



An
Bord
Pleanála

Inspector's Report PL.61.248080

Development	Change of use of existing butchers shop to take-away sandwich bar.
Location	40 & 39 (part of) Lower Newcastle Road. Galway.
Planning Authority	Galway City Council.
Planning Authority Reg. Ref.	16/266.
Applicant(s)	Mathew & Sarah O' Flaherty
Type of Application	Permission
Planning Authority Decision	To Grant Permission.
Type of Appeal	Third Party
Appellant(s)	Ken Kinneen.
Observer(s)	None.
Date of Site Inspection	May 10 th , 2017.
Inspector	Breda Gannon

1.0 Site Location and Description

- 1.1. The site is located on Lower Newcastle Road in Galway city. It is located at the end of a terrace of buildings, with varying building and roof lines. The site accommodates two buildings that includes a flat roofed single-storey commercial building (former butcher's shop) and a single-storey pitched roof (former dwelling house). A watercourse (Protected Structure No 8501) runs through the site. The area to the rear of the buildings is overgrown.
- 1.2. The site lies in an area of mixed uses consisting of residential, retail and office. To the south between Snipe Avenue and Seamus Quirke Road, the majority of the properties are in residential use, with a café/deli at No 37. To the north there is a Centra supermarket, with the remainder of the properties in residential use. On the opposite side of the road the NUIG campus and associated support services occupies a considerable land bank. There is also a Topaz petrol filling station at the junction with the N6 and an AIB bank close to the entrance to the university. There are parking restrictions on both sides of the road.

2.0 Proposed Development

- 2.1. The proposal seeks the change of use of a butcher's shop to a take-away sandwich bar. Further information was sought on the application on 14/11/16, on matters relating to the use/planning history relating to the subject site, nature of take-away element, opening hours, and requesting revised plans showing ventilated lobby to toilet.
- 2.2. On receipt of the further information, the planning authority sought the publication of new public notices. Unsolicited further information was submitted by the applicant on 12/1/17 seeking to clarify issues raised by an observer regarding the previous use of the premises.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission for the development subject to 10 no. conditions, which includes the following conditions of note;

Condition No 2 - Signage to be agreed.

Condition No 3 – Opening hours.

Condition No 4 – Controls use of premises i.e. not to be used for the sale of hot food for consumption off the premises. No external seating.

Condition No 6 – Odour control.

Condition No 7 – No plant, ducting, water tanks etc to be erected above roof level or on external walls without a further grant of permission.

Condition No 9 – No advertising or promotional material to be fixed to the front façade.

Condition No 10 – Noise control.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. The **Planning Officer's** report of 30/1/17 states that residential zoned lands allow for the consideration of the provision of local services. From the details submitted it would appear that a butcher shop and a booking office were in operation at the same time. The response to further information has established that there has been a retail use within the proposed 'prep and seating area' for 34 years by the butcher's shop and before that as an ancillary store room for the betting office under the 1983 permission. The retail use is well established and the proposed change of use is acceptable.

3.2.3. Other Technical Reports

The **Drainage Section** in their report of 24/10/16 raised no objection to the development.

3.3. Prescribed Bodies

The HSE in their report of 18/10/16 noted that the food business must be registered with the HSE and operated in compliance with all relevant food law. It sets out the requirements with regard to waste water and sanitary accommodation.

3.4. Third Party Observations

Two observations were received by the planning authority.

1. Mr Rory Hehir supports the development.
2. Mr Sean Rankin on behalf of Mr Ken Kinneen raised issues with regard to the following;
 - planning documents and non-compliance with Article 23 of the Local Government Planning and Development Regulations, 2010;
 - floor plan at variance with that granted planning permission under reg ref 80/245;
 - change of use should be sought in respect to No 39;
 - delivery and parking restrictions.
 - Reasons and Considerations in Board's decision PL 61.240300.

4.0 Planning History

80/245 – Permission granted on 17/8/81 by An Bord Pleanala (PL61/5/50685) for a change of use from residence to victualler's retail premises and retention of façade at No 40 Newcastle Road.

83/348 – Permission granted by An Bord Pleanala (PL 61/5/65606) for the change of use of dwelling house at No 39 Lower Newcastle to turf accountants premises.

