



An
Bord
Pleanála

Inspector's Report ABP303390-19

Development	Change of Use of upper floors of building from residential to restaurant together with ancillary works including changes in fenestration.
Location	Main Street, Kinvara, County Galway.
Planning Authority	Galway County Council.
Planning Authority Reg. Ref.	18/1465.
Applicant	Greatrok.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party -v- Grant.
Appellant	Paul O'Shaughnessy.
Observers	None.
Date of Site Inspection	22 nd March, 2019.
Inspector	Paul Caprani.

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1.0 Introduction

ABP30339-19 relates to a third-party appeal against the decision of Galway County Council to issue notification to grant planning permission for a change of use from an existing first and second floor residential unit to a commercial unit accommodating a commercial kitchen and 46-seater restaurant at Main Street, Kinvara, County Galway. The grounds of appeal raise a number of concerns primarily in relation to noise but also raise concerns in respect of visual amenity, parking and sewage and waste infrastructure.

2.0 Site Location and Description

- 2.1. The appeal site is located within the centre of the village of Kinvara in south Galway. The site is located at the corner of Main Street and the seafront area/Quay Street which leads northwards towards the boat quay/harbour area in the village. The site is located within the commercial core of the village and is bounded by a health shop to the immediate west of Main Street and by a local craft shop to the immediate north on Quay Street. The L-shaped building comprises of a three-storey structure fronting onto Main Street (and the corner of the building fronting onto the Quay Street). The remainder of the building fronting onto the seafront road in the northern portion of the site is two-storey. The building occupies almost the entire footprint of the site with the exception of a small outdoor storage space to the rear of the building which amounts to less than 20 square metres. The building is currently vacant and formally accommodated a public house.
- 2.2. The ground floor plan incorporated a bar and lounge area with toilets and storage area to the rear. At first floor level separate living accommodation was provided comprising of a kitchen/dining/living room area with three small bedrooms and a bathroom. Two additional small bedrooms and a bathroom was located in the second storey element at the corner of the building. My site inspection indicated, although it could not be verified as I could not gain access to the building that the residential element of the building was also vacant at the time of site inspection. The gross floor area of the building amounts to approximately 281 square metres.

3.0 Proposed Development

- 3.1. It is proposed to reinstate the bar at ground floor level with some minor internal alterations to the layout. At first floor level change of use is sought from residential to use as a kitchen/restaurant. The kitchen preparation area is to be located to the rear of the building with the restaurant/seating area to be located within that part of the building that fronts onto the Quay Street road and the Main Street. It is also proposed to omit the second floor of the building to create a double height ceiling over the restaurant area at the southern end of the building fronting onto Main Street. New toilets are also proposed at first floor level to serve the restaurant.
- 3.2. The application also seeks to alter the fenestration arrangements at first floor level with the incorporation of three new additional windows facing eastwards onto the seafront. It is also proposed to include rooflights within the double height space and alterations to the rear roof profile including the incorporation of a new window to serve the kitchen area. A proposed ventilation duct and a proposed air conditioning unit is also proposed on the flat roof section to the rear of the building.

4.0 Planning Authority's Decision

4.1. Planning Decision

Galway County Council issued notification to grant planning permission for the proposed development subject to 10 standard conditions.

4.2. Planning Authority's Assessment

- 4.2.1. The planning application was lodged on 17th October 2018. A letter of objection from the current appellant was submitted the contents of which have been read and noted.
- 4.2.2. A report from Transport Infrastructure Ireland states that TII have no observations to make.
- 4.2.3. A report from the Architectural Conservation Office recommends that the rooflights are flush with the pitch of the roof on the proposed development.

4.2.4. The planner's report states that the building is located at the centre of Kinvara Village on the quay and there is an existing public house at ground floor level which is undergoing renovations. The Planning Authority have no objection to the proposed development having regard to the planning history of the site, the existing uses on site and the nature of the proposed development situated within the village of Kinvara. It is therefore recommended that planning permission be granted for the proposed development.

5.0 Planning History

No planning history files are attached. Extensive planning history associated with the surrounding area is set out in the planner's report. None of this planning history appears to be directly relevant to the subject application.

