



Development

(1) RETENTION OF (a) ROOF WORKS COVERING EXISTING ALLEY-WAY, (b) NEW BAR AND TOILET AREA TO REAR OF ALLEY-WAY WITH CONNECTION TO EXISTING SERVICES, (c) INTERNAL REMEDIAL WORKS FOR INCREASED LOUNGE AREA, (d) TWO NO. SMOKING AREAS TO REAR OF SITE AND (e) INSTALLATION OF A STEEL CONTAINER WITH TIMBER CLADDING AT REAR OF SITE FOR BAR STORAGE AND (2) CHANGE OF USE FROM EXISTING BOUTIQUE SHOP TO NEW BAR AREA WITH ASSOCIATED TOILET FACILITIES AND INCLUDING NEW ACCESS DOORS TO SIDE ELEVATION, (3) CREATION OF NEW TOILETS AND EXTENDED BAR AREA TO REAR OF UNIT, (4) NEW SINGLE STOREY STONE CLAD FRONTAGE WITH PITCHED ROOF OVER TO FRONT OF THE EXISTING

ALLEYWAY CONNECTING THE EXISTING BUILDINGS AND (5) ALTERATIONS TO THE FRONT FACADE OF THE EXISTING BOUTIQUE SHOP INCORPORATING NEW LIGHTING AND SIGNAGE TOGETHER WITH ALL ASSOCIATED SITE DEVELOPMENT WORKS

Location McCafferty's Bar and Boutique, The Diamond, Donegal Town, County Donegal.

Planning Authority Donegal County Council

Planning Authority Reg. Ref. 18/50029

Applicant(s) Michael Boyle

Type of Application Permission

Planning Authority Decision Grant permission

Type of Appeal Third Party

Appellant(s)
1. John Begley
2. Seamus Martin

Observer(s) Paul Duncan

Date of Site Inspection 19th July 2018

Inspector Donal Donnelly

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1.0 Site Location and Description

- 1.1. The appeal site is situated to the south of The Diamond in Donegal Town. The site comprises McCafferty's Bar, an adjoining alleyway and the neighbouring property to the south, last in use as a boutique.
- 1.2. McCafferty's Bar is a 2-storey building with dormer level located at the corner of Quay Street and The Diamond. The property is rendered at ground level with dashed upper levels separated by fascia, cornice and string course. The dashed gable of the building faces south-west and there are two window openings in this elevation at ground and 2nd floor levels.
- 1.3. The former boutique property to the south-west is 2-storeys with a triangular layout and single off-set front window at upper level. The alleyway between the buildings has a width of approximately 7m at the entrance before widening out to the rear of the former boutique and the bookies premises further south. A yard to the rear of the property provides access to a public car park. There are a number of connections to The Diamond from this car park through/ between other properties along this frontage.

2.0 Proposed Development

- 2.1. Planning permission is sought for the following:
 - 1) retention of (a) roof works covering existing alley-way, (b) new bar and toilet area to rear of alley-way with connection to existing services, (c) internal remedial works for increased lounge area, (d) 2 no. smoking areas to rear of site and (e) installation of a steel container with timber cladding at rear of site for bar storage; and
 - 2) change of use from existing boutique shop to new bar area with associated toilet facilities and including new access doors to side elevation;
 - 3) creation of new toilets and extended bar area to rear of unit;
 - 4) new single storey stone clad frontage with pitched roof over to front of the existing alleyway connecting the existing buildings; and

- 5) alterations to the front facade of the existing boutique shop incorporating new lighting and signage, together with all associated site development works.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Donegal County Council issued notification of decision to grant permission subject to eight conditions.
- 3.1.2. Condition 2 states that live music and entertainment shall be confined to internal building areas. Other conditions are attached relating to signage and development contributions.

3.2. Planning Authority Reports

- 3.2.1. There are no objections in the Planner's Report to the roofed alleyway, smaller bar located to the rear of the alleyway and increased area to the lounge.
- 3.2.2. The Case Planner notes that the 2 no. wooded hut/ smoking areas are screened by boundary walling from third party properties and that the rear area, including storage container, is enclosed in wooded cladding and is not overly visibly from third party properties.
- 3.2.3. It is considered that the external design and façade is in keeping with this town centre location and that the significant intensification represents an acceptable form of development within such an area. A condition, however, is proposed to restrict music/ entertainment to internal areas in the interests of residential amenity.
- 3.2.4. The development will require a car parking provision of 5 no. spaces and a contribution condition was attached in lieu of this.
- 3.2.5. Unsolicited information was subsequently submitted to the Planning Authority in respect of a Regularisation Cert issued by the Fire Officer.

