



An  
Bord  
Pleanála

## Inspector's Report

### ABP-310476-21

<b>Development</b>	Demolition of existing structures on the site comprising public house/restaurant and nightclub
<b>Location</b>	Church Street, Newcastle west, , Co. Limerick
<b>Planning Authority</b>	Limerick City and County Council
<b>Planning Authority Reg. Ref.</b>	201373
<b>Applicant(s)</b>	U Store Cabins Limited.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant Permission with conditions
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Patrick Dalton.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	16 <sup>th</sup> September 2021.
<b>Inspector</b>	Bríd Maxwell

## **1.0 Site Location and Description**

- 1.1. This appeal relates to the site of a public house restaurant and night club formerly known as *Dick Darby's* and *Mission Nightclub* located at Church Street, Newcastle West in County Limerick. Church Street runs to the northwest of the Town Square and is characterised by a number of mixed uses. The appeal site is occupied by the two-storey public house fronting onto Church Street with an amalgamation of two storey and single storey extensions and additions to the rear having formed the former *Mission Nightclub*. The building is currently unoccupied and the structures and site to the rear is in a significant state of disrepair with evidence of fire damage. The appeal site backs onto the recently developed Aldi supermarket and car park to the west and southwest.

## **2.0 Proposed Development**

The proposal involves permission for the demolition of existing structures on the site and all associated site works. Application details outline that following an arson attack and fire at the site is contaminated due to damage and disturbance of asbestos roof. It is intended to decontaminate the site, remove any further asbestos and clear the site. It is intended to resurface the site in a washed gravel pending redevelopment. In response to a request for additional information it was outlined that it is intended to apply for permission for a mixed-use development comprising retail at ground floor and residential overhead.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1 By order dated 18<sup>th</sup> May 2021 Limerick City and County Council issued notification of the decision to grant permission and 15 conditions were attached which included the following of particular note.

Condition 2. Hours of construction.

Condition 7. Refurbishment Demolition Asbestos Survey.

Condition 14. Prior to commencement of works the applicant to locate and protect any Irish Water services within the red line. No building over watermains, common pipes or sewers.

Condition 15. Traffic Management Plan.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

Planner's initial report sought additional information to include a refurbishment demolition asbestos survey, details of future intentions for overall landholding, boundary treatment proposals and details of right of way. A traffic management plan and method statement was requested and the applicant was invited to address the third-party submissions.

Following submission of additional information final report recommends permission subject to conditions consistent with subsequent decision.

#### **3.2.2. Other Technical Reports**

Environment Section – Further information required to include refurbishment demolition asbestos survey. In the event of permission waste management plan.

Executive Archaeologist - No archaeological issues.

National Roads Design Office. – No observations.

Roads - Fence to comply with TII specifications. Construction management plan to be submitted. Area not to be used for parking of vehicles. Surface water details to be agreed. Damage to road / footpath to be repaired.

Roads. Traffic management during works. Traffic management. Hours of works. Surface water management.

### **3.3. Prescribed Bodies**

Transport Infrastructure Ireland. – No observations.

Irish Water – No objection. Existing connections to watermain and foul sewer in accordance with Irish Water specifications. Integrity, access and operation of foul sewer shall not be compromised. Works in accordance with code of practice.

### **3.4. Third Party Observations**

3.4.1 Submission from Patrick O Dwyer, 31 Connolly Avenue, Newcastle West. Outlines concerns with regard to future development of the site. It is hoped that a nightclub will not reopen on the site.

3.4.2 Patrick Dalton, 19 Church Street, Newcastle West who owns the property next door. Submission notes surprise at lack of consultation given that a pedestrian and vehicular right of way runs through the property. The right of way initially ran in a straight line north south at the rear of the original premises. When the night club was installed a westward deviation of the route was agreed. Concern regarding indefinite right of way. A solid physical boundary 2 metres in height should define same.

## **4.0 Planning History**

I am not advised of any planning history on the appeal site.

## **5.0 Policy Context**

### **5.1. Development Plan**

The Limerick County development Plan 2010-2016 as extended and Newcastlewest Local Area Plan 2014-2020 as extended refers.

The appeal site is zoned Town Centre. The purpose of this zoning is to protect and enhance the character of Newcastle West's town centre and to provide for and improve retailing, residential, commercial office, cultural and other uses appropriate to the town centre while guiding the development of a consolidated town centre area. Any proposed retail development shall be in accordance with the provisions of the Retail Strategy for the Mid West Region, 2010-2016.

## **5.2. Natural Heritage Designations**

The site is not within a designated area. The nearest such sites include:

The Lower River Shannon SAC circa 8km to the west

Askeaton Fen Complex SAC circa 15km to the northeast

River Shannon and River Fergus Estuaries SPA 15km to the north

Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA circa 4km to the west.

