



An
Bord
Pleanála

Inspector's Report ABP – 303158 – 18.

Development	Change of use of Unit 1.8, 1.9 and 1.10 located in the upper mall level from retail to a 5-screen cinema with ancillary hospitality area.
Location	Scotch Hall Shopping Centre, Marsh Road, Drogheda, Co. Louth.
Planning Authority	Louth County Council.
Planning Authority Reg. Ref.	18801.
Applicant	Hallscotch Venture Ltd.
Type of Application	Planning Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party
Appellants	<ol style="list-style-type: none">1. Orna Andrews.2. Melcorpo Commercial Properties.
Observers	None.
Date of Site Inspection	18 th February 2019.
Inspector	Patricia-Marie Young.

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1.0 Site Location and Description

- 1.1. The appeal site has a stated site area of 0.164ha. It consists of Units No's 1.8, 1.9 and 1.10 which are situated in the upper floor level at its easternmost side of the Scotch Hall Shopping Mall, a mixed shopping, residential and hotel complex located on the southern banks of the River Boyne and to the east of Drogheda's historic town centre in Co. Louth. These units were in use up until recently for retail purposes.
- 1.2. Vehicular access to the site is from the Marsh Road and the Dublin Road. There is a multi-storey car park contained within the main envelope of the shopping centre. This accessed from a signalised junction located on the Dublin Road. In addition, there is surface car park that is accessed from the Marsh Road to the north east of the shopping centre. A ticket is required to access and leave both car parks. The car parking tickets can be paid within the shopping centre, a ticket machine off the access road linking to the Marsh Road and can be redeemed by customers of the hotel at its reception.
- 1.3. Scotch Hall Shopping Centre is easily reached on foot with a board walk running alongside it and the River Boyne, a pedestrian bridge providing a link over the Boyne to North Quay/Merchants Quay and a dual vehicular and pedestrian bridge that provides connection to Shop Street, the Marsh Road and the R132 (Old Dublin Road).

2.0 Proposed Development

- 2.1. Planning permission is sought for the change of use of Units No. s 1.8, 1.9 and 1.10 from their permitted retail use to a 5-screen cinema with ancillary hospitality area, including food area, wine bar, external signage and all associated site works.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority **granted** permission subject to conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The **Planning Officer's Report** is the basis of the Planning Authority's decision.

3.2.2. Other Technical Reports

- **Infrastructure:** No objection.

3.3. Prescribed Bodies

3.3.1. Irish Water: No objection.

3.4. Third Party Observations

3.4.1. Both appellants submitted objections to the Planning Authority to the proposed development. The concerns raised in these submissions are the same as those raised in their appeal submissions to the Board.

4.0 Planning History

4.1. Relevant Planning History

4.1.1. The planning history of Scotch Hall Shopping Centre and D-Hotel complex includes but is not limited to -

P.A. Reg. Ref. No. 02/510170: Permission was **granted** for 21,065m² retail use, 7-screen Multiplex Cinema, office space, 125 residential units, hotel accommodation with 80 rooms, public house, multi-storey car park, pedestrian bridge, vehicular access from Dublin Road, new vehicular access off Marsh Road, civic spaces and boardwalk, floating platoon for boats and restoration and alteration of protected structures on site. This is a modification of P.A. Reg. Ref. No. 01/161.

P.A. Reg. Ref. No. 04/110: Permission was **granted** for change of use of the first-floor cinema and 6 no. ground floor apartments on the eastern elevation to retail.

P.A. Reg. Ref. No. 04/111: Permission was **granted** for a change of use of basement car park to retail/retail storage, and basement extension to accommodate 52 no. relocated car parking spaces.

P.A. Reg. Ref. No. 04/113: Permission was **granted** for additional floor to the multi-storey car park, providing an additional 184 spaces.

P.A. Reg. Ref. No. 05/118: Permission was **granted** for the change of use from ground floor circulation area to retail.

5.0 Policy and Context

5.1. Local Planning Provisions

5.1.1. Louth County Development Plan, 2015-2022.

Section 2.16.4 of the above stated County Development Plan indicates that the statutory plan for the urban and surrounding environs area of Dundalk is currently the Drogheda Borough Development Plan, 2011-2017, and that the County Development Plan will be an overarching Development Plan for the entire county including the settlement of Dundalk.

