



An
Bord
Pleanála

Inspector's Report PL61.248870

Development	Change of use from vacant internet café ground floor a commercial use upper floor to restaurant with ancillary take away on ground floor.
Location	9 Eyre Square, Galway.
Planning Authority	Galway City Council
Planning Authority Reg. Ref.	16/356
Applicant(s)	Doug Leddin & Kieran O'Malley
Type of Application	Permission
Planning Authority Decision	Grant permission
Type of Appeal	First V Conditions
Appellant(s)	Doug Leddin & Kieran O'Malley
Observer(s)	An Taisce
Date of Site Inspection	13 th October 2017
Inspector	Rónán O'Connor

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1.0 Site Location and Description

- 1.1.1. The appeal site is a three storey end of terrace building. The property is currently vacant with the last use of the ground floor being an internet café.
- 1.1.2. The appeal site is located within the Eyre Square Architectural Conservation Area. To the immediate north-west is a beer garden associated with O'Connells Bar. To the north-west, to the rear of the site, is a beer garden associated with An Pucan Pub. Adjoining the appeal site to the south-west is a three-storey building in office use.

2.0 Proposed Development

- 2.1.1. The proposal is for a change of use from vacant internet café on ground floor and commercial use of upper floors to restaurant with ancillary take away on ground and first floor and use of the second floor for storage, provision of new shopfront, reinstatement of sliding sash windows on the upper floors and ancillary works.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Grant permission with 13 conditions. Conditions of note are as follows:
 - Condition 4 (the subject of this appeal)– Restriction to a restaurant use only and specifically the premises shall not be used as a takeaway.
 - Condition 5 – Development shall not operate beyond 23:00 hours.
 - Condition 11 – Details of signage/advertising.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the planning officer reflects the decision of the planning authority. Points of note are as follows:

- Proposed development may be acceptable in principle

- Alterations to first floor windows not considered acceptable
- Query over removal of the stairs providing access from the ground floor
- Excess of toilet facilities – are they intended to serve the Pucan Bar to the rear?
- Further information was requested in relation to (i) revised shopfront details (ii) revised details for first floor windows (iii) clarify the extent of toilet facilities (iv) means of fire escape (v) details of ventilation equipment (vi) details of food storage and waste (vii) internal access required.
- Following receipt of further information, the planning officer notes:
- Not considered that this area of Eyre Square has an overconcentration of restaurant uses.
- Concern in relation to the ancillary takeaway use as has potential for noise and litter nuisance and would be detrimental to the character of the ACA and amenities of the area.

3.2.2. Other Technical Reports

- Roads - No objections
- Water and Drainage – No objections
- Chief Fire Officer – details of right to access fire escape required
- EHO – lack of detail regarding kitchen and internal arrangements

3.3. Prescribed Bodies

- 3.3.1. An Taisce – welcome proposals to replace uPVC windows with timber
Express concerns regarding alterations to the shopfront

3.4. Third Party Observations

- 3.4.1. None

4.0 Planning History

- 4.1.1. There is no recent relevant history on the site.

5.0 Policy Context

5.1. Development Plan

Galway City Council Development Plan 2017-2023

5.1.1. The site is zoned City Centre Uses and is within an Architectural Conservation Area.

5.1.2. Relevant provisions of the Development Plan include:

- 11.4.5 Uses – Relates to changes of use. Where development for and/or extensions to licensed premises, including off-licences, night-clubs and takeaways are being considered in the City Centre Area, the Council will take into account the following:
 - the effect of the proposed development on the amenities of the area
 - the effect of the propose development on the mix of uses in the area
 - the size, number and location of existing licenced premises in the area

5.2. Natural Heritage Designations

5.2.1. None

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The grounds of appeal, as submitted on behalf of the First Party Appellants are as follows:

- No negative impact on the amenities of the area by permitting an ancillary takeaway
- There is no negative impact on the special character and integrity of the Eyre Square Architectural Conservation Area
- The precedents referred to by the City Council in their determination of the application do not apply in this case and the exceptional circumstances in this case warrant a grant of permission to include ancillary takeaway.

