



An
Bord
Pleanála

Inspector's Report ABP.304742-19

Development	Change of use of basement from public house to restaurant use, alterations to basement level, elevational changes to ground floor including shopfront, awnings and signage and air ducting
Location	6 & 7 Henry Street, Limerick
Planning Authority	Limerick City & County Council
Planning Authority Reg. Ref.	19/325
Applicant(s)	The Spitjack Ltd.
Type of Application	Planning permission
Planning Authority Decision	Grant permission s.t. conditions
Type of Appeal	First Party
Appellant(s)	The Spitjack Ltd.
Observer(s)	None
Date of Site Inspection	23 rd August 2019
Inspector	Mary Kennelly

1.0 Site Location and Description

1.1. The site is located on Henry Street in the centre of Limerick City. It relates to the ground floor and basement of an existing premises which is in use as a public house at basement level, a restaurant at ground floor level and residential uses at the upper floor levels. The site is a corner site which is located at the end of the pedestrianised Bedford Row at its junction with Henry Street.

2.0 Proposed Development

2.1. The proposed development involves the conversion of part of the basement (246sq.m) from public house use to restaurant use.

2.2. In addition to the change of use at basement level, the proposed works involve the following:

- Provision of a new kitchen and extra customer toilets at basement level.
- Elevational changes to include new doors, windows and a new timber shopfront detail at ground floor level.
- New high-quality awnings and signage.
- Provision of a ducting/extraction system

2.3. The cover letter with the application points out that it is proposed to create a void area on the ground floor to provide for an elevated ceiling over a proposed ancillary bar area at basement level, (which is the existing use at basement level). Hence the existing ground floor currently measures 241sq.m and the proposed ground floor area shall be 232sq.m to facilitate the void area.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission subject to 10 no. conditions. The conditions related mainly to a requirement to submit additional details relating to outdoor seating, security shutters, signage, grease traps, waste management, noise

and extraction and ventilation. Condition 3 prohibited a take-away element without a further grant of planning permission.

Condition 2 required the payment of a development contribution of €18,450 in accordance with the General Development Contribution Scheme

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Area Planner's report noted that the proposed use is permitted in principle and is in keeping with the zoning objective for the city centre. The proposed awning and signage were considered to be of a high quality and the retractable nature of the awning was noted. Permission was recommended, subject to conditions. A condition for a development contribution at €75 per sq.m for 246sq.m was recommended.

3.2.2. Other Technical Reports

HSE – (09/05/19) No objection subject to standard conditions

Environmental Services (13/05/19) – provision must be made for the appropriate storage and segregation of domestic, commercial and industrial waste. No objection subject to a condition regarding this matter.

Chief Fire Officer (14/05/19) - No objection subject to compliance with Building Regulations; Fire Safety Certificate and Disability Access Certificate.

3.3. Prescribed Bodies

Irish Water - No objection subject to conditions (10/05/19) including a requirement to enter into a connection agreement in respect of water and waste water services with IW prior to the commencement of development.

3.4. Third Party Observations

None.

4.0 Planning History

10/770050 – planning permission granted to remove existing window on Bedford Row elevation and replace with double glazed doors.

14/02 – planning permission granted for alterations to the façade of the building and new signage; internal alterations and refit of the premises including provision of an additional stairs to the basement and all ancillary works.

14/1061 – planning permission granted for change of use of existing bar premises to restaurant, minor alterations to permission under Planning Ref. No. 14/02, including the omission of the enlargement of the existing opes in Unit 7 Bedford Row and Henry Street facades and the omission of the proposed internal stairway to the basement.

5.0 Policy Context

5.1. Development Plan

Limerick City and County Development Plan 2010-2016 (as extended)

Zoned for 'City Centre Area'. Restaurant is permitted use in Zone ZO.1(A). Relevant objectives include the following:-

Obj. ZO.1(A) – City Centre Retail Area – To provide for the protection, upgrading and expansion of higher order retailing in particular, comparison retailing, and a range of other supporting uses in the City Centre retail area.

Canopies/awnings - canopies of a traditional design and retractable materials are favoured and innovative design is encouraged. However, the obstruction and clutter of public footpaths by canopy use is strongly discouraged.

5.2. Natural Heritage Designations

There are two European sites in the vicinity of the site – the Lower River Shannon SAC (002165) which is located c.150m from the site and River Shannon and River Fergus SPA (004077).

6.0 The Appeal

6.1. Grounds of Appeal

The first party appeal was submitted by Cunnane Stratton Reynolds Planning Consultants on behalf of the applicant. The appeal is against **Condition No. 2 only**, which requires the payment of a Development Contribution of €18,450 in accordance with the General Development Contribution Scheme. The grounds of appeal may be summarised as follows:

6.1.1. Failure to comply with terms of adopted General Development Contribution Scheme

The P.A. has incorrectly applied a development contribution in respect of a change of use from one food and drink use (public house) to another (restaurant), at basement level, where there is no increase in floor area. The following criteria for an exemption outlined in the current GDCS for Limerick City and County are relevant.

