



An  
Bord  
Pleanála

## Inspector's Report ABP-310632-21

---

<b>Development</b>	Permission for change of use of part of first floor storage area to a kitchen area, ancillary to the restaurant at ground floor level, and all associated site services within a protected structure, RPS reference number 8109.
<b>Location</b>	Number 9, Quay Street, Galway City.
<b>Planning Authority</b>	Galway City Council
<b>Planning Authority Reg. Ref.</b>	20/243
<b>Applicant</b>	Hitian Land Ltd.
<b>Type of Application</b>	Permission for retention
<b>Planning Authority Decision</b>	Grant Permission for retention
<b>Type of Appeal</b>	Third Party v. Grant
<b>Appellant(s)</b>	Anna Mee
<b>Observer(s)</b>	An Taisce
<b>Date of Site Inspection</b>	26th January 2022
<b>Inspector</b>	Fergal O'Bric.

## 1.0 Site Location and Description

- 1.1. The appeal site is a three-storey building comprising an oriental restaurant with take-away service, known as Xian Street Food, that fronts onto a busy pedestrianised Street, Quay Street and sides onto Druid Lane, within the central business district of Galway City. The appeal site has an access door and window at ground floor level onto Quay Street and windows at the upper floor levels facing onto Quay Street and Druid Lane. There are other three-storey commercial premises located further north, south and west and east of the appeal site. along Quay Street and Druid Lane. The restaurant has some seating along the street front. The building has a stone frontage at ground floor level and render at upper levels facing onto Quay Street and signage comprising individual lettering which is downlit.
- 1.2. The appeal site is identified as a protected structure (reference number 8109) as per the Galway City Development Plan 2017-2023 and also included within the National Inventory of Architectural Heritage. The site is also located within the Galway City centre Architectural Conservation Area (ACA). The appeal site is part of a wider terrace of commercial buildings within the identified retail core area of Galway City.

## 2.0 Development Description

- 2.1. The development comprises the following: -
  - a. Retention permission for a change of use of a part of first floor storage area to a kitchen area associated with the ground floor restaurant.
  - b. All associated site services.
- 2.2. The planning application was accompanied by an Architectural Heritage Impact Assessment Report.
- 2.3. Further information was submitted by the applicants in relation to the following: Correspondence demonstrating the requirement for a kitchen/food preparation area

at first floor levels, floor plans demonstrating minimum floor areas for the seating areas; details of ventilation/mechanical extraction in operation on site, including drawings and design specifications and a response to the issues raised within the third party submission.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Planning permission for retention of part change of use from storage area to kitchen area at first floor level was granted subject to two conditions, which are set out below:

- Condition number 1: The development shall be retained in accordance with the plans and particulars as submitted to the Planning Authority.
- Condition number 2: The use of the kitchen, the subject of the planning application shall be ancillary to the restaurant use on site.

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

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

The Planning Officers report stated that the main aim of the Galway City Development Plan is to promote town centre vibrancy, vitality and attractiveness. The Planner was satisfied that the development to be retained does not adversely impact upon the integrity of the protected structure nor adversely impact upon the character of the City Centre Architectural Conservation Area (ACA). They set out that the development does not adversely impact upon neighbouring properties and accords with the policies and objectives of the Galway City Development Plan 2017-2023. A recommendation to grant planning permission for retention of change of use was issued.

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

Heritage Officer: No objections.

### 3.3. Prescribed Bodies

None received

### 3.4. Third Party Observations

One received from the owner of number 7, Quay Street, Ms. Anna Mee. The main issues raised within her observation related to the following matters:

- Encroachment/impact upon the Galway city walls
- Intensification of use within the premises.
- History of non-compliance with planning conditions.

## 4.0 Planning History

Subject Site:

Planning Authority reference number 92/760-In 1992, Galway Corporation granted planning permission for the erection of a kitchen and stairwell to the rear of the building in place of an existing extension and to change the use of the building from residential use to restaurant use.

Planning Authority reference number 19/128 - In 2019, Galway City Council granted planning permission for a change of signage on the front façade to raised stainless steel lettering and the erection of down lighting over the signage.