- Proposal involves the reuse of a building that has been vacant for a period of longer than 3.5 years in one of the key locations in Galway.
- Restoration of building will enhance the character and appearance of the Eyre Square Conservation Area.
- The Board are referred to the Planning Statement and the Architectural Impact Assessment submitted with the application and contained as Appendices to the appeal.
- The concerns in relation to the takeaway were not raised as part of the further information request.
- The 11pm closing time is considered reasonable.
- Appeal relates to Condition No. 4 restricting a takeaway use.
- The useable ground floor area is limited by a width of only 5.5m- may in part explain why unit has been vacant
- Viability of restaurant would be brought into question if a full kitchen was required
- Ideally suited to the Mexican themed restaurant as proposed
- For the viability of the takeaway restaurant it is essential that an ancillary takeaway element is available.
- There is no room for a larger kitchen or for more seating
- No concentration of restaurants and takeaways in the immediate area
- Not aware of any residential premises in close proximity to the appeal site
- No objections or observations from third parties
- No Conservation Report
- No objection from the Roads Department or from the Environmental Health Officer
- No justification in the report for a prohibition on an ancillary takeaway
- Nothing in the extract of the ACA report as quoted in the planner's report that precludes a restaurant with ancillary takeaway

- Management Plan for Eyre Square, referred to in the Planner's report, does not yet exist
- Takeaway element will not change the appearance of what is otherwise an acceptable development
- Coming and going of people is controlled by Condition No. 5 which restricts opening times to 11pm.
- No convergence with hours of other licenced premises in the vicinity
- In relation to litter, other retail uses would generate large volumes of litter
- Would accept a condition requiring a bin outside the premises and a condition requiring a litter management plan
- Any noise generated before 11pm would not be significant given the context of this busy city centre location.
- Unit is so small noise generation would be limited
- Potential patrons will not queue if this proposed development is full – they will simply move to somewhere else.
- Takeaway element available during the day would be a welcome addition to commercial activities in this area
- Is consistent with city centre zoning.
- No formal ACA Designation Report available
- Proposal has positive impacts on the ACA
- Previous refusal by the council and the Board at No. 30 Eyre Square is not relevant (Reg Ref 12/201 and PL61.244355) – this was a primarily take-away facility, with opening hours until 2.30am, with a floor area of 262 sq. m., was located adjacent to night clubs and other takeaways on Prospect Hill
- Included with the submission are Appendices numbered 1-6

6.2. Planning Authority Response

6.2.1. The response of the City Council to the first party appeal is summarised below:

- City Council has concerns in relation to the takeaway element, notwithstanding the restriction on opening hours to 23:00.
- Area of the premises is more than sufficient for the operation of the proposed restaurant – there are many other restaurants in the City Centre which operate successfully in much smaller premises
- Potential for late-night customers queuing and existing the takeaway as well as potential for noise and litter would be detrimental to the character of the ACA and the amenities of the area
- There are less sensitive areas of the City Centre where takeaways have been allowed by the City Council
- Reduced width is a result of the fire escape serving the adjacent premises which is also within the applicant's ownership/control
- Previous Inspector, in relation to the appeal at No. 30 Eyre Square, considered that conditions relating to litter management would be unenforceable
- At adjacent property, No. 11, in granting permission in 2014 for a change of use from retail to café, the City Council imposed a condition restricting takeaways (Planning Ref 14/198)
- City Council has therefore been consistent in seeking to safeguard Eyre Square as the premier civic space in the City Centre and have recognised the special characteristics of Eyre Square Architectural Conservation Area
- Not considered a takeaway will enhance the ACA
- Request that the Board uphold the Council's decision

6.3. **Observations**

One observation received from An Taisce:

- Support Conditions 4 and 5
- An Taisce totally opposed to substance of appeal
- Other takeaways on the north-western side of Eyre Square

- Previous premises which applied for an ancillary takeaway not appears to be more of a takeaway than a sit down restaurant
- Lack of a Management Plan for the ACA no reason for allowing development which may lead to the downgrading of Eyre Square
- Takeaways with their problems of noise and anti-social behaviour, tend to lower the tone of the area in which they are situated
- Council have just spent 20m euro on the recent regeneration of Eyre Square
- There are more appropriate empty shop units to choose from in the city centre.

6.4. **Further Responses**

6.4.1. None

7.0 **Assessment**

- 7.1.1. The first party appeal relates solely to Condition 4 attached to the Notification of Decision to Grant Permission issued by the Planning Authority which relates to the restriction of a takeaway use.
- 7.1.2. I am satisfied that the principle of a restaurant use at this location is appropriate and that the appearance of the proposed development is acceptable.
- 7.1.3. I consider it appropriate, therefore, that the scope of the assessment is restricted to the consideration of Condition 4 as attached to the Notification of Decision issued by the Planning Authority, in accordance with S.139 of the Planning and Development Act (as amended).
- 7.1.4. Condition 4 relates to the restriction of a takeaway use on the grounds that it may resulting in amenity impacts and have a negative impact on the special character and integrity of the Eyre Square Conservation Area.
- 7.1.5. In relation to the merits of an ancillary takeaway use, I note the restricted opening hours of the development from 10am to 11pm. This, in my view, will limit to a large degree any potential noise and disturbance nuisance resulting from the proposal.