5.1.2. Drogheda Borough Development Plan, 2011-2017.

The Drogheda Borough Development Plan, 2011-2017, is applicable. Under this plan the appeal site is zoned 'TCd – Docklands'. The zoning objective for such land is "*to provide for a mix of town centre activities in accordance with the Docklands Area Plan*". The site is located on a larger parcel of lands zoned as 'Docklands'. The stated objective for these lands is: "*to provide for a mix of new town centre activities in accordance with the Docklands Area Plan*". Cinema use is listed as a permissible use in these lands (Note: Table 2:2 – Development Management Zoning Matrix).

The stated vision for the docklands area as set out in the Area Plan is "*to create a first class town quarter and a model of sustainable urban regeneration where healthy, vibrant and diverse communities can flourish. To achieve a range of new commercial civic and recreational uses focused on the waterfront and water-based activities, while building on the unique setting, character and heritage of the Docklands.*"

5.1.3. Natural Heritage Designations

- The appeal site lies near the southern banks of the River Boyne at a point where it is a designated Special Area of Conservation (Site Code: 002299 – River Boyne and River Blackwater SAC).
- The appeal site is within c1.2km to the west of the Boyne Estuary Special Protection Area (Site Code: 004080).
- The appeal site lies c2.6km to the west of the Boyne Coast & Estuary Special Area of Conservation (Site Code: 001957).

5.2. Environmental Impact Assessment

- 5.2.1. Having regard to the serviced nature of the site, the lack of any ground works as all works proposed are within the envelope of the upper first floor level of the shopping mall, the quantum of development sought under this application, the lack of any direct hydrological connectivity from the site to any nearby sensitive receptors, I consider that there is no real likelihood of significant effects on the environment arising from the proposed development. Therefore, the need for environmental impact assessment can be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The Board received 2 no. 3rd Party appeals.
- 6.1.2. The grounds of appeal submitted by Melcorpo Commercial Properties can be summarised as follows -
- Concern is raised that the applicant has not included the surface car parking area as being in their ownership under the details submitted with this application.
 - This omission means that the planning application as submitted is invalid and it is considered that the Planning Authority did not give this matter due attention.
 - Concerns are raised in relation to the car parking provision present and that to be provided for the proposed development.

- It is considered that there is inadequate car parking for existing uses and to meet the needs of the proposed development.
- A coherent and comprehensive car parking strategy is required for development at this location.
- The Board is reminded of Section 35 of the Planning Acts, as amended.
- The proposed development would adversely impact upon the vitality and viability of the existing town centre.
- There are insufficient demands for the proposed development and it is a type of development that would fail to consolidate the town centre.

6.1.3. The grounds of appeal submitted by Orna Andrews includes the following additional concerns -

- There is already a partially constructed cinema complex within the boundaries of Scotch Hall. The permission for it has expired and there is a partially constructed shell which is in a derelict state.
- Some of the car parking needs of this complex is met by an unauthorised surface car park.
- The applicant should be refused permission until such a time as they have addressed the existing derelict partially built cinema structure.

6.2. **Applicant's Response**

6.2.1. The applicant's responses can be summarised as follows -

- All works will be carried out within the red line boundary and the proposed development does not rely on the surface car park referred to by the appellants.
- The overall Scotch Hall retail space is predominantly served by the existing multi-storey car park.
- It is the applicant's intention to make an application on the temporary surface car park and the derelict building this year.
- The existing multi-storey car park is stated to have 629 spaces over four floors.

- Section 7.3.9.2 of the Louth County Development Plan indicates that many types of developments have the potential for shared car usage. Notwithstanding the proposed development can be accommodated within the existing multi-storey car parking and would not result in any deficit of car parking spaces.
- To refuse planning permission for the proposed development based on Section 35 of the Planning and Development Act, as amended, would be unreasonable and unjustified.
- The cinema use is permissible and is in accordance with local policy provisions.
- The proposed cinema would offer a boutique style experience currently not available in the town.
- Contributing and increasing the cinema offer within the town would contribute to the revitalisation of Drogheda's town centre. Particularly between 6pm to 11pm which is peak cinema trading hours where footfall in the town would be increased.
- The current proposal seeks permission to convert retail space left vacant by the recent closures on the first floor of the shopping centre.
- The demographics of the town point to an increased demand for cinema screens with the overall population generally younger than the national average.
- This response is accompanied by a revised Site Plan indicating the appeal site and detailing land within the applicant's landownership in its vicinity.

