



An
Bord
Pleanála

Inspector's Report

ABP-308604-20

Development	Construction of a link lobby to public house and use of smoking area for seated dining space.
Location	Logan Street , Thomastown , Co Kilkenny
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	20561
Applicant(s)	Torca Developments Limited
Type of Application	Permission
Planning Authority Decision	Grant with conditions
Type of Appeal	Third Party
Appellant(s)	Karen McDonald.
Observer(s)	Helen McConville
Date of Site Inspection	25 th of February 2021
Inspector	Caryn Coogan

1.0 Site Location and Description

- 1.1. Carroll's Public House (a Protected Structure) is a mid-terrace property located on Logan Street in Thomastown. It is a terraced three-bay, three storey building, c.1900 with a public house on the ground floor.
- 1.2. To the rear there is an enclosed beer garden which backs onto a car parking area associated with a courtyard residential development called 'Carroll's Village', which is accessed via an archway along Logan Street.
- 1.3. The site area is 0.0361ha, and it is stated the area of the existing building is 1674sq.m. with. There is a wing of the pub (ancillary area) located beneath and attached to residential units. This wing includes the kitchen and toilets. The site layout indicates the site boundaries relative to the total land ownership.
- 1.4. The beer garden has a timber fence along the common boundary with the carpark. It would appear access to the beer garden and public house from the rear is under an arch adjoining a residential unit.

2.0 Proposed Development

- 2.1. The proposed development consists of :-
 - (a) Permission for the use of the existing external smoking area to the rear of the building for use as a seated dining space for customers of the public house;
 - (b) Permission for the construction of a new link lobby to the rear of the building connecting the existing public house to the associated ancillary facilities which were located in the adjacent building.

Carroll's Public House is a protected structure (NIAH No. 12317057)

3.0 Planning Authority Decision

3.1. Decision

Kilkenny Co. Co. granted planning permission for the proposed development subject to 5No. conditions.

2. The serving of food and the preparation of same on the site will cease at 22.00hours Monday to Sunday on this premises. Any changes in these hours will be the subject of planning permission.

Reason: In the interests of orderly development.

3. Activities from the development shall not give rise to noise levels off site, at noise sensitive locations which exceed the following sound pressure limits:

Daytime (0800-2200) : 55dB(A)

Night time (2200-0800) : 45dB(A)

3.2. Planning Authority Reports

3.2.1. *Planning Reports*

- The site is located within a mixed-use development which is compatible with the zoning for the area.
- The proposed is to use the existing smoking area as a dining area. The wooden fence screens it off from the adjoining residential area.
- Hours of operation are 10am to 10pm
- Environment have no objection to the proposal once conditions relating to noise and music are attached.
- The linking lobby is needed as there are two closed fire door, and a trip outside needed between the kitchen and the dining area. Banging of doors creates a noise nuisance to residents.
- The proposal is architecturally acceptable in the Conservation Area.

3.2.2. **Other Technical Reports:**

Environment Section: - No objection

3.3. Prescribed Bodies

An Taisce stated the lobby link may adversely impact the character of the protected structure. History of unauthorised developments and noncompliance with conditions.

3.4. **Third Party Observations**

- Excessive noise and nuisance
- Since 2019 the smoking area has tables chairs bunting and food has been served.
- Live music
- Residential amenities.

4.0 **Planning History**

Histories relating to Carroll's Village the residential courtyard:

4.1 **Planning Reference 16/190**

Planning permission granted to Torca Developments for a change of use of permitted retail units granted under parent planning permission reference number 04/1470 and subsequent planning reference number 15/474. Permission is sought for: 1) Change of use from 2 No. retail units, to 2 No. one bed wheelchair accessible apartments within building referred to as Block 02 and also for new extension to the rear of the 2 No. proposed apartments. 2) Change of use from 3 No. retail units, to 2 No. one bed & 1 No. 2 bed wheelchair accessible apartments within building referred to as Block 03.

4.2 **Planning Reference 15/474**

Planning permission granted for retention permission for works in connection to parent planning permission reference number 04/1470. Planning Permission is sought for: 1) Construction of a new storm water sewer and connection of same to the Public storm water sewer, including for the construction of an attenuation area within the site boundary. 2) Revision to site boundary. 3) Completion of partially constructed water main within site boundary. 4) Connection to public waste water sewer. 5) Completion of site works to site including erection of light fittings, landscaping and completion of hard surface areas. Retention permission is sought for: 1) Minor external alterations to constructed buildings within the site boundary (identified as Blocks 1, 2 and 3). 2) Minor internal alterations to constructed buildings within the site boundary. 3) Splayed entrance details at site entrance/exit onto Logan

Street, 4) The construction of 2 no single story bin stores and a single storey sub-station building within the site boundary .

