



An
Bord
Pleanála

Inspector's Report

ABP-308219-20

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| Development | Demolition of derelict stores, construction of a restaurant with takeaway facility. |
| Location | No. 1 Clare St., Limerick. |
| Planning Authority | Limerick City and County Council |
| Planning Authority Reg. Ref. | 191241 |
| Applicant(s) | Watchford Ltd. |
| Type of Application | Permission. |
| Planning Authority Decision | Grant Permission subject to conditions |
| Type of Appeal | Third Party |
| Appellant(s) | Joanne Ryan. |
| Observer(s) | None. |
| Date of Site Inspection | 27 th November 2020. |
| Inspector | Bríd Maxwell |

1.0 Site Location and Description

- 1.1. The appeal site has a stated area of .156 hectares and is located to the east of Lock Quay, and south of Park Canal at Clare Street, to the north east of Limerick City centre. The site is triangular in shape and is bounded to the north by the City Canal and associated walkway / cycle path to the south by Lock Quay/ Clare Street and to the east by residential dwelling and derelict buildings fronting onto the canal. The appeal site is occupied by a petrol shop and forecourt fronting onto Lock Quay /Clare Street and a derelict building fronting onto the canal.
- 1.2. The city canal which outfalls into the River Abbey which is part of the River Shannon and forms the eastern channel around Kings Island. The River Shannon is circa 500m to the west of the site.

2.0 Proposed Development

- 2.1. The proposal involves permission for the demolition of the existing derelict stores, and construction of a new restaurant with takeaway facility and ancillary storage, roof garden, connection to existing shop, new elevation treatment to existing shop, proposed signage and associated site works.
- 2.2. In response to a request for additional information from Limerick City and County Council revisions were made to the layout including the removal of the existing set of pumps nearest the proposed restaurant and reduction in the extent of the proposed upper floor / roof terrace area.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1 By order dated 21st August 2020 Limerick City and County Council issued notification of its decision to grant permission and 31 conditions were attached which included
Condition 2. Development Contribution €31,680
Condition 3. Revised surface water disposal plan and lighting design to be agreed.

Condition 4. Details of type of restaurant to be submitted for approval.

Condition 5. Flood emergency response plan which is not dependent on notifications from Limerick City and County Council to be in operation and reviewed annually.

Condition 6. Flood resistance and resilience measures to be outlined.

Condition 27. Restaurant to operate between 8am and 11 pm only. The roof terrace shall not be used after 9pm.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.1.1 Planner's initial report considers the proposal to be welcome in principle and sought further information on a number of matters including land ownership details, clarification of the exact nature of the proposed restaurant use, parking and traffic arrangements with provision for a setback of 1m in light of the route proposed for the bus corridor from R3445 Clare Street to University of Limerick. Further details regarding ventilation systems and signage details and surface water proposals as well as a refurbishment, demolition and asbestos survey. Proposals to address potential overlooking of adjacent private garden and flood risk also to be addressed.

3.2.1.2 A second report sought clarification regarding access, ownership, surface water proposals and flood risk and refurbishment demolition asbestos survey.

3.2.1.3 Final planning report recommends permission subject to conditions.

3.2.2. Other Technical Reports

3.2.2.1 Air Noise Water and Public Health team report notes that on basis of proximity to the Park Canal and Abbey River Watercourses the secure storage of fats oils and greases would be a priority. Written statement of storage arrangements to be provided.

3.2.2.2 Assistant Fire Officer refers to the requirements for compliance with building regulations. The site is licensable under the Dangerous Substances legislation. The proposal may pose a conflict with the exclusion zone around the fuel dispensing

pump as currently shown. The age of the underground storage tanks and associated underground piping should be risk assessed to ensure that they continue to be fit for purpose as they have finite service life post installation. Onsite drainage protection should be reviewed as larger road tankers now deliver bulk quantities. Applicant should supply a traffic plan for articulated fuel tanks coming into the existing and redeveloped site. Fire Safety Certificate and Disability access certificate required.

