



An
Bord
Pleanála

Inspector's Report ABP.301267-18

Development	Retention permission for 3 no. vents, air handling unit and associated development works
Location	49-50 Thomas Street & Augustinian Lane Limerick
Planning Authority	Limerick City & County Council
Planning Authority Reg. Ref.	17/581
Applicant(s)	Burgerchickcork Ltd.
Type of Application	Planning permission - retention
Planning Authority Decision	Grant permission s.t. conditions
Type of Appeal	Third Party
Appellant(s)	Kieran O'Donoghue
Observer(s)	None
Date of Site Inspection	8 th June 2018
Inspector	Mary Kennelly

1.0 Site Location and Description

- 1.1. The site is located in Limerick City Centre, in the heart of the retail/commercial area. Thomas Street is located just off O'Connell Street. The street is semi-pedestrianised with wide footpaths and high-quality paving and street furniture. It is a mixed-use street with shops, cafes, restaurants, bars, offices and residential. The appeal site is located at the eastern end of the block closest to O'Connell Street and has frontage to both Thomas Street and Augustinian Lane. This lane is L-shaped and bisects the street block N-S and turns E-W and links with Catherine Street via an arch.
- 1.2. The building is L-shaped and is four storeys at the front with a four storey return and a further two-storey extension at the rear, which stretches back to Augustinian Lane. There is a narrow external courtyard directly adjacent to the 2-storey extension. This area is used as an external store and utility area with bins, air handling plant and vents attached to the walls of the premises. There is a tall ventilation stack attached to the rear wall which protrudes over the lane. The premises are used as a restaurant on the ground floor with offices and residential on the upper floors. The appellant lives in the residential section on the upper floors.

2.0 Proposed Development

- 2.1. Retention permission is sought for various elements of air handling and cooling equipment attached to the rear facades. The air handling unit is located on the east-facing wall of the 2-storey extension (Elevation 2).
- 2.2. The extractor vents are located as follows:
 - Vent 1 - immediately beside the rear door to the kitchen (Elevation 3);
 - Vent 2 - on the rear wall of the 2-storey extension fronting Augustinian Lane (behind Stack Vent – Elevation 1); and
 - Vent 3 - on the eastern elevation of an internal yard (Elevation 4).

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission subject to one condition which reads as follows:

The development to be retained shall be carried out in accordance with the plans and particulars lodged with the application on 22nd day of June 2017, as amended by the further plans and particulars submitted on the 31st day of January 2018, except as may be otherwise required in order to comply with the following conditions.

Reason: In order to clarify the development to which this permission applies.

3.2. Planning Authority Reports

3.2.1. Planning Reports

It was noted that the site is located in the city centre retail area and that it is the policy of the City Council to reinforce the role of the city centre in the retail hierarchy. Regard was had to the Environment Report regarding noise levels (see below). The Area Planner also queried the necessity for the number of vents at the rear. Further Information was requested in respect of following :-

- A Noise Emission Assessment for the apparatus for which retention is being sought, to be measured at the nearest noise sensitive locations, the methodology for which must be in accordance with BS4142:2014.
- Justification for the need for the vents and associated apparatus to the rear of the site to be provided, together with clarification of whether any are obsolete.
- The potential to ventilate the development at roof level to be explored in the interests of residential amenity.
- A response to the objections from a local resident including proposals for solutions to same.

3.2.2. Other Technical Reports

Environment – the applicant should be requested to submit a report into the noise levels attributable to the apparatus for which retention is being applied. Noise levels should be measured at the nearest noise sensitive locations. The report should be prepared by a competent independent noise monitoring consultant and the methodology used to undertake noise analysis should be that described by British Standard BS4142:2014 – “Methods for rating and assessing industrial and commercial sound”.

3.3. Prescribed Bodies

HSE – no observations to make.

3.4. Third Party Observations

Kieran O'Donoghue – appellant. Objections raised as follows:

- Noise and odours associated with the development
- Impact on residential amenity
- Failure to adhere to previous conditions re odours, emissions and fumes.