- Where development does not involve additional demand for services no contribution is payable.
- An exemption from development contributions is applied in respect of elevational alterations.
- Changes to Internal Layouts where no additional floor area is proposed qualifies for an exemption under the GDCS.
- Where a contribution was paid previously for the existing use, no further contribution is required.

It is submitted that the proposed development is for a change of use which meets all of the above criteria as set out in Section 10 of the GDCS. In these circumstances, the GDCS provides for an exemption from paying a contribution. It is therefore sought that Condition 2 be omitted.

6.1.2. No intensification of demand for services

The proposal involves a change from a public house to a restaurant, where there is no need for new or upgraded infrastructure or services and/or where the development does not lead to the significant intensification of demand on existing

infrastructure, and where a development contribution had previously been paid for the existing use. There has been no assessment of this issue in the P.A. planning reports. Neither has there been any suggestion from internal or external consultees that there would be an increase in demand for services or infrastructure. In fact, there will be a very substantial reduction in demand (as substantiated by a document submitted) due to the following:

- Reduction in occupancy from estimated 289 persons to 63 persons including staff (80%) from public house to restaurant.
- Consequential reduction of just less than half on wastewater generation as a result of the change of use.
- The loading on water use would be reduced by 86%.

6.1.3. Double charging

Contributions were levied under previous planning permissions in 1992 and 1996 and were paid in respect of the existing use. It is submitted that substantial contributions in respect of transport, recreation and amenities and community and amenities, have therefore been paid under the General Development Contribution Scheme in force at the time and any further levies would amount to double charging, which is contrary to the Development Management Guidelines.

6.1.4. Elevation alterations are exempt from development contributions

Section 8, page 11 of the GDCS states clearly that elevational changes are exempt from development contributions.

6.1.5. Internal layout changes are exempt from development contributions

Section 8 page 11 of the GDCS states that internal layout changes where no additional floor area is created is exempt from development contributions.

6.1.6. In conclusion, no additional floorspace is being proposed as part of the current development. Internal changes include a new internal staircase, new kitchen, air extraction and ducting and customer toilets. The small external seating area is not additional floor area and will be the subject of a street furniture licence under S254 of the P&D Act. There is no intensification of the use and there is a reduction in the capacity of the basement to accommodate patrons. There is a reduced loading on services and, as such, there is no justification to levy a further contribution.

6.2. Planning Authority Response

The planning authority did not respond to the grounds of appeal

7.0 Assessment

7.1 Legislation and Guidance

- 7.1.1.** Section 48 (10)(b) of the Planning and Development Act 2000, as amended, provides that an appeal may be brought against a development contribution condition where the applicant considers that the terms of the General Development Contribution Scheme have not been properly applied. As the appeal is solely against Condition 2 of the planning permission, relating to a Financial Contribution, Section 48 (10)(c) applies. This requires that the Board shall not determine the relevant application as if it had been made in the first instance, but shall determine only the matters under appeal.
- 7.1.2.** Condition 2 requires the payment of a development contribution of **€18,450.00** in respect of public infrastructure and facilities benefitting development in the area in accordance with the terms of the adopted Limerick City and County General Development Contribution Scheme, made under Section 48(2)(a) of the Act.
- 7.1.3.** Further guidance on the matter is provided in the Development Management Guidelines, 2007 (Section 7.12) and in the Development Contribution Guidelines 2013.

7.2. Compliance with the terms of the General Development Contribution Scheme

7.2.1. Change of Use applications

The Limerick City and County Development Contribution Scheme 2017-2022 states the following in respect of change of use applications:-

Where a proposed change of use does not lead to the need for new or upgraded infrastructure/services or a significant intensification of demand placed on existing infrastructure and where a contribution was paid previously for the existing use, the development shall be exempt from paying a contribution. In all other circumstances, the change of use shall be charged at

the rate appropriate to the new use, subject to a reduction in respect of the contribution rate already paid for the existing use.

The proposed use relates to existing commercial premises which have been occupied as a public house on the basement floor level, a restaurant on the ground floor level and residential accommodation on the first and second floors. It is submitted that there is no additional floor area proposed and that the last use of the basement was as a public house which involves food and drink and is, therefore, similar to the proposed use as a restaurant. It is stated that, as the basement area is to accommodate additional kitchen/food preparation area and toilets and will incorporate a seating area which was not present in the existing bar, there would be no intensification of use or creation of additional floor area. Furthermore, it is claimed that the patronage of the basement would be significantly reduced by up to 80% due to the proposed layout and altered seating arrangements.

