



An
Bord
Pleanála

Inspector's Report ABP 313868-22

Development	Change of use from retail to licensed café, associated signage and ground level and alterations at basement level to provide for toilets.
Location	12 Cross Street Upper, Galway
Planning Authority	Galway City Council
P.A. Reg. Ref.	22/75
Applicant	Cross HQ Holdings Ltd.
Type of Application	Permission.
Decision	Refuse Permission
Type of Appeal	First Party x Refusal
Appellant	Cross HQ Holdings Ltd.
Date of Site Inspection	12 th September, 2022.
Inspector	Jane Dennehy

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1.0 Site Location and Description

- 1.1. No 12 Cross Street Upper is a four storey over basement historic building on the north east side of Cross Street Upper within the mediaeval core of the city which is an area known as “The Latin Quarter” in Galway city. The retail unit at ground floor level which is subject of the applicant and has a stated floor area of seventeen square metres in which there are some fittings was vacant at the time of inspection.

2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for change of use from a retail unit to use as a licensed café at ground floor level, along with toilets at basement level and the application also includes proposals for new shopfront signage. The applicant in this repeat application seeks which includes toilet facilities at basement level seeks to overcome the reasoning for refusal of permission for a previous proposal owing to a lack of provision of toilet facilities. (See planning history in section 4 below.)

3.0 Planning Authority Decision

3.1. Decision

By order dated the planning authority decided to refuse permission on ground of (1) deficiencies with regard to Fire Safety having regard to the Fire report issued and means of escape giving rise to concerns as to public health and safety and (2) substandard facilities and service for future customers owing to insufficient floor area, layout and design.

3.2. Planning Authority Reports

The planning officer in his report notes the prior planning history and considers that the applicant has successfully addressed some of the concerns about the previously unsuccessful proposal.

He states that:

- The concerns as to toilet facilities which arose in connection with the proposal under P. A. Reg. Ref. 21/425 (See planning history in section 4 below). to have been addressed.
- The shopfront design is acceptable and in accordance with the Galway Shopfront Design Guidelines.
- That the space proposed for the café use is substandard with it not being possible to operate a café use for customers that is of satisfactory quality
- That there are fire safety implications there being deficiencies in scope for escape from the basement level

The report of the Chief Fire Officer indicates that the proposed development is not in accordance with Fire Safety regulations with regard to means of escape as a result of which the development would not be eligible for a Fire Safety Certificate. Prior consultation on the deficiencies with the Fire Authority is recommended in the event of possible future proposals.

4.0 Planning History

P. A. Reg. Ref. 21/425. Permission was refused for change of use from a retail unit to use as a licensed café with a stated floor are of seventeen square metres at ground floor level, and proposals for new shopfront signage based on the following reason:

“Having regard to the nature and extent of the planning application as proposed it is considered that the provision of a 17square metres Brasserie-style café and wine bar, which does not have the benefit of any customer toilets would provide a substandard form of accommodation/retail service experience and therefore, if granted, would be contrary to the Galway City Development Plan, 2017-2023 and to the roper planning and sustainable development of the area.”

Permission was originally granted under P. A. reg Ref. 88/215 for change of use for the ground floor from residential to retail use along with alterations to the front elevation. Permission for retention of retail use at the basement level was subsequently granted under P.A. Reg. Ref. 94/171. An application under P. A. Reg.

Ref. 14/53 for change of use from residential to commercial use at the building was withdrawn prior to determination of a decision.

5.0 Policy Context

5.1. Development Plan

The operative development plan is the Galway City Development Plan 2017-2023 according to which the site is subject to the zoning objective CC – City Centre Uses: *To provide for city centre activities and particularly those which preserve the city centre as the dominant commercial area of the city.* According to section 10.2 it is an objective of the planning authority to control proliferation of uses that lead to deterioration of retailing on principle shopping streets and to control negative impacts due to dominance of excessive scale of some uses. Cross Street Upper is included among the designated principal shopping streets.

No 12 Cross Street in which the ground floor and basement level are subject of the current application is included on the record of protected structures. Policies and guidance for protection, use and enhancement of protected structures are set out in section 8.2.

Cross Street and the surrounding street network are within the City Core Architectural Conservation Area.

