



An
Bord
Pleanála

Inspector's Report

ABP-312701-22

Development	Change of use from existing commercial premises to a cafe/deli.
Location	17 Military Road, Cork City.
Planning Authority	Cork City Council
Planning Authority Reg. Ref.	2140477
Applicant(s)	Tim Sheehan
Type of Application	Planning Application
Planning Authority Decision	Grant with conditions
Type of Appeal	Third Party Appeal
Appellant(s)	Ernest and Margaret Kingston
Observer(s)	None
Date of Site Inspection	14 th October 2022.
Inspector	Susan Clarke

1.0 Site Location and Description

- 1.1. The subject site, measuring 0.0048ha, is located on the western side of Military Road that leads to the main entrance to Collins Barracks in Saint Lukes. The single storey structure, measuring 42 sq m, has a lean-to roof and is an end-of-terrace unit attached to a two-storey public bar, The Local. There is a single carriage laneway (approx. 2m wide) to the south that provides access to dwellings located to the rear of the site. The rear boundary of the premises is approximately one metre from No. 2 Bellvue Mews.

2.0 Proposed Development

- 2.1. The proposed development consists of the change of use of a commercial premises to a café/deli with a wine licence and associated internal and elevational alterations to the premises, including the provision of a retractable canopy, signage, and a retractable glass barrier and storage area for street furniture on the public footpath. The development also includes an increase in the height of the lean-to roof from 2.475m at its lowest point on the southern boundary to 2.8m and from 3.25m on the northern boundary (abutting the public house) to 4.15m. In addition, a parapet wall measuring 4.55m in height is proposed along the front (east) elevation.
- 2.2. Following a request for further information, the Applicant amended the proposed roof alterations, whereby the northern side of the lean-to roof is proposed to increase from 3.25m to 3.5m and the proposed parapet wall along the front elevation would have an overall height of 3.73m. Furthermore, the proposed retractable glass barrier and storage area for street furniture on the public footpath was omitted from the proposal. In addition, the Applicant advised that the hours of operation proposed are from 8:00am to 11:30pm and that the premises will operate independently from the adjoining public house.

3.0 Planning Authority Decision

3.1. Decision

The Local Authority issued a Notification of Decision to Grant Permission on 19th January 2022 subject to 11 No. standard conditions including *inter alia*:

- Condition 2: Restricts signage.
- Condition 3: Hours of operation restricted to 08:00am to 21:00.
- Condition 6: Waste details to be agreed with the Local Authority.
- Condition 7: Noise restrictions.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports (19th January 2022 and 27th October 2021)

The Planner's Reports are consistent with the decision of the Planning Authority.

Following the submission of further information submitted to the Local Authority on 19th November 2021, in relation to the use of the existing premises, clarification on the nature and extent of the proposed use, and amendments to the proposed development as outlined in Section 2.2 above, the Executive Officer considered that subject to the conditions, the proposal would not negatively impact the surrounding residential area.

The Acting Senior Executive Planner (19th January 2022) concurred with the recommendations of the Executive Officer.

3.2.2. Other Technical Reports

Conservation Report (8th December 2021): No objection, subject to condition.

Contributions (1st October 2021): No objection. Contributions not applicable.

Environment Report (1st October 2021): No objection, subject to condition.

Drainage Report (18th October 2021): No objection, subject to condition.

3.3. **Prescribed Bodies**

Irish Water (19th October 2021): No objection, subject to condition.

3.4. **Third Party Observations**

3.4.1. Two Third-party Observations were submitted to the Local Authority opposing the proposed development. The key points raised can be summarised as follows:

- Subject premises is not commercial but used for the storage of private vehicles.

- An internal link could be developed between the proposed development and the adjoining public house.
- The outdoor space could be used as a smoking area.
- Excessive licensed premises in the area. The proposal will lead to anti-social behaviour.
- No bin storage proposed.
- Negative visual impact for adjoining residents as a result of an increase in building height of the structure.
- Reduction in residential amenity as there will be an increase in noise levels.
- Safety concerns having regard to the proximity of the outdoor seating area to the vehicular entrance for the residential properties to the rear of the structure.

4.0 Planning History

No planning applications identified relating to the subject site.

5.0 Policy Context

5.1. Cork City Development Plan 2022-2028

Since the Local Authority issued a Notification of Decision to Grant Permission for the proposed development, a new development plan has been prepared and adopted for the City. The relevant development plan to this assessment is the Cork City Development Plan 2022-2028, which was adopted on 27th June 2022 and came into effect on 8th August 2022.

The site is zoned ZO 01 Sustainable Residential Neighbourhoods which has the objective to “*protect and provide for residential uses and amenities, local services and community, institutional, educational and civic uses*”.

