



An
Bord
Pleanála

Inspector's Report PL61.249046

Development	Change of use from retail and restaurant to boutique cinema and restaurant/bar.
Location	Dublin Road and Monivea Road, Moneenagisha Cross, Wellpark, Galway.
Planning Authority	Galway City Council.
Planning Authority Reg. Ref.	17/148.
Applicant	Radical Properties Limited.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party -v- Grant.
Appellant	Suzanne O'Neill.
Observers	None.
Date of Site Inspection	8 th November, 2017.
Inspector	Paul Caprani.

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1.0 Introduction

PL61.249046 relates to a third party appeal against the decision of Galway City Council to issue notification to grant planning permission for a change of use for an existing unit in the Wellpark Retail Centre from use as retail and restaurant to use as a boutique cinema together with a restaurant and bar area associated with the cinema. The third party appeal argues that the proposed change of use represents an overintensification of use on the subject site which will give rise to additional car parking demand and will impact on the vitality and viability of the existing town centre.

2.0 Site Location and Description

- 2.1. The proposed change of use relates to a large ground floor unit within the Wellpark retail development on the northern side of the Dublin Road in the eastern outskirts of Galway. The subject site is located adjacent to the 'G Hotel' near the Moneenagisha junction between Lough Italia Road, Monivea Road and the Dublin Road. It is located approximately 1.8 kilometres north-east of Eyre Square in Galway.
- 2.2. The Wellpark Retail Centre comprises of a mixed use commercial development on the northern side of the Dublin Road with access onto the Dublin Road to the south and also the Wellpark Road to the north-west of the site. It accommodates three large blocks. The largest commercial block at the corner of the Wellpark Road and Dublin Road accommodates the G Hotel. A large block to the rear accommodates numerous commercial units including retail warehouse developments such as Hickeys, Homestore & More and Woodies. A separate block at the south-eastern corner of the retail park accommodates the subject site. This block accommodates three storeys over basement. A car parking area is provided at basement level. At ground floor level the building accommodates a large retail unit currently occupied by a pet store and the unit which is subject to the current application. This unit is located to the front (south of the building), facing directly onto the Dublin Road. It is a large unit, occupying an area of 1,090 square metres and it is currently vacant. The upper

two floors of the building accommodate the Eye Cinema and associated ancillary uses. Currently 9 cinema screens are provided at the Eye Cinema.

- 2.3. The subject unit faces directly onto the Dublin Road to the south and also onto the main entrance to the retail park from the Dublin Road to the east. The building incorporates a curved elevation with extensive glazing. The Dublin Road to the south of the site is a heavily trafficked road being an important distributor route for traffic accessing the city centre from Oranmore and the eastern suburbs of Galway.

3.0 Proposed Development

Planning permission is sought for a change of use of 1,090 square metres from previously approved retail and restaurant use, to use as a boutique cinema, restaurant and bar use. The cinema is to incorporate four screens and associated ancillary facilities. The four cinemas are set out around a central aisle. Cinema A accommodates approximately 60 seats while Cinema B accommodates 57 seats, Cinema C accommodates 50 seats and Cinema D accommodates 26 seats. The bar and restaurant facilities are to be located adjacent to the southern elevation overlooking the Dublin Road. The remainder of the floor area is given over to toilet facilities, a circulation area, ancillary stores and stair cores.

4.0 Planning Authority Decision

4.1. Decision

Galway City Council issued notification to grant planning permission on the 27th July, 2017 subject to 9 conditions.

4.2. Planning Authority Assessment

- 4.2.1. The application was submitted on 6th June, 2017 on behalf of the applicant by Douglas Wallace Consultants. It was accompanied by a copy of the public notices, a completed application form and drawings.
- 4.2.2. A report from the **Drainage Section** stated that there is no objection to the proposed development subject to a number of surface water drainage.

