buildings. No 36-42 are protected structures and the subject site is within Galway City Core Architectural Conservation Area (ACA).
- 1.2. The site is accessed during the daytime through a restaurant “*Biteclub*” (No36/38) and at night by “*Electricclub*” (No 34). There is an additional fire escape entrance onto an adjoining residential area “Abbey Court” which shares a gated access from Upper Abbeygate Street. There are other uses intertwined between the subject site which appear to be mainly office with some residential on the upper floors.

2.0 Proposed Development

- 2.1. The proposed development may be summarised as follows:
 - Retention of:
 - Additional 38.3m² floor space to the rear of the nightclub at the ground floor,
 - Additional 89m² floor space on the first floor of the nightclub for use as a kitchen, rooftop lounge and store,
 - 2 openings between No. 42 and the nightclub at ground floor,
 - 2 openings between No. 40 and nightclub as toilets ancillary at the first floor (28.9m²),
 - Covered access and fire escape route (22.4m²) to the south east side of No 34 at first floor,
 - Outdoor bar area/ restaurant/ smoking area (202m²) with partly retractable canopy/ roofs together with perimeter audio speakers at first floor.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority issued a Notification of Decision to Grant Permission subject to 5 conditions, those of note include:

C 2: the use of the outdoor area shall be used as a restaurant until 23.00 and then as an outdoor smoking area for the nightclub from 23.00 to 02.30 and no amplified music shall be played in this area after 23.00.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the area planner reflects the decision to grant permission following the submission of further information on the following:

- Noise Impact Report for the outdoor area,
- Hours of use,
- Further assessment of proposed opening at first floor in No. 40,
- Inclusion of a full breakdown of the existing and permitted floor area for each floor,
- Clarification if the basement area (10/307) is included in the floor area figures,
- Clarification on the permitted use (149/95) of part of the outdoor area as a function room.

3.2.2. Other Technical Reports

Drainage Section- No objection.

Water Services Section- No objection.

Roads Section- No objection.

Fire Authority - No objection.

Environmental Health Officer- No objection.

Heritage Officer- Concern was raised over works including the filling of voids and the unauthorised works to two openings in original walls.

3.3. **Prescribed Bodies**

None received.

3.4. **Third Party Observations**

One submission was received from the owner of the nightclub to the rear of the subject site and the issues raised have been summarised in the grounds of appeal.

4.0 **Planning History**

97/421

Permission granted for change of window from one large to two smaller and door in centre of No 40.

97/339

Permission granted for extension to nightclub and alterations at restaurant at No 34-38.

95/711

Permission granted for change of use at 2nd and 3rd floor for residential and access stairway on ground floor at No 40.

95/149

Permission granted for change of original permission and extension of nightclub No 36-38.

94/78

Permission granted for entrance, toilets, roof over existing club and extension to restaurant No 36-38.

Property adjoining.

15/470

Permission granted for retention of a first floor terrace and bar area with retractable roof over the rear of No 24 Upper Abbeygate Street and retention of a first floor connection to No 24 Upper Abbeygate Street (a protected structure).

5.0 Policy Context

5.1. **Architectural Heritage Guidelines for Planning Authorities, 2004.** Development guidelines for Protected Structures and Areas of Architectural Conservation.

- **Chapter 7:** Conservation Principles.
- **Chapter 10:** Openings door and windows.
- **Chapter 11:** Interiors

5.2. **Galway City Development Plan 2017-2023**

The site is zoned as City Centre, where it is an objective “*To provide for city centre activities and particularly those, which preserve the city centre as the dominant commercial area of the city.*”

- **Section 11.4.2:** Plot Ratio, Maximum plot ratio permitted 2:1 where a higher ratio is allowed for minor extensions, infill contributing to the urban fabric and urban regeneration.
- **Section 11.4.5:** Uses, Consideration to extensions to nightclubs will take into account effect on the amenities in the area, mix of uses in the area and existing licenced premises.

Built Heritage

The site is located within the City Core Architectural Conservation Area (ACA) and includes four protected structures (No 221 – 224) therefore the following polices apply:

Policy 8.2 Protected Structures

- Ensure new development enhances the character or setting of a protected structure.