4.0 Planning History

- 4.1. There is no recent planning history on the appeal site.

- 4.2. Permission was granted on the adjoining site to the east in July 2017 (Reg. Ref: 10/20179) for 3 no. apartments in lieu of 2 no. previously granted under Reg. Ref 03/765, including all associated site works.

5.0 Policy Context

5.1. Seven Strategic Towns (Donegal Town) Local Area Plan, 2018-2014

- 5.1.1. The appeal site is zoned “town centre” where the objective is “to sustain and strengthen the defined town centre area as the centre of commercial, retail, cultural and community life.”
- 5.1.2. The frontage is within the “area of townscape character.” Objective DT-EH-2 seeks to “...manage ‘Areas of Townscape Character’ in the town centre of Donegal Town through a heritage-led approach including the conservation of the historic environment, townscape and civic space/public realm.”
- 5.1.3. There is a monument shown immediately to the south-west of the site.

5.2. Natural Heritage Designations

- 5.2.1. The Donegal Bay (Murvagh) SAC and proposed NHA are both approximately 50m west of the appeal site and the Donegal Bay SPA is approximately 80m to the south-west.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. Two third party appeals against the Council’s decision were lodged by the same architect on behalf of the owner of a property directly to the south-west of the rear of the applicant’s landholding, and by the owners of Begley’s Pharmacy, which adjoins the McCaffrey’s pub building to the east and south.
- 6.1.2. The ground of appeal and main points raised in each appeal are summarised as follows:

Seamus Martin Appeal

- Appellant's premises consists of a 3-storey building containing shops at ground level and two storeys of apartments above, with the benefit of 6 windows overlooking applicant's premises.
- Applicant's bar immediately adjoins appellant's premises and unauthorised development is at a distance of 35m, with smoking areas at a somewhat lesser distance.
- Open gateway was used for deliveries and back yard access during normal working hours and did not cause problems in a residential area.
- Appellant's apartments have become uninhabitable due to noise from music and inebriated clientele emanating from the covered yard and smoking area.
- Appellant and tenants are not being protected from harmful and adverse effects of night time noise and sleep deprivation.
- Council has not set a decibel limit compatible with comfortable levels in a residential area.
- Yard area immediately adjoining appellant's premises is not part of the planning application and continues to be used as a service yard and openly used to serve alcohol from within, and external to the shed.

Begley appeal

- Ground floor of appellant's property is used as a pharmacy with apartments over rear portion and former dwelling fronting The Diamond used for occasional personal use and as accommodation for professional pharmacy staff.
- All of appellant's premises at the rear have windows directly facing or at right angles to applicant's premises.
- Unauthorised roof structure is flimsy and is partially supported off appellant's premises over a distance of approximately 13m – noise is vibrating through appellant's walls and causing disturbance.
- Continual bar clientele access to the new area via an open door is further increasing noise pollution.

- Enclosed nature of the bar bounded on 3 sides by higher buildings further amplifies noise levels.
- Tenant has already moved out due to noise levels.
- McSwine's Bar is not yet developed or licenced and this will further increase the area for live music and associated noise pollution.

6.2. Applicant's Response

6.2.1. The applicant submitted a response to the third party appeals summarised as follows:

- Proposed development essentially constitutes an upgrading and refurbishment in a sympathetic and traditional fashion of an existing bar in The Diamond.
- Application provides for the visual and practical connection of two separate bars by means of the enclosure of the connecting alleyway and the installation of a single storey stone clad frontage with pitched roof over alleyway presenting to the street.
- Drawings are accurate and valid and show retention works that do not yet have be benefit of planning permission.
- Residential units within the core of a town centre must also experience levels of noise and disturbance not apparent in areas outside of such commercial zones.
- Traditional music is played within the bar itself during the week and within the alleyway at weekends.
- Acoustic assessment accompanying the appeal response found that noise levels predicted would be unlikely to have an adverse impact on the nearest residential properties.
- Applicant is willing to implement recommendations contained in Acoustic Report to further reduce predicted noise levels, including a dropped ceiling below the alley roof; installation of insulation strip along roof supports; rubber

matting upon stage platform; and new roofed rear exit lobby with doors (drawing appended).

