



An
Bord
Pleanála

Inspector's Report

ABP-303949-19

Development	Modifications to a previously permitted (Pl. Ref. No. 07/268) mixed-use development.
Location	IDA Small Business Park , Tuam Road, Galway.
Planning Authority	Galway City Council
Planning Authority Reg. Ref.	18318
Applicant(s)	MKO
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party-v-Grant First Party-v-Condition
Appellant(s)	(1) Hanover Street Investments Limited (2) MKO (3) Dr. Denis C. Higgins

Date of Site Inspection

06th June 2019

Inspector

Colin McBride

1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 0.2016 hectares is located at the Tuam Road IDA Small Business Park at the junction of Tuam Road and Connolly Avenue and to the north east of Galway City. The appeal site is occupied by an existing two-storey structure that has a vacant retail warehousing unit at first floor level and office and restaurant space at first floor level. The business park is accessed from a vehicular entrance off Connolly Avenue. Adjoining structures include a medical centre located to the south of the site and a single-storey commercial development to the north of the site. There are other commercial operations located to the east on the opposite side of the internal access road serving the business park.

2.0 Proposed Development

- 2.1. Permission is sought for (a) a change of use at ground floor level of 1,136sqm from bulky goods retail use to office use, (b) change of use at first floor level of 391sqm from restaurant use to office use, (c) installation of new mezzanine level of 848sqm for office use, (d) erection of external backlit signage to front (northwest) façade, (e) alterations to rear south east elevation, (f) replacement of two basement car parking spaces with an end-of journey cyclist changing/shower room and all associated site works.

3.0 Planning Authority Decision

3.1. Decision

Permission was granted subject to 6 conditions. Of note is the following condition...

Condition no. 2: The mezzanine level shall be used strictly for storage purposes only.

Reason: In the interest of proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planning report (22/11/18): Further information required including confirmation of landownership and the submission of a mobility management plan and details of car parking management.

Planning report (11/02/19): The proposal was considered to be satisfactory in the context of land use policy, traffic impact and a grant of permission was recommended subject to the conditions outlined above.

3.3. Prescribed Bodies

None

3.4. Third Party Observations

Submissions were received from Dr. Denis C. Higgins and Hanover Street Investments Ltd. The issues raised in these submissions are similar to those raised in the ground of appeal by both parties and such are outlined below.

4.0 Planning History

- 4.1 12.234: Permission granted for change of use of first floor permitted under 11/263 from office use to medical consulting rooms.
- 4.2 11/263: Permission granted for modification to previously approved development (07/268) including change of use of ground floor from bulky good retail to medical centre use.
- 4.3 07/268: Permission granted for modifications to approved development (06/489) including additional area at ground floor level.
- 4.4 06/489: Permission granted for demolition of existing structures and construction of a two-storey over basement mixed use development including bulky retail at ground floor level and office and restaurant at first floor level.

- 4.5 01/436: Permission granted for elevational changes and side extension to an existing structure.
- 4.6 01/34: Permission granted for elevational changes and new roof to existing structure.
- 4.7 00/690: Permission granted for an extension to existing structure,
- 4.8 00/357: Permission granted for 13 no. business start-up units.

5.0 Policy Context

5.1. Development Plan

- 5.1.1 The relevant Development Plan is the Galway City Development Plan 2017-2023 the site is zoned 'CI' with a stated objective 'to provide for enterprise, light industry and commercial uses other than these reserved to the CC zone'.

Office use is identified as being compatible within this land use zoning.

5.1.2 Section 11.9.2 Site Coverage and Plot Ratio for CI and I Land Use Zones

The development intensity standards of site coverage and plot ratio are designed so as to help prevent the adverse effects of over-development. Site coverage and plot ratios are given in Table no. 11. 3. The figures are the maximum attainable only under optimum site conditions. The site coverage is determined by dividing the total area of ground covered by the building by the total area of the site.

Table 11. 3 - Site Coverage and Plot Ratio for CI and I Zoned Lands.

Zone CI and I Maximum Site Coverage 0.80 and 0.80 respectively.

Zone CI and I Maximum Plot Ratio 1.25 and 1.00 respectively.