- 7.1.6. From my observations on site, there did not appear to be any residential units in the adjoining properties nor in the immediate vicinity. As such the potential impact on residential amenity is very limited.
- 7.1.7. I do not consider that there is an over-concentration of licenced premises in the area. The submitted planning statement considers the mix of uses within Eyre Square. Out of a total of 46 identified units, it is noted that there are 9 licenced premises around Eyre Square, comprising a mix of pubs, hotels and licenced food outlets. Retail and professional/financial services account for over 50% of the units within the Square. It is further noted there is only one other food outlet with a licence, with a further 4 food outlets without a licence (although it is not noted if these provide takeaway facilities or not).
- 7.1.8. My observations on site indicate that there is more of a concentration of café /restaurants and take-away uses to the west and north-west of the Square, along Rosemary Avenue and also along Prospect Hill. The closest clearly identifiable takeaway use to the appeal site located 108m to the north of the appeal site on Prospect Hill (Dominos Pizza). There is also a takeaway relatively close to this on the opposite site of Prospect Hill (The Charcoal Grill). To the east of the appeal site, along Forster Street, there is a further takeaway use approximately 110m from the appeal site (Four Start Pizza).
- 7.1.9. The proposal, in my view, would not lead to an undesirable precedent of allowing takeaways as a general principle, given the nature of the proposal, including the opening hours which are limited to 11pm. This is unlikely to correspond with the closing hours of surrounding licenced establishments, and as such, the potential for noise and other anti-social behaviour is lessened considerably.
- 7.1.10. In relation to the impact on the character of the Eyre Square Architectural Conservation Area, I do not consider that this ancillary takeaway use would, in itself, have an adverse impact on the character of the ACA. I am cognisant of the argument that an overconcentration of takeaway uses, that open for later hours than the current proposal, could result in a detrimental impact on the character of the ACA, but this is not the case in this instance. Indeed, the proposal is for the reuse of a unit that is otherwise vacant, with associated improvements in the appearance of the building, and in my view the proposed development would be a make a positive

contribution to the character, as a result of the introduction of an active street frontage and the positive alterations to the elevations.

- 7.1.11. In relation to the planning precedents cited by the LPA, the appellants and An Taisce, at 11 Eyre Square and 30 Eyre Square, I shall deal with each of these in turn. At No. 30 Eyre Square (ABP Ref PL61.241513), this was a proposal for a change of use from a bank to a restaurant with revised opening hours to 02:30am. This was granted by ABP with a condition prohibiting the takeaway element and limiting hours to 02:00.
- 7.1.12. In this instance the context was within an area with a relatively large number of restaurant/takeaways in the immediate area. In addition, the opening hours for the proposal were significantly later than that proposed here. I note the Inspector recommended that the takeaway use be allowed to operate until 10pm. The Board, however, precluded the takeaway use in its entirety, for reasons of amenity and to protect the special character and integrity of the Eyre Square Architectural Conservation Area.
- 7.1.13. In relation to the permission at 11 Eyre Square (14/198), this was an application for a change of use to a café/restaurant and associated alterations. Condition restricted the use to a café/restaurant only, specifically prohibiting a takeaway use. The reason for the condition was to protect the special character and integrity of the Eyre Square Architectural Conservation Area. However, in this instance I note a takeaway use was not applied for, and as such the merits, or otherwise, of same, were not discussed within the report of the planning officer. Without such a consideration, I do not consider it reasonable to impose a 'blanket ban' on takeaways on this side of Eyre Square, by way of planning conditions, as each case must be considered on its individual merits.
- 7.1.14. In relation to the issue of litter, I acknowledge there is potential litter associated with takeaway uses, although disposal of litter once a customer has left the premises is a matter of civic responsibility and is controlled by other codes. However, it is my view that a condition requiring a scheme of litter control, which includes the provision of litter bins, should be imposed in this instance and this will ensure that the applicant will make it as convenient as possible for customers to dispose of their waste responsibly.

7.1.15. In conclusion therefore, given the nature of the proposal and the characteristics of the surrounding area, I do not consider an ancillary takeaway element associated with the restaurant use would lead to a litter or noise nuisance and I do not consider it would, in itself, lead to an adverse impact on the special characteristics or integrity of the Eyre Square Conservation Area.

8.0 Recommendation

Having regard to the above, it is recommended that the Planning Authority be directed as follows:

AMEND WORDING OF CONDITION 4 TO THE FOLLOWING:

The development hereby approved shall be restricted to a restaurant and ancillary takeaway only.

Reason: In the interest of the amenities of the area and the special character and the integrity of the Eyre Square Architectural Conservation Area.

AND

ADD THE FOLLOWING CONDITION:

Litter in the vicinity of the premises shall be controlled in accordance with a scheme of litter control which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the provision of litter bins and refuse storage facilities.

Reason: In the interest of visual amenity.

Rónán O'Connor
Planning Inspector

09th November 2017