4.3 Planning Reference 04/1470

Planning permission granted to T.A. & W. Carroll for demolition of former bakery and outbuildings and construction of a three and four-storey development comprising of 26 no. apartments (2 no. 1 bedroom, 22 no. 2 bedroom and 2 no. 3-bedroom) with dormer windows and with balconies onto internal courtyard and 6 no. retail units on the former Comerford's bakery site and adjoining lands with entrance from Logan's Street through an arched ope at the former Nore Video Store. The development will include the refurbishment of the Logan's Street premises and a new 3-storey retail and residential building at the existing vehicular entrance to the bakery at site.

Planning Histories relating to the smoking area at the rear of the public house:

4.4 Planning Reference : 11557

Retention Permission for the change of use of 81 square meters gross from retail use to public house use containing public house kitchen, toilet facilities and 19 square meters of lounge area to the rear of existing public house. Application INVALID.

4.5 Planning Reference: 11578

RETENTION PERMISSION granted for the change of use of 81 square meters gross from retail use to public house use containing public house kitchen, toilet facilities and 19 square meters of lounge area to the rear of existing public house (a protected structure).

4.6 Planning reference 15649

a) Planning permission for the construction of a timber structure with awning to proposed external smoking area to the rear of existing public house. (b) Retention permission for existing link lobby to rear of building connecting existing public house to associated ancillary facilities. All works to take place to the rear of Carroll's Public House

4.7 Planning Reference: 08265

Planning permission granted for the erection of a timber pergola support structure for awnings to smoking area to the rear of existing public house. Condition No. 4 of the permission restricted the size of the smoking area to 50sq.m. only.

Note: I have downloaded some relevant extracts from the relevant planning histories cited above and included them in the Appendix of this report.

5.0 Policy Context

5.1. Development Plan

Thomastown Local Area Plan 2019

The subject site is zoned Town Centre.

TC1: Town Centre Policy

It is the policy of the Council to protect and enhance the role of Thomastown Town Centre as a vibrant and attractive town centre.

8.2.1 Town Centre ACA (Statement of Character)

The town centre of Thomastown comprises a coherent streetscape centred around a square block formed by Low Street, Pipe Street, Market Street and the Quays. There are also several shop and pub fronts in the town centre that add considerably to the character and architectural heritage of the town. It is essential to preserve and further encourage the quality of design and craftsmanship.
present.

ACA1 – Architectural Conservation Areas It is the policy of the Council to maintain the historic character of the designated Architectural Conservation Areas and to carefully consider any proposals for development that would affect the special character of these areas.

CAO1.1 To ensure that new development, including infill development, extensions and renovation works within or adjacent to the ACAs, preserve and enhance the special character and visual setting of the ACA including views and vistas, streetscapes, building lines, fenestration patterns and architectural features and to seek visual impact assessments where appropriate for such development.

5.2. Natural Heritage Designations

There are two designated sites in the vicinity, these include River Nore SPA (Site Code 004233), and River Barrow and River Nore SAC (Site Code 002162) both located less than 150m to the South.

5.3. EIA Screening

Having regard to the nature of the development proposed, the nature of the receiving environment, and proximity to the nearest sensitive location, 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

The third-party appeal can be summarised as follows:

- The continuing erosion of the residential amenities of the Carrolls Village community, in relation to traffic movement associated with the public house, commercial bins in the residential courtyard/ carpark space where children play, and noise disturbance and nuisance.
- There have been past failures of the current leaseholders to comply with planning permission conditions.
- There is a difference in the planning authority's approach in reaching a decision on the current application and the previous application 15/649.
- Under 15/649, the planning authority requested information advising it was not in favour of retaining the link corridor as constructed, and the planning authority had serious concerns about the development and its potential impact on the adjoining future residences in terms of noise. The application 15/649 was then withdrawn as the applicant did not respond to the further information.

