



An
Bord
Pleanála

Inspector's Report ABP 312111-21.

Development	Change of use from café/retail shop to part off-license use.
Location	Westwood Student Residence, Dangan, Newcastle Road, Galway
Planning Authority	Galway City Council
P. A. Reg. Ref.	21/302.
Applicant	Tom Meehan and Sons Ltd.
Type of Application	Permission
Decision	Refuse Permission.
Type of Appeal	First Party X Refusal
Appellant	Tom Meehan and Sons Ltd.
Observer	Geraldine Byrne.
Date of Site Inspection	4 th May, 2022
Inspector	Jane Dennehy

Contents

1.0 Site Location and Description	3
2.0 Proposed Development.....	3
2.2. Planning Authority Reports	4
2.3. Third Party Observations.....	5
3.0 Planning History	5
4.0 Policy Context.....	6
4.1. Development Plan	6
5.0 The Appeal.....	6
5.1. Grounds of Appeal.....	6
5.2. Planning Authority Response	8
5.3. Observations	9
6.0 Assessment.....	10
7.0 Recommendation.....	12
8.0 Reasons and Considerations.....	12
9.0 Conditions	9

1.0 Site Location and Description

- 1.1. The site of Westwood, a student accommodation complex is located at the corner of Upper Newcastle Road and Thomas Byrnes Road (with frontage onto both roads) on the west side of the city of Galway. At Block A the ground floor area subject of the application is a Spar store in which there is a café/restaurant and convenience retail unit at ground floor level which include a delicatessen counter, Barista dock and sandwich/soft drinks counter. At the time of inspection there were some tables and chairs along the frontage onto Newcastle Road Upper. There is some modest sized signage over the shopfront and along the Thomas Byrnes Road frontage the ground floor windows are blanked out.
- 1.2. There is a vehicular entrance at the north western end of the site frontage for services, and six on site pay and display parking spaces. A courtyard area laid out for parking was blocked off and inaccessible at the time of inspection. Thomas Byrnes Road off which there are several residential estates to each side, forms part of the N59 which continues in a north westerly direction beyond the site frontage Connemara and onwards through north Mayo and Sligo. On the opposite side of Upper Newcastle Road is the IDA Business Park.
- 1.3. According to the applicant's submissions the stated floor area of the retail unit is 206 square metres, the café is 100 square metres and that of the convenience retail element is forty-two square metres.

2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for change of use of the existing café and shop at Block A's ground floor area to include an off-license use involving minor alterations to the internal layout. If permitted an area of 100 square metres of the total floor area of 206 square metres is to be allocated to café use, 38.60 square metres to retail use and 10.50 square metres to subsidiary off license use. The remaining floor space is allocated to back of house and circulation space. **It is stated in the written submission that the back of house area is discounted, and circulation space is allocated to both café and retail elements resulting on 122.38 square metres or 70.37% for the café and 51.21 square metres or 29.63 square metres for the retail element.**

3.0 **Decision**

3.1. By order dated, 8th November, 2021 the planning authority decided to refuse permission based on four reasons as outlined briefly below:

- 1 Adverse effect in erosion of the use size and amenity of viable café restaurant element ancillary to the student accommodation complex and as a facility for the surrounding community.
- 2 Potential for increased drop off and pick activity on the N59 a national route, where a bus and cycle corridor is planned and where no drop off facilities resulting in endangerment of public safety by reason of traffic hazard as well as impeding investment in road improvements.
- 3 Projecting sign proposed for the east elevation is contrary to Policy 11.6 of the CDP.
- 4 Contravention of Condition No 5 of the grant of permission under P A. Reg. Ref. 19/167 and Condition No 4 of the grants of permission under P A. Reg. Ref. 20/357. Retail displays instead of approved seats for the café restaurant results in a reduction on floor space for the café restaurant.

3.2. **Planning Authority Reports**

- 3.2.1. The report of the Transportation Department indicates concerns as to additional stopping off and picking up movements on the N59 impeding the national bus route and contributing to illegal parking. If permission is to be considered, a thorough review of the previously submitted TTA provided with the original application and, under P. A. Reg. Ref. 19.197 is recommended so that it can be demonstrated for the department to see that the proposed development does not lead to increased illegal parking leading to traffic hazard.
- 3.2.2. The planning officer in his report provided a detailed account of the planning history for the development (see para 4 below for details). The proposed off license according to the planning officer would seriously erode the restaurant/café function benefitting the integration of the student community within the existing community. The current proposal's reduction from twenty to fourteen seats including a screened off area with twelve seats in the interior is regarded as significant and as hindering

the restaurant café function and the original grant of permission providing for forty-eight seats is noted in this regard.