- Implement proactive measures to encourage the conservation of protected structures.

Policy 8.3 ACA.

- Encourage the protection and enhancement of the character and special interest of designated ACAs.
- Ensure that developments within Architectural Conservation Areas enhance the character and special interest of the ACA.

Section 11.5 Shopfront

- Original shopfronts shall be retained or restored
- The design shall take account of the heritage of Galway.
- In general canopies shall not be permitted except when they are necessary to protect goods on display or where they are deemed acceptable under the prevailing Table and Chairs policy. Canopies are required to be in accordance with the *City Councils Shop Front and Design Guidelines*.

5.3. Natural Heritage Designations

The site is located 120m from the edge of the Lough Corrib SAC.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal have been submitted by AOS Planning on behalf of the owner of “Carbon Nightclub”, backing onto the site, which may be summarised as follows:

- The proposed development has a negative impact on the City Core ACA.
- There is overdevelopment on the site as all open space/ voids have been filled, the site is fully developed over three floors and there is an excess of these premises currently along Upper Abbeygate St.

- The further information submission does not adequately address the increase in floor area and the impact from the audio speakers.
- The noise monitoring was undertaken on Sunday 11th of December 2016 and this is an inaccurate reflection as it is not a busy period. The noise was recorded in excess of the max 30db between 23.00- 07.00 and condition 2 will not prevent any negative impact on the adjoining properties.
- The proposed development has a negative impact on the protected structure and has no regard to the national guidelines, in particular Section 7.7.1, and the use of materials.
- The grant of permission sets a poor precedence for further types of works.
- There is an inconsistency in planning decisions and the appellant has been given contradictory advice at preplanning.

6.2. Applicant Response

A response has been received from an agent on behalf of the applicant which may be summarised as follows:

- The proposed development complies with the development plan with regard the built heritage, landuses, development standards.
- The plot ratio of 1.30:1 is well below the maximum 2.0:1 for the CC zone even with the inclusion of the outdoor seating area.
- A report submitted from iAccoustics addressed the further information request and an amended report has been submitted including noise monitoring on a Friday and Saturday night and concludes there is similar noise levels.
- The hours of operation have been the same since 2008 and there have been no complaints. The proposed uses vary beyond just nightclub to events such as fund raiser, multicultural and food events.
- A Conservation Impact Statement has been submitted to conclude the works are mainly to the rear of the structure, therefore do not impact on the overall character of the façade and previous works have removed the majority of any internal features.

- The preplanning correspondence on other sites have no implications for development as they are based on merits.
- 15/270 included a temporary permission to allow the assessment of the impact of the surrounding area. It is requested the use of restricted hours will negatively impact the existing business.

6.3. **Planning Authority Response**

The planning authority response may be summarised as follows:

- Part of the development involves infilling of underused voids and ancillary spaces.
- It has been demonstrated that internal works will not adversely affect the special character of the protected structure.
- The plot ratio 1.30:1 is much less than the required 2.0:1 in the CC zoning, even with the inclusion of the covered lounge area it is still under with 1.43:1.
- Condition 2 (a) and the location of the first floor surrounded by 3 walls will provide mitigation against negative impact from noise, as detailed in the noise consultant's report.
- The example quoted by the appellant is an entirely new development and a 5year permission would be acceptable to assess the long term impact.

6.4. **Observations**

None received.

7.0 **Assessment**

- 7.1. The following assessment has regard to revisions in the Noise Impact Assessment, as part of the applicant's response to the grounds of appeal, and includes additional recordings on two different days. No amendments were proposed to any other part of the proposed development, nor have any additional submissions been received relating to this element of the proposal. The main issues of the appeal can be dealt with under the following headings:

- Principle of development
- Built Heritage
- Impact on Amenity
- Other matters
- Appropriate Assessment

Principle of development.

