



An
Bord
Pleanála

Inspector's Report PL.04.248696

Development	Construction of roof and use of yard as wash up area, opening up the wall, signage erection, new exit door and retention of signage lighting of restaurant food take-away collection area.
Location	East Douglas Street, Douglas, Co. Cork.
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	16/05931
Applicant(s)	Rahber Ltd.
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Liam Edwards
Observer(s)	Noel O'Donovan
Date of Site Inspection	25 th September 2017
Inspector	Kenneth Moloney

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1.0 Site Location and Description

- 1.1. The appeal property is a corner building located in the centre of Douglas village, Co. Cork. The appeal site comprises of two properties of which the front (north east) elevation faces onto East Douglas Street and the rear (south west) faces onto Carrigaline Road.
- 1.2. The properties currently operate as a Indian restaurant and takeaway.
- 1.3. The northern most property is a two-storey building whereas the southern most building is single storey in height with two roof dormer windows facing onto East Douglas village.
- 1.4. There is a single storey conservatory style building situated to the rear of the two-storey property and there is a yard situated to the rear of the single storey property.
- 1.5. There is a two-storey period property situated to the immediate south east of the appeal site. This property operates as a guest house.
- 1.6. The predominate land-use in the immediate area is commercial.

2.0 Proposed Development

- 2.1. The proposed development is for the following; Construction of flat roof to rear yard
 - Use of rear yard as wash-up area
 - Opening up of wall over counter level between pick-up and kitchen
 - Erection of signage
 - New exit door from staircase
 - Permission for retention of lighting to illuminate signage
- 2.2. Additional information was sought for the following; (1) (a) omission of proposed new exit door on the front elevation, (b) lighting details, (2) a timeframe for the removal of the existing extractor fan in the window, (3) details of new signage, (4) details of the proposed roof, and (5) a timeframe for the completion of all compliance issues in relation to L.A. Ref. 13/05781.

3.0 Planning Authority Decision

Cork County Council decided to **grant** planning permission subject to 19 conditions.

3.1. Planning Authority Reports

3.1.1. The main issues raised in the planner's report and the SEP's report are as follows;

Area Planner

- The planning application is on foot of enforcement action.
- The validity of the application was accepted.
- It is submitted by the applicant that the food offering in the restaurant and for pick-up area is the same.
- The proposed cover area will be used for a wash up facility.
- A condition of L.A. Ref. 13/05781 restricted the use of the subject area for a collection area for take-away food for consumption off the premises.
- Any introduction of a separate use in the premises would be the subject of enforcement.
- It is considered that the erection of the 4 no. lights contravene condition no. 5 of L.A. Ref. 13/05781.
- The Conservaion Officier recommends refusal of the application on the basis that the proposed unauthorised lighting, signage and new access door would have a significant impact on the character of the ACA which contravenes HE 4-5 of the County Developmnet Plan.
- It is recommended that the proposed lighting and advertising board is removed.
- It is considered that additional vents / plants erected on the site maybe in contravention of condition no. 6.
- In relation to condition no. 20 of of L.A. Ref. 13/05781 it is considered that the installtion of acoustic insulation has been complied with however a noise monitoring survey would be required.

- 3.1.2. Conservation Officer; - Refusal recommended as the proposal would have a significant adverse impact on the character of the ACA.
- 3.1.3. Area Engineer; -. No objections.
- 3.1.4. Observations: There is a submission from Irish Water who have no objections to the proposed development.

3.2. **Third Party Observations**

There is one third party objection and the issues raised have been noted and considered.

4.0 **Planning History**

10-Year Planning History

- L.A. Ref. 16/4517 – Permission **granted** for change of use of existing residential property to part of existing adjoining restaurant. It will be used for staff facilities and collection area for takeaway food.
- L.A. Ref. 08/7968 – Permission **granted** for the construction of single storey extension to existing restaurant kitchen area, provision of new fire exit door in existing conservatory. Permission upheld by An Bord Pleanala (appeal ref. 232484) following an appeal.
- L.A. Ref. 08/7967 – Permission **granted** for the lowering of cill of existing window opening to form new access door to restaurant, internal alterations and partial change of use of kitchen facility to takeaway service. Permission upheld by An Bord Pleanala (appeal ref. 232480) following an appeal.
- L.A. Ref. 07/10369 – Permission **refused** for single storey extension to existing restaurant kitchen area, provision for fire exit door, internal alterations

and associated site works. Refusal due to overdevelopment, insufficient area for adequate waste / recycling facilities, increased noise and odours.