5.0 Policy Context

5.1. Development Plan

The operative development plan is the **Galway City Council Development Plan 2017-2023**. The site is located within the 'Inner Residential Area', where Policy 2.7 is relevant.

Policy 2.7 Inner Residential Area - Protect the quality of inner residential areas including Claddagh, Shantalla and Newcastle (to Quincentenary Bridge) by ensuring that new development does not adversely affect their character and has regard to the prevailing pattern, form and density of these areas.

The site is zoned Residential 'R' with the following objective;

'To provide for residential development and for associated support development which will ensure the protection of existing residential amenity and will contribute to sustainable residential neighbourhoods'.

Section 11.2.8 of the Plan sets out the uses which are compatible with and which contribute/may contribute to the zoning objective.

The list of Protected Structures is contained in Schedule 3.

Ref 8501 is described as follows

'Including Bridges, Weirs, Walls, Embankment, Piers & Other Associated Infrastructure-Lough Corrib.

5.2. Natural Heritage Designations

None

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are summarised as follows,

Roads, Transport & Parking

- Vehicular customer and goods delivery parking outside the proposed development is severely restricted as there is a double yellow line immediately outside the premises and a traffic light post. There are currently 9 no. disc car parking spaces opposite No 5-11 Upper Newcastle Road, which are mainly accessible to vehicles driving out of the town to the N6, north on the N59, or the immediate area. There is a double yellow line on the opposite side of the Newcastle Road further restricting the potential for customer and goods delivery and parking of vehicles coming off the N6 or travelling south of the N59.
- To compound traffic safety matters, NUIG in 2012, created a new main vehicular entrance immediately adjoining the proposed development, diminishing any potential for any customer and goods vehicular parking (Dwg No P04A).
- To the south along the Newcastle Road there is a block of 14 individual ground floor commercial units with a road frontage of approx. 230m. Two of these units provide private car parking while the remainder depend on off street parking for their customers and goods deliveries.
- There are concerns that if permission is granted for the development that similar traffic congestion issues will occur to that which has occurred at the UHG, University Road and Newcastle Roads traffic lights junction.
- There is a shortfall in car parking for the development and a financial contribution has not been sought.
- No report was submitted by the Roads, Transport & Parking Department for this development with regard to road safety and traffic management.

Change of use

- No 39 was granted planning permission for a Turf Accountants and was operational for a short period before reverting to residential status. As the former use was abandoned, the area indicated 'prep area and seating' should be subject to a material change of use.
- Planning permission was granted for a butcher's shop within the planning unit of No 40 under reg.ref No 80/245 by An Bord Pleanála, while the planning unit

at No 39 was granted permission for a Turf Accountant under reg ref No 83/348. The extension of the retail convenience goods outlet into the turf accountants would constitute a material change of use. Convenience Goods outlets are not included in Table 11.2.8 under 'uses which are compatible and contribute to the zoning objective.

6.2. Applicant Response

Roads, Transport & Parking

- A butcher's shop operated within the subject unit and was unencumbered by the traffic management controls within this urban area.
- The size of the unit is modest and does not represent any significant intensification of development. It will serve a similar local market (residents and students) with the majority of patrons likely to travel by foot.
- The change of use at this location does not generate any traffic concerns and if the Roads & Transportation Section had issues, a report would have been forthcoming.
- The long established commercial use has always operated without on-site parking and it is not considered relevant or reasonable to raise this issue in the consideration of the change of use of this moderately sized premises.
- The proposed change of use does not generate any additional parking requirements as it is considered that the butcher shop would fall under the category of 'shop' and the sandwich bar would fall under the category of 'restaurant', both of which have the same parking requirement of 1 space per 15 m² gross floor area.

Similar grounds of appeal in relation to car parking and traffic were raised in relation to PL 61.240300, relating to an extension to a premises for a graphic design office at No 25 Lower Newcastle. The Board dismissed the traffic and parking issues raised. Similar circumstances apply to the proposed development.