- In the case of infill development in an existing terrace or street, it may be necessary to have a higher plot ratio in order to maintain a uniform fenestration and parapet alignment or to obtain greater height for important urban design reasons. In such circumstances, the Council may allow an increased plot ratio.
- Where a site has an established plot ratio in excess of the general maximum for its zone, re-development may, in exceptional circumstances, be permitted in line with its existing plot ratio if this conforms to the proper planning and sustainable development of the area.
- Minor extensions, which infringe plot ratio or site coverage limits may be permitted where the Council accept that they are necessary to the satisfactory operation of the buildings.
- On CI zoned lands, where it is proposed to provide, above ground level, an amenity open space area in association with residential accommodation, this space may be accepted as open space for site coverage purposes.

5.1.3 Table 11.5 Parking Standards

Office use

1 space per 25sqm gross floor area.

Specialist Office

1 space per 75sqm of gross floor area.

5.2. Natural Heritage Designations

None in the vicinity.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 A third party appeal has been lodged by Dr. Denis C. Higgins. The grounds of appeal are as follows...

- The existing restaurant space should be maintained to accommodate occupants of the Faustino building as there are no other facilities in the estate similar.
- Any of extension of the existing mezzanine would need additional structural support and would result in loss of existing car parking.
- There is a lack of information regarding number of occupants of the ground floor.
- There are inadequate water resources to deal with a fire in the building.
- There is no surface disability access spaces with most disability vehicles unable to access the basement car park.
- The footprint of the building is larger than the original site and was not constructed in compliance with the original permission.
- There is a lack of adequate visibility at the existing to the underground car park.
- Pedestrian safety is an issue in the existing business park with a lack of road markings, street lighting, traffic calming or footpaths.
- There is flooding from surface water after heavy rain.
- There is inadequate drainage services in the business park (waste and sewage systems).
- There is an existing issues regarding sewage/wastewater discharge onto the appellant's property.

6.1.2 A third party appeal has been lodged by Hanover Street Investments Limited. The grounds of appeal are as follows...

- The appellant notes that the existing development on site encroaches onto their property with a 2m wide footpath along the north east elevation entirely on their property. The appellants have submitted land registry documents illustrating ownership details.
- There is a discrepancy in the site size and boundaries illustrated in the previous permission granted (06/489, 07/268 and 11/263).
- It is noted that a drain is located in the strip of land onto which the appeal site encroaches and a fence has been erected along the footpath on the appellants' property without consent.

6.1.3 A first party appeal has been lodged by McCarthy Keville O'Sullivan on behalf of the applicants MKO. The grounds of appeal are as follows...

- The appeal concerns the application of condition no. 2 restricting the proposed mezzanine level to storage use.
- It is noted that site coverage remains unchanged and that the Development Plan does allow for infringement plot ratio or site coverage in cases where it is accepted such is necessary for the satisfactory operation of the building. It is noted that Section 11.1 of the County Development also indicates flexibility in application of development standards. It is noted that the provision of additional office space will contribute to city economy and is in accordance with City Development Plan policy.
- It is noted there is a need for additional office space and the proposed mezzanine floor would have no significant impact at this location. It is noted that the existing structure on site has been vacant for a significant period of time as well as noting it is well serviced by public transport as well as accessible to pedestrians and cyclists.
- It is noted that the increases in plot ratio is minor (1.29 as opposed to the restriction of 1.25 under CDP policy).
- It is noted that there is a sufficient level of parking provided for on the site.

6.2. Applicant Response

Response by the applicant, MKO.