- L.A. Ref. 07/8016 – Permission **granted** for retention of partial use of first floor of building as restaurant area.

5.0 Policy Context

5.1. Development Plan

The operational Development Plan is the Cork County Development Plan, 2014 – 2020.

5.2. Local Area Plan

The operational Local Area Plan is the Carrigaline Electoral Area Local Area Plan, 2017. In accordance with the settlement map for Carrigaline Environs the subject site is located within the settlement boundary.

The site is zoned 'Existing Build-up Area'.

6.0 Appeal

6.1. The following is the summary of a third party appeal submitted by Liam Edwards;

- Having regard to Section 35(b) of the Act the Board is precluded from granting permission when there is clear breaches of the planning code.
- Enforcement action has been previously undertaken by Cork County Council.
- The planning irregularities were the subject of a case at the Cork Circuit Court.
- The Circuit Court concluded that the applicant is in breach of planning permission granted under application register ref. 13/05781, Conditions no. 1, 3, 5, 6, 7, 19 and 20.

- There are two recent cases where Cork County Council granted permission for developments on Church Street ACA however An Bord Pleanála refused permission and these include appeal ref. 244123 and appeal ref. 247006.
- The current washroom area is a constant source of noise with the clatter of pans.
- It is submitted that any takeaway facility must be in accordance with L.A. Ref. 08/7967 (appeal ref. 232480) which required that the proposed takeaway is incidental to the main existing restaurant use.
- It is submitted that the restaurant and the takeaway facility have separate menus.
- It is submitted that lighting and signage to the appeal building is unnecessary and materially affects the streetscape and character of the ACA.
- The adjoining structure (River View) is listed as a NIAH Structure and the original restaurant building is on the RPS.
- In previous applications the Conservation Officer had serious concerns with proposals to change an existing window to a door. The current proposal is to alter a window to a door at the opposite side of the cottage which will mean the building will have two doors and one window.

7.0 Observations

The following is the summary of an observation submitted by Noel O'Donovan;

- Cork City Council previously returned as invalid, application no. 16/04517 for a similar development as the current proposal. It would be consistent to return this application on the same grounds.
- It is submitted that the proposed development will have a detrimental impact on East Douglas and Church Street ACA.
- It is considered that the Conservation Officer's report has been dismissed by the Area Planner.

- The Planning Authority has not followed through on Enforcement Action as many of the unauthorised developments have not been regularised.
- Conditions of a previous permission stated that the premises shall not operate as a fast food take-away facility. Notwithstanding this the applicant has established a standalone takeaway fast-food restaurant.
- The fire escape routes and exits are not clearly marked on the ground floor plans.
- It is submitted that the HSE placed a closure order on this premises in 2016.
- There is no management plan for waste within the development and no plans for recyclable materials.
- All waste is collected weekly in 3 no. wheelie bins from the rear of the property.
- The proposal will result in overdevelopment of the site.

8.0 Response

The following is the summary of a response submission submitted by the applicant's agent;

Frustration of the Planning Process

- It is submitted that the applicant has been involved in extensive interaction and consultation with the Planning Authority in order to address all issues.
- It is contended that the appeal submission is an attempt to cause commercial damage. As a person named in the appeal is a relative of the appellant and owner of Roosters Piri Piri, another local business.
- The appellant has refused the applicant permission to repair leaks which are damaging the appeal property

Impact on Character of Architectural Conservation Area

- It is submitted that the revised proposals submitted as additional information have addressed the concerns raised by the Conservation Officer.

- The fire exit door has been removed and the signage revised.
- The proposed signage is comprised of individual, non-internally illuminated letters on a painted fascia background.
- It is considered that a commercial property can have a place in a Architectural Conservation Area.
- It is submitted that the proposed signage is consistent with the example contained in Cork County Council's Guidelines for Management and Development of ACA.
- This application does not relate to a protected structure.
- Apart from the signage and lighting the proposed works have no material or visual impact on any other building, including the adjoining property, which is owned by the applicant.
- It is submitted that the appellant appears to have issues with the signage associated with adjoining properties other than the appeal site.