Section 11.185 of the Development Plan addresses cafes/restaurants:

The positive contribution of cafés and restaurants and the clusters of such uses to the vitality of the City is recognised. The following shall be considered in assessing applications for cafés/ restaurants:

- 1. The need to retain, protect and strengthen the vitality and multi-use function of designated centres;*
- 2. The number/frequency of cafés / restaurants in the area;*
- 3. The effect of noise, fumes, hours of operation, and general disturbance on nearby amenities and residents. Full details of any external extractor fans/vents and hours of operation of the development shall form part of a planning application;*
- 4. Traffic implications including adequate and safe delivery areas;*
- 5. Waste storage facilities;*
- 6. Any proposed signage/advertising/lighting shall be suitable and unobtrusive.*

Section 11.186 addresses hot food takeaways / fast-food restaurants.

5.2. Natural Heritage Designations

The closest designated site is the Cork Harbour SPA (004030), which is located approximately 4km from the subject site.

5.3. EIA Screening

Having regard to the nature and scale of the proposed development, comprising the change of use of a premises to a café/deli and associated structural works, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment 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. A third-party appeal has been lodged by Ernest and Margaret Kingston of No. 16 Military Road, St. Luke's Cork. The grounds of appeal can be summarised as follows:

- Proposal will not protect residential amenity.
- Proposal will serve as a steppingstone for the Applicant to extend the adjoining public house.
- The premises has never been used as a commercial premises.
- The proposed hours of operation from 08:00 to 23:30 suggests complete disregard for the neighbouring residents.
- No consideration in the application for deliveries.
- The retractable canopy suggests that the Applicant intends to provide cover to external seating which would further take from local amenity and removing any privacy of neighbouring properties.

6.2. Applicant Response

6.2.1. The Applicant submitted a First-Party Response to the Board on 14th March 2022. The key points from the Response can be summarised as follows:

- Proposal will enhance the amenities and local social environments and is not an extension to the existing public house.
- No cars have accessed the premises since 2005 and commercial rates have been paid.
- Condition No. 3 requires that the premises closes at 21:00.
- Deliveries will be minimal and the use of on-street parking in the surrounding area will not be an issue.
- Under licence No. SF/353/21 there is seating already in front of the building. There have been no complaints regarding this seating.

6.3. **Planning Authority Response**

No response received.

6.4. **Observations**

None.

6.5. **Further Responses**

None.

7.0 **Assessment**

Having examined the application details and all other documentation on file, inspection of the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues on this appeal are as follows:

- Principle of Development,
- Impact on Residential Amenities, and
- Appropriate Assessment.

7.1. **Principle of Development**

- 7.1.1. The subject site is zoned ZO 01 Sustainable Residential Neighbourhoods, which has the objective to “*protect and provide for residential uses and amenities, local services and community, institutional, educational and civic uses*”. Section 12.24 (ZO 1.4) of the Development Plan states that *Uses that contribute to sustainable residential neighbourhoods are also acceptable in principle in this zone provided they do not detract from the primary objective of protecting residential amenity and do not conflict with other objectives of this Development Plan*. Having visited the site and surrounding area, I do not consider that there is an excessive amount of café/deli or licenced premises in the area. Notwithstanding the conflicting arguments regarding the former use of the premises, I consider the proposed development to be acceptable in principle, subject to the protection of the area’s residential amenity, which is discussed in detail below.

7.2. Impact on Residential Amenities

- 7.2.1. The subject premises is located approximately 2m north of No. 16 Military Road and approximately 1m from No. 2 Bellvue Mews, both of which are in residential use. In terms of visual impact, I consider the works to be relatively minor and will not negatively impact on the residential amenity. I note that there are no Protected Structures in the area, nor is the site located in an Architectural Conservation Area. Should the Board be minded to grant permission for the development, I recommend that the signage details be agreed with the Local Authority. Having regard to the scale (i.e. minor increase in height of a single storey structure) and orientation of the site, the proposal will not cause any significant overshadowing. There are no windows proposed on the southern or western elevations and as such, there will be no increase in overlooking of the neighbouring residential units. While the proposed development does not include for outdoor seating, I note that the Applicant highlights that such seating is permitted under licence No. SF/353/21. I do not concur with the Appellant that the retractable canopy will result in a loss of privacy. The front boundary of the premises is approximately 2m from the northern elevation of No. 16 Military Road. This residential property directly fronts onto the public footpath. As the front elevation of the dwelling does not directly overlook the front elevation of the premises, I do not consider that there would be a significant loss of privacy to this dwelling as a result of the proposed development.
- 7.2.2. In my opinion, potential noise impacts from the proposal would be limited having regard to the scale of the proposal and the restrictions on the hours of operation as per Condition No. 3 attached to the Local Authority's Notification of Decision to Grant Permission. The Applicant has confirmed that the proposal will operate independently from the adjoining public house, and I note that there are no structural works proposed to facilitate a connection between the two units.
- 7.2.3. In terms of odours, the Applicant states that the food offer will typically be pre-prepared food and as such very limited food preparation will be undertaken. Therefore, it is proposed that the building will be naturally ventilated. Having regard to the limited prep area proposed and the Applicant's confirmation on the food offer, I consider that due to the low intensity nature of the proposal it will not cause adverse odour emissions that would negatively impact the surrounding residential amenity.

