



An  
Bord  
Pleanála

## Inspector's Report ABP-300921-18

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<b>Development</b>	Permission for change of use of No. 12 from retail to gaming and leisure and external and internal alterations. Retention permission for signage at Nos. 12 & 16.
<b>Location</b>	St. Patrick's Quay, Cork.
<b>Planning Authority</b>	Cork City Council
<b>Planning Authority Reg. Ref.</b>	17/37517
<b>Applicant(s)</b>	Finbarr Corkery
<b>Type of Application</b>	Retention permission & permission
<b>Planning Authority Decision</b>	Grant, subject to 12 conditions
<b>Type of Appeal</b>	Third party -v- Decision
<b>Appellant(s)</b>	John O'Mahony
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	28 <sup>th</sup> June 2018
<b>Inspector</b>	Hugh D. Morrison

# Contents

1.0 Site Location and Description .....	3
2.0 Proposed Development .....	3
3.0 Planning Authority Decision .....	4
3.1. Decision .....	4
3.2. Planning Authority Reports .....	4
4.0 Planning History.....	5
5.0 Policy Context.....	6
5.1. Development Plan.....	6
5.2. Natural Heritage Designations .....	6
6.0 The Appeal .....	6
6.1. Grounds of Appeal .....	6
6.2. Applicant Response .....	7
6.3. Planning Authority Response .....	7
6.4. Observations .....	7
6.5. Further Responses.....	8
7.0 Assessment.....	8
8.0 Recommendation.....	13
9.0 Reasons and Considerations.....	13
10.0 Conditions .....	13

## 1.0 Site Location and Description

- 1.1. The site is located centrally on St. Patrick's Quay, which lies on the northside of the River Lee and in Cork city centre. This Quay is composed of a continuous frontage of buildings, which exhibit a variety of heights and designs. These buildings are in use as shops, offices, leisure and gaming venues, hotels, car servicing and repair garages, and car parks.
- 1.2. The site itself, at No. 12 St. Patrick's Quay, has a narrow frontage relative to its depth and so it is of elongated form. This site extends over an area of 0.116 hectares and it accommodates a two storey building (265.5 sqm), which is presently vacant having been last used as a mobile phone repair place.
- 1.3. The applicant owns the adjoining properties on either side of the site, i.e. to the east, at No. 16 St. Patrick's Quay, a multi-storey red brick building from the late 19<sup>th</sup> century, which is in use at ground floor level as a leisure and gaming venue (942.5 sqm), and, to the west, a modern single storey building and forecourt, which are in use as a car servicing and repair centre.

## 2.0 Proposed Development

- 2.1. The proposal seeks planning permission for a change of use of No. 12 St. Patrick's Quay from retail to gaming and leisure, along with external and internal alterations that would facilitate this change of use. Thus,
  - Externally, the existing pedestrian door in the front elevation, which serves a stairs to the first floor, would be widened, a first floor opening in the front elevation and openings in the exposed western side elevation would be blocked up, a common parapet height would be secured to the side elevations and the existing double pitched roofs would be replaced by a flat one, and the north eastern corner of the building would be reworked to provide an open space with a void over.

Under further information, the proposed blocking up of the first floor opening in the front elevation was omitted and the proposed changes to the roof were

revised to secure a common eaves height, the construction of a new double pitched roof to the front portion of the building and cladding of this roof and the retained double pitched roof with profiled metal sheeting.

- Internally, the first floor would be raised and the layout of each floor would be revised. Replacement staircases would be introduced, too. An internal door would connect the ground floor of No. 12 to the adjoining ground floor of No. 16.

2.2. Under further information, the applicant clarified that the proposed use would operate as an extension to his existing gaming venue and it would maintain the same hours of opening, i.e. 14.00 to 06.00 daily.

2.3. The proposal also seeks retention planning permission for existing signage at Nos. 12 & 16. Under further information, the extent of the banner signs above the two arched openings at No. 16 was reduced to ensure that they fit within frontages that are under the applicant's control.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Following receipt of further information, permission granted subject to 12 conditions. The second of these conditions states that the proposed use shall only operate as an extension to the applicant's existing use in the adjoining building to the east and the third condition omits from the retention permission the banner signs at No. 16, the high-level sign at No. 12, the front roller shutters at No. 12, and it requires that details of a new fascia sign at No. 12 be submitted for the Planning Authority's agreement.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

Under further information the Planning Authority raised the following issues: clarification of usage, signage, revisions to the proposed alterations to No. 12, and

the status of the proposed use, i.e. would it be a standalone facility or an extension to the existing club.