3.5. Response to Further Information

The applicant responded to the FI request of the 18th August 2018 on the 30th January 2018 (following the grant of an extension of time). The FI response may be summarised as follows:

- A Noise Emission Assessment was submitted as requested, in respect of the apparatus for which retention permission is being sought. This was carried out in accordance with BS4142:2014. It concluded that the excess rating level over background sound level is +4dB(A) at the third floor window of the nearest residential property (appellant's). Thus it was considered that the apparatus would not cause a significant noise impact or adverse effect on this property.

- Confirmation that all vents which had become obsolete had already been removed. Before and after photographs were submitted to demonstrate this.
- The TP objection is not supported by any independent evidence as proven in the Noise Report and photos, which demonstrate the extent to which the apparatus and vents have been removed.
- It is submitted that the premises are situated in the middle of the city centre and that similar plant and equipment is operated by others in nearby premises.
- Letter from ProQuip (26/01/18) advising of specific works carried out to reduce noise and odour emissions from the equipment installed at the premises. It is stated that the works were carried out on 3rd July 2018, but as this date postdates the date of the letter, it is assumed that this was in error.

4.0 Planning History

PL91.244912 – (P.A. Ref. 14/1243) planning permission granted for change of shopfront to front elevation to Thomas Street and amalgamation of two rear windows to a single opening to rear yard elevation.

5.0 Policy Context

5.1. Development Plan

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

The site is located in an area defined as CCRA (City Centre Retail Area). Chapter 13 indicates that the City Council is committed to reinforcing the city centre's role in the retail hierarchy by facilitating the development of a significant amount of floor space to meet projected demand and projected retail unit size.

Relevant policies include

Policy ZO.1 City Centre Area – To support the retention and expansion of a wide range of commercial, cultural, leisure and residential uses in the City Centre as defined in the City Centre Strategy. Within the City Centre area take-away uses are open for consideration.

5.2. Natural Heritage Designations

The River Shannon SAC is located approx. 150m from the site, to the east. It is separated from the site of the proposed development by the neighbourhood park and further residential development.

6.0 The Appeal

6.1. Grounds of Appeal

The third-party appeal was submitted by Kieran O'Donoghue, who resides on the third floor above the restaurant premises. The first and second floor of the main building are in office/commercial use with some residential units, and are also in the ownership of the appellant. The main points raised may be summarised as follows:

- Residential element of building - The residential element is much more substantial than indicated in the submissions from the applicant. There are 6 no. apartments on the second and third floors of the premises at 49/50 Thomas Street. There are further residential units in adjoining properties. It is only the first floor that is in commercial use.
- Enclosed nature of courtyard – The odours and noise emitted from this equipment in this enclosed space results in nuisance to all 22 windows of his property.
- Air handling unit – too close to his window (FF on extension) with excessive noise (Picture 9).
- Vent 1 – beside rear door of restaurant – The vent is very close to his apartment and to the commercial units on the upper floors of the building. The vent is blowing out food odours all day which is intolerable.
- Back Door – the door is also new as the opening was narrowed to facilitate the vent next to it. There is also a small vent located within the door itself. He has witnessed a stream of smoke emitting from this vent.
- Vent stack and new duct end on rear wall – there is a new duct end behind the vent stack facing onto the lane (picture No. 6). This creates excessive

noise and odour emissions due to the location below the eaves and the close proximity to the vent stack.

- Contrary to permission 244912 – Applicant stated that there would be no additional external vents or outlets. Condition 3 prohibits emissions of malodours, fumes, gases, dust etc. that would give rise to annoyance to nearby residents and requires that odour emissions be controlled in accordance with details to be submitted and agreed with P.A. these conditions are not been adhered to and are causing a nuisance.
- Noise Emissions Assessment – based on a survey on a night when the noise levels were not as loud as usual (24/01/18). It is claimed that the Sound Engineer could not verify which vents were turned on/off as he conducted the survey in the dark from the third floor. There was no survey undertaken from his property on 5th January as stated in the report and the second floor is in residential use, not commercial.
- Reduction in apparatus – it is claimed that the reduction is not as significant as stated by the applicant, as much of this was removed before the development was commenced, and not because of complaints from him.
- Primary concern of odour emissions not addressed - this was not addressed by the Environment Dept. of the P.A. The request for observations from the HSE was made prior to the submission by the appellant. The letter from ProQuip claiming to have carried out works to reduce noise levels and emissions claims to have carried out the works on 3rd July 2018, which postdates the decision and appeal dates. The submission from Gaylord Industries dated 2007 is completely irrelevant.

