



An  
Bord  
Pleanála

## Inspector's Report

### ABP-313105-22

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<b>Development</b>	Retention of change of use of unit B2 from retail to hot food restaurant and outdoor seating to front and side of unit B1 and front of unit B2.
<b>Location</b>	Units B1 & B2, Railway Square, Waterford.
<b>Planning Authority</b>	Waterford City and County Council
<b>Planning Authority Reg. Ref.</b>	21/1228
<b>Applicant(s)</b>	Sean Johnston
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Split Decision
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Sean Johnston
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	23 <sup>rd</sup> November 2022
<b>Inspector</b>	Mary Crowley

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## 1.0 Site Location and Description

1.1. The appeal site with a stated area of 0.0824 ha is located on the ground floor of the Railway Square development: a multi storey mixed use development (apartments, retail, restaurant and office accommodation) over basement car parking to the south of the city core and to the west of the Johns River. There is a large public square/plaza with seating in front of the development, adjacent to Manor Street. It was noted on day of site inspection that there was a high level of unoccupied commercial units within the development. A set of photographs of the site and its environs taken during the course of my site inspection is attached. These serve to describe the site and location in further detail.

## 2.0 Proposed Development

2.1. Indefinite retention of as constructed alterations namely for:

- indefinite retention of change of use at Unit B2 (210sqm), from retail to hot food restaurant and amalgamation of same with existing restaurant Unit B1 (223sqm) forming a restaurant premises with a total area of 433sqm;
- for indefinite retention of as constructed outdoor seating areas to front and side of unit B1 (being 261sqm & 23sqm respectively) with associated retractable fabric covered roof system, as constructed clear corrugated roofs and surrounding panelled and glazed windbreakers to north and south facing sides; for altered roof canopy, glass balustrades and signage;
- and for indefinite retention of as constructed outdoor seating area (being 42sqm) to front of Unit B2 with as constructed clear corrugated roof and associated panelled wind breakers, all with associated site development work

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. Waterford City & County Council issued a notification of split decision as follows:

- **Grant** – retention of change of use at Unit B2 (210sqm), from retail to hot food restaurant and amalgamation of same with existing restaurant Unit B1 (223sqm)

forming a restaurant premises with a total area of 433sqm subject to 6 no conditions summarised as follows:

1)	Compliance with plans and particulars submitted on 23 <sup>rd</sup> December 2021
2)	The permission herein relates to changes of use and amalgamation at Unit B2 only. The outdoor seating areas are not permitted.
3)	No advertising on building or on the footpath / walkway without prior written agreement
4)	No advertising erected without prior grant of permission
5)	Air emissions, noise and / or odours
6)	Waste Management Plan

- **Refuse** – retention of as constructed outdoor seating areas to front and side of unit B1 (being 261sqm & 23sqm respectively) with associated retractable fabric covered roof system, as constructed clear corrugated roofs and surrounding panelled and glazed windbreakers to north and south facing sides; for altered roof canopy, glass balustrades and signage; and for retention of as constructed outdoor seating area (being 42sqm) to front of Unit B2 with as constructed clear corrugated roof and associated panelled wind breakers, all with associated site development works for the following 2 no reasons:

- 1) *Having regard to the design, material finish and location of the seating areas on a prominent site adjoining a public park, it is considered that the outdoor seating areas would be out of character with the adjoining buildings and constitute a visually discordant feature in the streetscape. It is considered the seating areas integrate poorly with the context of the setting of the site and the surrounding receiving environment and detracts from the visual amenity of the area and therefore, seriously injure the visual amenities of the area and be contrary to the proper planning and sustainable development of the area.*
- 2) *A section of the seating area to the west of the site as outlined in red on the plans and particulars submitted with the application is located on lands zoned “open space” as designated in the Waterford City Development Plan 2013 –*