- 3.2.3. In addition, the planning officer considers the proposed development potentially contributory to increased dropping off and picking up movements on the N59, a national route.

3.3. **Third Party Observations**

- 3.3.1. Three observer submissions were lodged at application stage in which concerns are raised as to impact on the approved café restaurant use, potential for anti-social behaviour and existing problems of traffic hazard by illegal parking on the footpath by patrons and commercial vehicles which might be worse with the proposed development in operation.

4.0 **Planning History**

ABP Ref: 301693. (SHD) Permission was granted for the demolition of the Westwood Hotel and for construction of the Westwood Student Accommodation complex (sixty-four apartment units and 394 bed spaces) which is now operational and occupied. The grant of permission included provision for a café restaurant at ground floor level

P. A. Reg. Ref: 19/197: Permission was granted for an extension (at the front) and a change of use from café restaurant use to retail/café/restaurant use at ground floor in Block A. A minimum area equivalent to fifty per cent of the floor area is to be dedicated to café and restaurant use. Under Condition No 5 there is a requirement for at least fifty per cent of the floor area within the enlarged unit to be in café restaurant use with a compliance submission being required which was submitted and agreed. Twenty-eight seats, (eight outside) were shown in the agreed layout.

P. A. Reg. Ref: 20/357: Permission was granted for relocation of the entrance the are retail unit from Newcastle Road elevation to the northern elevation opposite the main reception entrance, and associated signage and works at ground floor level for Block A. The internal layout for the side entrance area provides for twenty seats. Eight seats inside had been replaced with a deli counter.

P. A. Reg. Ref: 21/167: Permission was granted for bistro style tables and chairs outside the main reception entrance at Block A for use by customers of the retail unit during opening hours.

P. A. Reg. Ref: 20/204 and 20/152: Permission was granted for roof top plant and equipment and for construction and operation of a photovoltaic system on the rooftops of the three blocks along with balustrading.

5.0 Policy Context

5.1. Development Plan

The operative development plan is the Galway City Development Plan 2017 – 2023 (CDP) according to which the site is within an area subject to the zoning objective:

“R”: “To provide for residential development and for associated support development, which will ensure the protection of existing residential amenity and will contribute to sustainable residential neighbourhoods”.

The location is within an “an established suburb” the objective of which is to ensure a balance between the reasonable protection of residential amenities and the character of established suburbs and the need to provide for a sustainable residential development.

Development management standards are in Chapter 11. According to section 11.4.6, Office licences outside the city centre area can be considered in the context of effect on the amenities, mix of uses and size, number and location of existing off licenses in the area.

6.0 The Appeal

6.1. Grounds of Appeal

An appeal was lodged by the applicant’s agent on 3rd December, 2021 which includes an account of the planning background and context and description of the proposed development.

- The proposed development is appropriate to the zoning objective and as an associated support service for the local community without adverse impact on residential amenities.
- The originally permitted café restaurant (replacing the café restaurant at the former Westwood hotel) has a stated gross floor area of 149.5 square metres. With the sixty square metres gross floor area for the permitted extension and change of use to café/restaurant/retail under P. A. Reg Ref 19/197 a stipulation of fifty percent of the floor area to be in café/restaurant use.

The agreed breakdown of floor areas under the grant of permission under P. A. Reg. Ref. 20/357 was supplemented by the grant of permission under P. A. Reg. Ref. 21/167 for the bistro style chairs enhancing the café restaurant use and contributing to this viability the café restaurant which critical to the future success and viability of the café restaurant.