- It is noted that the Hanover Street Investment Limited appeal raises no issue regarding the principle of the application on its merits and relates solely to encroachment. It is noted that such is a civil matter and the provision of Section 34(13) of the Planning and Development Act, 2000 (as amended) are noted.
- It is noted that the structure on site is built in compliance with permission granted and is on land in the control of the owners of the building.
- In relation to the change of use of the restaurants it is noted there are other facilities in the local area and that permission was previously granted for a change of use of this nature under 11/263 and 12/234.
- It is noted that the mezzanine level will be of sufficient structural ability to cater for office use.
- It is noted that occupancy levels of the ground floor will be determined by the eventual occupant and such is not a planning issue.
- The structure has been previously granted a fire safety certificate and will be carried out in compliance with the relevant regulations in this regard.
- The basement car parking is accessible and provides for disability access spaces.
- The building footprint is compliant with permissions granted.
- Sightlines available at the existing to the basement car park area are adequate.
- The issues raised regarding surface parking, pedestrian safety etc. concern an area outside of the applicants' control.
- It is noted that discharge of wastewater drainage does not cross third party lands and runs straight to the public system.

6.3. Planning Authority Response

No response.

6.4. Further Responses

6.4.1 Response by the third party appellant Dr. Denis C. Higgins.

- The appellant reiterates concerns regarding drainage issues and the impact of increased intensity of use on such problems.
- It is noted that the existing basement car park is not being used by all car users due to the design of the ramp and low head height and that there is significant congestion at the entrance to the business park
- The appellant reiterates his concerns regarding loss of the restaurant space.
- It is noted that there is sufficient office space provided for and planned in the area and that the structure was built with a specific use in mind.

6.4.2 Response by the third party appellant Hanover Street Investments.

- The appellants reiterate their concerns regarding encroachment and land ownership and question the validity of the application.

7.0 Assessment

7.1. Having inspected the site and the examined the associated documents, the following are the relevant issues in this appeal.

Principle of the proposed development

Adjoining amenity

Traffic

Encroachment

Condition no. 2

Other issues

Appropriate Assessment

7.2 Principle of the proposed development:

7.2.1 The proposal entails the change of use of an existing structure from bulky goods retails at ground floor level to office use, change of use at first floor level from restaurant use to office use and installation of new mezzanine level of 848sqm for office use. The proposal also includes external alterations including new signage and alterations to the rear elevation as well changes to the basement car park including replacement of two basement car parking spaces with an end-of journey cyclist changing/shower room and all associated site works.

7.2.2 The appeal site is zoned 'CI' with a stated objective 'to provide for enterprise, light industry and commercial uses other than these reserved to the CC zone'. The proposed use is compatible with the land use zoning objective for the appeal site and the wider business park the site is part of.

7.3 Adjoining amenity:

7.3.1 The proposal entails alterations of an existing structure including a change of use from bulky good retail and restaurant use to office use. The existing structure is within an existing business park, which has a variation of commercial uses as well as a medical centre. The existing structure appears to have been vacant since it was built apart from use of part of the top floor for office use in recent times. The proposal entails change of use of the entire structure to office use with additional office space provided in the form of a mezzanine level (mezzanine level was previously approved for storage associated with ground floor retail unit). Having regard to its location within an existing business park and the nature of adjoining use, I am satisfied that the use of the building for office use would have no significant or adverse impact on the amenities of adjoining uses.

7.3.2 One of the appellants which relates to Galway Primary Care, which is a medical centre located to the south west. One of the issues raised relates to loss of the

restaurant use at this location due to the lack of such facilities. It would appear that the restaurant use was never occupied and that such has not been a facility available at this location. Notwithstanding such, I do not consider that it is a matter of proper planning and sustainable development. The proposed change of use from restaurant to office is in accordance with the City Development Plan land use policy and would be in accordance with proper planning and sustainable development of the area.

7.3.3 The same appellant raises issues regarding surface water drainage and drainage issues regarding wastewater and sewage. I would note that the surface water issue appears to relate to the overall business park and an area outside of the applicant's control. Notwithstanding such the proposal concerns alterations to an existing structure that is connected to existing services at this location. The application was referred to the Councils Drainage Section and Irish Water with no reports received. It does not appear that there is any objection to the proposal on the grounds of drainage infrastructure as the proposal concerns alterations to an existing structure.

7.4 Traffic/car parking:

7.4.1 The proposal entails the provision of 3,200sqm of office space. The existing structure provides for 75 spaces in two basement level. The proposal entails a reduction in the number of spaces to 73 spaces and the improvement of facilities for cyclists. Under Development Plan policy the requirement for the proposed use is 128 space based on a requirement for 1 space per 25sqm of office space. There is a shortfall of spaces and the applicants has submitted a mobility management plan, which indicates that modal split of users (existing employees at another location) with it noted that a significant amount of users will use public transport, cycling or walking to access the site.