2019) (as extended and varied). The purpose of open space zoning, as expressed in section 12.16 of the Waterford City Development Plan 2013 – 2019) (as extended and varied) is “to preserve and provide for recreational uses, open space and amenity facilities”. It is considered that the enclosed seating area located within the lands designated “open space” would contravene the provision of the Waterford City Development Plan 2013 – 2019 (as extended and varied) and be contrary to the proper planning and development of the area.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

- The District Planner recommended a split decision **granting** retention of change of use from retail to hot food restaurant and amalgamation of same with existing restaurant and **refusal** of outdoor seating areas subject to 3 no reasons.
- A further letter from the Hazel O’Shea SEP recommending split decision in accordance with the District Planner report subject to 2 no reasons and schedule of conditions. The notification of decision to issue a split decision reflects this recommendation.

#### 3.2.2. Other Technical Reports

- None

### 3.3. Prescribed Bodies

#### 3.3.1. None

### 3.4. Third Party Observations

#### 3.4.1. None

## 4.0 Planning History

- 4.1. No planning history has been made available with the appeal file. The following two previous appeals on the site are noted.

- **ABP 202992 (Reg Ref 03/99)** - Waterford City Council granted permission for a mixed Development of 126 apartments, retail and office accommodation, 174 parking spaces, demolition of 3no. houses at Railway Square, Waterford. Following a third party appeal the Planning Inspector recommended that permission be refused for three no reasons relating to (1) negative impact on the city wall, (2) visual impact and (3) overlooking and substandard open space. The Board granted permission subject to 17 no conditions.
- **ABP 220079 (Reg Ref 06/335)** - Waterford City Council granted permission for a restaurant with takeaway at Units 1 and 2, Railway Square, Link Road, Waterford. Following a third-party appeal the Board granted permission subject to 6 no conditions.

4.2. The Planning Authority provided a copy of the following section 254 License decisions:

- **Reg Ref 21/523** – Section 254 Licence for outdoor seating area at Bank Lane, Waterford grated for 1 year from commencement of development dated 29<sup>th</sup> June 2021.
- **Ref No 21/576** – Section 254 License for temporary seating area on the public roadway adjacent to Katty Barry’s, Mill Wall, Waterford with temporary marquee cover and temporary demonstrable screening granted for 1 year from commencement of development dated 24<sup>th</sup> August 2021.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. The operative plan for the area is the **Waterford City and County Development Plan 2022-2028**. The majority of the appeal site is zoned **TC - Town Core** where the objective is *to provide for the development and enhancement of town core uses including retail, residential, commercial, civic and other uses*. A smaller portion o the site to the west is zoned **OS - Open Space and Recreation** where the objective is *to preserve and provide for open space and recreational amenities*.

## 5.2. **Natural Heritage Designations**

5.2.1. The appeal site is not located in or immediately adjacent to a European Site. The Lower River Suir SAC is c780m to the east and north of the appeal site.

## 5.3. **EIA Screening**

5.3.1. Having regard to the nature and scale of the proposed development, 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.

## 6.0 **The Appeal**

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

6.1.1. The first party appeal has been prepared and submitted by Causeway Faciality Management against the reasons for refusal and may be summarised as follows:

#### 6.1.2. **Refusal Reason No 1**

- Construction of Railway Square Development was completed in c2006. There is a total of 4514.6 sqm of retail space on the ground floor of the development. Until September 2020 62% of the retail space in Railway Square remained vacant.
- The opening of a restaurant (Pinks) and a café (NYCD) have been a major factor in bringing life back to the development with a friendly atmosphere now apparent. The increase in pedestrian traffic to the businesses have forced a migration of a certain unwanted element which used to be a problem in Railway Square.
- The restaurant (Pinks) (Unit B1) and a café (NYCD) (Unit B2) both opened in September 2020 during Covid. Outdoor seating areas have to be formed as a necessity to make the businesses viable. The seating areas were formed on private lands so Section 254 License application were not applicable to these developments. Through lots of hard works and hard work both businesses have managed to stay open, and the buzz created in the area since has helped attract over 300 jobs for Waterford city. The reaction to the premises have been hugely positive.