Change of use

- The proposed change of use incorporates the entirety of No 40 and part of No 39. During the course of the application it was clarified that this part of No 39 was originally permitted as an ancillary store for the 'bookies' shop under reg.ref No 83/348. It was subsequently used as a 'storage and prep' area for 33 years by the butcher's shop.
- The appellant contends that the change of use of a Turf Accountants/ Bookies to a butcher shop amounted to a material change of use. Such a change is not material, occurred over 33 years ago and has no bearing on the assessment of the case. Furthermore, this part of No 39 was permitted and established as an ancillary store to a retail store. The development description is therefore correct and the change of use is legal and valid.
- The 'R' Zoning acknowledges and facilitates non-conforming uses and states *'extensions to or improvements of premises accommodating these non-conforming uses may be granted, where the proposed development would not be injurious to the amenities of the area'*. The proposed development is entirely in accordance with this development plan provision. Furthermore, owing to the strong commercial presence on the site, the nature of the food offering as well as the proposed neighbour friendly opening hours, the proposed development would not be injurious to the amenities of the area.

Financial

- The original Planning Officer's report raises a potential shortfall in parking. The report was written before the request for additional information when the planner was of the opinion that the area was residential. It is apparent that once the retail/commercial use of the part of No 39 was confirmed, there was no longer concerns regarding a shortfall in parking.

Distinctions from PL61.240798

- The decision to refuse PL61.240798 at No 7 Upper Newcastle has little or no relevance to the subject appeal.
- The site is not located within a dominant residential area. It is a long established commercial unit surrounded by a strong cluster of commercial and

mixed use development which acts as a local service centre to NUIG and the local residential catchment.

- The nature of the food offering and the proposed opening hours are respectful of the amenities of the area.
- No works are proposed to the exterior of the property or to the protected waterway.

The response is supported by details of commercial rates paid in respect to No. 39.

6.3. Planning Authority Response

No response to the grounds of appeal was submitted by the planning authority.

7.0 Assessment

The main issues that arise for determination by the Board is respect to this appeal relate to the following

- Principle of the development
- Change of Use
- Traffic and parking
- Board's previous decision under PL 61.240300.
- Appropriate Assessment

7.1. Principle of the development

Whilst the 'R' zoning does not specifically refer to sandwich bars etc., in the category of uses that are compatible with/contribute to the zoning objective, it does facilitate local shops and other support development that contribute towards residential amenity. Having regard to the established use of the site for retail purposes and the nature and scale of the proposed development, I do not consider that the proposal would impact adversely on the residential amenities of neighbouring property or that

it would be objectionable on other grounds, subject to appropriate conditions. It is my opinion that the development does not contravene the zoning objective for the area and is, therefore, acceptable in principle in this location.

7.2. Change of use

Issues have been raised by the appellant regarding the previous use of the part of the building shown as 'prep and seating area'. It is contended that it should be subject to a change of use from residential.

Whilst details of the planning history relating to the two buildings were forwarded by the planning authority, no drawings were submitted for the information of the Board. The planning authority has accepted that the disputed area was shown as a store in association with the butcher's shop in the original application. From my observations through the front window of the premises, the 'prep and seating area' area is clearly connected to the area used as the original butcher's shop. I am satisfied, therefore, that the area was used in association with the previous retail use and that issues regarding a material change of use do not arise.

7.3. Traffic and parking

I accept that parking restrictions apply on both sides of the road and that traffic congestion does occur, particularly during the am/pm peak, as the road forms a major corridor to/from the city centre towards the N6 and the N59 towards Moycullen. The proposed change of use will not significantly alter the current position over and above that created by the previous butcher's shop. I accept that the proposed development will continue to serve a local market, principally university students, residents etc., who will travel by foot. Having regard to the nature and limited scale of the development, I do not consider that there will be any additional consequences for traffic and parking which would impact on the amenities of the area to warrant refusal of the development.

Car parking standards are set out in Table 11.5 of the development plan. As noted, both a 'shop' and 'restaurant' generate the same requirement i.e. 1 no. space per 15 m² gross floor area. As the proposal is for a change of use only with no new build, there is no increased demand for additional car parking and no requirement for the

payment of a financial contribution. I would point out to the Board that the Planning Officer's report of 30/1/17 notes that a financial contribution is not payable as the use falls within the same category.