7.4.2 One of the appeal submissions notes that the existing layout of the business park is poor with a lack of road markings, street lighting, traffic calming or footpaths. I would note that the existing business park layout could be improved in this regard, however I would note that these areas are outside of the applicants control and outside of the appeal site. The proposal is for a change of use of an existing structure and to a use that is in keeping with land use zoning policy. I would consider that this is not an

issue that is under the applicants control and that such would not be a reason to deny permission for the proposed development. Despite the fact that such elements could be improved, I would consider that the nature of the operation proposed is compatible with existing uses and operations and that it would generate traffic patterns in keeping with the established use on site and existing uses within the business park.

7.5 Encroachment:

7.5.1 One of the appeal submission notes that the application site/curtilage of the existing structure encroaches onto their property. The appellants note that there is 2m wide footpath along the south eastern elevation and that such is wholly on their property and that a fence has been erected along this footpath on their property without their consent. The appellants have submitted a land registry map to demonstrate such. The applicants in their response refute the claims noting that this issue is not a planning matter. In response to further information the applicant submitted drawings to indicate that the footprint of the building is consistent with the permissions granted and have also submitted land registry documents.

7.5.2 I am satisfied that the issue being raised does not concern the footprint of the existing structure but relates to a strip of land along the south eastern elevation. The proposal entails a change of use and alteration of an existing structure with no increase in the physical footprint of the existing structure. Notwithstanding such I would note that the issue being raised is a land ownership dispute, which is not a matter that can be resolved by the Board or falls under the remit of such to do so. This is civil matter and I would also note the provisions of Section 34(13) under which it is noted that “a person shall not be entitled solely by reason of a permission under this section to carry out any development.

7.6 Condition no. 2:

7.6.1 A first party appeal was lodged against the application of condition no. 2, which states...

2. The mezzanine level shall be used strictly for storage purposes only.

Reason: In the interest of proper planning and sustainable development of the area.

The condition appears to have been applied on the basis of plot ratio and to restrict an excessive plot ratio. Under Development Plan policy the maximum plot ratio of structures within the CI zoning is 1.25. It is noted that the plot ratio of the structure is 1.29 with the mezzanine level included. I calculate that plot ratio is larger at around 1.5. The appellant notes that there is scope to permit for increased plot ratio under Section 11.9.2 with it stated that “minor extensions, which infringe plot ratio or site coverage limits may be permitted where the Council accept that they are necessary to the satisfactory operation of the buildings”.

7.6.2 I would note that with the additional office floor area on the mezzanine level that the plot ratio of the structure is in excess of the 1.25 restriction imposed with the CI zoning objective. I would note that Section 11.92 does indicate scope for infringement of such, however I do not consider that there is compelling case to indicate that such is necessary for the satisfactory operation of the building. In addition I would note that there is a shortfall in car parking based on the Development Plan requirements as detailed above. I would recommend that if the mezzanine level is permitted then it should be confined to storage use.

7.7 Other issues:

7.7.1 One of the appeal submissions question the proposed development on basis of structural issues and fire safety compliance. I would note that issues concerning building regulations and compliance fire safety requirements are no planning consideration and are dictated by separate regulations do not fall under the Boards remit.

8.0 Recommendation

8.1. I recommend a grant of permission subject to the following conditions.

9.0 Reasons and Considerations

Having regard to the design and scale of the proposed development, it is considered that the proposed development, subject to compliance with the conditions set out below, would not seriously injure the visual amenities of the area, would not

seriously injure the amenities of adjoining property and would be satisfactory in the context of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 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 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. The mezzanine level shall be used strictly for storage purposes only.

Reason: In the interest of proper planning and sustainable development of the area.

3. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

4. Site development and building works shall be carried out between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays or Public Holidays. Deviation from these times shall 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.

5. 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. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 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.

Colin McBride
Planning Inspector

12th June 2019