



An  
Bord  
Pleanála

## Inspector's Report ABP-301819-18

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<b>Development</b>	Permission for the demolition of existing live music venue/ licenced premises
<b>Location</b>	17 Commercial Quay, Wexford.
<b>Planning Authority</b>	Wexford County Council
<b>Planning Authority Reg. Ref.</b>	20180141
<b>Applicant(s)</b>	CoAnt Entertainments Ltd
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant subject to conditions
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	David O'Connor
<b>Observer(s)</b>	n/a
<b>Date of Site Inspection</b>	21 <sup>st</sup> August 2018
<b>Inspector</b>	Mary Crowley

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## 1.0 Site Location and Description

1.1. The appeal site with a stated area of 0.0355 ha is located on Commercial Quay in Wexford Town. It is a three storey building at the end of a terrace of three storey buildings all of varying heights. The appeal site adjoins the existing Crown Bar & Spice Restaurant which is also in the applicant's ownership. The building to be demolished occupies a prominent site and is currently used as pub / music venue. The building adjoins a beer garden and car park to the south. A set of photographs of the site and its environs taken during the course of the site inspection is attached.

## 2.0 Proposed Development

2.1. The application submitted to Wexford County Council on 6<sup>th</sup> February 2018 sought permission for the demolition of existing live music venue/ licenced premises and construction of new live music venue/ licenced premises, together with minor alterations to existing stairwell in adjoining Crown Bar / Spice Restaurant building to accommodate shared access, with associated site works. The stated gross floor area of the existing building is 394sqm. The gross floor area of proposed works is 606sqm. The gross floor area to be demolished is 394 sqm. The application was accompanied by a cover letter, Archaeological Assessment and Site Specific Flood Risk Assessment.

2.2. In response to a request for further information the applicant submitted the following on 27<sup>th</sup> April 2018 as summarised:

- The majority of the adjoining proprietries have already constructed on the boundary with no openings. Aerial photographs submitted refer. The neighbouring property on Commercial Quay has an extension constructed c1m from the boundary, which contains a window facing the proposed development and has effectively sterilised development. The applicant has examined the proposed building layout and revised accordingly to minimise the impact on the existing window. Revised layout submitted showing the building outline cut back at first and second floor levels to maximise the daylight to the existing neighbouring window were submitted.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. Wexford County Council issued notification of decision to grant permission subject to 13 generally standard conditions on 18<sup>th</sup> May 2018.

### 3.2. Planning Authority Reports

- 3.2.1. Planning Reports

- 3.2.2. The **Case Planner** in their first report (26<sup>th</sup> March 2018) recommended that the following further information be sought as summarised. Further information was sought on 29<sup>th</sup> March 2018.

- Assessment of how light will be maintained to the rear windows of the properties on Monk Street and on Commercial Quay.

- 3.2.3. The **Case Planner** (14<sup>th</sup> May 2018) in their second report and having considered the further information submitted recommended that permission be granted subject to conditions. The notification of decision to grant permission issued by Wexford County Council reflects this recommendation.

- 3.2.4. Other Technical Reports

- 3.2.5. **Chief Fire Officer** (28<sup>th</sup> February 2018) – Stated that a fire safety certificate is required in respect of this development and works must not be carried out unless and until such a certificate has been granted.

### 3.3. Prescribed Bodies

- 3.3.1. **Department of Culture, Heritage and the Gaeltacht** (9<sup>th</sup> May 2018) – The proposed site is within the Zone of Archaeological Potential in Wexford town and within the confines of Recorded Monument WX037-032. Recommended that a condition requiring a programme of pre-development archaeological testing be attached to any grant of planning permission as set out in the report.

### 3.4. **Third Party Observations**

- 3.4.1. There is one observation recorded on the planning file from David O'Connor, 18 Commercial Quay, Wexford. The issues raised relate to fire safety and escape, loss of natural light, construction impact and loss of trade.

## 4.0 **Planning History**

- 4.1. **Pre Planning P20170748** – A pre planning meeting took place on 13<sup>th</sup> November 2017. Stated that the principle of demolition of 3 storey building on to commercial Quay and replacing it with a purposes built venue was acceptable to the Planning Authority. Noted that the site was subject to possible flood risk and a therefore a flood risk assessment to be included in any application. Also noted that the site is located within an area of Archaeological Importance and survey may be required as part of any demolition and excavation proposed for this site.