- Overall noise impact on surrounding residential properties would not be significantly different from those noise levels currently experienced and mitigation measures would further improve such matters.
- Imposition of an extremely restrictive condition prohibiting live music within the proposed covered alleyway is unnecessary and damaging to the economic viability of the bar.
- Subject development will be required to obtain a fire safety certificate in accordance with relevant legislation.
- Proposal would constitute a highly improved hospitable environment for bar customers and tourists, while resulting in no significant adverse impacts for neighbouring properties.

6.3. Planning Authority Response

6.3.1. The Planning Authority responded to the third party appeals with the following comments:

- Enclosure across streetscape entrance to alleyway is indicated on Drawing P-005 – this would not be apparent on the streetscape given the setback and angle of same.
- There is adequate service access to the rear via the public car park and enclosure of private alleyway and streetscape proposals are considered acceptable.
- Alleged breaches are a matter for the Enforcement Department, and fire safety and building control issues are outwith the planning process.
- No evidence has been supported regarding alleged intolerable noise levels – in such an event, the Council lab should be consulted.
- Third party boundary is adequately screened and dedicated smoking areas are provided for.

- This is not a residential area, rather a town centre location of various commercial activities interspaced with limited residential accommodation.
- Conditions regarding the location of live/ music entertainment and location and type of lighting/ signage are sufficient and give due consideration to third party amenities.

6.4. Observations

6.4.1. An observation on the appeal was received by Mr. Paul Duncan, owner of a B&B business at The Diamond Centre, which is 56.5m east of the site boundary. The main points raised in this submission are as follows:

- No objection in principle to the development; however, the Council has not taken any steps to ensure that music/ noise is kept to acceptable levels.
- General Town Centre Objectives Ref: Gen-TC-2 (ii) & (vi) not being complied with.
- Readings of 58-68 decibels are readily detectable when monitored within the bedrooms – complaints and discounts have caused numerous problems and have affected the observer's quality of business.

6.5. Further Responses

6.5.1. Comments on the appeal response were submitted to the Board on behalf of Mr. John Begley wherein it is noted that others are similarly affected by the unauthorised development. It is considered that the Council has failed to uphold its own policy under the Draft Seven Strategic Towns Local Area Plan 2018-2024 to retain residents within town centres. The appellant states that a recorded rating of 70-82 decibels leaves it impossible to have residential accommodation in the vicinity.

6.5.2. Comments were also received from Mr. Seamus Martin noting that the confines of the bar can be easily manipulated to include attached stores. It is also unclear to the appellant how amplified music, live or otherwise, is to be contained within bars.

7.0 Assessment

7.1. I consider that the key issues in determining this appeal are as follows:

- Development principle;
- Noise and impact on residential amenity;
- Visual impact on Area of Townscape Character; and
- Appropriate Assessment

7.2. Development Principle

7.2.1. The appeal site is zoned “town centre” where the objective is “*to sustain and strengthen the defined town centre area as the centre of commercial, retail, cultural and community life.*” The proposed change of use of a vacant property to form an extension to an established town centre business would therefore be acceptable in principle subject to an assessment of the impact of the proposal on residential amenity and other relevant Development Plan policies and objectives.

7.3. Noise and impact on residential amenity

- 7.3.1. The development also includes the retention of a roof covering the existing alleyway, together with a new bar and toilets to the rear of the alleyway and an outside smoking area. The alleyway is now being used as an extension to the bar. This area includes seating, a small stage, TV screens and roof mounted speakers. There is an access to this area from the extended lounge and from the adjoining bookies, as well as from the street and the rear of the premises. Two smoking shelters are located to the rear of the alleyway and the presence of shelves for glasses suggests that the remainder of the yard is being used as a beer garden.
- 7.3.2. Two third party appeals and an observation have been received from adjoining and nearby property owners concerned primarily with the noise impact of the development. There are a number of apartments and guest accommodation in close proximity to the bar and it is submitted that residents have suffered from the effects of noise from music and patrons using the smoking shelters and outside areas to the rear of the pub.