- The playground area in the above mentioned “public park” was taken away by the council last year and as of yet has not been replaced. Indeed, the existing play surface has been completely removed and replaced purely with hardcore stone. This is why it is a surprise that the Council consider that the seating areas integrate poorly within the receiving environment and detract from the visual amenities of the area.

### 6.1.3. Refusal Reason No 2

- In order for the business to be viable during the height of Covid outdoor seating was an absolute requirement. During the pandemic outdoor seating area were encouraged and Acts were enacted to allow for same. A number of businesses have taken advantage of same throughout Waterford City where a number of high-profile grants have been issued by the City & County Council in relation to the creation of outdoor seating area on lands that are not zoned for same. This creates a precedent for the creation of outdoor seating areas similar to the area at Pinks.
- Reference is made to three Section 254 License applications for outdoors seating (20375, 21523 and 21576).
- The importance of the outdoor seating to the viability of the businesses (restaurant (Pinks) and a café (NYCD)) cannot be overstated. If the seating area were taken away the businesses would not be viable and there would be a loss of up to 40 jobs.
- The appeal was accompanied by site photos and Irish Examiner Article “*Why the vision for Waterford Railway Square is now becoming a reality*”.

## 6.2. Planning Authority Response

6.2.1. None

## 6.3. Observations

6.3.1. None

## 6.4. Further Responses

6.4.1. None

## 7.0 Assessment

7.1.1. Having regard to the information presented by the parties to the appeal and in the course of the planning application and my inspection of the appeal site, I consider the key planning issues relating to the assessment of the appeal can be considered under the following general headings:

- Principle
- Outdoor Seating
- Other Issues
- Appropriate Assessment

### 7.2. Principle

7.2.1. The Planning Authority assessed the proposed scheme under the Waterford City Development Plan 2013 – 2019. However, the operative plan in the assessment of this appeal is the Waterford City and County Development Plan 2022-2028. The Board may wish to invite the relevant parties to comment on same prior to making its decision.

7.2.2. The majority of the appeal site is zoned TC - Town Core where the objective is *to provide for the development and enhancement of town core uses including retail, residential, commercial, civic and other uses*. A smaller portion of the site to the west is zoned OS - Open Space and Recreation where the objective is *to preserve and provide for open space and recreational amenities*.

7.2.3. The retention of change of use at Unit B2 (210sqm), from retail to hot food restaurant and amalgamation of same with existing restaurant Unit B1 (223sqm) forming a restaurant premises with a total area of 433sqm is acceptable having regard to the planning history pertaining to the units together with the zoning objectives for the site.

7.2.4. There are two enclosed seating areas to be retained; one larger area to the west of the building and a second smaller area located in the central walkway between two buildings leading from Railway Square to the west to Johns River to the east. The larger seating area is discussed separately below. While I note that the Local Authority refused planning permission for both seating areas, I consider the smaller seating area along the walkway to complement the restaurant use to be retained and that such a

development is a common intervention in similar urban schemes. Accordingly I consider the retention of this smaller seating area in terms of use, design and layout to be acceptable.

### 7.3. **Outdoor Seating**

- 7.3.1. With regard to the retention of the as constructed larger outdoor seating areas to the west of the restaurant I note that this area is zoned for Open Space and Recreation. A restaurant use is not permitted under the zoning matrix as set out in the Development Plan. While I consider this larger outdoor eating area to complement the main restaurant use it remains that this use is unacceptable at this location.
- 7.3.2. With regard to the design, material finish and location of this larger seating area I tend to disagree with the Planning Authority in that it would not be out of character with the adjoining buildings and would not constitute a visually discordant feature in the streetscape. I refer to the site photos. This is a prominent and exposed corner site adjoining a very busy traffic intersection and where the intended merits of this zoned open space are significantly diminished by reason of location, layout and design treatment. I consider that the larger seating area would only serve to enhance what is otherwise a largely ineffective open space within a development where there is a high level of unoccupied commercial units at ground floor. However as documented above to permit same would not be in accordance with the zoning matrix for the area.
- 7.3.3. Waterford City and County Council issued a split decision refusing the outdoor seating area. However, having regard to the foregoing I am satisfied that the omission of the larger seating area can be dealt with by way of a suitable worded condition in this instance.