## 5.0 **Policy Context**

### 5.1. **Development Plan**

- 5.1.1. The operative plan for the area is the **Wexford Town & Environs Development Plan 2009 - 2015** (extended to 2019). The site is not within any of the 20 identified Masterplan Zones. The appeal is site located on lands zoned "Town Centre" where the objective is *to protect and enhance the special physical and social character of the existing Town Centre and to provide for new and improved Town Centre facilities and uses.*

### 5.2. **Natural Heritage Designations**

- 5.2.1. The site is not located within a designated Natura 2000 site. The site is proximate to the Slaney River Valley SAC (000781) and Wexford Harbour & Slobbs SPA (004076).

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. The third party appeal has been prepared and submitted by David O'Connor, 18 Commercial Quay, Wexford; property adjacent to appeal site. The issues raised may be summarised as follows:

- **Fire Escape** - The current scenario would allow for escape onto the existing roof.
- **Natural Light** – The appellant moved their barbershop to the first floor following the grant of permission for a small extension maximising natural light throughout the working day. The proposed development wraps around the appellants yard at a height of approximately 8m above the first floor and will eliminate most of the natural light into the appellant's workplace.
- **Structural Impact** – Given the age of the building and the planned works outlined in the scheme concern is raised for the possible damage that might occur to the appellants building re the structural integrity of their premises.
- **Appellants Concerns** – The issues have been exacerbated by a report in the local newspaper (copy provided) that implies that the appellants concerns have been dealt with. Conditions are noted however it is submitted that the appellant's concerns have not been dealt with in any way.
- **Extent of Building** - A portion of the building has not been included in the development (image of elevation provided).
- **Trade** – Concern is raised that the works will have a negative effect on the appellant's trade.

### 6.2. Applicant Response

6.2.1. The first party response has been prepared and submitted by Simon Clear & Associates and may be summarised as follows:

- **Fire Escape** – Submitted that the appellant appears to consider that he has an established right to escape across the neighbours (applicants) roof in the event of a fire in his premises. A right of access or escape has never been

previously claimed or established. Further this matter does not relate directly to the planning code. The appellant has a duty to resolve his fire escape route in accordance with a Fire Cert, which would not envisage jumping gaps of 1 metre from the appellant's structure to the applicants roof.

- **Natural Light** – The relatively recent introduction of a new window built within 1 metre of and facing onto the applicants property has not established a right to light for the purposes of the barber business, a use which can, and for lengthy periods of the year would be carried out using artificial light.
- **Structural Impact** – A demolition and construction management plan will be prepared by the contractor chosen to carry out the works in a manner that will not affect the physical or structural integrity of any adjoining property. A condition to this effect may be attached in a grant of planning permission.
- **Conclusion** – There is no substance to the grounds of appeal as the issues of concern in relation to the planning code were addressed in the further information.

### 6.3. **Planning Authority Response**

6.3.1. Wexford County Council state that they have no further comments to make.

### 6.4. **Observations**

6.4.1. There are no observations recorded on the appeal file.

### 6.5. **Further Responses**

6.5.1. There are no further responses recorded on the appeal file.

## 7.0 **Assessment**

7.1. The application was submitted to Wexford County Council on 6<sup>th</sup> February 2018. Further information was submitted on the 27<sup>th</sup> April 2018. Accordingly this assessment is based on the plans and particulars submitted on 6<sup>th</sup> February 2018 as amended on 27<sup>th</sup> April 2018.

7.2. Having regard to the information presented by the parties to the appeal and in the course of the planning application and my inspection of the appeal site, I consider the key planning issues relating to the assessment of the appeal can be considered under the following general headings:

- Principle
- Impact to adjoining Property
- Car Parking
- Flood Risk
- Archaeology
- EIA Screening
- Appropriate Assessment
- Development Contribution

## 8.0 Principle

8.1. This is an application for the demolition of an existing live music venue/ licenced premises and construction of new live music venue/ licenced premises. The stated gross floor area of the existing building is 394sqm. The gross floor area of proposed works is 606sqm. The gross floor area to be demolished is 394 sqm.

8.2. The building to be demolished is not listed on the record of protected structures and is not located within any designated conservation area. Further the structure does not in my view have any distinctive architectural merits and does not contribute significantly to this area in terms of visual amenity, character, or accommodation type. Accordingly there is objection to the proposed demolition of this building.

8.3. Under the provisions of the Wexford Town & Environs Development Plan 2009 - 2015 (extended to 2019) the site is located on lands zoned "Town Centre" where the objective is *to protect and enhance the special physical and social character of the existing Town Centre and to provide for new and improved Town Centre facilities and uses*. Having regard to the established principle of a live music venue/ licenced premises at this location together with the zoning objective for the site I am satisfied that the principle of redeveloping the site as a live music venue/ licenced premises is



acceptable subject to the acceptance or otherwise of site specifics / other policies within the development plan and government guidance.