3.2.2.3 Environmental Services report - a refurbishment demolition asbestos survey to be carried out and submitted to the Planning Authority. Waste management plan

3.2.2.4 Roads Section report - traffic and transport assessment required. Revised car parking, surface water disposal plan and waste management details. Details of traffic movement.

3.2.2.5 Senior Executive Engineer, Physical Development Department object in relation to flood risk due to insufficient information. Further clarification required regarding flood risk, with flood resistance and resilience measures to be incorporated into the design. Following submission of additional information report the indicates no objection subject to conditions including a flood emergency response plan and flood resistance and resilience measures.

3.2.2.6 Roads section - no objection subject to conditions.

3.2.2.7 Environment Section recommends conditions.

3.3. Prescribed Bodies

3.3.1 Irish Water submission indicates no objection subject to conditions including connection agreement. No building over infrastructure, provision of suitable grease trap, and connection to Irish Water specifications in accordance with Irish Water Code of Practice.

3.3.2 Department of Culture Heritage and the Gaeltacht notes location near the Lower River Shannon Special Area of Conservation (Side Code 002165). No potential lowering of water quality as a result of the proposal and appropriate mitigation to protect water quality in the SAC are included as conditions of a planning granted.

3.4. Third Party Observations

3.4.1 Submission by Rob Shanahan Architects on behalf of the adjoining landowner questions title in respect of the building to be demolished.

3.4.2 Submission by Joanne Ryan, 6 Clare Street objects on grounds of encroachment onto her property. Title of the proposed site being developed should be demonstrated. No details on boundary treatments. Overlooking of rear garden by roof terrace. Question adequacy of entrance, level of parking provision. Takeaway opening hours, servicing and bin storage. Sunlight and overshadowing not addressed. Construction details.

4.0 Planning History

12/770004 Retention permission for façade changes and minor internal refurbishment works to existing storage facility ancillary to shop premises.

11/770216 Retention permission for car wash facility including valeting bay and associated advertising signage.

03/770007 Retention permission for existing canopy fascia, shop fascia signa and ID price Sign.

02/770403 Refusal of permission for demolition of existing store and construction of 2 houses and associated site works.

5.0 Policy Context

5.1. Development Plan

The Limerick City Development Plan 2010-2016 refers.

The site is zoned City Centre Area.

5.2. Natural Heritage Designations

The appeal site is not within a designated area however the site is within 24 metres of the designated area of the Lower River Shannon SAC (Site Code 002165) The

River Shannon and River Fergus Estuaries SPA is within 1.5km downstream of the site.

5.3. EIA Screening

- 5.3.1. Having regard to the nature and scale of the proposed development, and to the nature of the receiving environment, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1 The appeal is by Ms Joanne Ryan, 6 Clare Street Limerick. Grounds of appeal are summarised as follows:

- Proposal encroaches on an area to the rear of appellant's property. Legal title questioned.
- Boundary details with appellant's property are unclear.
- Inadequate parking.
- Concern regarding use of takeaway facility.
- Unsolicited information 14/12/2020 used in the decision making process.
- Sunlight and overshadowing report not carried out.
- Unclear how the requirements of roads operations will be provided,
- Local Authority should have refused permission rather than issue clarification request, as the initial request for additional information was not complied with.
- Detailed matters should have been addressed prior to decision to grant and not by condition.
- Impact of rooftop terrace on private garden was not addressed.

- An adverse possession application has been made by the appellant to land registry regarding a portion of land to the rear of the property which has been approved.

