



An
Bord
Pleanála

Inspector's Report ABP 301496-18

Development	Change of Use of retail premises to Café/Coffee shop and associated site works.
Location	No 6 Quay Street, Galway. (Protected Structure).
Planning Authority	Galway City Council.
P. A. Reg. Ref.	17/275.
Applicant.	Jun Yan
Type of Application	Permission
Decision	Refuse Permission.
Type of Appeal	First Party x Refusal
Appellant.	Jun Yan.
Date of Site Inspection	24 th July, 2018.
Inspector	Jane Dennehy

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1.0 Site Location and Description

- 1.1. No 6 Quay Street is a three-storey building located on the north west side of Quay Street at the centre of Galway City. Quay Street is one of the principal streets of the mediaeval city. No 6 and No 8 Quay Street are combined as a five-bay building within a terrace of mediaeval origin. The ground floor is subdivided into two spaces by a substantial medieval wall in which there is a narrow doorway and an alcove. The sole external access is on Quay Street to the front.
- 1.2. It is understood that the ground floor of No 6 was in unauthorised use as a café for a period in 2017 and that prior that it was in use as a pet shop. A café with outdoor seating to the front was in operation at the ground floor of No 8 at the time of inspection.

2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for change of use of the ground floor from use as a pet shop to use as a Café/Coffee shop and associated site works.
- 2.2. The application includes proposals for enlargement of the alcove in the mediaeval wall to provide for access to the disabled toilet at the rear and fit out as a café. The application is accompanied by an “Architectural Heritage Impact Assessment” prepared by Ann Carey, (MUBC MIAI) in which interventions required to the structure (which includes a mediaeval wall) are outlined in which it is concluded that the proposed development “*will largely have no impact on the fabric of the building*”. Her assessment includes a recommendation for the interventions above the alcove wall and consolidation be undertaken by a contractor with specialist expertise in conservation of historic masonry. And that the entire project be monitored and recorded by a conservation specialist. The intervention to the alcove area within the mediaeval wall, raising its head was previously authorised by way of the prior grant of permission under P. A. Reg. Ref. 15/149, details of which are in section 4 below.)

2.3. A **further information submission** was lodged on 5th March, 2018 in response to a request for additional information from the planning authority with details relating requirements of the Environmental Health Officer, a statement that the applicant is not in a position to implement the grant of permission under P. A. Reg. Ref. 15/149. Proposed opening hours for the café which it is submitted does not conflict with the arrangements for the upper floor restaurant use, confirmation that the cafe is not a sit-down café due to the size and is a takeaway serving coffee and pastries and that no preparation of food will take place on the premises. Some signage details are also provided.

3.0 **Planning Authority Decision**

3.1. **Decision**

- 3.1.1. By order dated, 28th March, 2018, the planning authority decided to refuse permission based on two reasons.
- 3.1.2. According to Reason 1 the proposed development, which incorporates a predominant takeaway operation would materially contravene current development plan objectives, having regard to the provisions of section 11.4.5 which restricts change of use of ground floor premises from retail to non-retail use in the principal shopping streets and because the proposed development could set undesirable precedent for change of use of other similar premises with significant implications for commercial viability and vitality at the city centre.
- 3.1.3. According to Reason 2 the proposed development, would conflict with Condition No 2 of the grant of permission under P. A. Reg. Ref. 15/149It is added that the implementation of this grant of permission incorporating refurbishment and extension of Nos 6 and 8 Quay Street (protected structures) could be prejudiced.

3.2. **Planning Authority Reports**

3.2.1. **Planning Reports**

The planning officer notes:

- the restrictions of the prior grant of Permission under P. A. Reg. Ref. 15/149 providing for a retail use on the ground floor with access to upper floor restaurant use to ensure compliance with the prior development plan policy precluding change of use from retail to non-retail use on the principle shopping streets;
- The further information submission in which the applicant seeks to ensure compliance with section 11.4.5 of the current CDP with reference to the floor area of the ground floor proposed retail use, provides for access to the upper floor restaurant during retailing hours via the retail unit and includes arrangements for evening time access. The café proposed for the ground floor unit is to operate between 0800 hrs and 2200 hrs with no implications arising for the upper floor restaurant.
- The scope for consideration of ground floor use of the café up to January, 2018 having regard to the CDP provisions included under section 11.4.5, is acknowledged but it was concluded that the implementation of the grant of permission under P. A. Reg. Ref. 15/149 would be prejudiced.
- The planning officer also discusses the restrictions on certain uses within the city centre shopping streets to ensure the primacy of retail use of the shopping streets in the city centre. In view of the takeaway use as opposed to sit down café for the proposed development and the stated floor area of thirty six square metres which is in excess of maximum area of twenty square metres for which exemption would apply, it is concluded that the proposed development is in contravention of Policy 11.4.5 of the CDP and that permission should be refused based on the reasoning referred to in section 3.1 above.

