



An
Bord
Pleanála

Inspector's Report ABP.301227-18

Development	Change of use of part of a ground floor from retail/commercial use to restaurant use
Location	109/110 O'Connell Street, Limerick city
Planning Authority	Limerick City & County Council
Planning Authority Reg. Ref.	17/1046
Applicant(s)	Skycrest Ltd.
Type of Application	Planning permission
Planning Authority Decision	Grant permission
Type of Appeal	First Party
Appellant(s)	Skycrest Ltd.
Observer(s)	None
Date of Site Inspection	10 th July 2018
Inspector	Mary Kennelly

1.0 Site Location and Description

1.1. The site is located on O'Connell Street in the centre of Limerick city. It relates to the ground floor of an existing premises which is in use as a hotel, the George Hotel, with retail and restaurant uses at first floor level. The site is located between Shannon Street and Cecil Street on the western side of O'Connell Street. It is noted that the P.A. reports stated that the ground floor area to which the application relates (595sq.m) was currently vacant, but that the existing use had been identified as retail. However, at the time of my site inspection, the ground floor was occupied as a retail use (food emporium) with food and drink served on the premises, with seating areas both inside and outside on the street

2.0 Proposed Development

- 2.1. The proposed development involves the conversion of part of the ground floor (595sq.m) from retail/commercial use to restaurant use.
- 2.2. The submissions on file indicate that the proposed use is "a new food and epicurean centre of excellence featuring a retail food hall modelled on the Eatly concept in New York.....The new space owned and operated by Ronan Brannigan of the Savoy Hotel, George Hotel and Hampton's Bar and Grill will feature the very best of local and regional food driven by local suppliers showcased in a retail centre of excellence"

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission subject to 7 no. conditions. The conditions related mainly to a requirement to submit additional details relating to signage, grease traps, refuse storage, extraction and ventilation. Condition 3 required that the take-away use be ancillary to the main use as a sit-down restaurant.

Condition 2 required the payment of a development contribution of €44,625 in accordance with the General Development Contribution Scheme

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Area Planner's report noted that the proposed development provides for the redevelopment of the existing vacant unit at a prime location in the city centre, and that the use is permitted in principle in the zoning matrix. However, it was considered that inadequate information had been submitted in respect of the signage, materials and finishes, and information regarding the future occupier, the number of staff, hours of operation etc. These items were the subject of a FI request on 10th January 2018. Further information was also sought in respect of whether it is proposed to amalgamate the adjoining café/restaurant unit into the development, or whether this would remain as a stand-alone unit.

3.2.2. Other Technical Reports

HSE – (14/12/17/) No objection subject to conditions including the following matters

Staff toilet and customer toilet to be provided;

Hand washing, food washing, washing up facilities to be provided;

Detailed plans for layout and design of the food preparation area to be submitted;

Refuse storage area to be provided

Pest control to be addressed.

Chief Fire Officer – No objection subject to compliance with Building Regulations; Fire Safety Certificate and Disability Access Certificate.

3.2.3. Further Information Response

Further information was submitted on 29th January 2018. This stated the following

- Food Hall – the proposed use would consist of a Food Hall providing direct contact between customer and food producer. It would include an upmarket seafood counter where customers could choose their fish and either have it cooked for them immediately or for use at home.

- Hours of operation – the existing restaurant would continue to operate normal hours. The food hall would operate between 08.00 and 22.00 hours daily.
- Staffing and employment – the existing restaurant and retail premises employed approx. 40 people. It is anticipated that the proposed use would employ a similar number of people in a combination of full time and part time roles.
- Fire Regs – for the purposes of Fire Regulations, there will be linkages between all spaces.

3.2.4. Planning authority response to Further Information of 29/01/18

The Area Planner was satisfied with the further information response and permission was recommended.

3.3. Prescribed Bodies

Irish Water - No objection subject to conditions (15/12/17).

3.4. Third Party Observations

None.

4.0 Planning History

04/0412 – planning permission granted for a 128 bedroom hotel and new retail/commercial store at ground floor and basement level. This included a condition requiring payment of a Development Contribution under the GDCS of €396,050.

06/0416 – planning permission granted for change of use from commercial/retail to restaurant of part of the ground floor and basement. This included a condition requiring payment of a Development Contribution under the GDCS of €36,303. This relates to the unit described as being vacant at the time of the determination of the planning application. By the P.A.

17/104 – planning permission sought for a change of use of part of the ground floor from retail/commercial use to restaurant use. This application has not been determined.

5.0 Policy Context

5.1. Development Plan

Limerick City and County Development Plan 2010-2016 (as extended)

Zoned for 'City Centre Area'. Relevant objectives include the following:-

Obj. ZO.1(B) – City Centre Commercial Area – To support the retention and expansion of a wide range of commercial, cultural, leisure and residential uses (in the commercial core area/apart from comparison retail uses) in the city centre as defined in the City Centre Strategy.