6.0 Grounds of Appeal

6.1. The decision of Galway County Council to issue notification to grant planning permission was the subject of a third-party appeal by Paul O'Shaughnessy. The grounds of appeal are outlined below.

- The primary objection to the proposed development is the conversion of the existing first floor and second floor residential unit into a commercial unit comprising of a kitchen and 46-seater restaurant. The appellant's property is located immediately adjacent on Main Street and comprises of a commercial unit at ground floor level (health food store) and residential unit at first floor, second floor and to the rear of the ground floor. The rear of the proposed development is adjacent to and overlooks the rear of the appellant's property.
- The proposed development will impact on the appellant's residential property in a number of ways and primarily through excessive noise levels. There are existing windows at the rear of the development that are very close to the residential part of the appellant's property. The appellant has no indication of the decibel levels which would be emitted from a commercial kitchen unit and a 46-seater restaurant.

- In addition to the existing windows on the development property, a large feature glass window is proposed on the roof and rear wall of the kitchen. The plans submitted to Galway County Council do not specify if this window can be opened. If the window can be opened, it would cause noise disturbance to the appellant's property.
- Concern is also expressed that workers will congregate to the rear of the property during breaks and this could also give rise to excessive disturbance. The applicant does not have clarity as to whether or not adequate noise containment measures are being put in place and also whether or not amplified entertainment is taking place within the restaurant area.
- Concerns are also expressed that the extract duct and air conditioning will also give rise to excessive noise and will result in noise disturbance at the appellant's property. No details are provided in relation to the noise sound output from these units.
- For all the above reasons it is considered that a Noise Impact Assessment to examine and quantify the noise impact associated with the development should have been included with the planning application.
- Concerns are expressed that the size and final location of the extract duct and air conditioning units may obstruct the appellant's view of Kinvara Bay from the second floor property.
- It is also noted that the existing sewage connection from the residential part of the development property was redirected into the sewage pipe of the appellant's property some years ago and that this is prone to clogging and would therefore have to be removed from the appellant's property and redirected through the development property to the public main.
- There is no clarity as to where food waste from the proposed restaurant is going to be stored. Concern is expressed that it could be stored outside the rear of the development property which could result in odours and attract vermin.
- Concerns are also expressed in relation to the lack of public parking in the area around the development property.

- 6.2. On the basis of the above submission the appellant feels obliged to appeal the decision to ensure that due consideration to the appellant's genuine concerns. Photographs showing the rear of the subject site from the appellant's property are submitted with the grounds of appeal.

7.0 Appeal Responses

7.1. Planning Authority's Response

- 7.2. It appears that Galway County Council have not submitted a response to the grounds of appeal.

7.3. Applicant Response

- 7.4. The appeal response was submitted on behalf of the applicant by Oliver Higgins, Chartered Engineers. The grounds of appeal are outlined below.

As a preliminary matter it is noted that Condition No. 10 of Galway County Council's grant of planning permission applied a development contribution charge. It is noted that under the Development Contribution Scheme adopted by Galway County Council it is stated that '*development consisting of the conversion or renovation of upper floors of buildings into business/commercial or residential units in areas zoned town centre in local area plans shall be exempted from the provisions of the Development Contribution Scheme*'. The Board are requested to note this when making their decision.

Specifically, in relation to the grounds of appeal the following is stated:

- Under the current Galway County Development Plan 2015-2021 there is no specific requirement or objective for a restaurant developer to undertake a Noise Impact Assessment as suggested in the grounds of appeal. It is argued that such a requirement in this instance could be considered over-zealous. The proposed development is set within the village/town centre location and as such this type of commercial development is expected to be located in such locations. It is also unreasonable to expect ambient noise levels in village centres where commercial activities predominate.