- 8.4. While the building proposed is taller than the building being demolished overall I consider that the design, scale and height of the scheme to be acceptable at this quayside location. I note the applicant's proposals to create a large piece of art work on the southern elevation. In this regard I support the approach of the local authority and recommended that should the Board be minded to grant permission that a condition be attached requiring the developer to agree in writing with the Planning Authority the artwork for this elevation and any lighting associated with this artwork.

## **9.0 Impact to Adjoining Property**

Much of the appeal centres on the impact of the proposed development on the adjoining property to the north at No 18 Commercial Quay, a mixed use commercial property with a Barbers shop at first floor. The issues raised in the appeal relate to fire escape, loss of light, structural impact, loss of trade and the extent of the building.

- 9.1. There will inevitably be disruption during the course of construction, however such can be minimised to acceptable levels with appropriate standard working / construction procedures such as controlling construction hours, dust minimisation. I am satisfied that this matter can be dealt with by way of a suitably worded condition requiring the submission of a construction management plan for agreement. With the attachment of such a condition I do not consider that the construction phase of the development would give rise to an unreasonable impact on neighbouring properties in this instance.
- 9.2. With regard to fire escape I agree with the applicant that this matter does not relate directly to the planning code and that the appellant has a duty to resolve their fire escape route in accordance with a Fire Cert, which would not, in all likelihood envisage jumping gaps of 1 metre from the appellant's structure to the applicants roof.
- 9.3. Concerns raised with regard to access to natural light are noted however I am satisfied given the Town Centre location of the properties, the commercial nature of

the both the applicants site and the appellants site that the proximity of the proposed scheme as amended to the existing property is acceptable.

- 9.4. I note the concerns raised in the appeal regarding the omission of a portion of the building to be demolished in the application. Together with my site visit I am satisfied that there is adequate information available on the appeal file to consider the issues raised in the appeal and to determine the scheme proposed within the red line boundary.is application. Works proposed outwith this red line boundary may be subject to the rigours of the development management process

## 10.0 Car Parking

- 10.1. The Case Planners report states that "*additional car parking will be required for extra floor space i.e. 212sqm. One space per 25sqm for a dance hall is required under the Town Plan. This would translate into a requirement for 8 spaces*". The matter is not referred to again in any report or assessment. It is however noted that Condition No 4 of the notification required the payment of €4,000 in respect of works, consisting of the provision or improvement of car parking facilities in the functional area of the planning authority. This condition has not been appealed.
- 10.2. I refer to the Wexford County Council Planning Authority Area Development Contribution Scheme 2018 where it states that *car parking contributions are required when there is a shortfall or no provision of off-street parking proposed to service the development* in the amount of €500 per car parking space. The Scheme also states that credit will be applied for the authorised use, e.g. if the existing use requires 5 spaces and the proposed use requires 7 spaces, payment would be required for 2 spaces. I refer to the Case Planners Calculations and recommend that should the Board be minded to grant permission that a condition be attached requiring the payment of €4000 (i.e. 8 x €500) in respect of the provision of car parking.

## 11.0 Flood Risk

- 11.1. I refer to the Flood Risk Assessment that accompanied the application examined the flood risks to and arising from the proposed development. Flooding from tidal sources is the most likely source of flooding in the vicinity of the proposed development. The predicted flood water level from tidal sources in the vicinity of the

proposed development is 1.64m OD for the 0.5% AEP. However the historic flooding information indicates that the maximum flood level was approximately 2.0m on Commercial Quay during the October 2004 event and it is likely that this event was equivalent to the 0.1% AEP at Wexford with wave overtopping. The finished floor level for the proposed development will be 1.5m OD in order to facilitate universal level access but lower than the predicted 0.5% AEP tidal flood water level. To mitigate the potential impacts of future extreme tidal flood event the proposed development will be designed to incorporate flood resistance and resilience measures as set out in Section 6.1 of the FRA. The applicant further states that it is proposed to install suitable demountable flood defence barriers to a suitable level to act as mitigation measures and protect the proposed building. It is stated that these barriers will be fitted to all external openings at ground floor level, in addition the construction of the proposed building will allow for a suitable retaining wall / tanking to a height of 2.1m OD to achieve suitable water tightness.

- 11.2. Having regard to the information available on file I am satisfied that the potential impacts of the proposed development in terms of flooding have been established and that the type of development proposed is appropriate for this area. I do not consider that the proposed development would exacerbate the risk of flooding in the area.