- 4.2.3. A report from the **Environment Department** stated that there was no objection subject to six conditions most of which related to waste issues. Condition No. 3 required that the works be carried out between 9 a.m. and 6 p.m. Monday to Friday and 9 a.m. to 1 p.m. on Saturday.
- 4.2.4. A report from the **Chief Fire Officer** stated that there was no objection to the development subject to a number of fire safety conditions.
- 4.2.5. A report from the **Transportation Department** requests further information on the grounds that the application does not include a traffic assessment nor a car parking assessment.
- 4.3. The **Planner's Report** sets out the extensive planning history associated with the site. It notes that the proposal would result in an additional 193 cinema seats and that access to the subject space would be through the existing entrance to the Eye Cinema. It notes that the proposed change of use is acceptable in principle and the main issue that arises relates to car parking provision. In relation to this issue the Transport Engineer's comments are noted. However, it is considered unreasonable to request a further traffic impact assessment as the retail and restaurant use commands a higher parking requirement than that of the proposed use. The cinema in this instance, in accordance with development plan standards, would require an additional 19 car parking spaces. However, retail and restaurant uses attract a parking requirement of one space per 15 square metres and in this instance would generate a requirement of 72 car parking space. It is therefore considered that there is sufficient car parking and infrastructure capacity within an around the Wellpark Retail Centre to accommodate the proposed development. It is noted that other internal reports have no objection to the proposed development but suggest a number of conditions to be attached in the case where planning permission is granted. Thus these issues can be addressed by way of condition.
- 4.4. In relation to financial contributions it is noted that a financial contribution would be payable in this instance of €28 per square metre. However, a credit of €41 per square metre would be given for the existing retail use which is being paid under the parent permission. On this basis no further financial contribution is payable.
- 4.5. The planner's report therefore recommended that planning permission be granted subject to nine conditions.

4.6. Objections

4.7. One objection was received from the third party appellant. It raises issues in relation to the following:

- The road infrastructure is inadequate to cater for the development.
- The proposal results in an over-intensification of the area.
- The proposal will undermine future development of the core town and New Art Cinema which is located in Galway City Centre.

5.0 Planning History

There are no appeal files attached nor are there details of any planning applications contained in the rear of the planning file. However, the planner's report details relevant planning history and the more relevant cases are briefly summarised below:

Under Reg. Ref. 02/304 planning permission was refused for the demolition of two dwellinghouses and the development of a leisure complex incorporating cinemas, sports activity centre, leisure centre and gym together with retail units on the subject site. The reasons for refusal are not stated in the planner's report.

Under Reg. Ref. 02/780 planning permission was granted for the demolition of two dwellinghouse and the development of a leisure complex comprising of a seven screen cinema, sports activity centre, leisure centre, gym, retail units, building and site services, signage and basement car parking providing 63 spaces. The development was accessed off the Dublin Road and permission was granted in May, 2003.

Under Reg. Ref. 04/322 planning permission was granted for amendments to the approved scheme including a change of use from leisure centre/gym on the first and second floors to two additional cinemas.

Under Reg. Ref. 06/92 planning permission was granted for a boardwalk/balcony with steel and glass balustrade at raised ground floor level facing the Dublin Road.

Under Reg. Ref. 09/138 permission was granted for a four cinema screens at basement level cinema with a total capacity of 500 seats and a change of use at basement level from car park to cinema use. Permission was granted on 1st July,

2009. The planner's report indicates that under Reg. Ref. 14/141 that the planning life of this application was extended for a further period although the period of extension is not specified.

6.0 Grounds of Appeal

The decision of Galway City Council to issue notification to grant planning permission was the subject of a third party appeal by Ms. Suzanne O'Neill of 21 Fonthill Park, Rathfarnham, Dublin 14. The grounds of appeal are outlined below:

- The road infrastructure and accessibility to the proposed additional screens is inadequate. This is particularly important as many of the customers of the Wellpark cinema complex will be young children.
- The proposed four cinemas in such a small space represents an over-intensification of the development and should be scaled back.
- The proposed plan will have an adverse effect on the vitality and viability of the existing town centre.
- Inadequate traffic studies have been undertaken, and such studies are necessary, given the current demand on existing car parking within the retail and leisure complex. The proposed development would undermine the overall Galway City Council Retail Strategy.
- Detailed drawings should be provided as to where the new plant and machinery will be located as these could result in noise disturbance.
- There are concerns that there could be sound leakage from the proposed four auditoriums which will cause inconvenience and disruption to existing residents in the area.
- The Council only considered car parking requirements on the basis of an additional 194 seats. It is suggested that the requirement should be 20 spaces and not 19 as indicated in the planner's report. Furthermore, the Council failed to consider or provide parking requirements for the proposed restaurant and bar as part of the development.

- There are a number of vacant units in the area and if these are occupied or let in the short term there will be inadequate car parking for the overall development.

7.0 Appeal Responses

7.1. Applicant's Response to the Grounds of Appeal

7.1.1. A response was submitted by Simon Clear and Associates Planning Consultant.

The grounds of appeal state that the proposal in this instance represents a boutique cinema which is designed to attract a small number of patrons who are provided with a higher level of service than that normally associated with cinema experiences. The proposed screens are additional to and complementary to the nine existing larger screens at the multiplex cinema. With this in mind, the development is unlikely to be frequented by young children.

With regard to the issue of intensification, it is stated that the boutique cinema is low intensity and complementary to existing facilities that are already provided and operated within the centre.

In terms of the impact on the vitality and viability of the existing town centre, the proposed development would be in addition to the existing cinema facilities at this location and will only add to the vitality and viability of the town centre which heretofore exhibited some vacancy and some non-use of developed space.

With regard to traffic and car parking provision, it is stated that cinema going is fundamentally an evening leisure facility that is complementary to retail use and will therefore not necessarily add to the intensification of traffic generation or car parking demand during peak hours.

With regard to the Galway City Retail Strategy, it is stated that there are no grounds provided to explain how the proposal would fundamentally undermine the Galway City Retail Strategy. It is suggested that the proposal would have no impact upon the operation of the Galway City Retail Strategy.

With regard to increased noise disturbance, it is stated that the proposal is located within an established cinema complex and similar plant and machinery that already exists on site will be required to operate these additional screens. There will be no

noticeable alteration to the noise environment as a result of the proposal. Furthermore, the appellant has not identified any residents in the area that could be affected by the addition of four screens below the existing nine screens already established on the subject site.

Whether or not 19 or 20 car parking spaces should be provided appears to cater for the proposed use is considered to be “nit-picking”. Furthermore, persons using the proposed restaurant and bar associated with the cinema will only do so in conjunction with occupying cinema seats and therefore should not be double counted for the purposes of car parking provision.

With regard to car parking demand associated with existing vacant units on site it is argued that discreet application of car parking requirements to all elements within a multi-functional complex amounts to overcounting of the car parking requirement. The site is located within the ring road of Galway City which is well served by public transport. The objective of smarter travel to encourage alternative modes of access other than by private car should be promoted. The site is excellently located in this regard.

7.2. Planning Authority’s Response to the Grounds of Appeal

7.2.1. Galway City Council submitted a response on 12th September, 2017 and this is briefly summarised below:

- The road infrastructure was considered to be acceptable when the original development was granted planning permission. And it would be unreasonable to prohibit a change of use to a cinema which is a lesser car parking requirement than existing uses.
- The site is of adequate size to accommodate the proposed use within the existing building envelope.
- It is unclear how the proposal will affect the vitality and viability of the town centre. If anything it will enhance the role of the town centre as greater demand will be created for retail and restaurant uses with the loss of this space at Wellpark Retail Centre.
- There is ample provision of car parking to accommodate the proposed use.

- The proposal is fully in accordance with the zoning provisions for the site and would not in any way compromise the city's retail strategy.
- Information with regard to new plant and machinery has been requested by way of planning condition.
- The parking credit applied for the proposal is 72 car parking spaces, which is well in excess of the quantum of parking required for the proposed use. Furthermore, if the units were let on a short-term basis as retail units then the parking standard for retail use would apply and this would be in accordance with the original planning permission where the quantum of parking provided was considered to be excessive.
- It is therefore recommended that the Board uphold the decision of Galway City Council and grant planning permission for the proposed change of use.