- The current proposals is for a single storey extension with a smoking area, the floor area will be 107sq.m. and 22.5sq.m. will be a smoking area. The smoking area is roofed. It is a concern regarding noise.
- Under planning reference P10/316 permission was refused for changes to previously approved plans to substitute the pergola support structure to masonry single storey extension and to form a smoking area to one end of the extension to the rear of the public house. The permission was refused and has not been granted since.
- The link/ corridor lobby has been refused back as far as Planning Ref. 11/578 Condition no. 3.
- The 19sq.m. lounge area was granted on condition under Ref. 11/578 is would only be used in conjunction with the bar and not be used as a nightclub or for live music. There has been live music since the current leaseholders opened the pub in July 2019.
- Even though the site is zoned to accommodate mixed use development, the Carroll's Village development has become more residential as the applicant successfully applied for applied for change of use of retail units to apartments under planning reference 16/190.
- There have been ongoing complaints regarding the public from the residents /of Carroll's village.
- There has been noise, music, bright lights in the beer garden since August 2019. Deliveries are brought through the courtyard.

6.2. Applicant Response

None

6.3. Planning Authority Response

There is no further comment on appeal.

6.4. Observations

Helen McConville, on behalf of Oaklee Housing who are an approved Housing Body who provide housing to residents in the development immediately adjoining Carroll's pub. Karen McDonald, the appellant is one of their tenants. Her windows face directly onto the smoking area the subject of the planning application.

There is a planning history associated with the site. P08/265

P08/265 stated the smoking area was to be reduced to a standing area only maximum of 50sq.m., with no seating in the smoking area. The proposal materially contravenes a condition attached to the permission. (condition No. 4).

The tenant is right beside the smoking area, and made several complaints about the noise and nuisance since August 2019.

Oaklee House are surprised the intensification was granted given the planning history of the site.

7.0 Assessment

7.1. Introduction

I have inspected the subject site, reviewed the appeal file, and I consider the important issues to be assessed under this appeal area as follows:

- Planning History;
- Impact on Residential Amenities;
- Appropriate Assessment;

7.2 Planning History

The planning history of the subject site is twofold. Firstly, there is a long planning history associated with Carroll's Public House, and secondly there is a planning history associated with Carroll's Village the contiguous residential courtyard to the rear of the public house. From my research of the planning histories associated with both land uses, it would appear to be the planning authority has been inconsistent in its current decision to grant permission for the proposed development.

In 2008 planning permission was granted under reference **P08/265** for the erection of a timber pergola support structure for awnings to the smoking area to the rear of Carroll's Public House. Condition No. 4 of the permission stated:

The smoking area shall be reduced, and revised drawings submitted showing a maximum of 50sq.m. standing room only. The remaining hatched yellow in the drawings submitted shall be landscaped.

It is clear the planning authority had granted a limited smoking area. The drawings accompanying the appeal contain no dimensions, it would appear the smoking area is under 50sq.m. however there is seating, and this is not standing room only in accordance with the condition.

Under planning reference 15/649 the applicants, Torca Development Limited, applied for planning permission for a timber structure with a timber awning to the external smoking area, and retention of existing link lobby to rear of building connecting the public house to the ancillary facilities. The proposal was similar to the current proposal. The planning authority requested extensive further information on the 16th of December 2015 which was not replied to by the applicant. The letter stated the planning authority were not in favour of the link corridor, and it should be reconstructed in better quality materials. The letter also stated the planning authority had serious concerns regarding the potential impact of noise on the residences and there was an acoustic engineer to be employed, a noise minimisation plan was to be prepared and clarification regarding the use of the smoking area.

I note the planning authority did not have the same concerns in the assessment of the current case, and although the relevant planning histories were cited at length in the planning report they were not referenced in the assessment. I consider the issues raised in the planning histories remain relevant, and they are examined in greater detail in the next section below.

7.3 Impact on Residential Amenities

The relationship between the rear of the public house and the adjoining residential properties at Carroll Village is very unusual. I note from the planning histories, the residential courtyard was granted planning permission to the rear of the public house back in 2004 (Ref: 04/1470). Then a smoking area was added to the rear of the public house back in 2008 (Ref: P08/265). There was planning permission granted

for the change of use of 81sq.m. of retail space to public house space containing a kitchen and toilet facilities in 2011 (Ref. P11/578). The fundamental problem is both developments, the public house and the residential courtyard, (in 2016 the applicants received planning permission to convert retail units on the ground floor in Carrolls Village to residential units alongside the smoking area) have been developed in an ad hoc and piecemeal fashion with no overall plan or consideration for existing amenities, or how both uses can function compatibility with eachother. Furthermore a number of developments on site were included with planning permission, and were the subject of retention applications. In my opinion, without a basic masterplan co-ordinating the rear development of O'Carroll's public house with the integrated residential courtyard, O'Carroll's Village, both layouts and land uses are not compatible in their current form and require a full design re-evaluation based on assessment and characterisation of the noise and nuisance receptors.