6.3. Planning Authority Response

6.3.1. The Planning Authority's response can be summarised follows.

- The car parking requirement for a cinema is based on 1 car parking space per 200m² gross area whereas the existing car park requirement for retail was 1 car parking space per 50m². Even allowing for the wine bar and food court there is an excess of car parking already permitted within the Scotch Hall complex and the change of use's car parking requirement is less than the permitted retail use.
- The applicant has been in contact with them to resolve the derelict building within the complex and bring it into commercial and/or complementary use.

- The matter of the unauthorised car park has been referred to the Enforcement Section and enforcement action has been taken.

6.4. Further Responses

- 6.4.1. On the 30th day of January 2019, the Board received a further response from the appellant Ms. Orna Andrews. This response contends that the applicant has failed to provide an adequate explanation for the map error in their submitted application. The appellant also considers that there is nothing concrete in the applicant's proposals to make an application in relation to the partially built cinema.
- 6.4.2. On the 31st January 2019, the Planning Authority submitted a further response. This response concurs with the applicant's comments made in relation to landownership and notes their clarification that they are in the process of drawing up plans for the derelict/partially constructed site to the east of the Scotch Hall complex. It is noted that a Warning Letter has been issued to the owners of the unauthorised surface car park.
- 6.4.3. On the 14th day of February 2019, the Board received a further response from the appellant Melcorpo. This response raised a concern that the Board had failed to circulate the applicant's response to their grounds of appeal. This response raises no new issues.

7.0 Assessment

7.1. Overview

- 7.1.1. In my opinion the following issues are of relevance to the assessment of the current appeal:
- Validation Issues
 - Principle of Development and Compliance with Land Use Zoning
 - Impact on Vitality and Vibrancy of Town Centre
 - Drogheda's Capacity to Absorb an Additional Cinema
 - Car Parking
 - Drogheda's Capacity to Absorb an Additional Cinema

- Enforcement and Derelict Sites
- Advertising
- Appropriate Assessment

7.2. Validation Issues

- 7.2.1. Both appellants have questioned the validity of this planning application on the basis that the applicant has failed to indicate their actual landownership relative to the site area for which planning permission is sought for the change of use from retail units to a 5-screen cinema with ancillary hospitality area. On this matter they raise concerns that an existing surface car park located to the east of the Scotch Hall and D-hotel does not form part of the blue line area, i.e. land within the applicant's legal interest. On this basis they argue that the application is invalid.
- 7.2.2. I am cognisant that the Planning Authority validated this planning application and that this issue was raised by the appellants in their submissions to the Planning Authority during their assessment of this application. The Planning Authority after this issue being raised to them decided to grant permission.
- 7.2.3. The applicant as part of their response to the grounds of this appeal have submitted an amended Site Plan which they contend indicate the land in which they have a legal interest in blue relative to the site area which is outlined in red. This together with other documentation on file in my view substantiates the applicants adjoining landholding relative to the appeal site.
- 7.2.4. I consider that the issue of validation of the application is to be one between the appellants and the Planning Authority in the first instance and I propose to proceed with an assessment of the substantive planning issues arising from this application in my assessment below.
- 7.2.5. The proposed development relates to existing retail units within the existing Scotch Hall shopping centre and it is clearly outlined in red. In addition, the red line area is completely encompassed within a larger blue line area indicating a substantive landholding in the applicant's legal interest around it. This is unchanged in both the Site Plans accompanying this application and the applicant's response to the grounds of this appeal though the later indicates a larger blue lined parcel of land.

- 7.2.6. As discussed in my assessment below the proposed development has a car parking requirement which is less than that which would have been required under the parent grant of permission. Moreover, it is less than what is currently required under the current local planning provisions for the retail quantum of development that the 5-screen cinema and ancillary hospitality area seeks to replace.
- 7.2.7. Based on the above factors together with the appellants lack of a substantive basis to conclude that the proposed development would, if permitted, be reliant upon the subject unauthorised surface car park, I concur with the Planning Authority that it would be unreasonable to invalidate this application based on this concern.
- 7.2.8. The appellants raise further concerns in relation to why the applicant excluded the surface car park from the blue lined area indicated in this application.
- 7.2.9. In this regard, they provide an overview of the planning history of this complex including the surface car park which they rightly indicate is without the benefit of a valid permission to be currently in use and that it has been in operation prior without compliance with a temporary now expired grant of permission. It is their view that the proposed development like the other development within this complex would be functionally reliant upon this surface car park due to an overall deficit in car parking to meet the parking requirements of the quantum of uses contained within this shopping centre and hotel complex. As such they consider that the proposed development would also be in part functionally reliant on this unauthorised and non-compliant surface car park.
- 7.2.10. The appellants refer to Section 35 procedure of the Planning & Development Act, as amended. They contend that the history of unauthorised development by the applicant in relation to this surface car park both by way of having it operational without the benefit of planning permission and having not complied with the conditions attached to its temporary grant of permission that this would justify the Board refusing permission under the said Section of the Planning Act.
- 7.2.11. I am cognisant that this section of the Planning Act can be used only when the Planning Authority or the Board on appeal forms a view that it is likely that a development would not be carried out in the manner proposed or in contravention of conditions that may be placed on a permission. The applicant seeks permission for a development within the confines of a shopping centre which has been completed