- Typical decibel levels for a normal conversation is in the range of 55 to 65 dB(A). It is also noted that last orders within the restaurant are generally up to 9.30 p.m. It is highly probable that the last patrons will vacate the restaurant by 10.30. Such operation times are considered reasonable for a central village area. Furthermore, the configuration of the restaurant will ensure that the potential for sound is “logically zoned” relative to the shape of the restaurant. It is noted that there are no seating areas immediately adjacent to the existing windows which faces the appellant’s property. The existing building is already constructed from mass stone walls which are approximately 600 millimetres thick. Therefore the minimum density standards for building materials in separating walls set out in the Building Regulations have been satisfied and substantially exceeded in the existing building.
- The new windows will be replaced and replicated using triple glazing which will further reduce any noise impact. It is the owner’s aim to continue to operate the pub which previously existed on site.
- The proposed enlarged window at the rear to serve the kitchen has no direct implication on the adjoining property. This window will be visible from the chef’s bar and will ensure that views of the built heritage of the town will become an integral part of the dining experience.
- With regard to the extraction plant serving the kitchen area there will be specific absorption baffle placed around the external condenser units and they typically have a low operating noise range of 40 to 45 dB(A). The location of the air conditioning plant is likely to be on the flat roof serving the kitchen.
- The applicant is likely to propose a new sewer to serve the development which ‘can be facilitated through the existing property’.
- It is envisaged that the restaurant will endeavour to operate a zero-waste policy insofar as reasonably practicable. Food waste will be used for composting off site. It will be stored on site for a very short period and vermin control is standard practice in the food industry. Storage yards and bins will be maintained to the highest level.
- In terms of car parking, the site is located in the village centre and is reliant on the public provision of car parking. It is unreasonable to expect the applicant

to provide any car parking for the development. The restaurant will be busiest in the late afternoon/evening where there will be little conflict with daytime parking needs.

8.0 Development Plan Provision

- 8.1. The Kinvara Local Area Plan 2005-2011 appears to be the Plan which is still in operation for the village. The subject site is zoned '*Village Centre Mixed Development*'. The village centre (mixed development) zone seeks to provide a mix of retail, commercial, office, tourism and residential uses. Retail uses are encouraged at ground floor level on main shopping streets with office or residential uses overhead.
- 8.2. In terms of the provision of bars/nightclubs, Section 6.3.3 of the development plan states that in order to maintain an appropriate mix of uses and protect night-time amenities in the village, the Planning Authority will through appropriate use of its development control powers prevent excessive concentration of any of these uses in a particular area and shall ensure that the intensity of any proposed use is in keeping with both the character of the area and with adjoining businesses when development proposals are being considered. The following issues will be taken into account in the assessment of the application for the above uses.
- Noise at the boundaries will be carefully monitored and noise insulation measures will be required at the time of the submission of the planning application. Other effects of the development on the amenity of nearby residents must be assessed prior to the granting of planning permission.
 - The importance of safeguarding the vitality and viability of the village centre and maintaining a vibrant mix of uses.
 - The Planning Authority shall insist that property litter control measures be put in place to the operation of any premises.
 - All food preparing premises will require a grease trap. A developer can find out more about this requirement from the Environment Section of Galway County Council.

9.0 Planning Assessment

I have read the entire contents of the file, visited the site and its surroundings and have had particular regard to the issues raised in the grounds of appeal. I consider the Board can restrict its deliberations to the issues raised in the grounds of appeal and the issues set out below.

9.1. Principle of Development

- 9.1.1. I consider the principle of the change of use from residential to restaurant to be generally acceptable in principle having regard to the site's location within the centre of the village of Kinvara where it is appropriate that commercial uses should be encouraged. I would also have regard to the fact that Kinvara is a picturesque village on the gateway to the Burren National Park and for this reason tourism is an importance economic function of the village. The provision of a restaurant would contribute to the tourism product of the village and as such the provision of a restaurant at such a central location within the village should in principle be encouraged. It is also obvious that the provision of a restaurant use is acceptable in principle under the village centre (mixed development) land use zoning. I also note that a public house is also permitted in principle (this use has already been established on site).
- 9.1.2. The main problem which arises under the current application is the fact that there is existing residential accommodation in adjoining buildings and these buildings comprise of the old fabric of the village with a tight urban grain as therefore the two uses are in very close proximity. The separation distance between the appellant's site and the rear return of the subject site ranges between 4 and 6 metres. There therefore is potential for the proposed development to impact on the residential amenity of the residential element of the upper floors of the adjoining building.