Breaches of the Planning Code / Unauthorised Developments

- The issues that caused the first application to be invalidated have been addressed.
- Enforcement issues in relation to L.A. Ref. 13/05781 have been addressed.
- In relation to conditions no. 1 and 3 of L.A. Ref. 13/5781 the food offered is the same for the restaurant as the pick-up section.
- In relation to Condition no. 5 any non compliant signage has been removed. Retention permission is now sought for the lighting and the rope lightening erected under the gutters has been removed.
- The extractor fan in the window facing tramway terrace has been removed.
- In relation to condition no. 7 the non-compliant roof has been removed and planning permission is sought for a new roof.
- In relation to condition no. 20 acoustic panels have been fitted to the boundary wall.

- It is submitted that the additional information response has also addressed issues in relation to L.A. Ref. 13/05781.
- It is submitted that issues raised by the Environmental Report were addressed in a submission on 27th September 2017.
- It is submitted that any outstanding unauthorised issues in relation to L.A. Ref. 13/5781 have been addressed in this current application. These include non-exempt signage, roof over yard and overly large open area at collection counter.

Construction of wash-up area

- The proposed roof is not visible from the public road and therefore will have no impact on the ACA.
- The acoustic requirements by the Planning Authority have been complied with.
- The proposed wall is a separation wall from the appellant's property and can be constructed without hacking into the gable wall.
- The appellant's property is a functioning B&B.
- The rear yard was only used for washup and never used for food preparation.
- The rear yard functions as a washup area to serve the kitchen.
- It is contended that water ingress from the roof of the appellant's property is ongoing.

Opening of wall over counter between pick-up area and kitchen

- It is submitted that the business provides two offerings, i.e. Lal Quila and Rooster Pil Pil.
- It is submitted that the appeal is largely on the basis of competition from a rival restaurant, i.e. Rooster Piri Piri. The owner of this restaurant is a relative of the appellant.

Erection of Signage and Lights

- Following concerns raised by the Conservation Officer Signage proposals have been revised.
- The revised signage comprises of individual, non-internally illuminated letters on a painted fascia background.
- It is submitted that well designed and proportionate signage is wholly acceptable in Douglas village and within the ACA.
- It is submitted that the proposed signage is in accordance with Cork County Council Guidelines for the Management and Development of ACA.
- The proposals in this application do not relate to a protected structure.
- The proposed signage and lighting will have no adverse impact on the ACA.
- The proposals will have no adverse impact on the adjoining guesthouse which is a on the NIAH.
- It is noted that all the commercial properties along tramway terrace have signage of varying types.
- It is noted that the appellant has no objection to the signage proposals and this demonstrates that the appeal submission is commercially driven.

Relacing window with door

- The replacement of the existing window with a door has been removed from the application at the further information stage.

9.0 Assessment

- Principle of Development
- Architectural Heritage
- Impact on Established Residential Amenities
- Enforcement

9.1. Principle of Development

The permitted development on the appeal site relates to an established Indian restaurant and a takeaway outlet. In order to consider the principle of the proposed development it is important to consider the relevant planning history of the appeal site.

In relation to the take-away outlet it was first permitted by planning consent, under appeal ref. 232480 (L.A. Ref. 08/7969). In this particular planning application the applicant sought permission for a small take-away use that would be incidental to the main restaurant use. It was proposed that take-away customers would wait in the hallway / lobby area of the restaurant while awaiting their ordered food and that the take-away food and its packaging was designed for home consumption rather than eating outside the premises. In addition it was proposed that the opening hours of the take-away outlet would be consistent with the opening hours of the restaurant. The Board granted permission for this limited take-away outlet. Subsequent to this planning application the applicant sought to extend the business into the adjoining single storey property (which is now the subject of this current appeal). Therefore planning permission (L.A. Ref. 13/05781) was sought for a change of use from residential of the existing single storey property to use as part of the existing restaurant premises for staff facilities and collection area for take-away for consumption off the premises. Cork County Council granted permission for this proposal. Condition no. 3 restricted the opening hours of the take-away facility to between the hours of 08:30 and 23:30 only.