and relates to vacant retail units, No.s 1.8, 1.9 and 1.10, within it. This shopping centre has therefore already been carried out and this application essentially seeks internal alterations to it alongside a change of functional use for a quantum of floor area within it.

7.2.12. The conditions attached by the Planning Authority in their notification to grant planning permission are not in my opinion to be onerous. Should the Board be minded to grant permission it is likely that similar conditions would be considered appropriate.

7.2.13. Moreover, based on my considerations below I have raised no substantive concerns that resulted in my recommendation of a particularly onerous condition to be imposed by the Board in the event of a grant of permission.

7.2.14. It is unlikely that the development would not be carried out in accordance with any permission that may be granted for it, and so it is my view that the section 35 procedure would not apply in this case.

7.3. Principle of Development and Compliance with Land Use Zoning

7.3.1. The appeal site is located on lands that are zoned town centre and docklands under the applicable Development Plan with cinema use being listed as a permissible use on these lands. I therefore consider the generally principle of the proposed development which essentially seeks planning permission for the change of use of existing but vacant retail units within the upper levels of the existing Scotch Hall shopping centre into a 5-screen cinema with an ancillary hospitality area is acceptable, subject to safeguards.

7.4. Impact on Vitality and Vibrancy of Town Centre

7.4.1. In my opinion the grounds of appeal did not elaborate as to how the proposed development will impact on the vitality and viability of Drogheda's town centre. The subject site is zoned 'TC- d' (Town Centre - Docklands) and it is an objective of the Planning Authority to seek for a mixture of town centre activities in accordance with the Docklands Area Plan. The proposed cinema use is deemed to be a permissible land use on such zoned lands.

7.4.2. In addition, Policy TC3 of the Development Plan states that the Planning Authority will seek "*to encourage activities including cultural and entertainment uses that add*

to the diversity of the Town Centre thereby enlivening the evening economy and contributing to its vitality and viability”.

- 7.4.3. Furthermore, the Board will note that the units in question have already been constructed and are amongst several existing vacant units within the Scotch Hall shopping centre.
- 7.4.4. Arguably there is a level of synergy between the retail and the cinema use at this location having regard to the land use zoning of this shopping centre as well as surrounding town centre and dockland zoned lands alongside the fact that the more extended evening and night time hours of operation of the cinema use, even though it is less intensive to that previously permitted, results in a more vibrant and vital evening presence for this shopping centre in addition to its existing hotel through to restaurant uses.
- 7.4.5. I consider that the impact of the development sought on the town centre and retail park vitality and vibrancy in this case not to be a sufficient basis to warrant a refusal of permission.
- 7.4.6. I further consider that the proposed development is in accordance with the proper planning and sustainable development of the area in that it proposes new uses for existing floor area within town centre dockland zoned land and a land use that would add to the entertainment uses available which in turn would strengthen the evening economy of the town.

7.5. Car Parking

- 7.5.1. On the matter of car parking requirements, it would be reasonable to assume that the car parking required to cater for the original retail uses of the floor space for which the change of use is proposed was predicated on full occupancy of the units proposed. It is also reasonable to assume that the car parking provision was deemed to be acceptable and in accordance with the standards set out in the development plan operational at the time of granting planning permission.
- 7.5.2. Therefore, any future occupancy of retail units within this shopping centre would be catered for under the terms of the original permission.