9.2. Noise Issues

- 9.2.1. The historic arrangement of buildings in close proximity to each other should not in my view necessarily prohibit the provision of a commercial evening time use on the appeal site. The applicant in his response to the grounds of appeal indicates that the old stone masonry walls are in excess of that required in the Building Regulations to

ensure effective noise attenuation. This contention is also supported by the drawings submitted which indicate that the external walls associated with the building are in excess of half a metre thick and comprise of dense masonry which would in my opinion prove to be very effective in terms of noise attenuation.

- 9.2.2. The applicant in this instance has also indicated that the restaurant opening hours will not extend beyond 9.30 p.m. in the evening which should ensure that the last diners would leave around 10.30 as the restaurant would progressively empty out after 9/9.30 p.m. The potential for noise disturbance would become progressively less as patrons vacate the restaurant.
- 9.2.3. The replacement of existing windows with triple glazing should also ensure that potential noise propagation from the restaurant area would be contained. The Board will also note that the windows serving the public restaurant area are all located on the public side of the building and therefore away from the appellant's house.
- 9.2.4. The grounds of appeal also suggest that the Board should insist that a noise impact assessment be carried out on the subject site prior to determining the current application. While it is of course open to the Board to request such an assessment, I consider that, having particular regard to the applicant's response to the grounds of appeal which suggest that appropriate mitigation measures can be put in place to contain noise, that the Board would simply address this issue by way of condition. The Board could attach a condition requiring that during the operational phase of the proposed development the noise level arising from the development as measured at any point along the external boundary of the site shall not exceed an $L_{Aeq T}$ value of 55 dB(A) during the period 0900 hours to 2200 hours from Monday to Sunday inclusive. Such a noise level in my view would be acceptable having regard to the site's central location adjacent to the main street where ambient and background noise levels are likely to be in the region of 45 to 55 dB(A) particularly during the summer months when the village is most frequented by tourists etc.
- 9.2.5. With regard to the potential for amplified music taking place within the restaurant this issue can be adequately addressed by way of condition. I will consider it appropriate that the Board would consider attaching such a condition having regard to the close proximity of a residential unit.

- 9.2.6. With regard to the issue of the proposed extraction duct and air conditioning unit again I consider that this issue could be most adequately addressed by way of a condition stipulating noise levels at the boundary of the site. The applicant has indicated in his response to the grounds of appeal that the extraction plant serving the kitchen area have a low operating noise range of between 40 to 45 dB(A). The incorporation of a noise condition as suggested above, would in my view adequately address any concerns in relation to same.
- 9.2.7. With regard to the congregation of staff for breaks in the decking area to the rear, I note that this decking area is located to the rear of the kitchen and therefore is not directly adjacent to the appellant's dwelling. Having regard to the separation distance and the presence of the existing building on the subject site between the decking area and the appellant's dwelling, I do not consider that noise from restaurant staff would give rise to any significant amenity issues. Again, I refer to the fact that the appellant's dwelling is located on the main street in close proximity to a number of bars some of which have outdoor seating areas and this is more likely to give rise to noise generation than restaurant staff breaks.
- 9.2.8. It is my conclusion therefore that the principle of a residential development is suitable on the subject site having regard to its central location within the village. I am also satisfied that the building materials inherent in the existing building fabric are sufficient to significantly attenuate and contain noise associated with the restaurant. Furthermore the Board could in my view ensure that noise is kept to an acceptable level incorporating an appropriate noise condition together with restricting opening hours and prohibiting amplified music etc. If such conditions were put in place, I consider the proposal would have acceptable impact and would not materially or significantly affect the residential amenity of the appellant.

9.3. **Other Issues**

- 9.3.1. Concerns were expressed that the size and final location of the extract duct and air conditioning unit may obstruct the appellant's view of Kinvara Bay from the second floor of the property. The view in question is not a protected view or prospect in the development plan and the applicant in this instance has no legal right to ensure that the view in question is maintained purely for his benefit. It also appears from the drawings submitted that the proposed air conditioning unit and proposed ventilation

duct will not rise above the existing roofpitch on the two-storey element of the existing dwelling. The drawings submitted indicate that the proposed air conditioning unit and ventilation duct are relatively small, at less than a square metre. The size of the units therefore would not have a significant or profound effect on the appellant's views.