#### 3.2.2. Other Technical Reports:

- Irish Water: No objection, standard notes.
- Drainage: No objection, subject to conditions.
- Roads Design: No objection, subject to condition.

## 4.0 Planning History

No. 16 St. Patrick's Quay:

- 04/29164: Retention of change of use of storage space to private members card playing club: Permitted.
- 05/30035: Retention of side extension: Permitted.
- 06/30893: Change of use of storage space to restaurant (250 sqm beside private members card playing club) and change of front elevation: Permitted.
- 07/32219: Change of use of part (85.1 sqm of 170.2 sqm) of private members card playing club to gaming and leisure premises: Temporary 3-year permission granted, which expired in 2010.
- 08/33605: Retention of signage affixed to emergency exit door onto MacCurtain Street: Refused.

Enforcement

- E5306: Unauthorised use of premises for gambling: Enforcement notice served on Nos. 13 – 15 St. Patrick's Quay: Warning notice served on No. 16 St. Patrick's Quay: Following granting of retention permission to 04/29164, file closed.
- E7207: Enquiry re. gaming machines outside space permitted under 07/32219 and expiry of same: On inspection of said space no gaming machines found.

## 5.0 Policy Context

### 5.1. Development Plan

Under the Cork City Development Plan 2015 – 2021 (CDP), the site is shown as lying within the City Centre Retail Area (CCRA). The commentary to the Zoning Objective for this Area states that “Other uses such as residential, hotel, office, and cultural and leisure facilities, etc. which complement the retail function of the CCRA and promote vibrancy of the city centre are also permitted...”

Casinos/private members clubs and shop fronts and facades are addressed under Paragraphs 16.83 and 16.103 of the CDP.

### 5.2. Natural Heritage Designations

Cork Harbour SPA (site code 004030)

Great Island Channel SAC (site code 001058)

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- The appellant questions whether or not the gaming use at No. 16 St. Patrick’s Quay is authorised. As the proposed use would be an extension of this one, to grant it risks authorising an extension to an unauthorised use. Alternatively, if the Board considers that the proposed use can be adjudicated upon, then this should be on the basis of the existing gaming use, too, i.e. 264.5 sqm + 942.5 sqm.
- Exception is taken to the Planning Authority’s position that the proposal as revised and clarified is largely acceptable from a land use planning perspective. Whereas the relevant zoning objective seeks the provision of higher order comparison retail uses, the proposed use would not be compatible with retailing at all. The continuing pattern of non-retail uses on St. Patrick’s Quay is frustrating the realisation of the said objective.

- Attention is drawn to 7 other gaming venues/amusement arcades in the city centre, the majority of which are within 5 minutes walking distance of the site. The Planning Authority failed in its assessment of the proposal to take into account the proliferation of the said uses and the undermining effect of the same on the vibrancy of the city centre.

## 6.2. Applicant Response

- The appellant is a competitor of the applicant's, as he owns the Victoria Sporting Club and Casino at No. 5 St. Patrick's Quay.
- Under further information, the question of unauthorised uses at No. 16 was addressed and the relevant plans were revised to show uses that pertained previously, including prior to those granted under a temporary permission. Reference is made to the registration of the premises with the Department of Justice.
- The amalgamation of the existing and proposed floorspaces would be inappropriate as the existing gaming use does not extend over the entirety of the existing floorspace.
- Attention is drawn to Paragraph 15.7 of the CDP, which explicitly states that, while retailing is to be prioritised in the City Centre Retail Area, this not to the exclusion of other land uses, which include cultural and leisure facilities.
- The proposed extension would not lead to a proliferation of gaming uses as it would entail more than just gaming uses, e.g. leisure and restaurant facilities, and thus add to the vibrancy of the city centre.

## 6.3. Planning Authority Response

No further comments.