6.2. Applicant Response

6.2.1 The response by Morgan McDonogh Architectural and Planning Consultants on behalf of the first party is summarised as follows:

- Application relates only to land owned by the first party.
- Access will not be required onto the appellant's property.
- Parking is provided for - 14 spaces and 8 pump spaces.
- Regarding the use restaurant this will be a sit down facility with ancillary takeaway.
- As the site is to the north of the appellants property a sunlight analysis is not necessary also the proposal is the same height as the derelict building therefore no additional impact arises.
- Roads issues to be addressed by condition
- Request for further information and clarification in accordance with proper procedure.
- Conditions requiring subsequent approval are correct and appropriate.
- No part of the roof terrace is located to the rear of the appellant's property. Plant room on the roof between the roof terrace and appellant's property, Screening to half the length of the roof terrace will ensure no overlooking.
- Proposal will rejuvenate an area of the canal in Limerick that has been derelict for a number of years. It will provide employment and encourage further development in this area. Concerns of overlooking and impact on private amenity have been addressed.

6.3. **Planning Authority Response**

The Planning Authority did not respond to the appeal.

6.4 **Section 132 Notice**

6.4.1 A Section 132 Notice issued from the Board to the applicant on 22 February 2021 requesting a Natura Impact Statement to be submitted. The applicant was requested to respond to the notice on or before 22 March 2021 however no response was received by the Board.

7.0 **Assessment**

7.1. I consider that the substantive issues of the appeal can be addressed under the following broad headings:

- Legal interest
- Principle of Development Design and Layout
- Neighbouring Residential Amenity.
- Servicing, parking and access.
- Flood Risk
- Appropriate Assessment

7.2. **Legal Interest**

7.2.1 I note the queries raised by the third party appellant and observer in respect of the title to the proposed development site. The third party appellant outlines that an adverse possession claim has been made in respect of the land between the appeal site and the boundary of her dwelling site. The submission by Rob Shanahan on behalf of the observer to the Council 22 January 2020 outlines a claim to ownership of the adjoining site to the east which apparently overlaps with the appeal site. I note that in response to request for additional information and clarification of

additional information by Limerick City and County Council on the issue of legal interest land registry details were submitted in respect of Folio DG4W8 which includes part of the derelict structures proposed for demolition however does not include the entire structures proposed for demolition. The written submissions in response to the request for clarification of additional information received by the Planning Authority on 29th July 2020 state *“As previously noted, we have revised the plans, without changing the redline boundary to provide for a bin store (hatched in blue) on the ground floor and roof terrace plan. The roof terrace does not extend over the hatched area. The proposed plant room has been moved the west and therefore the area in blue is left clear. This will ensure that the area under query is not developed until the land registry query is resolved.”* In response to the grounds of appeal the first party asserts that *“Our submission of 19th March 2020 adjusted the proposed building to exclude the section of property to the rear of Ms Ryan’s¹ property and only provided for an external bin store in this location.”* Based on these submissions it is apparent that there is some ambiguity or dispute with regard to the legal interest in the part of the site now proposed as location of the bin store (hatched in blue on plans submitted in response to request for additional information).

- 7.2.2 Whilst the issue of site ownership is essentially a civil matter and I would refer the parties to Section 34(13) of the Planning and Development Act 2000, as amended as follows: *“A person shall not be entitled solely by reason of a permission under this section to carry out any development”*. I consider that if the Board were to determine that a grant of permission is appropriate in this case, further clarification on the applicants legal interest in the overall site might be sought in advance of a decision.
- 7.2.3 As regards matters raised within the appeal in respect of the procedures adopted by the Planning Authority regarding unsolicited submissions and the issuing of a request for additional and clarification of additional information, such matters of beyond the remit of the Board in terms of assessment of the appeal and any review of such administrative decisions are the preserve of the courts.
- 7.2.4 As regards the third party appellant’s contention that detailed matters should have been resolved during the course of the application as opposed to their resolution as

¹ The third party appellant

conditions precedent, I consider that whilst the provision of thorough, accurate and precise development details is good practice, and that the submitted plans are indeed somewhat imprecise in this regard, planning legislation does provide for a degree of flexibility in terms of development management and for detailed matters to be addressed by condition.

7.3. Principle of Development, Design and Layout

7.3.1 On the issue of the principle of development I note that the site is zoned city centre and the proposed rejuvenation of the currently derelict part of the site is welcome in principle. I consider that the proposal to open up the site to its northern side and provide for an active frontage to the canal walkway is a very positive development and provides potential for further regeneration within the immediate area.