- A revised proposal for the layout indicates a smaller size off license which allows for eighteen seats inside and fourteen seats outside (permitted under P. A. Reg. Ref. 21/167 facilitating the local community and effectively in replacement for the former hotel. The floor area involved for the off license is very small and would have no effect on the café restaurant.
- With regard to set downs and pick-ups at the premises, there is no increase in floor area overall proposed and traffic and parking arrangements were considered in the prior applications with a proposed set down and pick up area being omitted at the request of the Transportation Department for traffic safety and congestion issues. (P. A. Reg. Ref. 19/167 refers). These issues did not arise Under P. A. Reg. Refs. 20/357 and 21/167. There is no material impact on traffic and parking conditions in terms of trip generation and some trips would not be solely for alcohol goods. Parking is prohibited on the street and should be enforced.
- The applicant is willing to omit the projecting sign on the east elevation from the proposal. Instead, it is to be replaced by a single fascia sign on the eastern elevation as agreed under P. A. Reg. Ref. 20/357. (Drawing No 2428-200300 refers)

- The proposed development accords with the requirements of Condition Nos 5 of P. A. reg. Ref. 197 and No 4 of P. A. Reg. Ref. 20/357 and the original grant of permission. Any further clarification on floor space allocations could be addressed by condition. The revised plans provided with the appeal show seating along the entire frontage of the unit. 67.1 % of floor space is dedicated to care restaurant use, well in excess of the required fifty percent.
- It is not agreed that the potential for increased anti-social behaviour and littering would arise, the planning code not being appropriate for control, there being other means of control of anti-social behaviour. As required under legislation the sale of alcohol is to be from a separate area and the applicant undertaken to comply with requirements and guidelines on sale and display of alcohol. CCTV camera will be also provided to assist with management and restriction to the hours permitted for sales. Proximity to student accommodation is not a valid reason for restriction on such use. Consent from the West Student Accommodation ownership/management was provided at application stage.
- There are no off-licenses within one kilometre of the site whereas there is a substantial residential population who would benefit from the needed local service. The planning system should not inhibit or interfere with competition in the retail sector.

6.2. Planning Authority Response

In a submission received on 11th January, 2022 the planning authority confirms its assessment and decision to refuse permission but includes some additional observations

- The updated layout in the appeal in which there is a reduction to ten square metres from sixteen square metres for the size of the proposed off licences and an increase from fourteen to eighteen café restaurant seats within the building and the twelve seats outside seats, reduced from fourteen under P. A. Reg Ref. 21/167 is noted along with the applicant's case that this arrangement is for a viable café restaurant as a partial replacement for the former Westwood Hotel. However, given that the café restaurant (with forty-

seven internal and forty-eight external seats) is a partial replacement of the community facility within the former Westwood Hotel as provided for in the original grant of permission and the reductions in seating further to the subsequent grants of permission the current proposal involving removal of a screened block of twelve seats is regarded as too significant. In adverse impact on the quality of the café restaurant facility. The restaurant café element enabled delivery of planning again through the social and community benefit in replacement of the former hotel had been seen as critical to the redevelopment for student accommodation. The planning authority is very concerned as to the diminution of the community benefit by way of the café restaurant in that it is being subsumed within the shop retail unit which has a predominant food element with self-service sales at counters to patrons who can sit within the shop but at which there is no table service.

- The revised proposal for the reduced size off license and for eighteen instead of fourteen seats is not considered to be operable within the space allocated due to conflict with doors display counters and circulation space.
- The proposed omission of the projecting sign is welcomed but the replacement sign is considered unwarranted.
- It is recommended that permission be refused having regard to the removal of the screened seating area owing to further erosion of the café restaurant facility as a facility for the community

6.3. Observations

6.3.1. A submission was lodged on behalf of Ms Geraldine Byrne of Tudor Lawns, and it is stated that she represents some residents at residential developments in the vicinity, off Thomas Flynn Road and at Newcastle Road according to which the proposed development.

- Is contrary to the grant of permission for a student accommodation complex under ABP 30-1963-18 (SHD) by way of the reduction in the restaurant space to create a retail convenience store.

- There is no parking available for with the proposed development and there are existing problems of unauthorised parking on the N59 and at the Thomas Heinz Road by commercial and private vehicles
- There is an off license within two kilometres of the site location.