Obj. ZO.1(A) – City Centre Retail Area – To provide for the protection, upgrading and expansion of higher order retailing in particular comparison retailing, and a range of other supporting uses in the City Centre retail area.

5.2. Natural Heritage Designations

There are two European sites in the vicinity of the site – the Lower River Shannon SAC (002165) which is located c.150m from the site and River Shannon and River Fergus SPA (004077).

6.0 The Appeal

6.1. Grounds of Appeal

The first party appeal was submitted by HRA Planning Consultants on behalf of the applicant. The appeal is against **Condition No. 2 only**, which requires the payment of a Development Contribution of €44,625 in accordance with the General Development Contribution Scheme. The grounds of appeal may be summarised as follows:

6.1.1. **Failure to comply with terms of adopted General Development Contribution Scheme**

The current GDCS for Limerick City and County is very clear on its intentions regarding change of use applications (Item 10 of the GDCS). There are three criteria

outlined in the Scheme whereby no contribution or a reduced amount is payable as follows:

- **Where development does not lead to a need for new/upgraded infrastructure or services** – The building was constructed in 2006 at which time new and adequate services were provided to serve the development.
- **Where the development does not lead to the significant intensification of demand on existing infrastructure** - The GDCS applies solely to transport, recreation facilities and community facilities as the Council no longer has responsibility for water and drainage services. The City Centre benefits from the existing footfall and not as a result of an increase in demand on the road network or public car park. The proposed use will not contribute to an intensification of this demand and will have no impact on demand for recreational and community facilities.
- **Where a contribution was paid previously for the existing use** – a commercial contribution of €396,050 was levied on the building when constructed and paid in full.

It is submitted that the proposed development is for a change of use which meets all of the above criteria as set out in Item 10 of the GDCS. In these circumstances, the GDCS provides for an exemption from paying a contribution. It is therefore sought that Condition 2 be omitted.

6.1.2. Double charging

It is submitted that a contribution of €396,050 was paid in 2006 in respect of the original planning permission for the building on the site (04/412) and that a further contribution of €36,303 was paid in respect of a change of use of part of the ground floor and basement to restaurant (06/416). Thus, substantial contributions have already been paid in respect of the building and the ground floor uses within the past 12 years and the P.A. has paid no regard to the previous development contributions paid in respect of this property. It is estimated that the proportion of levy already paid (04/412) in respect of the floor area occupied by the proposed use is €59,500 (at €100 per sq. m). Thus, the levy has been paid under the General Development Contribution Scheme in force at the time and any further levies would amount to double charging, which is contrary to the Guidelines.

6.1.3. Unreasonable and contrary to the proper planning and sustainable development of the area

This is a City Centre site and is located on appropriately zoned land within a commercial area, where there are many similar uses, including retail, commercial and restaurant uses. The building is currently vacant and has been vacant for two years. It is submitted that it was previously in use as a convenience store with an extensive food bar and seating area to the rear, including food preparation area. The current proposal represents an opportunity to re-occupy this part of the building and introduce a use which would benefit the city centre.

The proposal to impose a levy is considered to be contrary to the Development Contribution Guidelines which state that the Development Contribution Scheme should not be seen as a “cash cow” and that a balance needs to be struck between funding infrastructure and the need to encourage economic activity and promote sustainable development patterns. It is submitted that the proposal would stifle economic activity in the city centre which is contrary to the strategic plan for the sustainable development of the area.

6.2. Planning Authority Response

The P.A. responded to the grounds of appeal

7.0 Assessment

7.1 Legislation and Guidance

- 7.1.1.** Section 48 (10)(b) of the Planning and Development Act 2000, as amended, provides that an appeal may be brought against a development contribution condition where the applicant considers that the terms of the General Development Contribution Scheme have not been properly applied. As the appeal is solely against Condition 2 of the planning permission, relating to a Financial Contribution, Section 48 (10)(c) applies. This requires that the Board shall not determine the relevant application as if it had been made in the first instance, but shall determine only the matters under appeal.

7.1.2. Condition 2 requires the payment of a development contribution of **€44,625.00** in respect of public infrastructure and facilities benefitting development in the area in accordance with the terms of the adopted Limerick City and County General Development Contribution Scheme, made under Section 48(2)(a) of the Act.

7.1.3. Further guidance on the matter is provided in the Development Management Guidelines, 2007 (Section 7.12) and in the Development Contribution Guidelines 2013.

7.2. Compliance with the terms of the General Development Contribution Scheme

7.2.1. Change of Use applications

The Limerick City and County Development Contribution Scheme 2017-2022 states the following in respect of change of use applications:-

Where a proposed change of use does not lead to the need for new or upgraded infrastructure/services or a significant intensification of demand placed on existing infrastructure and where a contribution was paid previously for the existing use, the development shall be exempt from paying a contribution. In all other circumstances, the change of use shall be charged at the rate appropriate to the new use, subject to a reduction in respect of the contribution rate already paid for the existing use.