- 7.3.3. The appeal by the adjoining property owner to the east highlights that there are apartments over the rear portion of the property and the former dwelling fronting the Diamond is occasionally used as accommodation. All of the premises at the rear have windows directly facing, or at right angles to the appeal site. The unauthorised roof structure is considered to be flimsy and is partly supported off the appellant's premises, with noise vibrating through walls and causing disturbance. It is also submitted that continual bar clientele accessing the new area via an open door is further increasing noise pollution. Similar points are made by the other appellant who owns a 3-storey building with apartments in upper levels located less than 35m from the smoking area. The observer on the appeal owns a B&B business situated The Diamond Centre approximately 50m to the north-east of the appeal site boundary.
- 7.3.4. It is acknowledged by the Planning Authority that, cumulatively, the three bar areas will represent a significant intensification. However, this was considered to be an acceptable form of development within a town centre location, where various commercial activities are interspaced with limited residential accommodation. Conditions regarding the location of live/ music entertainment and the location and type of lighting/ signage were considered to be sufficient and give due consideration to third party amenities.
- 7.3.5. Since the issue of notification of decision in this case, the Seven Strategic Towns (Donegal Town) Local Area Plan 2018-2024 has been adopted. Policy GEN-TC-2 of this plan states that any commercial or retail use within the town centre area will be required to demonstrate compliance with a number of criteria. Of particular relevance to this development, it is stated that any proposal shall be compatible with surrounding land uses and shall not harm the amenities of nearby residents. Moreover, a proposal should not create a noise nuisance and emissions shall be dealt with in accordance with relevant standards.
- 7.3.6. The applicant acknowledges that live music is played within the bar during the weeks and within the alleyway at weekends. It is contended that the imposition of an extremely restrictive condition prohibiting live music within the proposed covered alleyway is unnecessary and damaging to the economic viability of the bar. The applicant, however, is willing to implement a range of noise mitigation measures

contained within an Acoustic Assessment submitted with the third party appeal response.

- 7.3.7. In my opinion, the playing of music in the covered alleyway and the use by patrons of rear external area have the potential to cause adverse noise nuisance, particularly during busy times late in the evening. The alleyway and external yard essentially act as overspill areas as the premises gets busier, and during these times, music entertainment takes place in the covered alleyway. I consider that the alleyway is unsuitable as a location for music entertainment having regard to the nature of the roof structure and the confines of this area. I would be particularly concerned with noise levels towards the rear of the alleyway and within the smoking areas, which are in close proximity to nearby above ground apartments. Ambient noise levels are much lower towards the rear of the property compared to the street frontage.
- 7.3.8. Having regard to the above, I consider that the Planning Authority was correct to place restrictions on the use of the alleyway for music entertainment. I have also given consideration to removing all types of amplified sound from TV's and speakers from the alleyway. However, I would be satisfied that the measures put forward by the applicant within the Acoustic Assessment would be sufficient to negate TV and speaker sound. In particular, the proposed lobby with self-closing doors to the rear will help to contain noise within the premises and allow the bar and nearby dwellings to co-exist.
- 7.3.9. The applicant has also put forward proposals for the redesign of the smoking area to the rear. Additional enclosure of this area, particularly in the direction of appellants' property will help to reduce noise impacts. I note that the yard area to the rear beside the smoking area appears to also act as an overspill 'beer garden'. I have given due consideration to attaching a condition that no access to this area should be permitted after 10pm on any night. However, I can find no evidence that this area actually has planning permission to operate as a beer garden. I therefore propose a condition to any grant of permission that this area should be closed off and made separate from the smoking shelter.