I would consider that the permission granted under L.A. Ref. 13/05781 alters the original permission for a take-away granted under appeal ref. 232480. In the original permission for a take-away outlet the applicant considered that the scale of the take-away would be relatively small in that it was not anticipated that there would be any more than two customers waiting for ordered food at any one time. In the permission granted under L.A. Ref. 13/05781 the hallway or lobby to the restaurant was replaced by a dedicated area for take-away customers waiting on take-away food. This area is separate to the main restaurant with own door access and importantly it

is larger than the hallway / lobby of the restaurant. In my view and based on a visual observation of the subject property this new area would accommodate more customers than was possible within the lobby / hallway of the restaurant.

Therefore I would consider that the scale of the take-away is potentially larger than that permitted under appeal ref. 232480 and I would also note that the Local Authority in granting permission for L.A. Ref. 13/05781 did not include condition no. 2 requiring that the proposed take-away use shall be incidental to the main restaurant use. However, I do note that it is the applicant's intention that the take-away outlet is intrinsically linked to the restaurant as it shares the same kitchen.

I note the comments by the appellant, in his appeal submission, that the proposed development must be in accordance with L.A. Ref. 08/7967 which required the take-away to be incidental to the main existing use. I would consider, having regard to the planning history, that the proposed development, which relates to items I have listed in Section 2.0 of this report, would not be inconsistent with the established and permitted use on the appeal site.

9.2. Architectural Heritage

In considering the impacts of the proposed development on architectural heritage I would have regard to established architectural heritage and the conservation status of the local area.

The subject property is not a protected structure and is located within a designated ACA in accordance with the provisions of the Cork County Development Plan, 2014 – 2020. Although in terms of architectural character it is important to note that the adjoining two-storey building to the immediate north-west is a protected structure (RPS ID 00684 – former Grada Station) and the adjoining building to the immediate south east is listed on the National Inventory of Architectural Heritage. Therefore I would consider that the appeal property is located within an area that has a reasonable level of architectural heritage.

The proposed external modifications to the appeal property include the provision of a door in lieu of a window. However following an additional information request this proposal has been omitted. This modification would retain the established architectural heritage of the streetscape. The internal modifications proposed include the opening up of wall over counter level between pick-up and kitchen. As the subject structure is not a protected structure I would consider that this intervention would be acceptable.

Furthermore and following an additional information request the proposed signage was revised and the revised proposal is smaller in scale than the original proposal. Although the signage is reduced in size I would consider, based on the submitted drawings and a visual observation of the local area, that the scale of the revised signage is still excessive having regard to the relatively small size of the existing building. I note the comments of the Conservation Officer, in her report dated 22nd September 2016, in which she recommended refusal as the proposed development would result in significant negative impact on the ACA. I would consider that individually mounted lettering will be more sensitive than a single fascia board. Overall I would consider that the scale of the proposed signage is out of proportion with the existing building and out of character with the established architectural heritage and the architectural conservation area. I would recommend a condition to the Board, should they favour granting permission, that the proposed signage is omitted.

In addition the proposed 4 no. spot lights is inconsistent, in my view, with the scale and the character of the building and would in my view detract from the local architectural character and set an undesirable precedent for other such development within the designated ACA. The planners report also refers to this spot lighting as contravening condition no. 5 of L.A. Ref. 13/5781.

I therefore would recommend a condition to the Board, should they favour granting permission, that the 4 no. spot lights are omitted by condition in the interest of preserving the architectural character of the local area.

9.3. Impact on Established Residential Amenities

In terms of considering the impacts of the proposed development on established residential amenities I would have regard to the established permission on the appeal site and the established uses in the immediate area.

The immediate area is predominately commercial in use and therefore having regard to the established uses and the zoning objective pertaining to the appeal site there is an expectancy that the appeal site will be developed for commercial uses. There is an established permission on the appeal site for a take-away use and a condition of a previous permission requires that the takeaway operates within the hours of the adjoining restaurant. I would note that any complaints regarding the impacts that the take-away would have on established residential amenities would be outside the remit of the Board's consideration in this current appeal.

In terms of the Board's consideration in relation to adverse impacts on residential amenities I would consider that the extent of this consideration in this case relates to the proposed roof covering and the spot lighting.