### 7.4. **Other Issues**

- 7.4.1. **Car Park Vent** - I refer to the cover letter submitted with the planning application where it states that *the part of the outdoor seating area over the existing smoke vent from the car park is managed so that when the restaurant is closed, all furniture is removed from the area and the floorboards are opened back up (the boards have been designed and constructed with hinging system to allow for same) to clear the vent area. it is further stated that in the event of a fire alarm going off during business*

*hours, the same action would take place i.e. all furniture would be removed and the floor boards are opened out to clear the vent area.* The vent was not readily visible on day of site inspection, and it has not been annotated on details supplied with the appal file.

- 7.4.2. The Case Planners report notes that under Reg Ref 21/266 a similar application was deemed withdrawn following a request for further information. It is stated that the Fire Officer commented on this previous application that the *“proposed seating area appears to block a dedicated smoke ventilation opening from the underground car park (Fire Safety Certificate BR 96/04 refers). This is a critical safety feature for the building which should not be impacted by the proposed development”*.
- 7.4.3. I agree that this is a critical safety feature and that this opening should not be impacted. However having regard to the substantive zoning issues discussed above I do not consider it necessary to refuse the scheme on these grounds.
- 7.4.4. **Development Contribution** – I refer to the Waterford City and County Development Contribution Scheme 2015-2021. It is noted that the Draft Development Contribution Scheme is open for public consultation during the period Tuesday 18th of October to Tuesday 29th of November 2022. The development is not exempt from the requirement to pay a development contribution in either scheme. It is therefore recommended that should the Board be minded to grant permission that a suitably worded condition be attached requiring the payment of a Section 48 Development Contribution in accordance with the Planning and Development Act 2000

## 7.5. **Appropriate Assessment**

- 7.5.1. Having regard to the nature and scale of the proposed development, the nature of the receiving, the physical separation distances to European Sites, and the absence of ecological and/ or hydrological connections, the potential of likely significant effects on European Sites arising from the proposed development, alone or in combination effects, can be reasonably excluded.

## 8.0 **Recommendation**

- 8.1. Having considered the contents of the application the provision of the Development Plan, the grounds of appeal and the responses thereto, my site inspection and my

assessment of the planning issues, I recommend that permission be **GRANTED** for the following reason.

## 9.0 Reasons and Considerations

9.1. Having regard to the TC – Town Core and OS - Open Space and Recreation zoning objective for the site in the Waterford City and County Development Plan 2022-2028 it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable in terms of the policy requirements of the development plan, would not seriously injure the visual amenities of the area or the residential amenities of property in the vicinity and would not be prejudicial to public health. 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, 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><b>Reason:</b> In the interest of clarity</p>
2.	<p>The permission herein relates to a change of use at Unit B2 (210sqm), from retail to hot food restaurant and amalgamation of same with existing restaurant Unit B1 (223 sqm) forming a restaurant premises with a total area of 433sqm together with the outdoor seating area to the north of Unit B1 (23sqm ) and north of Unit B2 (42sqm) as per the plans and particulars lodged with the application only. The outdoor seating area to the side of unit B1 (261sqm) with associated retractable fabric covered roof system, as constructed clear corrugated roofs and surrounding panelled and glazed windbreakers to north and south facing sides; for altered roof canopy, glass</p>

	<p>balustrades and signage on lands zoned OS - Open Space and Recreation shall be omitted.</p> <p><b>Reason:</b> In the interest of the proper planning an sustainable development of the area.</p>
3.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p><b>Reason:</b> It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>

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**Mary Crowley**

**Senior Planning Inspector**

**25<sup>th</sup> November 2022**