7.0 Assessment

- 7.1. In principle, having regard to the relevant CDP policy objectives, there is no objection to a small off license section within a convenience retail unit serving a small local catchment comprising student, residents and employees within the vicinity. Off licenses are not over represented in the area and it is not accepted that the proposed development would to undue anti-social behaviour. It is of note that the student accommodation complex is under a management arrangement. Furthermore, sales hours could e restricted if considered warranted.
- 7.2. However, the requirement, as provided for under the original grant of permission for the student accommodation complex which allowed for the replacement of an established hotel of significant size incorporating restaurant and bar facilities benefiting the local and wider community with student accommodation incorporating a viable restaurant/café facility benefitting the local and wider community is considered both reasonable and desirable. It is appropriate that avoidance of potential conflict with the requirement for a viable public café restaurant element within the student accommodation complex should be ensured in consideration of planning policy and in development management.
- 7.3. The existing café restaurant element is materially different from the former restaurant and bar facilities within the Westwood Hotel which provided for full menus with table service whereas in effect the existing café restaurant element is part of the retail convenience store element in that patrons can select prepared food at counters and refrigerated shelving along with beverages and sit in to consume their purchases or take it out. While such facilities have a purpose and contribute to the viability of the shop, they are not comparable to restaurant use as characterised at the former hotel. As such it is fully agreed that restaurant café use benefitting community as provided

at the hotel was to be protected and continued is somewhat and would be further eroded by the inclusion of an off licences with in the retail element.

- 7.4. The current facilities are in effect a convenience food facility within a retail unit as opposed to a dining facility as provided for the former hotel which also provided bar facilities. The off-license facility is in effect an extension to and widening of the offer of the convenience store offer unrelated to bar lounge facilities of the former hotel. The planning authority in its comments in the planning officer report and the response to the appeal on the revised proposal providing for a reduced size off license, correctly points out as to the inadequacy and substandard quality and amenity potential of the proposed seating arrangement within the internal layout and loss of the screened seating area.
- 7.5. There is no dispute that no increase in the size of the overall public sales area within the retail element of the development is involved in the current proposal. However, an off license in representing a widening of the offer would, having regard to the likelihood of individual trips for purchase of alcohol only would without question, lead to additional trip generation including trips specifically and solely for the purpose of visiting an off licence even though a significant percentage of trips would not be by private car. It is considered that an increase in illegal parking in the vicinity for stop offs/pickups on the public footpath and turning movements onto and off the future bus and cycle corridor along the carriageway and, at an important junction on the N59/Upper Newcastle Road and the entrance to the development itself would occur and would be significant particularly in the absence of available parking facilities at the site or public parking in the area.
- 7.6. The Transportation Department in its report has indicated concerns as discussed above and is opposed to the development. It is also noted that it is necessary for it to be demonstrated in a revised and updated transport and traffic assessment report along with a road safety audit that the proposed development would not give rise to traffic hazard and endangerment of public safety if the proposal is to be reconsidered. It is noted that this recommendation is not taken up in the appeal.
- 7.7. **Environmental Impact Assessment Screening.**
- 7.7.1. Having regard to the nature of the existing and proposed development and its location in a serviced urban area, removed from any sensitive locations or features,

there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

7.8. Appropriate Assessment Screening.

- 7.8.1. Having regard to the location of the site, which is on serviced land, to the existing development and in the vicinity and, to the nature and scale of the proposed development, no appropriate assessment issues arise, the proposed development would not 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. Given the foregoing, it is recommended that the planning authority decision to refuse permission be upheld based on the following reasons and considerations.

9.0 Reasons and Considerations

1. The proposed development would compromise the viability of the provision for and operation of a restaurant/café of size, amenity and quality benefiting the development and the local community as provided for under the original grant of planning permission under Register References, (SHD) and P. A. Reg. Ref. 19/197 and 20/357 and in particular Condition Nos 4 and 5 thereof. As a result, the proposed development would interfere with the certainty of the availability of a viable restaurant café which would eroding the availability of local services and facilities for the local community and would result in negative impact on the amenities of the area the protection of which is provided for in the prior grants of permission and, would be contrary to the proper planning and sustainable development of the area.
2. The proposed development would lead to increased unauthorised parking on the public footpath and turning movements onto and off the carriageway on the N9 for which there is a specific objective for provision of a cycle and bus

corridor. As a result, the proposed development would lead to conflicting traffic movements and obstruction of the free and safe flow of traffic in the vicinity of an important junction. and would therefore endanger public safety of all road users by reason of traffic hazard and would be contrary to the proposer planning and sustainable development of the area.

Jane Dennehy

Senior Planning Inspector
10th May, 2022.