6.2. Planning Authority Response to grounds of appeal

The P.A. has not responded to the grounds of appeal.

6.3. First party response to grounds of appeal

The first party responded on 23rd April 2018. This is generally in the form of a rebuttal of the grounds of appeal. It includes information regarding several other

cafes and restaurants in the vicinity and photographs of same to demonstrate the apparatus such as that proposed are commonplace. It is submitted that the appellant has not submitted any evidence to support his claims that the fans are left on all night or that the survey was conducted on a night when the noise was less than usual.

The location of the AC unit was justified on the basis that it replaced two former units, it is adjacent to the site of the former AC units, that it serves the FF kitchen and is proximate to that, and that the difference in noise emissions between the two locations is negligible. The submission from ProQuip was noted as containing an error in respect of the date that the work was carried out, in that it should have been 3/07/17 rather than 3/7/18.

7.0 Assessment

7.1. It is considered that the main issues arising from the appeal are as follows:-

- Principle of development;
- Residential amenity impact in terms of noise and odour from particular units and siting of same; and
- Compliance with conditions of previous planning permission.

7.2. Principle of development

7.2.1 The location of the site in a city centre retail area on lands zoned for commercial, retail, cultural, leisure and residential uses, which is in mixed use means that the development comprising the retention of an air handling unit and extractor systems is appropriate in principle. It is noted that this is an established use in a mixed-use area which has the benefit of a recent planning permission for a change of shopfront, which was granted on appeal, to which the appellant was also a third-party appellant. However, given the mixed-use nature of the site, it is considered important that the provision of such equipment does not result in a nuisance or serious injury to the residential amenities of nearby residential units. Furthermore, it is a requirement of the previous planning permission granted by the Board in September 2015, (Ref. PL91.244912) that the development be operated such that there will be no emissions

of malodours, fumes, gases, dust or other deleterious materials which would cause a nuisance and that details of extract ducts were to be agreed with the P.A. These matters will be addressed in the following sections.

7.3. Residential Amenity of occupiers of apartments

- 7.3.1.** The air handling unit that is proposed to be retained, replaces a former air handling unit, which was located on the same wall, (east-facing 2-storey extension at the rear). However, crucially, it is located much closer to the appellant's office window, which is on the same wall. It is estimated that the apparatus is located about 1.2m from this window (see Photo 9 submitted by appellant). The applicant has justified this location mainly on the basis that it is located just below the window of the kitchen that it serves, that it replaces a previous plant and that two units have been replaced by a single one. However, the applicant is silent on the issue of the siting of the apparatus closer to the appellant's window.
- 7.3.2.** The ducting from the apparatus travels southwards along the external face of the wall. Photographs were also submitted by the appellant in respect of 244912, which shows that a large duct which is currently at the base of the existing AC unit was in the same position in 2015, and that it was linked to the AC units, which were positioned further to the south and at a lower level on the wall. However, this duct now seems to be redundant. Thus, it would seem reasonable to require that the AC unit (to be retained) be relocated such that it is to the south of the kitchen window, rather than directly underneath it, and hence further from the appellant's windows.
- 7.3.3.** The appellant has expressed concern regarding the odours emanating from the three vents that are proposed to be retained. These are situated beside the back door, behind the vent stack on the rear lane and within an internal yard to the east of the premises. The applicant has justified the location of these vents based on the proximal location to each of the cooking areas served and the equipment associated with them. During the course of the planning application, the applicant also provided further information (unsolicited) stating that additional filters and noise abatement measures have been installed to reduce the noise and odour emissions from each of the vents, (letter from ProQuip dated 26th January 2018).