## 12.0 **Archaeology**

- 12.1. The proposed development is located on the site of a 19<sup>th</sup> century structure. The area is surrounded by Victorian buildings and in an area reclaimed from the site during the 19<sup>th</sup> century. I refer to the report of the Department of Culture, Heritage and the Gaeltacht where it states that the proposed site is within the Zone of Archaeological Potential in Wexford town and within the confines of Recorded Monument WX037-032. I have considered the Archaeological Impact Assessment submitted with the application together with the reports on file and in my view I am satisfied that this matter can be dealt with by suitable worded condition whereby the developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site.

## 13.0 EIA Screening

13.1. Having regard to the nature and scale of the proposed development comprising the demolition of existing live music venue/ licenced premises and construction of new live music venue/ licenced premises, in a serviced urban area there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 14.0 Appropriate Assessment

14.1. The site is not located within a designated Natura 2000 site. Having regard to the nature and scale of the proposed development within an established urban area, the nature of the receiving environment and proximity to the nearest European site (Slaney River Valley SAC (000781) and Wexford Harbour & Slobbs SPA (004076)) no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 15.0 Development Contribution

15.1. Wexford County Council has adopted a Development Contribution scheme under Section 48 of the Planning and Development Act 2000 (as amended): Wexford County Council Planning Authority Area Development Contribution Scheme 2018. Under the Section of the Scheme entitled "Incentives (Discounting /Credit)" it states that *where commercial development on site is being demolished as part of the development, credit will be given against contributions due for the area (sq. m.) of the demolished building in the event of redevelopment of site/structure.*

15.2. The stated gross floor area of the existing building to be demolished is 394sqm. The gross floor area of proposed works is 606sqm. It is therefore recommended that should the Board be minded to grant permission that a suitably worded condition be attached requiring the payment of a Section 48 Development Contribution in accordance with the Planning and Development Act 2000 for 212sqm.

## 16.0 Recommendation

16.1. I recommend that permission be granted for the proposed development for the reason and considerations set out below.

## 17.0 Reasons and Considerations

17.1. Having regard to the zoning objective for the site as set out in the Wexford Town & Environs Development Plan 2009 - 2015 (extended to 2019), to the design, layout and location of the proposed development and to the pattern of development in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual amenities of the area or the amenities of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area

## 18.0 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 27<sup>th</sup> 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. a) Amplified music or other specific entertainment noise emissions from the premises shall not exceed the background noise level by more than 3 dB(A) during the period 08.00 to 22.00 hours and by more than 1 dB(A) at any other time, when measured at any external position adjoining an occupied dwelling in the vicinity. The background noise level shall be taken as L90 and the specific noise shall be measured at

L<sub>Aeq</sub>T.

- b) The octave band centre frequencies of noise emissions at 63 Hz and at 125 Hz shall be the subject to the same locational and decibel exceedence criteria in relation to background noise levels as set out in (a) above. The background noise levels shall be measured at L<sub>Aeq</sub>T.
- c) The background noise levels shall be measured in the absence of the specific noise, on days and at times when the specific noise source would normally be operating; either
  - i. during a temporary shutdown of the specific noise source, or
  - ii. during a period immediately before or after the specific noise source operates.
- d) When measuring the specific noise, the time (T) shall be any 5 minute period during which the sound emission from the premises is at its maximum level.
- e) Any measuring instrument shall be precision grade.

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

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

- 3. a) No music speakers or sound amplification of any kind will be placed on the external walls or roof.
- b) All entrance doors in the external envelope shall be tightly fitting and self-closing.
- c) All windows and roof lights shall be double-glazed and tightly fitting.
- d) Noise attenuators shall be fitted to any openings required for ventilation

or air conditioning purposes.

**Reason:** In order to protect the amenities of property in the vicinity.

4. No awnings, canopies, roller shutters or additional external lighting shall be erected or displayed on the premises or within the curtilage of the site without prior grant of planning permission.

**Reason:** In the interest of visual amenity

5. Details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

6. Prior to commencement of development the applicant / developer shall agree in writing with the Planning Authority the artwork for the southeast elevation and any lighting associated with this artwork. Any subsequent changes to this artwork shall also be agreed in writing with the Planning Authority.

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

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

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

8. Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the

vicinity.

9. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall -
  - a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,
  - b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and
  - c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

**Reason:** In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site

10. 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.

11. The developer shall pay to the planning authority a financial contribution of €4,000.00 (four thousand euro) in respect of the shortfall of 4 no off street car parking spaces required to service this development 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. The application of any indexation required by this condition 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.

**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.

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**Mary Crowley**

**Senior Planning Inspector**

**24<sup>th</sup> September 2018**