- 7.2. The subject site is located within the City Centre (CC) zoning of Galway City where it is an objective “*to provide for city centre activities and particularly those, which preserve the city centre as the dominant commercial area of the city.*” The proposed development refers to the use of the site for a variety of commercial uses including restaurant, function room and nightclub. The planning history refers to 1994 for the nightclub which has been in use since. The grounds of appeal argue the proposed development is overdevelopment of the site. Section 11.4.2 of the development plan includes a maximum plot ratio of 2:1 for new development with an increase in ratio for any site which already has a ratio in excess of the maximum. The plot ratio for the proposed development is 1.43:1, inclusive of the outdoor area, which I consider acceptable.
- 7.3. Therefore, based on the city centre location, the current use of the site and the development plan standards I consider the proposed development is not overdevelopment of the site and the principle of development is acceptable in principle, subject to complying with conditions and other planning requirements as addressed in the following sections.

Built Heritage

- 7.4. The proposed development includes the retention of four new openings, two on the ground floor and two on the first floor, an extension to the rear of the ground floor (c. 40m²) with infill over on the first floor (c. 90m²) and change of use of outdoor area for restaurant/ smoking area with part permanent and part retractable roof. The subject site includes four protected structures (No 34,36,38,40& 42) along Upper Abbeygate Street which interlink to form the nightclub and restaurant. The site is also located within the City Core Architectural Conservation Area. I have addressed the main

issues relating to the protected structure and ACA below as the openings, materials and the impact on the streetscape.

- 7.5. Openings: The Conservation Impact Statement submitted as part of a further information request, provides details for the 2 openings at first floor, between No 40 and No 42, (formerly windows, replaced by doors) and refers to photographic evidence and the thickness of the walls to suggest the walls used for the openings are post-medieval of either late 19th or early 20th century, and concludes the works do not alter any heritage of significant importance. The conservation report also refers to the addition of 2 no openings on the ground floor, through new blockwork walls. A response from the Heritage Officer of the County Council requested the filling of the openings as the impact of the works on the fabric of the building was not considered. Chapter 10 of the “*Architectural Heritage Guidelines for Planning Authorities*” provides guidance on appropriate works for doors and openings in protected structures and, in the first instance, special features of interest should be identified and new openings should be sympathetic with the architectural character of the building in terms of materials, design, scale and proportion. I note the location of the openings on the first floor, central in the wall between the two buildings, the conservation impact assessment and the modern addition of the walls on the ground floor and I do not consider they have a significant impact on any features of special interest of the protected structure.
- 7.6. Materials: The external materials used for the infill area on the first floor over the ground floor extension, the roof over the fire escape on the first floor and the permanent roof with partial retractable roof over the outdoor seating/ smoking area, include a mix of metal sheeting and perforated sheeting. The Conservation Impact Statement states the perforated sheets connected to the rear of No 32 and 34 have no impact as they are not protected structures. In addition, the report states that none of the fixings for the galvanised roof structure over the outdoor bar area are attached to protected structures of No 36,38, 40 or 42. The conservation impact statement fails to assess the impact of the first floor kitchen, lounge and infill store over ground floor extension to the rear and side of protected structures No 36 and 38. The grounds of appeal have raised the appropriateness of the materials on the impact on the protected structure and I note the report of the Heritage Officer is

opposed to fixing of the retractable roof because of the impact on the fabric of the building.

- 7.7. Policy 8.2 of the development plan requires all new developments enhance the character and setting of a protected structure. In addition to this, Chapter 11 of the “*Architectural Heritage Guidelines for Planning Authorities*” provides guidance for works to the protected structure where an overall assessment and interrelationship of different spaces should be made whilst having consideration to ceilings walls and any interesting features or fittings present. Based on the lack of an architectural survey of No 36 and 38, it is unclear if any features to the rear of this protected structure has been damaged. The guidelines also refer to the need to consider the potential cumulative effect of minor works on the protected structure and I consider all the elements of the proposed development are interrelated and have an impact on the protected structure and I do not consider the temporary appearance of the proposed development on the first floor for the kitchen, lounge and store make a positive contribution to the protected structures, nor do I consider the use of metal sheeting or perforated sheeting is an appropriate material. Therefore, based on the national guidance, the development plan, the nature of the works and the location within a protected structure, I consider the proposed development has a negative impact on the character and setting of a protected structure.
- 7.8. Streetscape: The proposed development does not include any changes to the façade along Upper Abbeygate Street, therefore I do not consider it has a negative impact on the streetscape or the City Centre Architectural Conservation Area.
- 7.9. Archaeology: The proposed development includes a ground floor extension to the rear of the site (38m²). The submitted archaeological survey refers to testing undertaken in 1998 in advance of planning permission and concludes that no significant medieval material was found on the site. Therefore, based on previous test results on the site, I do not consider the proposed development would have a negative impact on any archaeology on the site.

