



An
Bord
Pleanála

Inspector's Report 301911-18

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| Development | Change of use of premises from retail to amusement arcade |
| Location | 2 & 3 McCurtain Street, Cork |
| Planning Authority | Cork City Council |
| Planning Authority Reg. Ref. | 1837846 |
| Applicant(s) | Seamus Murphy |
| Type of Application | Planning permission |
| Planning Authority Decision | Refuse permission |
| Type of Appeal | First Party |
| Appellant(s) | Seamus Murphy |
| Observer(s) | None |
| Date of Site Inspection | 1 st October 2018 |
| Inspector | Mary Kennelly |

1.0 Site Location and Description

- 1.1.** The site is located on McCurtain Street, in Cork City Centre. McCurtain Street is located just to the north of the City Quays and to the east of St. Patrick's Hill. McCurtain Street is a mixed-use street with predominantly retail or commercial premises on the ground floor with offices or residential overhead and several hotels, bars and other entertainment uses. It also forms part of the N8, Glanmire Road (Dublin Road). The appeal site is located at the eastern end of the street, on the southern side, opposite the junction with York Street.
- 1.2.** The site comprises a two-storey property with attic at No. 2 McCurtain Street and a 2-3 storey property at No. 3 McCurtain Street. The proposed development relates to the whole of the ground floor of No. 3 but only part of the ground floor of No. 2. At present, No. 3 is occupied on the ground floor as casino/amusement arcade, 'Gold Rush', and the ground floor of No. 2 is in use as two separate retail units at the front of the premises, one of which is currently vacant. The adjoining site to the east is LeisurePlex which also extends to the rear of No. 2. To the west of No. 3 lies the rear section of St. Patrick's Quay Carpark, which does not have access or an active frontage to McCurtain Street.

2.0 Proposed Development

- 2.1.** It is proposed to change the use of the premises at No. 2 from retail to amusement arcade with alterations at ground floor level. It is also proposed to carry out some internal alterations to the ground floor of No. 3 to facilitate the amalgamation of the unit with the existing amusement arcade.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to refuse permission for one reason as follows:

Having regard to zoning objective ZO1 City Centre Retail Area and Objective 13.4 Protection of Prime and Key Secondary Retail Frontage of the Cork City Development Plan 2015-1021 which seek to protect retailing, it is considered that the proposed change of use would materially contravene the objectives of the plan and would be contrary to the proper planning and sustainable development of the area. It is further considered that the proposed development would result in an overconcentration of amusement arcades in the area and would seriously injure the residential amenities and depreciate the value of properties in the vicinity.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- 3.2.1.1 The Area Planner's report (28/05/18), noted that the site is zoned as part of the City Centre Retail Area, where it is the policy to protect retailing and that McCurtain Street is designated as a Key Secondary Retail Frontage, where the objective is to restrict certain uses including betting office from locating at ground floor level. The use of the first floor was questioned in that it was noted that there is a sign stating "Live Casino Upstairs", but no planning permission has been granted for a change of use from the authorised use as offices. It was further noted that Nos. 2 and 3 are included in the National Inventory of Architectural Heritage.
- 3.2.1.2 It was considered that the proposed change of use would be detrimental to the objective to protect the retail function of the street and that it would be unacceptable on the grounds that there is already a high concentration of such uses in the vicinity, including the adjacent Leisureplex, and Macau Sporting Club and Victoria Sporting Club, which are located on St. Patrick's Quay. It was considered that the use would also be inappropriate in terms of the NIAH listing of the two premises and in terms of the noise and disturbance associate with such a use, which would be likely to discourage living over the shop in this area.
- 3.2.1.3 The overconcentration of such uses was considered to be detrimental to the retail and residential functions of McCurtain Street. It would also be likely to result in a dead frontage. Refusal was therefore recommended.

3.2.2. Other Technical Reports

Roads Design - Planning - No objections.

Drainage/Water Services – no objection subject to conditions, which include a condition requiring the submission of a site specific flood risk assessment due to its location within Flood Zone B and having regard to the vulnerable nature of the use.

Environment, Waste Management and Control – no objection subject to conditions. These related to noise and hours of operation during the operational phase and control of waste and litter during construction works.