Having regard to the current layout of the rear of the public house and the ancillary element of the pub located beside and under residential units, I have serious concerns regarding the residential amenities in particular the following.

- There are residential properties overlooking the beer garden area, these are noise sensitive locations, which have not been given serious consideration in the planning application documentation;
- There are deliveries and an emergency exist/ access from the smoking area into the residential courtyard alongside a residential property under an archway serving the residential units;
- The hours of operation proposed from 10am-10pm for the serving of food in the smoking area will create day long and night long noise and disturbance to the adjoining residences that are contiguous and directly overlook the smoking area.

I refer the Board to a third-party objection received by Kilkenny Co. Co. from Karen McDonald on 24th of September 2020 which is also Appendix 1 and Appendix 2 of her appeal. I refer in particular to the photograph illustrating the relationship of the apartments on the ground and first floor to the smoking area and link door (brown door) the subject of the planning application. These locations are highly sensitive to

noise and disturbance from the intensified use of the smoking area and linked doorway/ corridor.

In my opinion, the rear element of the public house is a poor layout and design that was incrementally created on the site due to reactive circumstances eg the introduction of the smoking ban, covid restrictions etc, without due consideration for the amenities of the contiguous residents, who are directly and materially impacted upon by the substandard layout of the ancillary wing and its lack of connection to the main public house, and the relationship between the smoking area, deliveries, refuse storage and the residential units.

The proposed development represents a material intensification of the external smoking area to the rear of the building which would enable people to be seated in the location for a considerable length of time, with the potential to create noise and nuisance seriously injuring the existing amenities of the adjoining residential properties. The issue of the conflicting uses needs to be addressed in a comprehensive design for the rear of the public house.

The site is located in a town centre location whereby mixed uses can exist in harmony. According to the planning histories, the residential development would appear to have pre-dated the smoking area, although Carroll's public house is a long established business and an iconic building in Thomastown (a protected structure also). I note, the residential element of Carroll's Village was intensified in 2016, when planning permission was granted for the conversion of retail units to residential units, and it is unclear to me, which is the primary land use at this location.

The entire layout, design and functioning of the public house at the rear requires re-examination as opposed to continuous knee-jerk reactions and subsequent planning applications. The overall design needs to be revisited to ensure the mixed uses can live in harmony, otherwise conflicts will continue on the overall property, and disturbance, nuisance and noise will negatively impact on the adjoining residences.

In addition, the applicant will have to assess the alleged noise levels relative to the proximity of noise sensitive receptors, and the particular noise characteristics of the proposed development, having regard to the intensification of existing operations that would result the further exacerbation of noise that would ensue.

Having examined the planning authority's decision to grant permission for the development in particular the attached conditions, having regard to the substandard layout, I consider it is inappropriate in this instance to address the concerns arising by means of condition, and I consider that a more fundamental re-evaluation would be necessary and subsequent planning application. I am therefore recommending a refusal of the proposed development.

7.4 Appropriate Assessment

Having regard to the nature and scale of the development proposed, being a change of use and an alteration to the rear of an existing building in the town centre of Thomastown, and to the nature of the receiving environment, 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.

8.0 Recommendation

- 8.1. I recommend the planning authority's decision to grant planning permission for the proposed development be refused for the following reasons and consideration.

9.0 Reasons and Considerations

Having regard to the nature and scale of the proposed development, its noise generation characteristics, including partly open walls, its location within a courtyard surrounded by residential developments, the planning history of the site, the documentation submitted on file, and the pattern of development in the vicinity, including the proximity of noise sensitive receptors, the Board considers that the development proposed would seriously injure the amenities of this area and of properties in the vicinity. Furthermore, the development proposed would facilitate seating in a smoking area for which planning permission was prohibited under planning register reference number P08/265, would intensify the significant scale of public house use served by the dining space, and would, thereby, further exacerbate the impacts of noise on neighbouring noise sensitive properties. The development proposed therefore, be contrary to the proper planning and sustainable development of the area.

Caryn Coogan
Planning Inspector

23rd of March 2021