7.4. Precedent created by previous planning decisions

I do not accept, as contended by the appellant that comparisons can be made between the current proposal and previous refusals for development in the vicinity. The proposed development involves the change of use of a well established commercial property. There is no loss of residential use and the impacts associated with the development are relatively benign, with no potential for significant impacts on residential amenities.

In contrast, I consider that the arguments made by the planning authority and the Board that the development proposed at No 7 Newcastle Road would erode the established character and residential amenities of the area are entirely reasonable. Both proposals would have involved the part conversion of an existing house with loss of residential use and one of the proposals included the provision of a take-away (PL 61.240798) which generates adverse impacts associated with late night opening, traffic, noise, general disturbance etc.

The appellant also refers to the Board's decision (PL 61.240300) in respect of an extension of the ground floor at No. 25 Lower Newcastle Road (to the south) for use as a graphic design office. The proposal would extend an existing commercial operation. The property is recessed from the road with some on-site parking space to the front. While issues were raised in the appeal regarding traffic congestion and parking associated with the use of the site, the reporting Inspector accepted that due to the nature of the activity and the proximity to the university that most of the customers would be staff/students and would arrive on foot and the Board accepted that position. Similarly, I do not accept that comparisons can be drawn between the proposed development and the situation that has developed opposite the hospital, where a significant number of retail properties have developed close to a major junction.

I accept that each proposal must be considered on its own merits. The current proposal is for a small sandwich bar in a building which was formerly used for commercial purposes. There is no loss of residential use and I consider that subject

to conditions the development can be operated without any adverse impacts on the residential amenities of the area.

7.5. **Appropriate Assessment**

The closest European site is Lough Corrib SAC (000297) and Lough Corrib SPA (004042). There is a watercourse running through the site which could act as a conduit for contaminants. However, the proposal is for a change of use only. Having regard to the location of the development within a built up area, the nature and scale of the development and the separation distance from the Natura 2000 sites, I consider that the proposed development either alone, or, in combination with other plans or projects, would not be likely to have significant effect on Lough Corrib SAC or Lough Corrib SPA, or any other European Site, in view of the sites conservation objectives and that, therefore, a Stage Appropriate Assessment and the submission of a Natura Impact Statement is not required.

Note: The proposal involves a change of use only. No works are proposed which would interfere with the protected watercourse (Protected Structure).

8.0 **Recommendation**

8.1. Having considered the contents of the planning application, the decision of the planning authority, the provisions of the development plan, the grounds of appeal and the responses thereto, my inspection of the site and my assessment of the planning issues, I recommend that permission be granted for the development for the reasons and considerations set out below.

9.0 **Reasons and Considerations**

Having regard to the planning history relating to the site and the pattern of development in the area, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenities of the area, would be acceptable in terms of traffic safety and convenience 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 20th day of December 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 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 interests of clarity.

2. The sandwich bar shall not be used for the sale of hot food for consumption off the premises, other than the provision of a hot sandwich or wrap. Outdoor seating shall not be provided.

Reason: To protect the amenities of the area.

3. The shop sign shall consist of hand painted lettering or solid individual lettering affixed directly to the shop front façade. The sign may be backlit but shall not be internally illuminated. Details of the signage shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

Reason: In the interests of visual amenity.

3. Notwithstanding the exempted development provisions of the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, no additional advertising signs or structures shall be displayed or erected on the building or within the curtilage of the site unless authorised by a further grant of planning permission.

Reason: In the interests of visual amenity.

4. The hours of operation shall be between 07.30 hours and 18.30 hours Monday to Saturday and 09.00 and 17.00 on Sunday only.

Reason: In the interests of the residential amenities of property in the vicinity. .

5. The developer shall control odour emission from the premises in accordance with measures which shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

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

6. No additional development shall take above roof parapet level, including air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment unless authorised by a further grant of permission.

Reason: To protect the residential amenities of property in the vicinity and the visual amenities of the area.

7. Details of measures to control the transmission of sound from the premises shall be submitted to and agreed in writing with the planning authority prior to the commencement of the development.

Reason: To protect the amenities of the area.

Breda Gannon
Planning Inspector

12th May 2017.