8.0 Development Plan Provision

- 8.1. The site is governed by the policies and provisions contained in the Galway City Development Plan 2017-2023. The subject site is zoned 'CI' to provide for enterprise, light industry and commercial uses other than those reserved to the city centre zone.
- 8.2. In terms of car parking requirements - cinemas, theatres and places of worship require 1 space for every 10 seats. In the case of retail development - 1 space is required for every 15 square metres of gross floor area.
- 8.3. Chapter 6 of the development plan specifically relates to the retail strategy. The main strategy objective includes to provide for an appropriate range and scale of retail services throughout the city at accessible locations and in accordance with the settlement strategy for the city.

9.0 Planning Assessment

I have read the entire contents of the file, visited the site in question and I consider the pertinent issues with regard to determining the current application and appeal are as follows:

- Impact on Road Infrastructure
- Impact on Parking Provision
- Intensification of Use
- Impact on Vitality and Viability of Galway City Centre
- Noise Impacts
- Other Vacant Units within the Wellpark Complex
- Appropriate Assessment

9.1. Impact on Road Infrastructure

- 9.1.1. The grounds of appeal argue that the road infrastructure and accessibility to the existing Wellpark complex is inadequate. Furthermore, the nature of the use will attract younger children which will give rise to road safety concerns.
- 9.1.2. In relation to the issue of road infrastructure, I inspected the subject site and the road network surrounding the subject site. I acknowledge that traffic volumes on the road network are heavy, with the site being in close proximity to the Moneenagisha junction and also adjacent to the Dublin Road which is an important distributor route in and out of the city. Notwithstanding this point, the road infrastructure serving the Wellpark complex was developed as part of the overall scheme and was deemed adequate to cater for the uses proposed within the overall development. There is an extant planning permission for a restaurant and retail use within the subject unit which would in itself give rise to demands on road infrastructure. I do not consider that the change of use proposed under this application will in any way accentuate demand for requisite road infrastructure which would result in that infrastructure being inadequate. I am satisfied that in overall terms, the proposed change of use in question would have a negligible impact in terms of traffic demand and by extension will not result in any excessive demands in respect of road infrastructure.
- 9.1.3. With regard to the presence of young children in the vicinity of the retail complex, the applicant points out in response to the grounds of appeal that the proposal in this instance specifically seeks to provide a boutique style cinema which will essentially cater for the tastes of the grown-up market, rather than universal releases. The

proposed change of use in this instance therefore will not attract significant amounts of children over and above that which currently exists. Furthermore, the existing road infrastructure includes footpaths and designated pedestrian crossings within the complex and therefore provides appropriate pedestrian vehicular segregation. As such, it will be inappropriate in my view to refuse planning permission on grounds that the proposed development could pose a particular traffic hazard to young children.

9.2. Impact on Parking Provision

- 9.2.1. I refer the Board to the photographs attached, I visited the subject site, I inspected the site on a Wednesday afternoon during a period of inclement weather when car usage would be expected to be high. Notwithstanding this point the Board will note from the photographs attached that there was ample free car parking space at basement level directly beneath the subject site. This suggests that there is adequate car parking to cater for the proposed development. Furthermore, it is apparent from the parking standards set out in Table 11.5 of the City Development Plan, that cinemas attract lower parking requirements than that associated with retail developments. Therefore, it can be reasonably anticipated that car parking demands associated with the cinema will be less than that associated with a retail unit and restaurant which currently have the benefit of planning permission on the subject site. I would agree therefore with the Planning Authority's conclusion that the cinema will have a lesser car parking requirement than that associated with the extant permission on site.
- 9.2.2. Furthermore, it is also apparent that peak parking demand associated with the cinema is not likely to coincide with peak parking demand associated with retail activity. While peak parking demand associated with retail activity tends to be during normal business hours, parking demand associated with cinemas and theatres and other places entertainment tend to be higher in the late afternoon and evening time. Therefore, the same car parking spaces are likely to be occupied by the different land uses throughout the day and evening time. This in my view represents a more appropriate and efficient use of car parking spaces.
- 9.2.3. Whether the parking requirement associated with the new cinema is 19 or 20 spaces is immaterial in my view. As the Planning Authority point out the car parking