## 6.4. Observations

None

## 6.5. Further Responses

None

## 7.0 Assessment

7.1. I have reviewed the proposal in the light of the CDP, relevant planning history, the submissions of the parties, and my own site visit. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Land use,
- (ii) Visual amenity,
- (iii) Water, and
- (iv) AA.

### (i) Land use

7.2. The site lies within the City Centre Retail Area (CCRA), which is subject to the following Zoning Objective: “To provide for the protection, upgrading and expansion of retailing, in particular higher order comparison retailing, as well as a range of other supporting uses in the City Centre retail area.” The accompanying commentary states that “Retailing is prioritised in this area but not to the exclusion of other land use types. Other uses such as residential, hotel, office and cultural and leisure facilities, etc. which complement the retail function of the CCRA and promote vibrancy in the City Centre are also permitted, subject to the policies to promote City Centre retailing in Chapter 13.”

7.3. The proposed change of use would entail the replacement of an existing vacant shop with an extension to the applicant’s existing gaming and restaurant use. As the proposed use would be a leisure one, it would come within the ambit of the aforementioned commentary.

7.4. The appellant questions whether the applicant’s existing use is authorised. This question is of relevance insofar as, if this use is not authorised, then it would be inappropriate to authorise an extension of it.

7.5. The applicant has responded to the appellant’s question by stating that this matter was addressed under further information. A comparison of the originally submitted



existing and proposed layout plans (drawing nos. PL-01 & 03) and the revised proposed layout plan (drawing no. PL-03 revision B) submitted at the further information stage indicates that the applicant intends to revert to the layout of his existing use that pertained before a previous temporary permission was granted, i.e. from that authorised under 07/32219 to that authorised under 06/30893. Provided such reversion occurs, the currently proposed extension of the existing use would be able to proceed in conjunction with an authorised use. I, therefore, consider that a condition should be attached to any permission, which requires that the layout shown under 06/30893 pertains.

- 7.6. The appellant questions whether the proposed gaming and leisure use would complement the Zoning Objective's pursuit of higher order comparison retail uses. Instead, he expresses the view that this use would frustrate this Objective.
- 7.7. During my site visit, I observed that ground floor uses on St. Patrick's Quay range widely across retail and commercial sectors. Thus, to the east of the applicant's property lies a leisure centre, a hotel, and a vacant building, while to the west lies a car servicing and repair garage, a coffee shop, a bridal shop, a car stereo and alarms shop, a beautician's, the entrance to a car park, a vacant shop, a TD's constituency office, a model shop, a beauty shop, and a betting shop. Thus, while retail uses are in the majority, other uses are present, too, and the retail uses tend not to be higher order comparison ones. I, therefore, take the view that this aspirational aspect of the Zoning Objective needs to be weighed along with the existing baseline of uses on St. Patrick's Quay. Given that the proposed gaming and leisure use would be an extension of an existing one and it would entail the reuse of a vacant building next to a car servicing and repair garage, I am unable to conclude that its presence would be harmful to the retail function of the Quay. Insofar as it would generate increased footfall, it may indeed complement that function.
- 7.8. The appellant draws attention to the 7 other gaming/amusement arcades in the city centre, the majority of which are within 5 minutes walking distance of the site. He expresses the view that the Planning Authority failed to take into account the proliferation of these uses and the undermining effect that they have on the vibrancy of the city centre.

- 7.9. The applicant has responded by stating that his proposed use is for gaming and leisure, rather than just gaming, and, likewise, his existing use, which would be extended by the proposed use, brings together gaming facilities with a restaurant. Thus, these uses would be wider than simply that of gaming that occurs elsewhere and so they are capable of being distinguished.
- 7.10. I note the applicant's response. I note, too, that, under Figure 1 of the appellant's submission, existing arcade premises are mapped. These show a reasonable dispersal of these premises, although 4, including the appellant's and the applicant's, are located in the city block bound to the north and south by MacCurtain Street and St. Patrick's Quay. These 4 are separated out along the frontages of this Street and Quay, with 2 on each. Thus, they do not congregate side-by-side. Neither would that of the proposed use, as it would be an extension to an existing use rather than a stand-alone additional facility. Condition 2 of the Planning Authority's draft permission conditions the proposed use to that of an extension, a condition that I consider should be replicated in any permission that the Board may decide to grant.
- 7.11. I conclude that the proposed use would be compatible with the Zoning Objective for the site and, provided it is operated as an extension to the applicant's existing use in the adjoining premises, this use would not lead to a proliferation of gaming uses within the city centre.

