



An
Bord
Pleanála

Inspector's Report PL08.248124

Development	The erection of a retractable canopy to the front of Lana restaurant. (Protected Structure)
Location	No. 3 Ashe Street, Tralee, Co. Kerry.
Planning Authority	Kerry County Council.
Planning Authority Reg. Ref.	16/1200
Applicant(s)	Chattai Food Ltd.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party
Appellant(s)	Sean Hussey.
Observer(s)	None
Date of Site Inspection	02.06.2017
Inspector	Fiona Fair.

1.0 Site Location and Description

- 1.1. The appeal site, with a stated area of 0.009 ha, is located in Tralee town centre. The building, Number 3 Ashe Street, is situated on the east side of the street. Ashe Street is a one-way vehicular street with traffic travelling north east from Lower Castle Street. The carriageway is narrow with bollards on both sides and wide footpaths.
- 1.2. The structure, the subject of this application, comprises a three storey pitched roof mid-terrace property with a red brick façade and bay windows at first and second floor level. The building to the south is currently in use as 'Regetta Great Outdoors' and the building to the north is in use as 'Mozarts' Restaurant. 'Mozarts' has an area coordinated off providing outdoor seating to its front, on to Ashe Street. The appellant's premises 'Sean Hussey Menswear' also forms part of the terrace, located to the north and adjoining 'Mozarts'.
- 1.3. The structure the subject of the appeal is currently in use as 'Lana' Restaurant, with a nameplate over the front of the building indicating 'asian street food'. Seating is provided at ground floor within the building and two outdoor tables with seating were present on the street to the front of the premises at the time of my site visit.
- 1.4. The shopfront is protected, recorded on the Councils Record of Protected Structures, reference number 10.

2.0 Proposed Development

- 2.1. Permission for:
 - The erection of a retractable canopy to the front of Lana restaurant. A Protected Structure.
 - Canopy extends 2.5m from the façade of the building and is located under the fascia. It has a minimum clearance of 2.1m from ground level.

3.0 Planning Authority Decision

3.1. Decision

Planning permission Granted subject to six number conditions. Conditions of note include:

Condition 2 requires that no additional signs, symbols, emblems, nameplates or other advertising devices shall be erected or displayed externally on the site, save with the prior written approval of the p.a.

Condition 3. No musical apparatus shall be used within the enclosed area to the front.

Condition 4. Details of mechanism for the canopy, where applicable the canopy shall be retractable during closing hours, licence required for outdoor seating, canopy shall not be used for advertising purposes, no further external lighting or security shutters shall be erected without a separate planning permission and requires the applicant submit a cross section of the shopfront scale 1/50

Condition 5 sets out material, colour and finish to be agreed with the p.a.

Condition 6 canopy to be maintained and / or replaced upon damage or deterioration to the satisfaction of the p.a.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- Planning Report: The planning report supports the draft decision to grant planning permission.

3.2.2. Other Technical Reports:

- Building Control Officer: No objection.
- File referred to the Conservation Officer and the Heritage Officer no response forthcoming / on file.

3.2.3. The file was referred by Kerry County Council to DAU Dept. of Arts, Heritage, Regional, Rural and Gaeltacht Affairs, An Comhairle Ealaíon, An Taisce, HSE and Fáilte Ireland, no response was forthcoming / on file.

3.2.4. The file was referred by ABP to The Heritage Council and to DAU Dept. of Arts, Heritage, Regional, Rural and Gaeltacht Affairs no response was forthcoming / on file.

3.3. **Third Party Observations**

One objection received concerns raised are similar in nature to those raised in the third party appeal on file, summarised below.

4.0 **Planning History**

None pertaining to the subject appeal site.

The planning authority response to the appeal indicates all planning reference numbers, for all planning applications in the vicinity of the subject appeal site since 1991. None directly relevant.

5.0 **Policy Context**

5.1. **Development Plan**

The operative plan for the area is the Tralee Town Council Development Plan 2009 - 2015. The site is located in an area where the land use zoning objective is 'Mixed Use' the purpose of this zoning is 'to protect and enhance the special physical and social character of the town and to provide for residential development'.

The site is located within car parking Zone A as outlined in Map 2B of the Development Plan.

The site is located within the Retail Control Zone within the Central Core Area of the Primary Retail Area, as identified in Map 3A of the 2009 -2015 Tralee Town Development Plan.

The shopfront is protected, recorded on the Councils Record of Protected Structures, reference number 10. The site is located within the identified archaeological zone of potential and a designated architectural conservation area (ACA) Zone 5, Edward Street / Ashe Street / Castle Street. The following Sections of the Town Development Plan are of relevance:

Section 8.3 – Architectural Heritage

Policy AHP04

Policy ACAP01, ACAP03, ACAP04

12.32 Shopfronts and Advertising

The Castle Street, Edward Street & Environs ACA Management Plan was adopted by the Council in July 2012 and includes the Ashe Street area.