requirements associated with cinemas are significantly less than that associated with restaurants and retail uses and as such the change of use would result in a significantly lower car parking demand, less than 1/3 of that associated with the extant use. As such, there is no requirement in my view to provide any additional car parking associated with the cinema.

9.3. Intensification of Use

I have argued above that the proposed development will not result in any intensification of use in terms of traffic generation. The proposed cinema use is likely to result in a lower trip generation and is also likely to attract peak car parking demand outside normal business hours because of the recreational nature of the use proposed. Furthermore, I am satisfied that the unit in question is of sufficient size to cater for the proposed development. I do not consider that the cinemas or the associated bar and restaurant use are in any way crammed into the floorspace. Having inspected the drawings, I consider that there is sufficient space and circulation area to adequately cater for the restaurant, bar and cinema uses on site.

9.4. Impact on Vitality and Viability of Galway City Centre

9.4.1. The grounds of appeal did not elaborate as to how the proposed development will impact on the vitality and viability of Galway City Centre. The subject site is zoned CI, it is therefore the Planning Authority's objective to seek that community and cultural facilities, amongst other uses are accommodated under this land use zoning objective. The Planning Authority, through the land use zoning objectives contained in the development plan, seek to ensure that community and cultural facilities are provided on the subject site as these uses "are compatible and contribute to the zoning objectives". Furthermore, the Board will note that the unit in question has already been constructed and therefore it is in accordance with the proper planning and sustainable development of the area that the existing unit accommodates a use which is acceptable in principle with the zoning objectives set out in the development plan. The subject site is also located in close proximity of the town centre and is located within an existing retail park and within wider commercial uses situated along the Dublin Road.

9.4.2. With regard to the impact of the proposed development on the Galway Retail Strategy, the Board will note that a retail use is not proposed in this instance.

Therefore, the proposed development will not result in the proliferation of retail uses outside the city centre which could contribute to the weakening of the viability and vitality of the city centre. As the Planning Authority point out in its response to the grounds of appeal, the proposed change of use from retail to cinema use will, if anything, support and enhance the retail strategy which seeks to strengthen retail activity within the city centre.

9.5. Noise Impacts

- 9.5.1. The grounds of appeal argue that the location of plant and machinery could give rise to excessive noise which could impact on the residential amenities of the surrounding area. Having regard to the commercial nature of the subject site, and its surroundings together with its proximity to the Dublin Road, I would consider that in general ambient noise levels are high in the area and that any additional plant and machinery associated with the cinema use is highly unlikely to give rise to any additional noise generation which would result in a material change in ambient or residual noise levels within the area. Furthermore, the Board will note from the photographs attached that the subject site is not located contiguous to any residential dwellings in the vicinity. The nearest residential dwellings are located over 100 metres away and these dwellings are surrounded by commercial development in much closer proximity. Any noise generated by plant associated with the cinema is highly unlikely therefore to give rise to any residential amenity issues.
- 9.5.2. Finally, in relation to this point Condition No. 5 of the Planning Authority requires that details of all plant and machinery, filters or extractions vents used in connection with the development shall be submitted to and agreed in writing with the Planning Authority. This shall include details of any sound attenuation measures to be incorporated. It is stated that all plant shall be located within the buildings or the basement and shall not extend beyond the roof level unless subject to a separate grant of planning permission. I therefore consider that the Planning Authority have adequately addressed this issue by way of condition and that if the Board are minded to grant planning permission a similar condition should be attached.
- 9.5.3. With regard to the issue of sound leakage from the auditoriums, there is no evidence to suggest that this constitutes a material issue. It is anticipated that the proposed development will be constructed and will be compliant with any requirements of Part

E of the Building Regulations to ensure that the cinemas accord with any acoustic performance requirements set out under the Building Regulations.