3.3. Prescribed Bodies

3.3.1 Irish Water (20/05/18) – no objection subject to recommended conditions.

3.4. Third Party Observations

No third-party submissions were received by the P.A.

4.0 Planning History

TP10/34676 – planning permission granted for retention of existing illuminated signage to front of building.

TP10/34315 – permission refused for retention of animated LED signage projecting out from front elevation

TP08.33072 – permission granted for change of use of first floor from general storage use to general office use with ancillary staff facilities.

Adjacent sites

TP 17/37657 – permission granted at The Windsor Inn (corner McCurtain St. and York St.) for part demolition of existing structures, construction of a part 5, part 6, part 7 and part 8 storey over basement guest accommodation facility and the provision of a public bar at GF level and an external courtyard.

TP 15/36655 – Thompson House - Permission granted for change of use of part of ground floor from art gallery/café/classrooms to function rooms/offices and part of ground floor from retail/workshop to café with optional use of retail, and alterations to

internal layout and external elevations. Subsequently permission was granted for further alterations to structure (PS).

5.0 Policy Context

5.1. Cork City Development Plan 2015-2021

5.1.1 The site is zoned ZO 1, City Centre Retail Area the objective for which is “To provide for protection, upgrading and expansion of retailing, in particular higher order comparison retailing, as well as a range of other supporting uses in the City Centre Retail Area”. Paragraph 15.7 states that the City Council is committed to the reinforcement of the City Centre’s role in the retail hierarchy by supporting existing retailing and facilitating new floor space to meet projected demand. Retailing is prioritised in this area but not to the exclusion of other land use types. Other uses such as residential, hotel, office and cultural and leisure facilities etc., which complement the retail function of the CCRA and promote vibrancy in the City Centre, are also permitted, subject to policies to promote City Centre retailing in Chapter 13, City Centre and Docklands.

5.1.2 McCurtain Street is designated as a ‘Key Secondary Retail Frontage’. Objective 13.4 seeks to protect Prime and Key Secondary Retail Frontages as follows:

To restrict retail offices, general offices, hot food take-aways, general convenience stores, public houses, nightclubs, mobile phone shops, bookmakers/betting shops and restaurant uses from locating at ground floor level on prime retail frontages, and restrict retail offices, general offices, hot food take-aways, bookmakers/betting shops at ground floor level on secondary retail frontages (as defined in Map 2, Volume 2).

5.1.3 Other relevant policies contained in Chapters 4 (Retail Strategy) and 16 (Development Management) include the following:-

Obj. 4.3 – City Centre (Retail)

Obj. 4.8 – Core Retail Areas

Obj. 4.16 – Vacant floorspace

16.79 – Proposals for the provision of amusement arcades

5.2. Natural Heritage Designations

Cork Harbour SPA (004030) – lies approx. 3km to the east.

Great Island Channel SAC (001058) lies approx. 6km to the east.

6.0 The Appeal

6.1. Grounds of Appeal

The first-party appeal was submitted by Halley Walsh Planning Consultants on behalf of the applicant. The main points raised may be summarised as follows:

- **Vacant floorspace** – the P.A. failed to have regard to Objective 4.16, Vacant Floorspace, and Section 4.49 of the City Development Plan, which allows for the merging of existing units and the change of use of retail units to meet market demand and to counteract high vacancy rates within the city centre retail area. It is submitted, therefore, that the proposed development does not materially contravene Objective ZO1 ‘City Centre Retail Area’ or Objective 13.4 ‘Protection of Prime and Key Secondary Retail Frontage’ of the CDP.
- **Duration of vacancy** – the premises has been vacant for some time which is due to the limited floor area of the unit which restricts its viability for other potential uses.
- **Overconcentration of amusement arcades** - The small scale of the development, being an extension to an existing business of 43m², would not result in an overconcentration of such uses in the area.
- **Dominant uses non-residential** – given that the dominant uses in McCurtain Street are non-residential, the small-scale extension would not seriously injure the residential amenities and depreciate the value of properties in the vicinity, as evidenced by the lack of third party objections. It is submitted that the existing casino use ‘Gold Rush’, together with the neighbouring use,

Leisureplex, forms an integral part of the mixed use of the street and makes a positive contribution to the entertainment value of the area.