Planning Authority reference number 19/335 - In 2019, Galway City Council refused planning permission for a part change of use of a first floor storage area to a kitchen area ancillary to the restaurant at ground floor level.

Planning Authority reference number 20/77 - In 2020, Galway City Council granted planning permission for changes to previously granted development under reference number 92/760 providing for a larger extension than previously permitted at first floor

level and the use of the second floor as a storage area, and part change of use of a first floor storage area to a kitchen area ancillary to the restaurant at ground floor level. Condition number 3 of that permission stated that within three months of the final grant of planning permission, the first floor food preparation area/kitchen and all associated fixtures and fittings shall be removed from the property and this area shall only be used for storage purposes. The remainder of the property shall be used for restaurant purposes only.

## **5.0 Policy and Context**

### **5.1. Galway City Development Plan, 2017-2023**

The appeal site has the benefit of a city centre (CC) land use zoning where the objective is “To provide for city centre activities and particularly those, which preserve the city centre as the dominant commercial area of the city”

Restaurant/take-away uses are not specifically listed within the zoning matrix. However, among the uses which are considered to be compatible with the city centre location, include tourist related uses.

Section 5 of the Plan pertains to economic activities and sets out the following in relation to city centre vitality and vibrancy “The retail strategy also includes for other policies in the plan which supports aspects that contribute to maintaining the vitality and vibrancy of the city centre, encourages competitive choice, which in turn secures a healthy environment for commerce”

Section 5.3 relates to commercial development and sets out the following “There is a notable presence of the hospitality sector, cafe culture and the entertainment area bolstered by the tourism market and the strong student population”

Policy 5.1 for Enterprise seeks “To preserve the city centre as the prime focus and identity for town centre commercial activities”

Section 8.2 pertains to Bult Heritage where the following is set out:

“It is policy to encourage the protection, enhancement and active use of protected structures”.

Section 8.3 pertains to Architectural Conservation Areas where the following policy is included: “Ensure that developments within Architectural Conservation Areas enhance the character and special interest of the Architectural Conservation Areas”.

Section 8.6 pertains to the Galway City walls where the following policy is set out: “Secure preservation in-situ of the historic medieval city walls and seek to protect and enhance their setting”.

## **5.2. Draft Galway City Development Plan 2023-2029**

The Draft Galway Development Plan (DGDP) was on public display until April 2022 and the Chief Executive’s report is currently being prepared on the submissions received during the display period. The Plan is expected to be adopted in the first quarter of 2023.

The appeal site has the benefit of a city centre (CC) land use zoning within the Draft Plan where the objective is “To provide for city centre activities and particularly those, which preserve the city centre as the dominant commercial area of the city”

Section 6.3.1 pertains to the commercial sector where the following is set out “Retailing in particular contributes to the commercial life of the city and is key in conjunction with the hospitality, restaurants, café culture and entertainment sector to support the competitiveness and the attraction of the city for both residents, the high student population and the tourism market”.

Section 8.2 pertains to Protected Structures where the following is set out “In addition, a change of use of a protected structure to a use compatible with the conservation of the structure, notwithstanding the zoning of the area, can also be considered”

Section 8.3 pertains to Architectural Conservation Areas (ACA’a) and the following is set out specifically in relation to the city centre ACA “The medieval core of Galway is

a mix of streetscape and buildings of many periods. The layout and the scale of some of the streets reflect the medieval street pattern. The city core is the most important area of built heritage in Galway. Its designation is beneficial in ensuring the area's character is enhanced and protected".

Section 8.7 of the Draft Plan pertains to the city walls and the following policy is included: "Secure preservation in situ of the historic medieval city walls and seek to protect and enhance their settings".

### 5.3. **National Guidance**

- Architectural Heritage Protection Guidelines for Planning Authorities (2011)- Department of Arts, Heritage and the Gaeltacht.

### 5.4. **Natural Heritage Designations**

None relevant.

### 5.5. **Environmental Impact Assessment - Preliminary Examination**

Having regard to the limited nature and scale of the development works, and the fact that the development relates to a change of use of a small part of the first floor area of an established and permitted commercial premises, with no additional floor area developed, the site being fully serviced, the absence of any connectivity to any 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.