- 9.3.2. With regard to the issue of sewage the applicant in his response to the grounds of appeal states that he is likely "to propose a new sewer to serve the development which can be facilitated through the existing property". I note that Galway County Council did not express any concerns in relation to sewage and I consider that this issue could be most adequately addressed by way of a standard condition requiring that all surface water and drainage arrangements shall be the subject of a written agreement with the Planning Authority prior to the commencement of development.
- 9.3.3. With regard to restaurant waste, the applicant has indicated that the restaurant will endeavour to operate a zero waste policy in order to ensure that much waste as possible will be diverted from landfill. Proper management of the restaurant facility including storage areas and bins for food waste should ensure that odour and vermin do not become problematic.
- 9.3.4. With regard to the issue of car parking, it is not possible to provide any off-street car parking within the curtilage of the site. The old historic core of the village does not readily lend itself to provide off-street car parking. There are areas of communal public car parking located along the quayside and along the public streets within the village. It would be unreasonable in my view to refuse planning permission for the proposed commercial development and any other commercial development in the village for that matter on the basis that there is no potential to provide off-street car parking.
- 9.3.5. Finally, the applicant's response to the grounds of appeal suggests that a development contribution charge attached as Condition No. 10 has been incorrectly applied on the grounds that development such as that proposed which involved the conversion and renovation of the upper floors of the building shall be exempted under the provisions of the Development Contribution Scheme. It is my considered opinion that the Board are precluded from considering revisiting this matter on the grounds that, if the applicant was unhappy with the condition in question, he should

have appealed it as part of a first party appeal to the Board in order to enable the Board to give it due consideration. It is inappropriate for the applicant to seek redress for any perceived grievances associated with the permission granted on the basis of a third party appeal.

10.0 Conclusions and Recommendation

Arising from my assessment above I consider that the Board should uphold the decision of the Planning Authority and grant planning permission for the proposed change of use on the basis that such a use is permitted in principle within the village centre and that with the incorporation of appropriate conditions, I consider that the appellant's concerns particularly in relation to noise can be allayed.

11.0 Appropriate Assessment

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

12.0 EIA Screening

The proposed development does not constitute a class of development for which environmental impact assessment is required.

13.0 Decision

Grant planning permission for the proposed development in accordance with the plans and particulars lodged based on the reasons and considerations set out below.

14.0 Reasons and Considerations

Having regard to the zoning objective pertaining to the site, it is considered that subject to conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health and would 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.

15.0 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 required details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to the commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The restaurant shall only operate between 0900 hours to 21.30 hours Mondays to Sundays inclusive.

Reason: In the interest of residential amenity.

3. The operators of the premises shall control odours emissions from the restaurant in accordance with details and measures to be submitted to and agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interest of public health and to protect the amenities of the area.

4. No advertisement or advertisement structure (other than those shown on the drawings submitted with the application) shall be erected or displayed on the building (or within the curtilage of the site) in such a manner as to be visible from outside the building, unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

5. No signage, advertising structures/advertisements, security shutters, or other projecting elements, including flagpoles, shall be erected within the site unless authorised by a further grant of planning permission.

Reason: To protect the visual amenities of the area.

6. Details of all storage of refuse including food waste associated with the development shall be agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interest of public health and visual amenity.

7. (a) During the operational phase of the proposed development, the noise level arising from the development, as measured [at the nearest dwelling] [at the nearest noise sensitive location] or [at any point along the boundary of the site] shall not exceed:-

- (i) An Leq,1h value of 55 dB(A) during the period 0800 to 2200 hours from Monday to Saturday inclusive.
- (ii) An Leq,15 min value of 45 dB(A) at any other time. The noise at such time shall not contain a tonal component.

At no time shall the noise generated on site result in an increase in noise level of more than 10 dB(A) above background levels at the boundary of the site.

- (b) All sound measurement shall be carried out in accordance with ISO Recommendation 1996:2007: Acoustics - Description and Measurement of Environmental Noise.

Reason: To protect the residential amenities of property in the vicinity of the site.

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 rooflights proposed shall be flush with the pitch of the roof.

Reason: In the interest of visual amenity.

10. The developer shall pay to the planning authority a financial contribution of €1,502 (one thousand five hundred and two euro) 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. 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.

Paul Caprani,
Senior Planning Inspector.

8th April 2019.