7.4. Visual impact on Area of Townscape Character

- 7.4.1. A number of principles are set out in the Local Area Plan for 'Areas of Townscape Character'. Under Policy DT-EH-2, it is stated that consideration should be given to the retention of traditional gates and boundary condition, building lines and shopfronts. New proposals should reflect the proportion, scale and massing of the existing streetscape, and amenity and open space associated with buildings and groups of buildings should be protected.
- 7.4.2. It is proposed to replace the existing gated access to the alleyway with a new single storey stone clad frontage with pitch roof presenting to the street. The Planning Authority noted in its response to the third party appeal that this would not be apparent on the streetscape given the setback and angle of same. It was also considered that there is adequate service access to the rear via the public car park.
- 7.4.3. I would have concerns regarding the visual impact of the proposed new frontage on the streetscape and 'area of townscape character'. As well as providing access to the side and rear, alleyways, gateways and archways act as focal points and provide visual separation between buildings and terraces. In my view, the existing gateway at this location is an appropriate frontage that provides a degree of separation between The Diamond and Quay Street. The gables of McClafferty's Bar and the boutique building are set at angles to one another and the space between tapers to the rear. The stepping forward of The Diamond building line helps to frame this corner space when viewed from the south. In my opinion, the open nature of this frontage and the increased activity brought about by the new covered alleyway enhances this space in a manner that is consistent with the streetscape.
- 7.4.4. The proposed frontage with pitched roof will have the effect of creating an infill building between the terraces at a prominent corner location. I consider that this enclosure and loss of gateway will have an adverse impact on the setting of the buildings either side and will result in a reduction in street activity. The proposal will give the appearance of a single storey infill building in an otherwise two and three storey streetscape. I consider that this aspect of the proposal should be omitted.
- 7.4.5. I acknowledge that the new frontage to the alleyway may be more effective for containing noise within the site; however, as noted above, I am more concerned with the impact of noise towards the rear of the site.

7.5. Appropriate Assessment

- 7.5.1. Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely an urban and fully serviced location, no appropriate assessment issues arise.

8.0 Recommendation

- 8.1. It is considered that the proposed development should be granted for the reasons and considerations hereunder and subject to the conditions below.

9.0 Reasons and Considerations

Having regard to the “*town centre*” zoning objective and the location of the site within an “*area of townscape character*”, together with the established nature of the business and the design, scale and layout of the development, it is considered that, subject to compliance with conditions below, the development to be retained/ proposed development would not seriously injure the visual amenities of the streetscape or the residential amenities of property in the vicinity. The development to be retained/ proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be 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 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 new pitched roof stone clad frontage to the alleyway shall be

omitted and the existing gateway access shall be retained.

Reason: In the interests of visual amenity and character of the streetscape.

3. Live and/ or amplified music entertainment shall be confined to internal building areas and shall not be played within the covered alleyway or any other external areas.

Reason: In the interests of residential amenity.

4. Within 3 months of the date of this order, the developer shall submit to the Planning Authority for written agreement proposals for the implementation of the noise mitigation measures, as outlined in the Section 4 of the Acoustic Assessment submitted to the Board on 27th day of April 2018.

This shall include but not necessarily be limited to the following:

- a) Installation of sound insulation below the alley roof structure;
- b) Fitting of a gap or insulation strip where roof supports abut neighbouring property walls;
- c) Construction of a rear lobby with automatically closing doors as illustrated in the drawing appended to the Acoustic Assessment;
- d) Construction of a smoking shelter as illustrated in Figure 8 of the Acoustic Assessment to replace existing shelters;
- e) Fitting of noise attenuators to any openings required for ventilation or air conditioning purposes;
- f) Filling of any other gaps to reduce noise from escaping the premises.

The above measures shall be fully implemented with six months of the date of this order and written confirmation of such shall be furnished to the Planning Authority.

Reason: In the interests of residential amenity.

5. This permission does not authorise the use of the rear yard as a beer garden. Within three months of the date of this order, the applicant shall submit revised proposals for partial enclosure of the smoking area and for

gated access from the smoking area to the rear yard.

Reason: In the interests of residential amenity.

6. The bar frontage shall be in accordance with the following requirements:-

(a) Signs shall be restricted to a single fascia sign using sign writing or comprising either hand-painted lettering or individually mounted lettering;

(b) Signage shall be in Irish language only, or if bilingual signage is proposed, Irish language shall be given prominence;

(c) Any stone cladding shall be constructed from stone local to the area;

(d) All external lights shall be adequately hooded and aligned to prevent spillage of light onto the public road/ adjoining properties;

Reason: In the interest of visual amenity.

7. Notwithstanding the provisions of the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, no advertisement signs (including any signs installed to be visible through the windows), advertisement structures, banners, canopies, flags, or other projecting elements shall be displayed or erected on the buildings or within the curtilage of the site, unless authorised by a further grant of planning permission.

Reason: To protect the visual amenities of the area.

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. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid

prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission

. Donal Donnelly
Planning Inspector

20th November 2018