7.3.2 As regards the design and layout I note that the scale of the proposal maintains the character of the current structures on the site. The restaurant is single storey in scale with a roof terrace which is partially covered to provide an outside amenity. The design provides for extensive glazing to create transparency between the restaurant and canal. A simple palette of materials brick, limestone and zinc are proposed. Horizontal bars to the roof terrace are proposed in deference to the traditional nautical railing with a hardwood handrail. A clear glazed screen is proposed inset behind the bars. It is proposed to remove the brick wall at the rear of the site boundary onto Park Canal and to install hot dip galvanised steel railings painted black. The proposed roof terrace to be provided with a covered pergola. The existing shop and forecourt are to be upgraded to include provision for burnt larch cladding and black aluminium framed glazing. Having considered the details of the proposal I consider that the design approach has been justified in design terms and the proposal to rejuvenate the overall site will be of positive benefit and is appropriate in terms of its design and impact on the streetscape.

7.4 Neighbouring Residential Amenity.

7.4.1 On the issue of impact on established residential amenity I note that the concerns raised by the appellant relate principally to overlooking, overshadowing and

disturbance arising from noise and other nuisance as well as disturbance and inconvenience during the construction period. On the issue of overshadowing I would concur with the first party that given the location to the north of adjacent dwellings no overshadowing arises. I further note in relation to the height of the structure the proposal maintains the established building height.

7.4.2 As regards overlooking I note the revisions to the proposal during the application including setting back of the first floor terrace and location of plant room to create a buffer to the adjoining residential property. I am satisfied that mitigation to prevent overlooking can be provided and I consider that this can be addressed by condition.

7.4.3 As regards noise and other disturbance having regard to the central location of the site and built-up character of the area, and current noise environment I consider that additional noise arising from the proposed development is not likely to be significant. Subject to standard good management practice no significant disturbance should arise that would give rise to a loss of residential amenity. I consider that the rejuvenation of the site to an active use represents a positive impact in terms of the residential and other amenities of the area.

7.4.4 As regards construction impacts, I note that given the proximity to residential dwellings there will be some potential for disturbance to residential amenity however given the short-term duration and subject to appropriate best practice construction methods such impacts can be appropriately mitigated. On the matter of waste and potential contamination I consider that an appropriately designed waste management plan and construction and demolition management plan will mitigate such issues arising

7.5 Servicing, parking and access.

7.5.1 Servicing arrangements for the existing shop and proposed restaurant can be adequately accommodated together on the site. I note the existing connection to foul sewer and that the submission form Irish Water indicated no objection subject to standard conditions. I note that the issue of surface water disposal was raised within the Council's request for additional information and clarification of additional

information and was not resolved in any detail. I note that this is addressed below in relation to the issue of appropriate assessment.

7.5.2 As regards traffic levels arising, I would concur with the Local Authority Planner that given the central location of the site and nature of the proposed use a traffic impact assessment is not required. I consider that the regularisation of access arrangements on the site will improve the current situation. I consider that the proposed restaurant use will not give rise to significant traffic generation. Having considered the detail of the application I consider that the proposal is acceptable from a traffic and transport perspective.

7.6 Flood Risk

7.6.1 In relation to flood risk I note the Flood Risk Assessment by PHM Consulting which was submitted in response to the Council's request for clarification of further information. The assessment notes the location of the site within Flood Zone A – Defended, at risk from fluvial and coastal flooding. The site does not provide natural flowpaths of fluvial floodwaters.

7.6.2 In terms of the justification test the established use of the site as a service station and convenience store and proposal to replace currently derelict buildings with restaurant (a less vulnerable use in terms of the Planning System and Flood Risk Management Guidelines) use is noted. The site is zoned City Centre Area within the Limerick City Development Plan 2010-2016 as extended. The site is not an important conveyance route that will impact nearby sites and the development will not increase flood risk elsewhere. The proposed finished floor level of the restaurant will match the existing service station at 4.15m AOD raised above the 10% AEP event and defended to the 0.5% AEP event. Residual risk is managed by the implementation of the emergency management plan. I consider that based on the details provided the risk of flooding has been mitigated and managed in accordance with the Planning System and Flood Risk Management Guidelines to reduce the residual risk to an acceptable level.