- **Dead frontage** – The layout of No. 2, with three entrances onto the street, will ensure that the proposal would not result in a dead frontage, as the other two entrances will remain.
- **Impact on NIAH structures** - The proposal involves internal alterations only and there would be no change to the exterior of these NIAH structures.
- **Use of upper floors without consent** – the upper floor of No. 3 was used temporarily as a private card club but this use has ceased and the associated signage has been removed.

6.2. Planning Authority Response

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

7.0 Assessment

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

- Compliance with Zoning Objective and Retail Policy for City Centre Retail Area
- Appropriateness of use – residential and visual amenity

7.2. Compliance with Zoning Objective and Retail Policy for City Centre Retail Area

7.2.1. The site is located within the City Centre Retail Area and the Zoning objective ZO1 seeks to provide for protection, upgrading and expansion of retailing, in particular higher order comparison retailing. The Retail Strategy for the city is set out in chapter 4 of the Development Plan. Para. 4.8 states that the City Centre is the principal retail centre for the South West Region and forms the first tier within the Retail Hierarchy. The strategy (Para. 4.9) is to consolidate the City Centre as the primary retail destination in the region, and to be the prime focus for future retail development, in particular, high order comparison retail. **Objective 4.3** seeks

To protect and enhance the role of Cork City Centre as the primary retail centre in the south west region by facilitating the continued regeneration and modernisation of existing and the development of new retail building stock, coupled with a range of complimentary leisure, recreational and cultural uses and investment in public realm improvements.

Para. 4.28 stresses the importance of developing and maintaining a compact core where retail and commercial uses are close enough to each other to benefit from each other's pedestrian flows and to maintain their role. In light of the foregoing, it is clear that the retention of existing retail units within the retail core area is of paramount importance and that there needs to be strong justification for permitting the loss of such units.

7.2.2. The aim of the zoning objectives (13.12) is to ensure that the City Centre retains its primacy as the commercial and employment heartland of the city. The City Centre Retail Area zone is designated in order to reinforce the City Centre's role in the retail hierarchy. It is stated that the CCRA, which includes McCurtain Street, will be the priority location for comparison retail development, alongside a supporting mix of uses which stimulate activity and develop the vibrancy of the City Centre. The aim is further explained (13.12) as seeking to create a

“fusion of shopping, leisure and entertainment and to distinguish it from the more functional shopping centres in the suburbs.....with a mixture of retailing, restaurants, pubs, entertainment and cultural experiences.....accompanied by a good quality and safe environment...”

7.2.3. In order to maintain the retail primacy of the City Centre, key retail streets have been designated, within the CCRA. McCurtain Street is designated as a Key Secondary Retail Frontage, and Objective 13.4 seeks to protect this retail frontage by restricting certain uses such as retail offices, general offices, hot food takeaways, bookmakers/betting shops at ground floor level. Further related objectives allow for the amalgamation of units in appropriate circumstances in order to meet a demand that might arise for medium sized units in order to suit modern retailing needs (13.6); and require new build developments in the CCRA to accommodate active uses at ground floor level (13.7).

7.2.4. It is considered that the proposal to replace a retail unit with an extension to a leisure use would be inconsistent with the retail strategy and objectives for the CCRA as set out above. The policy objectives consistently seek to reinforce the retail function of the designated shopping streets, which includes the retention of existing retail uses. Whilst the retail policy facilitates a mix of retail and other uses, the focus is on maintaining the strong retail character of the prime and secondary retail streets.

7.2.5. McCurtain Street has a reasonable representation of retail uses but also has a very strong representation of non-retail uses including many hotels, restaurants, pubs, entertainment uses etc. The shopping element appears to be quite eclectic and fragile in that there are few, if any, high-profile retail brands and most of the shops are small scale and consist of uses such as artisan bakeries, international food stores etc. McCurtain Street is also physically removed from the main heart of the City Centre shopping area, being north of the river. It is noted that the retail unit in question, together with the grocery shop, are sandwiched between two major entertainment uses and the rear elevation of a car park, with little or no active frontages. The intention of facilitating a mix of uses seems to be to stimulate activity and develop the vibrancy of the City Centre. It is considered, however, that the replacement of the retail unit at No. 2 with an extension of the amusement arcade/entertainment use would militate against this intention to enhance and retain the vibrancy of the shopping street.