3.3. Other Technical Reports

- 3.3.1. The report of the **Environmental Health Officer** is detailed and was issued following a site meeting and indicates concerns about the configuration of the proposed internal space, proposed ventilation facilities and measures to ensure satisfactory hygiene standards and refuse storage facilities. It is also noted that the application does not include provision for toilet facilities for use by staff which would be required.

- 3.3.2. The report, the **Heritage Officer** indicates no objection subject to archaeological recording and liaison with the designated museum by an archaeologist regarding removal of archaeological material and storage. It is stated that all worked stone and carved stone found should be treated as an archaeological find and portable antiquity.
- 3.3.3. The report of the **Fire Officer** indicates concern that the proposed development would prejudice implementation of the grant of permission under P. A. Reg. Ref. 15/149 but otherwise considers the ground floor use proposed acceptable subject to issue of a Fire Safety Certificate.
- 3.3.4. The report of the **Environment Section** indicates requirements relating to provision for waste management.

4.0 Planning History

- 4.1. This is an extant grant of Permission P. A. Reg. Ref 15/149 which is referred to throughout the previous sections of this report which has not been taken up. This grant of permission is for:
- change of use of the first floor from offices to restaurant use,
 - change of use of the second and third floors from residential to restaurant use
 - internal alterations to include a new stairs and circulation area providing for restaurant access at the upper levels via the ground floor retail unit at No 6.
 - alterations to the shop front, demolition and replacement of a non-original flat roof link building at first floor and removal of roof over an existing rear stone building and non-original stairs.
 - a new rear extension with fire escape and second floor extension and, plant area,
 - repair and upgrade works.

Under Condition No 2 there is a requirement for the ground floor of No 6 Quay Street to be operated as a retail unit in accordance with the details provided to the planning

authority on 28th January and 30th June 2016 unless a prior grant of planning permission has been obtained.

- 4.2. According to the planning officer report the planning authority issued a section 5 declaration prior to lodgement of the application indicating that repair to roof and replacement of low quality pvc. windows with timber sash windows, shutter repairs and replacement shutters constitute exempt development.

5.0 Policy Context

5.1. Development Plan

The operative development plan is the Galway City Development Plan, 2017-2023, (CDP) adopted in December 2016 and brought into effect in January, 2017.

Policy 6.3, provides for the promotion and protection of the central city area as the prime retail area of the city which is the major town centre in the retail hierarchy and has a large regional catchment. the Region.

Quay Street is one of the network of principal shopping streets for which it is the policy of the planning authority not to permit conversion of ground floors from retail to non-retail uses, including retail services. (Section 11.4.5 which is referred in the previous sections of this report refers.)

An additional provision under Section 11.4.5 includes scope for consideration, during the twelve-month period following the bringing into effect of the CDP, proposals for food outlet use which is exclusive of takeaway use where premises have a total retail floor area that does not exceed fifty square metres.

Nos 6 and 8 Quay Street are included on the record of protected structures. (Item Nos 8105 and 8107

The site location is within the City Core Architectural Conservation Area (ACA) and the Zone of Archaeological Potential (ZAP)

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. An appeal was received from Thornton O'Connor on behalf of the applicant on 24th April, 2018 attached to which is a floor plan drawing and included with is a survey record of the uses of the premises along Quay Street. According to the appeal, the survey record shows 17.5 percent of the twenty premises on Quay Street are in retail use and these premises are small so the street is an established food and beverage destination.