I would recommend that the spot lights are removed by condition, as outlined in the Section 9.2 above, and therefore the outstanding issue is the roof covering.

I note from the drawings pertaining to L.A .Ref. 13/05781 that the area proposed for a roof covering is permitted as a yard. The proposed roof would enclose this area and the current application seeks to change the use of this area from yard to washup area. At the time of my site inspection I noted that the owner had installed sound proofing materials along its gable wall with the neighbouring B&B property. Overall I

would consider that the proposed roof covering will contribute to containing the noise and preventing any undue noise nuisance. I would recommend a condition to the Board requiring the applicant to include sound proof materials in the roof construction and this would contribute to containing any undue noise emissions further.

Overall I would consider that the proposed development would not unduly impact on established residential amenities.

9.4. Other Issues

The appellant raises a number of issues claiming that the applicant has not complied with previous permissions or indeed the conditions of these permissions. I would consider that these issues raised are generally enforcement issues, in accordance with Part VIII of the Planning and Development Act, 2000 (as amended), and would be outside the scope of this appeal which relates to items listed in Section 2.0 of the report above. I would therefore consider that it is a matter to be raised with the local authority rather than An Bord Pleanala.

10.0 Recommendation

10.1. I have read the submissions on the file, visited the site, had due regard to the County Development Plan, and all other matters arising. I recommend that planning permission be granted for the reasons set out below.

11.0 Reasons and Considerations

Having regard to 'Existing Built Up Area' zoning of the subject site, the pattern of development in the area, the established use on the site and the scale and design of the proposed development, it is considered that, subject to compliance with conditions below, the proposed development would not seriously injure the amenities of the area and of the property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

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 25th day of April 2017, 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 proposed development shall be modified as follows:
 - a. The proposed signage above the door on the front elevation shall be omitted.
 - b. The proposed 4 no. spot lights shall be removed.

Revised drawings showing compliance with the above requirement shall be submitted to the planning authority for written agreement prior to the commencement of development.

Reason: In the interest of protecting architectural heritage and residential amenities of the local area.

3. Notwithstanding the provisions of the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, no 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. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health and to ensure a proper standard of development.

5. The requirements of the Environment Health Authority shall be ascertained and adhered to in the development.

Reason: In the interest of public health.

6. Prior to the commencement of development the developer shall submit, and obtain written agreement of the planning authority to, a plan containing details of the management of waste (and, in particular, recyclable materials) within the development including the provision of facilities for the separation and the collection of the waste and, in particular, recyclable materials, and for the ongoing operation of these facilities.

Reason: To provide for appropriate management of waste and in particular, recyclable materials, in the interest of protecting the environment.

7. The site and building works required to implement the proposed development shall only be carried out between 0800 hours and 1800 hours, Monday to Friday and between 0900 hours and 1400 hours on Saturday. No work shall be carried out on Sundays, Bank Holidays or Public Holidays.

Reason: To protect the residential amenities of the area.

8. Prior to the commencement of development a scheme shall be submitted to, and approved in writing by the Planning Authority for the effective control of fumes and odours from the premises.

Reason: In the interests of the amenities of both the immediate neighbours and general surroundings.

9. Prior to the commencement of development a litter management scheme for the proposed development shall be submitted and agreed in writing by the Planning Authority.

Reason: In the interest of protecting the amenities of the area.

10. The noise level shall not exceed 55 dB(A) rated sound level (that is, corrected sound level for a tonal or impulsive component) at the nearest noise sensitive location between 0800 and 2000 hours, Monday to Friday inclusive, and shall not exceed 45 dB(A) at any other time. Noise levels shall be measured at the noise monitoring locations. Monitoring results shall be submitted to the Planning Authority on a 6 monthly basis.

Reason: To protect the amenities of property in the vicinity of the site.

11. A schedule, and appropriate samples, of all materials to be used in the roof construction, including sound proofing materials, shall be submitted to and agreed in writing with, the planning authority prior to commencement of development.

Reason: To ensure an appropriate standard of development and in the interest of residential amenity.

12. 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. The contribution shall be paid prior to the commencement of development 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 the Board to determine the proper application of the terms of the Scheme.

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

Kenneth Moloney
Planning Inspector

29th September 2017