## 6.0 **The Appeal**

### 6.1. **Grounds of Appeal**

A third-party appeal was submitted by O Donnellan & Co. Architects on behalf of the appellant, Ms. Anna Mee. The issues raised in the appeal are summarised below.

#### Architectural Heritage:

- The kitchen extension has a significant impact on the character and setting of the building within an Architectural Conservation Area (ACA).
- The impact of ducting/plant fixed to the roof of the kitchen extension or to the appellants property has not been addressed.
- The ducting adversely impacts upon the Galway City walls.
- No measures to protect the integrity of the city walls have been put in place.
- Lack of ventilation between the internal linings within the kitchen area and the city walls could result in a deterioration of the character and integrity of the city walls.

#### Other Issues:

- Plans submitted with the application include ground and first floor plans and front elevation plans. No side elevation plans, or cross sections were submitted.
- The Architectural Heritage Impact Assessment (AHIA) Report was submitted after the observation was made by the appellant to the Planning Authority as unsolicited information and, therefore, the appellant was not afforded an opportunity to comment on the AHIA.

#### **6.2. Applicants Response to the third party appeal submission**

The applicant responded to the appeal submission raising the following issues:

- The purpose of the additional kitchen space is in order to meet the requirements of the HSE guidelines in terms of food separation, the separation of meats, fish and vegetables as well as vegetarian and gluten free products.



- The additional kitchen space allows for the safe operation of the restaurant business with particular regard to the handling and storage of food.
- The Planning Authority have considered all of the information submitted and were satisfied that the operations on-site were not contrary to Section 11.4.5 of current the Galway City Development Plan regarding uses in the city centre.
- In terms of the plans and particulars submitted to the Planning Authority, a cross section of the building was submitted and contains the necessary details.
- The Architectural Heritage Impact Assessment (AHIA) was deemed to be acceptable by the Planning Authority.
- The AHIA sets out that the change of use from a store room to a kitchen area has a slight physical impact on the protected structure with no physical impact on the historic fabric of the building and the visual impact was stated as being slight to imperceptible. It also stated that no impact upon the character or setting of the ACA arises as a result of the change of use.
- A full specification of the ventilation/mechanical extraction has been provided. It sets out that the wall coverings on the internal kitchen walls are not fixed directly to the external walls, an air gap exists between the wall coverings and the external walls in order to prevent a build-up of moisture. The wall are necessary to adhere to food safety requirements and best practice guidance.
- The Heritage Office of Galway City Council (GCC) raised no objections to the development and recommended that no further works be carried out to the appeal site without the benefit of a planning permission.
- The floor area of the first floor kitchen is approximately 13.7 square metres and is modest in proportion to the floor area of the entire restaurant.
- Planning permission for the first floor kitchen has already been granted by the Planning Authority under planning authority reference number 20/77.

- Galway City Council (GCC) considered the issue of encroachment on the neighbouring property to be a civil matter, outside the remit of the Planning Authority to determine.
- The applicants appointed a building surveyor to carry out a site and building survey. This survey concluded that no elements of number 9 Quay Street, extend beyond the north-eastern boundary shared with number 7, Quay Street. Site survey drawings to this effect have been submitted as part of the appeal response.

**6.3. 2<sup>nd</sup> appeal submission by O'Donnell an & Co. architects on behalf of Ms. Anna Mee in response to issues raised by the applicants within their appeal response.**

- The plans submitted are lacking detail, in terms of no side elevation or cross-section plans were submitted, street levels and details of plant/services at roof level are lacking, the adjoining property at number 7 not shown clearly on street elevation plans.
- Lack of detail within the AHIA make it impossible for the GCC Heritage Officer to come to conclusions regarding impact of the works on the protected structure.
- Without the benefit of detailed drawings, it would be impossible to establish what measures, if any, were taken to preserve the protected structure.
- No details have been provided of the relationship between the external walls of the protected structure and the internal first floor kitchen walls of the building and how the intervening space would be naturally ventilated.

**6.4. Planning Authority Response:**

The Planning Authority made no additional comment in relation to the appeal.