7.7 Appropriate Assessment

7.7.1 The site is within 24m of the Lower River Shannon SAC Site Code 002165 and the River Shannon and River Fergus Estuaries SPA Site Code 004077 is within circa 1.5km downstream of the site. I note the dearth of information with regard to the surface water proposals despite this issue having been raised within the Council's request for additional information and clarification of additional information. The drainage drawing (Ref 102-A2) submitted in response to the Council's request for clarification of further information request notes the location of the existing forecourt separator and states "*all surface waters from the existing developed area are collected via a gravity channel and below ground pipe system. Hydrocarbon removal is provided through the forecourt separator. No alarm system is currently provided. The exact final route of discharge is currently unclear.*" It is proposed that prior to commencement of development tracing and condition survey is carried out on existing networks and a detailed upgrade and any necessary remedial works package be prepared and submitted to Limerick City and County Council for approval prior to commencement.

7.7.2 I note that a number of the qualifying interests for the Lower River Shannon SAC and River Shannon and River Fergus Estuaries SPA are reliant on water quality and given the lack of information with regard to surface water disposal and on the potential for outfall to the Abbey River I am concerned that having regard to the source pathway receptor model it cannot be determined that the proposed development would not have a significant effect individually or in combination with other plans and projects on a European Site. On this basis the Board issued a Section 132 Notice to the applicant on the 22 February 2021 requesting a Natura Impact Statement to be informed inter alia by precise and detailed proposals with regard to storm water drainage design and outfall. The Board requested submission of this information on or before 22 March 2021. No response has been received by the Board.

7.7.3 In the absence of this detailed information with regard to surface water disposal it is considered that significant effects on European Sites cannot be excluded and therefore it cannot be concluded that the proposal individually, or in combination with other plans or projects would not result in adverse effects on the integrity of the

Lower River Shannon SAC (Site Code 002164) and the River Shannon and River Fergus Estuaries SPA (Site Code 004077) in view of the sites' conservation objectives. In such circumstances, the Board is precluded from granting permission for the proposed development.

8.0 Recommendation

- 8.1 Having regard to the foregoing I consider that the proposed development is welcome and largely accordance with the objectives of the Development Plan, will improve the public realm and I consider that there will be no undue impact on the amenities of the locality and the proposed development is acceptable from a traffic safety perspective and has been appropriately mitigated in terms of flood risk.
- 8.2 However, in light of the insufficient details on the file with regard to surface water disposal and in the absence of a NIS it cannot be determined that the proposed development individually, or in combination with other plans or projects would not result in adverse effects on the integrity of the Lower River Shannon SAC and River Shannon and River Fergus Estuaries SPA, in view of the sites' conservation objectives. Having regard to the foregoing I recommend that permission is refused for the following reason:

Reasons and Considerations.

In light of the proximity of the development site to the Abbey River which forms part of the Lower River Shannon SAC (Site Code 002164) and upstream of the River Shannon and River Fergus Estuaries SPA (Site Code 004077) and on the basis of surface water connectivity the potential arises for direct and indirect effects arising from habitat loss and impact on water quality during construction and operation phases of the proposed development. On the basis of the information provided with the application and the appeal particularly with regard to surface water management the Board cannot be satisfied that the proposal individually, or in combination with other plans or projects would not result in adverse effects on the integrity of the Lower River Shannon SAC (Site Code 002164) and the River Shannon and River Fergus Estuaries SPA (Site Code 004077) in view of the sites' conservation

objectives. In such circumstances, the Board is precluded from granting permission for the proposed development.

Bríd Maxwell

Planning Inspector

4th May 2021