9.6. Other Vacant Units within the Wellpark Complex

- 9.6.1. It would be reasonable to assume that the car parking required to cater for the original development granted under Reg. Ref. 02/780 and any subsequent amendments was predicated on full occupancy of the units proposed. It is also reasonable to assume that the car parking provision was deemed to be acceptable and in accordance with the standards set out in the development plan operational at the time of granting planning permission. Therefore, any future occupancy of retail units within the retail park would be catered for under the terms of the original permission. Furthermore, I have argued above that the proposal represents a less intensive use in terms of parking requirements. I have also argued above, that the use of the unit as a boutique cinema will experience peak car parking demand in the evening times which is outside the peak retail times. I am therefore satisfied that the issue of parking demand in respect of other retail units within the complex being occupied, is not a significant and material issue in the adjudication of this appeal.

9.7. Appropriate Assessment

Having regard to the nature and scale of the proposed development and the nature of the receiving environment together with the proximity of the nearest European site, 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 and projects on a European site.

10.0 Conclusions and Recommendation

- 10.1. Arising from my assessment above, and having regard to the commercial use already established within the retail park and the fact that the proposed cinema use constitutes a land use which will be acceptable in principle under the zoning objective, I consider that the proposed development is in accordance with the proper planning and sustainable development of the area. Furthermore, I consider that the utilisation of key commercial open space on a corner site within the park would

constitute an appropriate planning gain and would add to the vitality and vibrancy within the retail park and within commercial developments along the Dublin Road.

11.0 Decision

Grant planning permission for the proposed development in accordance with the plans and particulars lodged based on the reasons and considerations set out below.

12.0 Reasons and Considerations

Having regard to the CI zoning objective associated with the site which seeks to provide for enterprise, light industry and commercial uses, it is considered that the proposed change of use from retail and restaurant use to boutique cinema and restaurant/bar use, subject to conditions set out below, would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health and would generally be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

13.0 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 the 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. Water supply and drainage arrangements, including the attenuation and 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.

3. The applicant shall provide cycle parking spaces within the development site. Details of the number, location and design of cycle parking spaces shall be submitted to the planning authority for written agreement prior to the commencement of development.

Reason: In the interest of sustainable transport.

4. Prior to the commencement of development, the applicant shall submit for written agreement with the planning authority details in respect of waste storage and disposal arrangements along with any litter control arrangements.

Reason: In the interest of visual amenity and the proper planning and sustainable development of the area.

5. Prior to the commencement of development details of all plant machinery, filters and extraction vents associated with the development shall be submitted to and agreed in writing with the planning authority. These shall include any proposal for sound attenuation measures to be incorporated within such plant, machinery ducting filters or extraction vents. All plants shall be located within the building or basement and shall not extend beyond the roof level unless subject of a separate planning application.

Reason: In the interest of residential and visual amenity.

6. A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

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

7. Prior to the commencement of development, the developer shall submit a traffic management plan for the written agreement of the planning authority setting out details on the movement of machinery and materials on and off site and associated storage of machinery and materials for the duration of development.

Reason: In the interest of traffic and pedestrian safety.

8. Any alterations to public services, public areas or utilities necessitated by the development shall be carried out at the developer's expense having firstly obtained the agreement in writing of the planning authority or other public bodies responsible for such utilities prior to any alterations carried out.

Reason: In the interest of orderly development.

9. Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0900 to 1300 on Saturdays and not at all on Sundays or Public Holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the amenities of property in the vicinity.

10. No advertisement or advertisement structure, the exhibition or erection of which would otherwise constitute exempted development under the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, shall be displayed or erected (on the building/within the curtilage of the site) unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity. In order to allow the planning authority to assesses the impact of any such advertisement or structure on the amenities of the area

Paul Caprani,
Senior Planning Inspector.

20th November, 2017,