- 7.3.4.** It is considered that the location of the each of the vents is reasonable and that it is unlikely that the relocation of same would make any material difference to the emissions. The installation of additional modified filters and noise mitigation measures, as already carried out in July 2017, is likely to be the most effective solution in terms of reduction of noise and odour emissions.
- 7.3.5.** The appellant has also questioned the adequacy of the Noise Impact Assessment and several aspects of the survey. I would agree that the assessment should ideally have been carried out at both the second floor and the third-floor residential windows. However, I would accept the bona fides of the sound engineer and that the assessment was carried out in accordance with the appropriate standards, other than the location of the monitoring/surveys points. It is considered that the increase in the noise levels when the apparatus was switched on, compared with when it was switched off, is minimal (+4dB) and is below the +5dB Lowest Observed Adverse Effect Level threshold, (as specified in the BS 4142:2014 standard). It is stated that this indicates that the noise impact from the subject mechanical plant is at a level that it audible but not to a level where a complaint would be expected. I would accept, therefore, notwithstanding the criticism of the NSLs as stated above, that the plant and vents that are proposed to be retained are not likely to cause a significant noise impact on the residential units on the upper floors of the premises.
- 7.3.6.** The applicant has provided before and after photographs of the efforts made to date to reduce the obsolete vents, ducts and plant at the rear of the premises. Notwithstanding this, it is considered that there is a very substantial amount of equipment, vents, ducts and piping to the rear of the premises, much of which seems to be redundant. It is considered, that should the Board be minded to grant permission, a condition should be attached requiring the removal of all obsolete equipment and ducting, with details of same to be agreed with the planning authority in advance.

7.4. Compliance with conditions of previous planning permission

- 7.4.1** The Board granted permission for the change of shopfront elevation to Thomas Street under 244912, subject to conditions. Condition 3 required the operation of the development with no malodours, fumes, gases, dust or other deleterious material such as would give reasonable cause for annoyance to any person in any residence

in the vicinity of the development. The second part of this condition required the developer to control odour emissions in accordance with measures, including extract duct details and details of associated noise emissions at neighbouring residential property, which was required to be submitted to and agreed with the P.A. prior to commencement of development. The stated reason for the condition was in the interest of residential amenity of the neighbouring property.

7.4.2 It is not clear whether the applicant had complied with this condition as there is no information on the file regarding the appropriateness of the odour emissions or whether the details of the ducts and noise emissions were submitted to the P.A. prior to commencement of the development. Notwithstanding this, it is considered that the noise emissions have now been addressed in the Noise Assessment and the applicant has provided additional filters to reduce odour emissions from the plant and equipment, as per the letter from ProQuip dated 26th January 2018. This letter stated that the following works were carried out on 3rd July 2017 (date corrected by subsequent letter from applicant's agent):

- Noise emissions - Additional mitigation measures to reduce noise levels from the existing canopy system by installing a variable speed controller. The intention of this measure was to slow the fan and to reduce the exterior noise from same.
- Odour emissions – Additional mitigation measures to reduce odour emissions from the same system. A Shepard Wool Filters were fitted by removing the existing baffle filters and replacing them with modified filters that house the Shepard wool cartridges. The specifications for these filters is attached to the submission.

It is considered that the control of odour emissions is an ongoing operational matter which is a matter for the planning authority to enforce with the assistance of the HSE, where necessary.

7.5. Environmental Impact Assessment

7.5.1. Having regard to the nature and scale of the development to be retained there is no real likelihood of significant effects on the environment arising from the proposed

development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

7.6. Appropriate Assessment

- 7.6.1.** 7.5.1 The site is located approximately 150m from a Natura 2000 site, namely, Lower Shannon SAC. Given the distances involved, that the use is an established one and as the site is located in an established urban area, on serviced lands, it is considered that no appropriate assessment issues are likely to arise.

8.0 Recommendation

- 8.1. It is recommended that planning permission be granted for the reasons and considerations set out below.

9.0 Reasons and Considerations

Having regard to the provisions of the Limerick City and County Development Plan 2010-2016 (as extended), to the nature and scale of the development and to the existing pattern of development in this central city location, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area, or of property in the vicinity and would, therefore, be in accordance 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 26th day of January 2018 and the 30th day of January 2018, and by the further plans and particulars received by An Bord Pleanála on the 23rd day of April 2018, 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) The air handling unit to be retained shall be relocated further to the south on the east facing wall of the two-storey rear extension such that the apparatus is sited to the south of the first floor kitchen window.
 - (b) Any redundant or obsolete plant, equipment, vents and ducts shall be removed from the rear walls and flat roof area of the premises within three months of the date of this order. Details of which items are to be removed shall be agreed in writing with the planning authority prior to removal.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority within one month of the date of this order.

Reason: In the interests of the residential amenities of the occupiers of the adjacent residential units.

Mary Kennelly
Senior Planning Inspector

14th September 2018