The applicant has submitted grounds of appeal based on each of the above criteria, which will be addressed in turn below.

7.2.2. Need for new or upgraded infrastructure or services

The proposed use relates to an existing hotel with a commercial/retail ground floor, which is contained within a relatively newly constructed building. The premises is situated in the heart of the city centre with a mix of uses nearby including many shops, cafes, restaurants and entertainment uses. The applicant submits that the building has been designed to accommodate such uses with all of the necessary services. It is further submitted that the last use of the premises was as a convenience store with an extensive food bar and seating area to the rear, including food preparation. There is no evidence on file to substantiate this.

The GDCS provides funding for three general classes of development, namely, Transport, Recreation and Amenities and Community Facilities. However, it is

considered that the change of use from a commercial retail area within the ground floor of a hotel to a restaurant is unlikely to generate a demand for new or upgraded services under the headings of transport, recreation and amenities or community facilities. The proposed use as described in the FI seems to be part retail and part restaurant, and the use that has been established since the application was submitted seems to fit this description. I would agree, therefore, that the proposed use would not be likely to generate a need for new or upgraded infrastructure.

7.2.3. Significant intensification of demand on existing infrastructure/services

Similarly, it is considered unlikely that the proposed change of use would generate a significant increase in demand on existing services and infrastructure in the area.

7.2.4. Regard for contributions paid previously

The applicant has advised that a development contribution of €396,050 was paid under planning permission Reg. Ref. 04/412 in respect of the parent permission for the hotel and commercial/retail area. The GDCS clearly states that where a contribution was paid previously for the existing use, the change of use development shall be exempt from paying a contribution.

7.2.5. The arguments set out above indicate that the proposed change of use meets all three criteria for an exemption from the requirement to pay a development contribution. It is considered, therefore, that there is no justification for the requirement to pay a development contribution in accordance with the terms of the current Development Contribution Scheme.

7.3. Double charging

7.3.1. The appellant considered that the requirement to pay a Development Contribution, given that the site was formerly granted planning permission (04/412) subject to the payment of development contributions, which has been paid in full, effectively resulted in double charging. The appellant has provided evidence of payment of the levy. It was further submitted that a development contribution was required under Permission 06/416 for a change of use of part of the ground floor from commercial/retail to restaurant, which was also paid in full (evidence provided). This relates to the remaining part of the commercial/retail element of the ground floor and part of the basement.

7.3.2. The Development Contribution Guidelines 2013 state in respect of double charging, that any development contribution already levied and paid in respect of a given development should be deducted from the subsequent charge so as to reflect that this development had already made a contribution. However, the current application is for a change of use and no additional floor area is proposed. Furthermore, such changes of use are specifically stated as being exempt from the requirement if a contribution in respect of the existing use has already been paid. I would agree, therefore, that the imposition of another levy in respect of the same floor area would amount to double charging. However, the second levy referred to by the appellant (€36,303) was paid previously in respect of the adjoining floor area. It would appear that this contribution condition was not appealed to the Board.

7.4. Proper planning and sustainable development of the area

7.4.1. The appellant submits that the imposition of the levy in these circumstances in respect of a unit which has been vacant for 2 years in the heart of the city centre is stifling economic activity and undermining an opportunity to re-introduce a vibrant use to the city centre premises. These arguments seem reasonable, but it is considered that the main issue before the Board is whether the terms of the Development Contribution Scheme have been properly applied. As stated previously, it is considered that the terms of the Scheme have not been properly applied on the basis that the exemption for changes of use where a contribution has already been paid and where there is no significant increase in demand for new or existing services, was not addressed by the planning authority in the determination of the planning application.

8.0 Recommendation

8.1. Having regard to the information on the file, the grounds of appeal, the planning and technical reports of the planning authority in relation to the development, and to the assessment above, I recommend that the Board directs the planning authority to **REMOVE** Condition 2 and the reason therefor as follows for the reasons and considerations set out below.

9.0 Reasons and Considerations

The current Limerick City and County Development Contribution Scheme at paragraph 10 provides for an exemption from the requirement to pay a development contribution in respect of a change of use where the development would not lead to a need for new/upgraded infrastructure/services or a significant intensification of demand for existing services, or where a development contribution has previously been paid in respect of the existing use. It is considered that the planning authority has not demonstrated that the proposed change of use would result in the need for new or upgraded infrastructure/services, or a significant increase in the demand for existing infrastructure/services, or that it has taken into account the contributions previously paid in respect of the existing use on the site. Therefore, it is considered that the terms of the Planning Authority's Development Contribution Scheme have not been properly applied. The condition requiring the payment of the contribution should therefore be removed in order to comply with section 48(2)(c) of the Planning and Development Act 2000, as amended.

Mary Kennelly
Senior Planning Inspector

31st August 2018