6.1.2. It is submitted that:

- The application was lodged within the first year of the bringing into effect of the current CDP so Section 11.4.5 allows for consideration of a unit with a gross floor area of less than fifty square metres
- The applicant was unaware, when operating the café from the ground floor unit previously that planning permission was required. Since ceasing operations it has not been possible for the applicant to secure a retail tenant due to the restricted unit size.
- As the applicant now understands that the takeaway use cannot be the primary use it is now proposed as an ancillary use. Drawing 2001.App.303 shows revisions to the floor plan and demonstrate viability of the unit as a sit-down café for fourteen seated persons seated.
- The reference to takeaway in Policy 11.4.5 of the CDP applies to a full takeaway where the premises is predominantly used for sale of hot food for consumption of the premises and this is verified in the planning officer assessment who refers to the predominant take away element of the proposed development. The current proposal therefore, providing for a café for fourteen persons seated is consistent with the CDP policies, in that the take away element is an ancillary element of a principle café use. Reference is made to definitions for a café as a “primary function” of restaurants which facilitate takeaway and delivery services in CDPs for Dublin City, Fingal and South Dublin County Councils.

- In support of a claim that change of use to cafe use with an element of takeaway without changing the permitted use and in the subject case ensuring compliance with Policy 11.4.5 of the CDP references are also made to definitions for “ancillary”, and, “ancillary” use to “principal” use in case law (*Palmerlane Limited v An Bord Pleanala* [1999] and *Rehabilitation Institute v Dublin Corporation* refer.) which is cited in the appeal and reference is also made to an encyclopaedia of Planning Law and Practice. (Full citation not provided.)
- Attachment of a condition limiting the duration of the grant of permission to three years would be reasonable. It is similar to a condition attached to a grant of permission for change of use from a bank to coffee shop at 18-21 St Stephen’s Green in Dublin City under P. A. Reg. Ref. 2422/13.

6.1.3. With regard to the Reason 2 attached to the decision to refuse permission, it is submitted that:

- This reasoning is *ultra vires* because a planning authority cannot refuse permission based on a grant of permission (under P. A. Reg. Ref. 15/149) that may not be implemented. The applicant can choose to implement the prior grant of permission by removing the café use and providing retail use. A third option is an amending application in respect of the ground floor use of No 6 for which permission may or may not be granted.
- The grant of permission under can still be implemented if the current proposal were to be permitted by ceasing the café use. The applicant should be able to use the premises as required, at a particular time, but at the moment the permitted development under P. A. Reg. Ref. 15/149 is not to be implemented. The current application facilitates utilisation of the ground floor unit and vacant premises on Quay Street and represents proper planning and sustainable development and complies with the CDP whereas if the prior grant of permission is implemented it is likely that the proposed café use from the ground floor would be removed.

6.2. Planning Authority Response

- 6.2.1. A submission was received from the planning authority on 30th May 2018 in which the grant of permission for restaurant use on the upper floors under P. A. Reg. Ref 15/149 which has not been taken up is noted. It is acknowledged that the principle of ground floor use as a café as being open for consideration is also noted.
- 6.2.2. The view that the proposed development does not accord with Policy 11.4.5 of the CDP including the expired temporary policy is confirmed owing to the proposed use as a takeaway operation.
- 6.2.3. The proposal put forward in the appeal for café use with ancillary take away use is a material alteration from the proposed development indicated in the application. The contention that revised plans can be submitted which render the take away element as ancillary to the café use is unacceptable and is contrary to the development plan provisions.
- 6.2.4. Consideration of use of the property in entirety, given the narrow plot width is an important consideration having regard to the planning history and to investment by both the applicant and planning authority in conservation work and redevelopment and use of all floors at the structure/coffee shop in isolation from the upper floors. A grant of permission would jeopardise the previously permitted development which incorporated repair and restoration works to both Nos 6 and 8 Quay Street.

7.0 Assessment

- 7.1. The current CDP's retail policy and objectives for protection and promotion of retail use and restrictions on other uses in the ground floor levels of the central network of principal shopping streets is reasonable. It is also reasonable that the date of lodgement of an application should be taken into account with regard to the additional twelve-month provision for consideration of applications for food outlets (excluding takeaways) following the bringing into effect of the current CDP. However, the description and details in the original application and further information submission indicate a proposal for a take away with the internal floor layout showing a waiting area for customers with three stools only, no customer toilet facilities and a statement that the configuration does not allow for scope for an

internal layout and use as a sit-down café. As the clarification provided in the further information submission demonstrated that the use was for sale of food for consumption off the premises, it is precluded from consideration irrespective of whether there was scope for consideration within the initial twelve-month period provided for in the CDP.