**(ii) Visual amenity**

- 7.12. Under the proposal, external alterations would be made to No. 12 St. Patrick's Quay. Thus, with respect to the front elevation, the first-floor window was to be blocked up. Under further information, this was omitted. The existing pedestrian front door on the LHS of the front elevation would be widened slightly and the existing roller shutters to the shop front would be re-sited in a position flush with the front plane of this elevation. Under condition 3(d) of the draft permission, the Planning Authority seeks the removal of these shutters and the accompanying case planner's report states that any security shutters should be installed behind the shop front.
- 7.13. I consider that the first-floor opening should indeed be retained and that the widening of the said door would be appropriate. Paragraph 16.103 of the CDP addresses shop fronts and commercial facades and it advocates the approach to security shutters enunciated by the case planner. I, therefore, consider that a condition should be

attached that makes clear that the subject shutters in their proposed position are not permitted.

- 7.14. The western side elevation of No. 12 is exposed insofar as it abuts the adjoining forecourt to the car servicing and repair garage. Existing openings in this elevation would be blocked up. The arched vehicular doorway would, however, be retained as a discernible feature from within the ground floor of the building. At the further information stage, a different approach to the roofing of this building was brought forward, which would allow its attractive existing timber beam roof structure to be retained and left exposed within the first floor. This structure spans the central and rear portions of the building and it would be accompanied by a raised double pitched roof over the front portion.
- 7.15. I note that, while the submitted plans show that the front gable of the new roof would protrude above the parapet to the front elevation of the building, they do not show how this protrusion would be dealt with. I consider that a design detail needs to be brought forward in this respect that would be respectful of the existing front elevation, which is clearly visible from St. Patrick's Quay and Merchant's Quay on the southern side of the River Lee. This matter could be conditioned.
- 7.16. The proposal also seeks the retention of existing signage on the front elevations to Nos. 12 & 16. In relation to the former building, this signage comprises an elongated banner above and below the first-floor window and a further sign on the front face of the projecting security shutter box. In relation to the latter, this signage comprises individually applied letter and symbols set within two arches above the two entrances to this building from St. Patrick's Quay and two elongated banners underneath first floor windows.
- 7.17. Under condition 3(b) of the draft permission, the two banners at No. 12 are omitted from the permission and, under condition 3(a), the two banners at No. 16 are omitted, too. Condition 3(c) affords the opportunity for a new fascia sign at No. 12 to be agreed upon.
- 7.18. I concur with the Planning Authority's approach as encapsulated under the aforementioned condition 3. Thus, only the signage within the said arches would be suitable for retention permission.

7.19. I conclude that the external alterations proposed for No. 12 would be compatible with the visual amenities of the area, provided the interface between the new double pitched roof and the front parapet of the building is successfully resolved. I conclude, too, that the banner signs on the front elevations to both Nos. 12 & 16 would be incompatible with these visual amenities.

### **(iii) Water**

7.20. The site is a city centre one, which is fully serviced with respect to the public mains water supply and the public foul and surface water sewerage system.

7.21. Under the Lee CFRAMS, the site is shown as being at risk of fluvial and tidal flooding. Under Paragraph 5.28 of the Planning System and Flood Risk Management Guidelines, most proposals for a change of use of an existing building are stated as being “unlikely to raise significant flooding issues” unless, e.g. they introduce a significant additional number of people into flood risk areas.

7.22. In the light of the above and in the knowledge that the proposal would have the potential to introduce additional people into the applicant’s overall premises, I consider that it would be prudent to condition the submission of an emergency plan, which would address evacuation procedures in the event of a flood event.

7.23. I conclude that the proposal would be capable of being satisfactorily serviced and that the site’s flood risk should be addressed by means of an emergency plan.

### **(iv) AA**

7.24. The site is not in a Natura 2000 site and the nearest such sites are the Cork Harbour SPA (site code 004030) and Great Island Channel SAC (site code 001058). This site is a fully serviced, developed, urban one and so I do not consider that its change of use as proposed would be likely to have any significant effects on the Conservation Objectives of these Natura 2000 sites or any other Natura 2000 sites.