I would agree that the proposed change of use of the basement represents a minimal change in terms of the nature of the use and would not result in any increased scale or intensification of that use, or in any additional floor area. I would also accept that the proposed development is likely to reduce the capacity of the premises to accommodate patrons compared with the existing permitted use. The submitted plans indicate that the effective floor area would in fact be reduced slightly by reason of the accommodation of a void over an ancillary bar area. Thus, the demand for services is not likely to be increased as a result of a grant of permission.

7.2.2. Need for new or upgraded infrastructure or services or significant increase in demand for such services

The premises are situated in the heart of the city centre with a mix of uses nearby including many shops, cafes, restaurants and entertainment uses. The applicant submits that the building has been designed to accommodate such uses with all of the necessary services. The GDCS provides funding for three general classes of development, namely, Transport, Recreation and Amenities and Community Facilities. However, it is considered that the change of use from a public house within the basement of a mixed-use premises to a restaurant, as currently exists on the ground floor, is unlikely to generate a demand for new or upgraded services under the headings of transport, recreation and amenities or community facilities.

The proposed use as described in the grounds of appeal seems to be less demanding on existing services and on infrastructure and would not generate a requirement for the provision of additional services such as car parking, water supply or wastewater disposal. A submission included with the grounds of appeal sets out a comparison between the existing and proposed uses in terms of occupancy/seating capacity, and the likely loadings in respect of water and wastewater infrastructure. This clearly indicates that the proposed development would result in a substantial reduction in all categories. This seems reasonable.

I would agree, therefore, that the proposed use would not be likely to generate a need for new or upgraded infrastructure or a significant increase in demand for existing services and infrastructure in the area. The planning authority has not demonstrated that the proposed change of use would result in the need for new or upgraded services. In such circumstances, the GDCS allows for an exemption from the need to pay a development contribution.

7.2.3. Alterations to elevations and internal layout

The GDCS includes an exemption for elevational alterations and for changes to internal layouts, where no additional floor area is proposed. It is agreed that the current proposal falls within these categories and qualifies for an exemption. The applicants have submitted that the development contribution, as calculated and applied by the P.A., seems to have been based on an incorrect floor area. However, I note that the planning application form states that the floor area involved in the change of use is 246sq.m, which is the figure used in the calculation.

7.2.4. Regard for contributions paid previously

The applicant has advised that development contributions have been levied previously under various permissions. For example, conditions 2 and 3 of 91/104, when permission was first granted for a public house in the basement, required contributions in respect of car parking and water supply improvement, respectively. A copy of a receipt for the latter (€6,200) which was paid was enclosed with the grounds of appeal. The applicant has indicated that a further two contributions were required under planning permission Reg. Ref. 96/249 in respect of existing uses at the site. Although it was not possible to establish proof of payment of these

contributions, it was submitted that there was no enforcement action in respect of failure to comply with these conditions either.

The GDCS clearly states that where a contribution was paid previously for the existing use, the change of use development shall be exempt from paying a contribution. Although it has not been proven that all previous contributions have been paid, there is proof that at least one of the levies was paid, and the planning authority has not demonstrated that it has taken into account any contributions paid previously.

- 7.2.5.** The arguments set out above indicate that the proposed change of use meets all three criteria for an exemption from the requirement to pay a development contribution. The terms of the Scheme have not been properly applied on the basis that the exemption for changes of use where a contribution has already been paid and where there is no significant increase in demand for new or existing services, was not addressed by the planning authority in the determination of the planning application. It is considered, therefore, that there is no justification for the requirement to pay a development contribution in accordance with the terms of the current Development Contribution Scheme.

8.0 Recommendation

- 8.1.** Having regard to the information on the file, the grounds of appeal, the planning and technical reports of the planning authority in relation to the development, and to the assessment above, I recommend that the Board directs the planning authority to **REMOVE** Condition 2 and the reason therefor as follows for the reasons and considerations set out below.

9.0 Reasons and Considerations

The current Limerick City and County Development Contribution Scheme at paragraph 10 provides for an exemption from the requirement to pay a development contribution in respect of a change of use where the development would not lead to a need for new/upgraded infrastructure/services or a significant intensification of demand for existing services, or where a development contribution has previously been paid in respect of the existing

use. It is considered that the planning authority has not demonstrated that the proposed change of use would result in the need for new or upgraded infrastructure/services, or a significant increase in the demand for existing infrastructure/services, or that it has taken into account the contributions previously paid in respect of the existing use on the site. Therefore, it is considered that the terms of the Planning Authority's Development Contribution Scheme have not been properly applied. The condition requiring the payment of the contribution should therefore be removed in order to comply with section 48(2)(c) of the Planning and Development Act 2000, as amended.

Mary Kennelly
Senior Planning Inspector

3rd October 2019