6.0 The Appeal

6.1. Grounds of Appeal

An appeal was lodged with the board by MKO on behalf of the applicant on 21st June, 2022 attached to which is a statement by Ryan and Associates.

- 6.1.1. With regard to Reason 1 for the decision to refuse permission it is submitted that it is unreasonable to refuse permission over public health and safety grounds. Reference is made to the section 18, Development Management Guidelines, 2007 according to which fire safety is a consideration only if it is relevant to the primary purpose of the planning act. (An extract is provided.) It is contended that in the subject case, the issue is not relevant to the primary purpose of the planning acts. It is submitted that

Fire Safety issues should be resolved with the Fire Authorities and are outside the planning remit. It is also the applicant's case that there is scope for there are derogations and flexibility with regard to fire safety.

- 6.1.2. In the submission by Ryan and Associates with regard to Reason 1 for the refusal of permission it is submitted that the fire risk at the premises which is very small is very limited with the suppression system installed. It is stated that an indicative layout only was provided with the application. A solution can be made available prior to occupation which is fully compliant with B1 Building Regulations. Compliance can be achieved by:

Redirecting the staircase and providing a staircase direct to the outside with agreement to same with the Fire Department. The premises can be considered as a kiosk. Open stairs compliant with Clause 14.2 of BS 9999 and a mist-based suppression system can be provided. Access to the basement can be restricted to 2-3 persons.

Fire Risk can be addressed by an early warning system, maximum occupancy at ground floor level of twenty persons and travel distance not exceeding eighteen metres in one direction which is compliant with Part B Building Regulations, signage and an automatic sprinkler.

- 6.1.3. With regard to Reason No 2 for the decision to refuse permission reference is made to the planning history and to sections 6.8 regarding information deficits and the scope of additional information requests and conditions to address same and 7.14 regarding clarity within reasoning for refusal of permission within the Development Management Guidelines, 2007 full extracts from which are provided.
- 6.1.4. It is stated that the reasoning for refusal of permission for the prior proposal was not complete and substantive with regard to the reference to substandard form of accommodation based on area and size. The reasoning for refusal for the current proposal has therefore been based on a new matter and this is the issue to be avoided according to in section 7.14 of the Guidelines.
- 6.1.5. The planning officer has not specified the policies and objective within the CDP that are considered to be contravened in the report or reasoning for the refusal of permission. A range of hospitality options are available in the city and small

premises have their own merits within the mix of options and size of premises in contributing to and enhancing the vitality of the city centre.

- 6.1.6. Consideration was not given by the planning authority to the scope for provision of outdoor seating. Seating for up to twelve persons could be provided. The City Council is giving consideration to implementing pedestrianisation on a permanent basis in the street, temporary pedestrianisation having been implemented in 2020. This a licensed café could be operated without patrons being seated inside.
- 6.1.7. There is precedent for consideration of the current proposal. Permission was granted under P. A. Reg. Ref. 15/310 or change of use from bookmaker to licensed cafe at No 6 Cross Street Upper. The useable floor area was significantly less than the overall ground floor size of forty-five square metres. The usable floor area in the current proposal is broadly similar, it being noted that the planning authority discounted some of the floor area to reach ten square metres. It was also concluded by the planning authority that the development subject of the grant of permission for at No 6 Cross Street Upper concluded that the café would be more open to the street resulting in improvements to the vitality and viability of the street and the city centre. A similar argument applies to the current proposal.

6.2. Planning Authority Response

- 6.2.1. A submission was lodged by the planning authority on 22nd July, 2022 in which it is stated that the planning authority acknowledges that the proposed layout, with provision toilet facilities is an improvement on the original proposals provided under the prior application. (P. A. Reg Ref: 21/425 refers.) The issue of concern with the previous proposal related to design, layout and size resulting in substandard accommodation in addition to the lack of toilet facilities and that the Fire Safety concerns were not raised as the observations of the Fire Officer had not been made available. It is pointed out that a DAC as noted by the Building Control section would be required if permission is granted.
- 6.2.2. According to the submission.
- The planning authority has similar concerns to those it had regarding the prior proposal as indicated under reason No 2 as to the substandard form of accommodation that would be available, notwithstanding the improvements.