Having regard to the nature and scale of the proposal, the nature of the receiving environment, and the proximity of the nearest European sites, no Appropriate Assessment issues arise and it is not considered that the proposal 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. That permission and retention permission be granted.

## 9.0 Reasons and Considerations

Having regard to the Cork City Development Plan 2015 – 2021, it is considered that, subject to conditions, the proposed use would, as an extension to an existing adjoining use, be compatible with the Zoning Objective for the site. The proposed external alterations to the building at No. 12 St. Patrick's Quay would, subject to the omission of the front security shutters and the elaboration upon the relationship between the proposed new roof and an existing front parapet, be compatible with the visual amenities of the area. However, the existing banner signs on the buildings at Nos. 12 & 16 St. Patrick's Quay would be incompatible with these amenities. The site is serviced and its attendant flood risk can be addressed by means of an emergency plan. The proposal would thus be compatible with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 14<sup>th</sup> day of December 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 amended as follows:
  - (a) Details of how the interface between the proposed new roof and the parapet to the front elevation of the building at No. 12 St. Patrick's Quay would be handled shall be prepared.

(b) Details of any proposed new fascia sign for the front elevation of the building at No. 12 St. Patrick's Quay shall be prepared.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interests of visual amenity.

3. Permission is not hereby granted for the proposed re-siting of the security shutters to the shop front at No. 12 St. Patrick's Quay.

**Reason:** In the interest of clarity.

4. Retention permission is not hereby granted for the retention of the banner signs at first floor level on the front elevations of the buildings at Nos. 12 & 16 St. Patrick's Quay.

**Reason:** In order to safeguard the visual amenities of the area.

5. Prior to the commencement of the proposed gaming and leisure use at No. 12 St. Patrick's Quay, an emergency plan for the building in the event of flooding shall be submitted to the Planning Authority.

**Reason:** In the interest of public safety.

6. The proposed gaming and leisure use at No. 12 St. Patrick's Quay shall only operate as an extension to the existing gaming and restaurant use at No. 16 St. Patrick's Quay.

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

7. Prior to the commencement of the proposed gaming and leisure use at No. 12 St. Patrick's Quay, the gaming and restaurant use at No. 16 St. Patrick's Quay shall operate in strict accordance with the ground floor layout plan shown on drawing no. PL-03 revision B.

**Reason:** In the interest of clarity.

8. 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.

9. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006.

**Reason:** In the interest of sustainable waste management.

10. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

**Reason:** In the interests of public safety and residential amenity.

11. (a) Amplified music or other specific entertainment noise emissions from the premises shall not exceed the background noise level by more than 3 dB(A) during the period 0800 to 2200 hours and by more than 1 dB(A) at any other time, when measured at any external position adjoining a noise sensitive building in the vicinity. The background noise level shall be taken as L90 and the specific noise shall be measured at LAeq.T.

(b) The octave band centre frequencies of noise emissions at 63 Hz and at 125 Hz shall be subject to the same locational and decibel exceedence criteria in relation to background noise levels as set out in (a) above. The background noise levels shall be measured at LAeqT.

(c) The background noise levels shall be measured in the absence of the specific noise, on days and at times when the specific noise source would normally be operating; either

- (i) during a temporary shutdown of the specific noise source, or
- (ii) during a period immediately before or after the specific noise source operates.

(d) When measuring the specific noise, the time (T) shall be any five minute period during which the sound emission from the premises is at its maximum level.

(e) Any measuring instrument shall be precision grade.

Detailed plans and particulars indicating sound-proofing or other measures to ensure compliance with this condition shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. An acoustical analysis shall be included with this submission to the planning authority.

**Reason:** In order to protect the amenities of residential property in the vicinity having particular regard to the nuisance potential of low frequency sound emissions during night-time hours.

12. (a) All entrance doors in the external envelope shall be tightly fitting and self-closing.
- (b) All windows and roof lights shall be double-glazed and tightly fitting.
- (c) Noise attenuators shall be fitted to any openings required for ventilation or air conditioning purposes.

Details indicating the proposed methods of compliance with the above requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

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Hugh D. Morrison  
Planning Inspector

12<sup>th</sup> July 2018