6.0 The Appeal

6.1. Grounds of Appeal

- Proposal would inhibit light
- Negatively impact upon businesses along Ashe Street
- Block views / line of visibility of the window display of number 5 Ashe Street, this business depends upon visibility of window displays to attract trade.
- Contrary to traditional shopfront design and will negatively impact the visual amenity of the streetscape
- Set a negative precedent
- Concern of negative impact upon the footpath

- Seems to extend very low at only 2.1m from the ground which could lead to safety concerns.
- Canopy will lead to tables and chairs and difficulties of people passing along the footpath and again safety concerns
- Ashe Street has a beautiful streetscape which should be protected
- The appeal site is a protected structure.

6.2. Planning Authority Response

Response received it is summarised as follows:

- GIS map indicating the file reference numbers of all developments (planning applications) adjoining the subject appeal site since 1991

6.3. First Party Response

6.3.1. A response was received from SJK Engineering & Surveying Ltd. on behalf of the applicant Chatthai Foods Ltd, it is summarised as follows:

- The appeal property is not located adjacent to Mr. Sean Hussey's property and the erection of a canopy to the front of Lana restaurant will not have a negative effect upon natural light or inhibit light onto Mr. Hussey's property.
- The erection of the canopy would not affect or impede on the window display of Mr. Hussey's property.
- Canopy is designed in full accordance with the design guidelines for canopies
- The external canopy will attract more custom for the restaurant, which in turn will attract more footfall to Ashe Street and have a positive effect on Mr. Hussey's business,
- A separate application for a licence for outside seating with proposed de-mountable screening to front of proposed external seating has been made to Kerry County Council and a license for the outside tables has been granted.
- Response accompanied with:
 - Canopies and Awnings Design Guidelines, March 2010

- Copy of Licence application acknowledgement TRALA/0/37449 for 4 number table layout for external seating at number 3 Ashe Street.
- Layout Plan indicating Floor Plan, external seating and demountable screening.

7.0 Assessment

I consider the key issues in determining this appeal are as follows:

- **Principle of the Proposed Development**
- **Impact upon Streetscape and Protected Shopfront**
- **Appropriate Assessment**

7.1. Principle of the Proposed Development

- 7.1.1. The Shopfront of number three Ashe Street, the appeal site, is protected, recorded on the Councils Record of Protected Structures, reference number ten. It is of 'local' 'architectural value' in accordance with the 'National Inventory of Architectural Heritage' (NIAH).
- 7.1.2. The appeal premise's is located within Tralee town centre, which is a mixed use centre, comprising a variety of service and commercial uses. The area is a Retail Control Zone within the Central Core Area of the Primary Retail Area, as identified in Map 3A of the 2009 -2015 Tralee Town Development Plan. The variety of services available along Ashe Street is what would typically be expected in a town centre. There is no car parking along the street, with pedestrians being prioritised. Ashe Street has impressive portions with wide footpaths on both sides of the street, demarcated by way of bollards and paving. It is a quiet one-way vehicular street, with the narrow carriageway for cars resulting in low speed. The principle of outdoor seating and dining has been established along the street.
- 7.1.3. Tralee Town Council have no objection to the proposed development. The planning officers report notes that a 'Canopies and Awnings Design Guidelines' document was prepared in 2010 arising from a need to provide development management

guidance for an increasing number of planning proposals for canopies and awnings received during 2000s. It is contended that the increase in such proposals accompanied improvements in the public domain and streetscape carried out by the Town Council during this period.

- 7.1.4. Subject to compliance with development management criteria and subject to a condition I consider a retractable canopy such as that proposed would be acceptable in principle and wholly reasonable.

7.2. **Impact upon Streetscape and Protected Shopfront**

- 7.2.1. As stated in the preceding section the shopfront is protected. The site is located within the identified archaeological zone of potential and within an area designated as an Architectural Conservation Area (ACA)

- 7.2.2. Policy Objective AHP04, is of relevance, it seeks to 'protect and enhance protected structures by ensuring:

- The maintenance, alteration, extension, replacement or insertion of any significant feature(s) or part(s) to the structure shall be appropriate to the architectural character and setting of the Protected Structure.
- Development adjacent to a protected structure shall not detract from the character of the structure or its setting, and existing views to and from the protected structure shall be protected from undue intrusion by new development, including structures, plant and equipment, signs or other devices.
- Require planning permission for any alteration, change of use, or the replacement of any element of a Protected Structures where the character of the structure is affected'.

- 7.2.3. Policy Objective ACAPO1, is also of direct relevance, it requires that 'when assessing proposals for development or redevelopment within an ACA to have particular regard to:

- The impact of proposed developments on the intrinsic character of the area including streetscape and urban layout in relation to compatibility of design, materials, and intensity of site use

- The impact of the proposed development on existing visual and residential amenities
- Potential increases in traffic movements or intensification of uses which might adversely affect the character of an Architectural Conservation Area will not be encouraged’.