- 7.5.3. Furthermore, having regard to the current car parking requirements I accept having had regard for the provisions of the Development Plan that the proposal represents a less intensive use in terms of car parking requirements.
- 7.5.4. I also accept that proposed change of use to a boutique cinema with ancillary hospitality area is a type of land use that evidence supports will in general experience peak car parking demand in the evening times which is outside the peak retail times, i.e. when there is less intensive pressure on the existing multi-storey car parking spaces. Moreover, this is also a time when public provided on-street and car parking is generally in less demand.
- 7.5.5. While I am cognisant of the appellants concerns on the matter of car parking I am satisfied that it is not a significant and material issue in the adjudication of this appeal. The impact of the proposed development, if permitted, on the existing quantum of car park within the Scotch Hall Shopping Centre and on the surrounding area would not in my view result in any adverse or significant impact on the car parking provision. Further, the car parking provision within this shopping centre appears to be more than ample to accommodate the different nature and operational hours of land uses that it contains in a manner that is consistent with local planning policy provisions.

7.6. Drogheda's Capacity to Absorb an Additional Cinema

- 7.6.1. I accept that Drogheda and its hinterland is under provided for in terms of cinema screens. I also consider that it is not unreasonable to accept the all cinema venues are the same type or contain the same facilities, capabilities and catchment for patrons.
- 7.6.2. Having regard to the current and projected population of Drogheda, the age profile of its population and its catchment area together with the willingness of patrons to travel outside of this settlement for their cinema experience there is little substantive evidence that would in my view support the contention that Drogheda could not accommodate an additional cinema offer proposed under this application.
- 7.6.3. What is of concern is whether or not the proposed location is appropriate for the proposed development.
- 7.6.4. As already discussed the location of the proposed cinema is appropriate being town centre within easy walking distance of public transportation and for many residential areas within the town. The proposed 'TC-d' location would add to the cultural and

entertainment activities present within the confines of Drogheda's town centre adding to its attractiveness alongside would synergise with other evening and night time uses that are already present in its vicinity.

- 7.6.5. Based on the considerations I am not convinced that the proposed development could not be positively absorbed within the town centre of Drogheda in a successful manner.

7.7. Advertising

- 7.7.1. I raise no particular concern in relation to this matter subject to an appropriate condition should the Board be minded to grant permission to achieve a high-quality solution that is appropriate to the sites location within what is built heritage rich townscape.

7.8. Enforcement & Derelict Site

- 7.8.1. The appellants raise unauthorised development and derelict site concerns for land that appears to be in the applicant's legal interests, but which does not form part of the appeal site itself.

- 7.8.2. In relation to the unauthorised development, this concern relates to a surface car parking which is situated to the north east of the shopping mall. As previously discussed I consider that as the quantum of car parking required under the Development Plan is less for cinema and ancillary uses proposed than retail it would be unreasonable to assume that any grant of permission would result in a type of development that would require this unauthorised car park to cater for its needs. I therefore consider that the planning status of this car parking and its continued use is a matter for the Planning Authority to deal with as they see fit.

- 7.8.3. Similarly, I consider the matter of the derelict site which lies to the east of the shopping centre is a matter for the Planning Authority to deal with as they see fit.

- 7.8.4. Based on the above I consider these matters are outside of the Boards remit in their consideration of this appeal case.

7.9. Appropriate Assessment

Having regard to the nature and scale of the proposed development and the nature of the receiving environment together with the proximity of the nearest European site, 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 and projects on a European site.

8.0 Recommendation

8.1. I recommend a **grant** of planning permission based on the reasons and considerations set out below.

9.0 Reasons and Considerations

Having regard to the 'TC- d' zoning objective associated with the site which seeks to provide for a mix of new town centre activities in accordance with the Docklands Area Plan, it is considered that the proposed change of use from retail and to boutique cinema together with ancillary hospitality area, subject to conditions set out below, would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health and would generally be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be carried out and 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. Full details of all proposed signage shall be submitted and approved in writing by to the Planning Authority. Furthermore, notwithstanding Part 2 (Exempted Development – Advertisements) of Schedule 2 of the Planning and Development

Regulations, 2001, or any re-enactment thereof, no other signs apart from those signs which are agreed in writing with the Planning Authority shall be displayed at the site without a prior grant of planning permission.

Reason: In the interest of visual amenity.

3. 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. Details of the proposed water supply and drainage services, including detailed layouts and specifications, shall be submitted to the Planning Authority for agreement and no development shall commence prior to the confirmation of such agreement in writing by the Planning Authority.

Reason: In the interest of public health and to ensure a proper standard of development.

Patricia-Marie Young
Planning Inspector

11th March 2019