Impact on Amenities

- 7.10. The premises are located within a city centre location, includes the interlinking of four commercial premises for the nightclub, in operation since 1994, and is directly adjacent to city centre residential development, including Abbey Court (to the north

east). The proposed development includes an outdoor seating area for restaurant until 23.00 and then as a smoking area for nightclub until 02.30, which is partially covered with a retractable roof and includes 6 no amplified speakers. The grounds of appeal argue the proposed development will have a negative impact on the surrounding area. I have addressed the impact of noise and visual separately below.

- 7.11. Noise: Condition No 2 restricts the use of the outdoor area for the restaurant until 23:00 and the smoking area until 02.30, the grounds of appeal argue that this is not sufficient to prevent a negative impact on the surrounding area and the information contained in the noise report was insufficient to adequately conclude there would be no disturbance. The response from the applicant provided additional noise monitoring on Friday and Saturday recorded from the nearest noise sensitive location (bedroom) to support the original noise monitoring. The noise report refers to BS 8233:2014 as a guidance for 30 dB LAeqT, average over 8 hrs, acceptable noise levels for bedrooms between 23:00- 07:00. I note the recorded noise levels varied significantly between No 15 Abbey Court adjacent to the first floor (c. 30 dB LAeqT) and No 38 Abbeygate Street opposite the third floor along the main Street (c. 40 dB LAeqT). The submitted recorded noise levels for No 38 are above the recommended maximum and the impact statement links these elevated levels to the existing street noise along this main route. I note the location of the bedroom to the rear of No 38 Abbeygate and directly above the outdoor seating area. Whilst I am recommending a refusal for the proposed development, if the Board are of a mind to grant permission I consider a condition restricting any use of 6 no amplified speaker after 23.00 would be reasonable.
- 7.12. Visual: The roof, retractable and permanent, over the smoking area/ outdoor seating area, connects two internal walls. The proposed development will not be visible from the main street, Upper Abbeygate Street, along the front of the properties. The pitch of the roof and metal sheeting will be visible from first floor balconies of properties along Mary Street, to the north. External piping and service infrastructure on the roof of adjoining properties is also visible from the rear of residential properties. Therefore, based on the location of the works I do not consider the proposed development would have a negative impact on the visual amenity of adjoining properties.

Other Matters.

- 7.13. Condition No 5 includes a levy for 24 car parking spaces which cannot be provided on site. I note the Galway City Contribution Scheme allows for the imposition of a levy in lieu of the provision of spaces. The current use on the site includes restaurant, function room and nightclub, therefore based on the use of the site predominantly in the evening, I consider this levy reasonable.

Appropriate Assessment

- 7.14. The subject site is 120m from the edge of the Lough Corrib SAC although, having regard to the nature and scale of the proposed development within a serviced urban area, 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 the conservation objectives of any European site.

8.0 Recommendation

- 8.1. It is recommended that the proposed development is refused for the reasons and considerations as set out below.

9.0 Reasons and Considerations

The proposed development by reason of works to the interior and exterior of No 34, 36, 38, 40-42 Upper Abbey Gate Street, involving the inappropriate design and use of substandard materials for the extension and alterations on the first floor, would result in the loss of original features. It is considered that these works would have a serious and detrimental impact on the character and setting of a protected structure and are contrary to the "*Architectural Heritage Guidelines for Planning Authorities*" and Section 8.2 of the Galway City Development Plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Karen Hamilton
Planning Inspector

22nd of May 2017.