## 6.5. Observations

An Taisce made an observation and set out the following issues:

- They support the appeal made by Ms, Anna Mee in terms of the impacts upon Ms. Mee, s business and the impacts upon the protected structure.
- They refer the Board to their observation made under planning reference number 19/335 to GCC for a development similar in nature to the development which is the subject of the current planning appeal, and which was refused planning permission by the Planning Authority.
- The current appeal is seeking to reverse that decision made by the Planning Authority.

## 7.0 Assessment

7.1. The main planning issues in this appeal relate to the impact upon the Architectural Heritage, given the sites location within an Architectural Conservation Area and the appeal site being included within the Record of Protected Structures. Other issues in terms of impact upon the neighbouring property at Number 7 Quay Street will be considered. Appropriate Assessment requirements are also considered. I am satisfied that no other substantial planning issues arise. The main issues can be dealt with under the following headings:

- Principle of Development
- Architectural Heritage
- Impact upon neighbouring amenity
- Appropriate Assessment.

### 7.2. Principle of Development

7.2.1. The appeal site is zoned City Centre (CC)' within the current Galway City Development Plan (GCDP) 2017-2023 where the objective is "To provide for city centre activities and particularly those which preserve the city centre as the dominant

commercial area of the city”. Although a restaurant use is not specifically listed within the zoning matrix, the principle of a change of use within the existing footprint of an established and permitted restaurant business is considered acceptable, subject to adhering to a number of development management criteria. In this instance, these criteria would include that the works respect the architectural heritage of the site/ACA and considering the impact upon the neighbouring amenities and to determine if the development accords with best practice heritage principles and the policies and objectives of the Development Plan.

- 7.2.2. The restaurant is not a business that is out of character with the mix of surrounding retail and non-retail businesses or out of character within the Galway City centre retail area. I am satisfied that the principle of the change of use is acceptable, subject to the matters in relation to architectural heritage and respecting neighbouring amenities being appropriately addressed. These matters will be addressed in the subsequent sections within this report.

### 7.3. **Architectural Heritage**

- 7.3.1. The appeal site is located within the Galway City Architectural Conservation Area (ACA) and is identified as a protected structure (reference number 8109) within the current Galway City Development Plan. The building is a three storey end of terrace structure, with a stone external finish at ground floor level and render on the upper two floors. The structure is an attractive and important component of the streetscape, on the corner of Quay Street and Druid Lane. The structure is well maintained, and retains some of its original architectural features including decreasing fenestration size between the first and second floors and the strong vertical emphasis incorporated within the fenestration detailing. The AHIA concludes that “there is no evidence that any walling was altered or removed during the works. The physical impact upon the protected structure is considered to be slight and the visual impact upon the protected structure is considered to be negligible. The impact in the city centre ACA is judged to be imperceptible”.
- 7.3.2. Given the architectural significance of the appeal site within a prominent city centre location, the impact of the proposals on the architectural integrity of the appeal site and the wider ACA needs to be duly considered. The first floor kitchen area, which is the subject of this appeal, is slabbed out internally with stainless steel sheeting

around the sink and cooking areas and white PVC type sheeting on the remaining kitchen wall areas. I consider that the physical impact of the works to be slight, given no external walling was removed or altered to accommodate the works. I am also satisfied that the changes made are reversible, if necessary, and therefore, would be in accordance with a key principle set out within the Architectural Heritage Protection Guidelines (AHPG's). I would concur with the conclusion of the AHIA, in terms of the physical impact being slight.

- 7.3.3. It is apparent that the works have been carried out in accordance with best architectural conservation practice, in that the steel and PVC fixings are not directly attached to the external walls of the building. It is stated that an air pocket exists between the internal kitchen walls and the external walls in order to allow the external walls of the protected structure the necessary space to breathe and to limit the build-up of moisture between the slabbing and the walls. The visual impact of the works is negligible, and I am satisfied that the works have not adversely impacted the character or special interest of Number 9 Quay Street. The changes are not evident from the public areas of the building, as the kitchen is separated from the sitting area at first floor level. I also note that the works are not visible externally from either Quay Street or from Druid Lane, and therefore, I am satisfied that no adverse impact arises on the character or setting of the protected structure or the city core ACA.
- 7.3.4. Therefore, on balance, I am satisfied that the works would not have an adverse impact on the architectural integrity of number 9 Quay Street nor the city centre core ACA. The proposals are considered to accord with Section 8.2 of the current Development Plan, where the policy is "to encourage the protection, enhancement and active use of protected structures".
- 7.3.5. I am satisfied that the key conservation principles of keeping a building in use and reversibility have been incorporated within the development. Therefore, I am satisfied that the works are compliant with the built heritage guidance as set out within Sections 7.3 and 8.3 of the AHPG's, in terms of keeping a building in use, minimal intervention and reversibility of works, and are therefore, considered to be acceptable from an architectural heritage perspective.
- 7.3.6. the AHPG's 2012.