7.2.4. As outlined by the Applicant, delivery vehicles will utilise on-street car parking in the area and as such, I do not consider that they would adversely impact on the area's residential amenity. Furthermore, having regard to the size of the proposal, I do not consider that it would be likely to generate a significant increase in traffic volume in the area. I note from my site visit that there is parallel parking available on both sides of Military Road. Should the Board be minded to grant permission for the proposal, I recommend that the waste storage details be agreed with the local authorities.

7.2.5. In conclusion, in my opinion, I consider that the proposed development will contribute to the area's viability and vibrancy without unduly negatively impacting on residential amenity. I am satisfied that the proposal is consistent with Section 11.185 of the Development Plan.

7.3. **Appropriate Assessment**

The site is c. 4km to the closest point of the Cork Harbour SPA (site code 004030). Having regard to the nature and scale of the proposed development in an established built-up urban area, and the separation distance to the European sites to the subject site, I do not consider that the proposal would be likely to significantly impact the qualifying interests of the European Sites during either the construction or operational phases of development. As such, I consider that no Appropriate Assessment issues arise. In conclusion, I do not consider 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**

I recommend that planning permission be granted, subject to the conditions outlined below.

9.0 **Reasons and Considerations**

9.1.1. Having regard to the site's land use zoning objective (ZO 01 Sustainable Residential Neighbourhoods), the nature and scale of the proposed development, and the provisions of the Cork City Development Plan 2022-2028 including Section 11.185 (Cafes/Restaurants), it is considered that, subject to compliance with the conditions

set out below, the development would not seriously injure the residential amenities of the area or of property in the vicinity in terms of noise, loss of privacy, overbearing or overshadowing impacts nor would it represent a traffic safety issue or lead to an overconcentration of licenced premises in the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>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 submitted on 19th November 2021 to the Local Authority, 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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The café/deli shall be operated independently and shall not be jointly operated with the adjoining public house.</p> <p>Reason: In the interest of clarity.</p>
3.	<p>The café/deli shall not operate outside of the following hours:</p> <p>Monday to Thursday 08:00am to 09:00pm</p> <p>Friday and Saturday 08:00am to 10:00pm</p> <p>Sunday 12:30am to 09:00pm.</p> <p>Reason: In order to protect the amenities of residential property in the vicinity.</p>
4.	<p>(a) Amplified music or other specific entertainment noise emissions from the premises shall not exceed the background noise level by more than 3 dB(A)</p>

	<p>during the period 0800 to 2100 hours and by more than 1 dB(A) at any other time, when measured at any external position adjoining an occupied dwelling in the vicinity. The background noise level shall be taken as L90 and the specific noise shall be measured at LAeq.T.</p> <p>(b) The background noise levels shall be measured in the absence of the specific noise, on days and at times when the specific noise source would normally be operating; either</p> <p>(i) during a temporary shutdown of the specific noise source, or</p> <p>(ii) during a period immediately before or after the specific noise source operates.</p> <p>(c) When measuring the specific noise, the time (T) shall be any five minute period during which the sound emission from the premises is at its maximum level.</p> <p>(d) Any measuring instrument shall be precision grade.</p> <p>Detailed plans and particulars indicating sound-proofing or other measures to ensure compliance with this condition shall be submitted to, and agreed in writing with, the planning authority prior to use of the premises. An acoustical analysis shall be included with this submission to the planning authority.</p> <p>Reason: In order to protect the amenities of residential property in the vicinity having particular regard to the nuisance potential of low frequency sound emissions during night-time hours.</p>
5.	<p>Prior to the commencement of development, details of the materials, colours and textures of all external finishes, including signage details, shall be submitted to and agreed in writing by the Planning Authority.</p> <p>Reason: In the interests of orderly development and the visual amenities of the area.</p>

6.	<p>Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health.</p>
7.	<p>A plan containing details for the management and safe disposal of all waste (and, in particular, recyclable materials) within the proposed development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials, and for the ongoing operation of these facilities, shall be prepared by the local authority prior to commencement of development and shall be placed on the file and retained as part of the public record.</p> <p>Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.</p>
8.	<p>The applicant or developer shall enter into water connection agreement(s) with Irish Water prior to the commencement of this development.</p> <p>Reason: In the interest of orderly development.</p>
9.	<p>Site development and building works shall be carried out only between the hours of 0700 to 1800 Mondays to Fridays inclusive, 0800 to 1400 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.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>

Susan Clarke
 Planning Inspector

20th October 2022