7.2.6. The appellant considers that the fact that the unit is vacant and has been vacant for some time justifies the change of use as proposed. Reference is made to Objective 4.16 in support of this viewpoint. However, it is considered that this objective seeks to reduce the level of vacant floorspace mainly by bringing re-occupied units back into retail uses. Objective 4.16 states

To seek to reduce the level of vacant floorspace within the Core Retail Areas by 50%, half of which should be occupied by retail use and the remainder by non-retail uses or retail services. Re-occupied retail units should be at a ratio of 2:1, comparison : convenience goods.

The appellant suggests that the vacancy of the unit may be related to the small scale of the unit and suggests that amalgamation is, therefore, appropriate. However, it is considered that the amalgamation of units referred to in the retail policy of the CDP

relates to the creation of more attractive retail units. Thus, there may, for instance, be an opportunity in the future to amalgamate the units within No. 2, rather than isolating one of the units and amalgamating the other with the entertainment use next door.

- 7.2.7.** It is considered, therefore, that the proposed development would not be consistent with the retail policies for the City Centre Retail Area or the Key Secondary Frontage Area, of which McCurtain Street forms an integral part.

7.3. Appropriateness of the use Residential and Visual Amenity

- 7.3.1.** Chapter 16 of the Development Plan includes guidance on the development of uses such as Amusement Centres/Arcades (16.79), Betting Offices (16.81) and Casinos/Private Members Clubs (16.83). In general, the development management advice seeks to ensure that such uses do not cause disturbance to residents and/or detract from the residential amenity of an area, and to ensure that the visual amenity of the street is not adversely affected. The Development Plan also seeks to encourage residential development in the City Centre including 'living over the shop' and in this respect, seeks to ensure that there is an appropriate balance between entertainment uses and residential uses such that disturbance is kept to a minimum.
- 7.3.2.** The site is located at the eastern end of McCurtain Street, where there appears to be few residential uses at present. Although I would acknowledge the planning authority's desire to protect the residential amenities of the area, I would accept the appellant's view that the proposed development is unlikely to result in any significant loss of amenity by reason of the small scale of the increased floor area (43sq.m) and the lack of existing residential uses in the immediate vicinity of the site.
- 7.3.3.** In terms of the visual amenity, I note that the two buildings in question are listed as NIAH structures. However, I would also accept that there are no proposals to alter the exterior of the buildings and, as such, the proposed development is unlikely to have an adverse impact on the visual amenities of the area. Notwithstanding this, however, the proposal would result in a dead frontage which would contribute to the existing dead frontage on either side of No. 2, and which would not be sympathetic to the enhancement of the visual amenity of the street. Furthermore, the proposal to break through the party wall between the two adjoining NIAH structures is likely to

negatively affect the integrity of these historic buildings. However, as the alterations are unlikely to result in serious injury to the visual amenities of the area.

7.4. Environmental Impact Assessment

Having regard to the nature, size and location of the proposed development, 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.

7.5. Appropriate Assessment

Cork Harbour SPA (004030) lies approx. 3 km to the east and Great Island Channel SAC (001058) lies approx. 6km to the east. Given the distances involved, that 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 I recommend that planning permission should be refused for the reasons and considerations as set out below.

9.0 Reasons and Considerations

1. Having regard to Zoning Objective Z01 City Centre Retail Area and to the Cork City Retail Strategy and the designation of McCurtain Street as a Key Secondary Retail Frontage, as set out in the current Cork City Development Plan 2016-2022, and to the nature of the uses in the vicinity of the site, it is considered that the replacement of a retail unit with an extension to a leisure use which would result in the loss of an active ground floor use frontage, would be inconsistent with the retail strategy which seeks to reinforce the primacy and retail function of the City Centre Retail Area and to maintain the character and vibrancy of the designated shopping streets. The proposed development would, therefore, materially contravene Zoning Objective Z01

and Objectives 4.3, 13.4 and 13.7 of the current Development Plan and would be contrary to the proper planning and sustainable development of the area.

Mary Kennelly
Planning Inspector

26th November 2018