7.3.7. The Heritage Officer within the Council did not outline any particular objections to the development proposals. He acknowledged that the issue previously raised under Planning Authority reference number 19/355, in relation to the confirmation that an air pocket exists between the internal wall fixings and the external walls has been addressed to his satisfaction. The Planning Authority is supportive of the change of use and the minor reversible internal alterations that arise.

7.3.8. In conclusion, I am satisfied that the change of use from a storage area to a kitchen area, ancillary to the ground floor restaurant use, does not adversely impact upon the character of the ACA nor impact upon the integrity of the protected structure. I am satisfied that the works have been carried out in accordance with best practice conservation principles and are therefore, considered to be acceptable from an architectural heritage perspective.

#### **7.4. Neighbouring amenities**

7.4.1. In terms of the potential of the development to adversely impact upon the neighbouring property to the north, at number 7 Quay Street, the change of use as completed, from a storage area to a kitchen area ancillary to the ground floor restaurant use, which is established and permitted, largely pertains to internal modifications. I am satisfied that the modest scale of the kitchen area, comprising approximately 10% of the overall floor area of the premises, would not significantly adversely impact upon the amenities of the neighbouring property owner.

7.4.2. In terms of the external plant and services, I note the applicants submitted a report from a building surveyor as part of their second appeal submission. This survey states that all elements of number 9 Quay Street are contained within the existing folio that pertains to the appeal site and that this survey is based on the most up to date mapping available. The Planning Authority noted the issue of encroachment on the neighbouring property and were satisfied that this represented a civil matter.

7.4.3. Section 5.13 of the Development Management Guidelines for Planning Authorities advises that the planning system is not designed as a mechanism for resolving disputes about rights over land and that these are ultimately matters for resolution in the Courts. Section 34(13) of the Planning and Development Act 2000 (as amended) states: A person shall not be entitled solely by reason of a permission under this

section to carry out any development. I am satisfied that the provisions outlined above give the Board sufficient comfort to permit the development.

- 7.4.4. In Conclusion, based on the information set out above, I am satisfied that the development does not significantly adversely impact upon the amenities of neighbouring properties.

## 7.5. **Other Issues**

- 7.5.1. In terms of procedural matters in terms of the timing of the submission of the AHIA and the extent of detail included within the plans submitted to the Planning Authority, I note that these matters were considered acceptable by the Planning Authority. I am satisfied that this did not prevent the concerned party from making representations. The above assessment represents my de novo consideration of all planning issues material to the proposed development.

## 7.6. **Appropriate Assessment.**

Having regard to the nature and modest scale of the development which pertains to a change of use of part of an existing building and where no additional floor area arises, within a serviced urban area and the distance from the nearest European site, it is concluded that no Appropriate Assessment issues arise, as the development would be unlikely 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 that planning permission for the retention of a part change of use at first floor level from a storage area to a kitchen area be granted subject to conditions.

## 9.0 **Reasons and Considerations**

Having regard to the 'Town Centre' zoning objective of the subject site, the pattern of development in the city centre area, it is considered that, subject to compliance with the conditions set out below, the change of use sought to be retained, does not

adversely impact upon the architectural heritage of the protected structure nor the city core Architectural Conservation Area, nor adversely impact upon the neighbouring amenities within the city centre. The development is therefore, considered to be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be retained in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 22nd day of September 2020, 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 first floor kitchen facility, the subject of the current appeal, shall be used solely in connection with the established and permitted restaurant business on site. The kitchen facility shall not be used to service any other business or operation.

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

---

Fergal Ó Bric  
Planning Inspectorate

17<sup>th</sup> June 2022