7.2.4. The Castle Street, Edward Street & Environs ACA Management Plan (2012) includes the Ashe Street Area. It includes policy objectives relating to shopfront design and views. It requires that proposals for refurbishment of traditional shopfronts shall ensure original features and design elements are retained to form a feature of the new development. It requires that shopfront design shall comply with the Council’s Guidelines for Shopfronts, adopted 2010. Particular attention to be paid to the need to maintain and enhance the rhythm of existing features and shopfront design. The Management Plan refers to the view along Ashe Street including the Court House (located to the north east of the subject site) and view of Castle Street while travelling south westwards along Ashe Street towards the town centre. The width of the street and classical proportions of its buildings are noted.

7.2.5. I am of the opinion that the erection of a retractable canopy to the front of Lana restaurant, as proposed, is acceptable in principle. In particular regard being had to Tralee Town Council Planning Departments ‘Canopies and Awnings Design Guidelines’ (March 2010 – copy attached to the 1st Part Response on the file). The canopy is of traditional design, retractable, positioned to avoid covering of any distinctive architectural elements with a minimum clearance, from ground level, of 2.1 m to ensure pedestrian safety and to allow visibility into the shop from the street and it is proposed to be set back 750mm from the edge of the footpath. I recommend a condition be attached to any decision to grant planning permission, forthcoming from the Board, that precise details of the mechanism, material, color and texture of the canopy be submitted to and agreed in writing with the p.a. in conjunction with a cross section of the shopfront detailing fascia, consoles and pilasters.

7.2.6. I note that the ‘possible conditions’ for attachment to grants of permission for canopies, set out in Appendix 1 of the Guidelines. Regard is had to the draft conditions of the notification of decision to grant planning permission, summarised in section 3.1 of this report above.

- 7.2.7. I am of the opinion that subject to compliance with conditions that the proposed erection of a tradition style, retractable canopy at this location, on Ashe Street, complies with the ethos of promoting pedestrian use of public streets and areas. It would not detract from the Protected Structure status of the building and does not compromise policy and objectives relating to ACA's.
- 7.2.8. I agree with the first party that people presence in the public realm is a positive contribution. I cannot agree with the appellants concern that a retractable canopy would inhibit light to adjoining premises, block views, negatively impact upon businesses along Ashe Street or set a negative precedent.
- 7.2.9. With respect to monitoring and enforcement of the external seating area I note that this is not a matter for this planning application (tables and chairs are subject to license under section 254 of the Planning and Development Act). However, noncompliance with conditions of the license or planning conditions are within the remit of the planning authority. The planning authority, under the Planning and Development Act 2000, as amended, are required to ensure unauthorised use or noncompliance with conditions is enforced against.
- 7.2.10. The proposed retractable canopy would not be visually incongruous or diminish the architectural merit of the structure or the streetscape so as to warrant a refusal of permission.

7.3. **Appropriate Assessment**

- 7.3.1. Overall I consider it is reasonable to conclude on the basis of the information available that the proposal individually or in combination with other plans or projects, would not adversely affect the integrity of a Natura 2000 site having regard to the nature of the proposed development, urban location and separation distances involved to adjoining Natura 2000 sites. It is also not considered that the 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

- 8.1.1. I recommend that the decision of the planning authority be upheld and planning permission be Granted to the proposed development.

9.0 Reasons and Considerations

- 9.1.1. Having regard to the land-use zoning of the site "Mixed Use", the existing pattern of development on the site and in the vicinity it is considered that subject to compliance with the conditions set out below, the development, would be acceptable in terms of visual amenity, architectural heritage and impact upon the streetscape. 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 carried out 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 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. Prior to commencement of any development the following shall be submitted to and agreed in writing with the planning authority.

- (a) Details of the mechanism and precise location for the retractable canopy
- (b) Details including samples of the material, colour and texture of the canopy
- (c) A cross section (scale 1/50) of the shopfront detailing fascia, consoles and pilasters

Reason: In the interest of the visual amenities of the area

3. Notwithstanding the provisions of the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, no additional advertisement signs including any signs installed to be visible through the windows, advertisement structures, banners, canopies, flags, or other projecting elements shall be displayed or erected on the buildings or within the curtilage of the site, unless authorised by a further grant of planning permission.

Reason: To protect the visual amenities of the area.

- 4.
- (i) The canopy shall not be used for advertising purposes.
 - (ii) The canopy shall be retracted during closing hours of the premises.
 - (iii) No further external lighting or security shutters shall be erected on the premises, without a prior grant of planning permission

Reason: To protect the visual amenities of the area.

5. No music or other amplified sound shall be broadcast externally from the premises.

Reason: To protect the amenities of the area.

6. The canopy shall be maintained and / or replaced upon damage or deterioration to the satisfaction of the planning authority.

Reason: To protect the visual amenities of the area.

Fiona Fair
Planning Inspector
19.06.2017