## **5.3. EIA Screening**

5.3.1 Having regard to nature and scale of the development, 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 appeal is submitted by Patrick F Dalton. Grounds of appeal are summarised as follows:

- Concern relates to the retention of a right of way defined by walls.
- The owner of the appeal site was facilitated by third parties who agreed to vacate a long-standing historical right of way which was further to the west and closer to the Church Street frontage. Solicitor's letter in respect of the agreement outlined the requirement for a wall at both sides of the right of way.
- Having regard to the unknown long term development prospects for the site concern arises that use as a car park could obstruct the right of way. Restoration of a solid physical boundary of at least two metres in height is required.

## **6.2. Applicant Response**

6.2.1 The response by Connellan and Associates Planning and Energy Consultants on behalf of the first party is summarised as follows:

- Acknowledge that the appellant and other grantees have a right of way over the land coloured yellow to reach the rear of their properties which front onto Church Street.
- The existing right of way goes back to 23 August 1982 when it was granted by a deed of easement. (Copy attached)
- Intention is to clean up the site and improve the visual amenities of the area and render the site capable of redevelopment.
- Pre-planning discussions regarding the future use of the lands are ongoing.
- Deed of easement makes no reference to the provision of any walls bounding the right of way as is now requested by the applicant.
- A permission will not detract from the grantees rights in the way.
- Existence of a right of way will be taken into account in the design of future development proposals for the land. No structures or car parking spaces will be located on the right of way.
- The provision of 2m high walls would inhibit the layout and design of any future development proposals.

## **6.3. Planning Authority Response**

The Planning Authority did not respond to the grounds of appeal.

## **7.0 Assessment**

7.1. I note that the appeal does not question the principle of development and the main issue raised within the grounds of appeal relates to the impact of the proposal on third parties in terms of their ability to exercise their right of way over the site. I am satisfied that no other substantial planning issues arise. Appropriate Assessment requirements also need to be considered.

7.2 I note that in relation to the issue of right of way the applicant does not contest the existence of a right of way over the site and submits that the right of way will not be interfered with. A copy of the deed of easement in respect of the right of way made on 23<sup>rd</sup> August 1982 is provided within the appeal response and it is noted by the first party that the agreement does not include any reference to boundary walls. The third-party appellant contends that the right of way should be delineated by way of construction of a 2m high boundary wall at both sides. I would concur with the first party that such a wall would potentially constrain the future development of the site and would be inappropriate. In any case I consider that such definition is unnecessary. The first party has outlined a clear commitment to take account of the right of way in any future redevelopment of the site and also notes the provisions of 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.”*

7.3 On the issue of Appropriate Assessment Screening having regard to the nature of the development and lack of hydrological connection to European sites and applying the source pathway-receptor model and having regard to the considerable separation distances involved it is reasonable to conclude that the proposed development individually or in combination with other plans or projects would not be likely to have a significant effect on any European Sites in view of the site’s conservation objectives and a stage 2 appropriate assessment and submission of an NIS is not therefore required.

## 8.0 Recommendation

8.1. Grant permission subject to the following conditions.

## 9.0 Reasons and Considerations

It is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity and would be acceptable in terms of and 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, as amended by the further plans and particulars received on the 21<sup>st</sup> of April 2021 except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars. In default of agreement, the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity.

2. (a) Drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services. Prior to commencement of development, the developer shall submit to the planning authority for written agreement, a Stage 2 - Detailed Design Stage Storm Water Audit.  
(b) Upon completion of the development, a Stage 3 Completion Stormwater Audit to demonstrate Sustainable Urban Drainage System measures have been installed and are working as designed and that there has been no misconnections or damage to storm water drainage infrastructure during construction, shall be submitted to the planning authority for written agreement.

Reason: In the interests of public health and surface water management Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

3. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with the planning authority prior to commencement of development. This plan shall be prepared in accordance with "Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and



Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006.

Reason: In the interest of sustainable waste management.

4. Site development and building works shall be carried out only between the hours of 0700 to 1900 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.

5. During the construction and demolition phases, the proposed development shall comply with British Standard 5228 - Noise Control on Construction and open sites Part 1.

Reason: In order to safeguard the amenities of property in the vicinity.

- 6 The construction of the development shall be managed in accordance with a Construction Management Plan which shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development. The plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction and demolition waste.

Reason: In the interest of public safety and residential amenity.

7. Detailed proposals for traffic management shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

Reason: In the interest of traffic safety.

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Bríd Maxwell  
Planning Inspector

17<sup>th</sup> September 2021