- 7.2. The applicant has subsequently, in the appeal, changed the nature of proposed development to a sit-down café which is significantly materially different from the original proposal. It is a new proposal and the statement in the submission of the planning authority to this end is accepted. It is therefore not considered that it is logical that the date of lodgement of the original application, which was within the twelve-month period could be taken into consideration.
- 7.3. This application relates to a structure of mediaeval origin in which it has been indicated that some mediaeval fabric survives. By reason of size and configuration, the mediaeval origins and the statutory requirements for historic structures included on the record of protected structures, there are challenges in sustaining a viable and appropriate use. The prior grant of permission provides for use of the upper floors. Potential for such use to be hindered is a major consideration in determining a decision on the current application as is evident in the assessment by the planning authority. Access to the staircase to the permitted restaurant on the upper floors via the café is not ideal and, reliance on routing for restaurant patrons through the ground floor premises is not ideal, particularly should the ground floor use cease, or be altered. However, if permission is granted an appropriate condition regarding these access arrangements for the upper floors even though the grant of permission under P. A. Reg. Ref. 15/149 has not been taken up to date, should be attached.
- 7.4. Notwithstanding the limitations to the scope for viable occupancy and use attributable to internal size and configuration of historic buildings such as No 6 Quay Street, it is considered that small ground floor spaces and space similar to that of kiosks in a mediaeval street network are capable of and suitable for retail use of a tourist/craft nature. It is therefore not accepted that there is no potential whatsoever for retail use on the ground floor of the subject premises notwithstanding the difficulties in attracting tenants referred to in the submissions made in connection in the application and the appeal. The historic area of Galway city in which the site is located is a primary and major tourism destination in terms of attractions, amenities

and facilities. To this end, it is not considered that there is a sufficient case for flexibility in interpretation and application of the provisions of section 11.4.5 in this regard, particularly regarding the floor size restrictions.

7.5. The claim that the proposed takeaway use is an ‘ancillary’ use to the main use as a café represents a major departure from the original proposal regarding the nature of use. It is understood that food delivery companies generally provide a delivery service from restaurants more so than from outlets selling prepared or semi prepared sandwiches and pastries. Notwithstanding the revisions to the floor plan layout showing seating and customer access through the mediaeval wall to the rear space for toilet facilities it is considered very likely that takeaway element of the proposed use is considerably greater than the sit-in element. The argument in the appeal with regard to the modified proposal that the take away element would come within the meaning of “ancillary” with reference to the case law and publication referred to in the appeal is not persuasive.

7.6. It is agreed that direct reference to conflict with a condition attached to a grant of permission in respect of which no commencement notice has been lodged, within the reasoning for a refusal of permission is not appropriate although the rationale for its inclusion on the part of the planning authority, in the building’s interest and its use is understandable.

7.7. Finally, should permission be granted, it is recommended that appropriate conditions be attached providing for works that mediaeval material and monitoring and recording to be carried out under the direction of an archaeologist and specialist in historic building conservation and as previously stated, with regard to provision for access to the upper floors via the ground floor unit.

7.8. **Appropriate Assessment**

Having regard to the scale and nature of the proposed development and to the serviced central business district location, no Appropriate Assessment issues arise. The proposed development would not 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. In view of the foregoing, it is considered that the planning authority decision to refuse permission is reasonable and it is recommended that the decision be upheld based on the draft reasons and considerations set out below.

9.0 Reasons and Considerations

The proposed development is a proposal for change of use from retail use of the ground floor of the premises at No 6 Quay Street. Quay Street is one of the principal shopping streets as defined in section 6.3 of the Galway City Development Plan, 2017-2023, according to section 11.4.5 of which the conversion of ground floors of premises in these principal shopping streets to non-retail uses is not permitted except for exceptionally small units, the floor space of which is less than twenty square metres. It is considered that the proposed change of use to a coffee shop/café with a take away element would materially contravene this development objective and would set undesirable precedent for similar development on the principal shopping streets in the centre of the city. The proposed development would materially contravene the Galway City Development Plan, 2017-2023 and would be contrary to the proper planning and sustainable development of the area.

Jane Dennehy

Senior Planning Inspector,
14th August, 2018.