- The planning authority considers that it is not possible for the development to be compliant with the requirements of the Fire Authority for a Fire Certificate due to the small floor plate and lack of accessibility to the basement. Reference is made to Schedule 4 of the Planning and Development Act, 2000 as amended whereby there is proviso for refusal of permission in the case of structure whereby the proposed development would endanger the health or safety persons occupying or employed in the structure or adjoining structure or be prejudicial to public health.
- Works to the interior (with regard to provision for an enclosed staircase which would be required by the Fire Authority) would require a grant of planning permission in that the structure is included on the record of protected structures. The open external staircase is not acceptable to the Fire Authority.
- With regard to the case for precedent presented in the appeal reference is made to Condition No 2 attached to the decision to grant permission under P. A. Reg. Ref. 15/310 omitting any amalgamations without a prior grant of permission and as to the planning authority view that the internal layout was of appropriate size and quality with its main entrance at the side. The Fire authority had no concerns about this proposal. The proposed layout is too constrained and lacks ground floor level toilets.
- Cross Street Upper is not pedestrianised, and it is considered that the provision of outdoor seating at No 12 Cross Street Upper would give rise to obstructions with it being unlikely that an application for a section 254 license would be successful.

7.0 Assessment

- 7.1. With regard to Reason No 1 for the decision to refuse permission and to the Fire Safety issues, it is noted that the Fire Authority has advised that the applicant consult it. It is also noted that the building is on the record of protected structures. While the planning officer does not favour an external staircase as a route of escape, it is unreasonable for permission to be refused based on grounds of questionability as to whether a Fire Certificate could be obtained. The applicant has provided a technical

report with the appeal. The proposed development, if permitted, would remain subject to a requirement for a Fire Certificate under its separate legislative code in order for the grant of permission to be implemented. Given the foregoing, Reason One for the planning authority's decision to refuse permission is not supported.

- 7.2. With regard to Reason 2 for the decision to refuse permission, the planning officer concerns are understood to be primarily focussed on the confined size and configuration of the ground floor and the amount of space that would be available for use by customers' use as a result of which the cafe facilities would be substandard. This current proposal has a significantly improved layout in the revisions to the original layout proposed in the prior unsuccessful application notwithstanding the concerns as to the proposals for toilet facilities to be located in the basement. It is of note that the development would be subject to compliance with Building Regulations and with Environmental Health standards which come under separate codes.
- 7.3. The applicant cannot rely on the possibility of being in a position to provide outdoor seating to supplement the seating to be provided within the interior and such an option cannot be taken into consideration. As confirmed by the planning officer a section 254 license would be required and he has indicated concerns as to the adequacy of the width of Cross Street Upper. It would be open to the applicant to apply for a License the planning authority decision on which would be open to appeal by the applicant.
- 7.4. Setting aside the foregoing matters, a strong case made by the applicant's agent as to the acceptability and unique contribution of very sized small café facilities within a range of restaurant, bar and café facilities in a cluster within an area. The case made in this regard is very persuasive with regard to the subject location within the mediaeval core of the city popular with tourists and residents as is the case with most central urban areas in other cities. It should be noted that the applicant would be required to seek a separate license if it is intended to offer alcohol for sale to patrons.
- 7.5. There is no objection to the proposals for shopfront signage, subject to a condition with a requirement for a compliance submission.

7.6. Environmental Impact Assessment Screening

- 7.6.1. Having regard to the nature of the 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.

Appropriate Assessment Screening.

- 7.6.2. Having regard to and to the nature of the proposed development and the serviced inner urban site location, no Appropriate Assessment issues 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 considered that there are insufficient grounds having regard to the planning remit and the interests of proper planning and sustainable development to warrant refusal of permission. It is therefore recommended that the planning authority decision be overturned, and that permission be granted based on the reasons and considerations and subject to the conditions which follow.

9.0 Reasons and Considerations

- 9.1. Having regard to the location within the network of mediaeval streets of the city which is a primary destination for amenities and services for visitors, workers and residents, and to the zoning objective: CC *“To provide for city centre activities and particularly those which preserve the city centre as the dominant commercial area of the city”* according to the Galway City Development Plan, 2017-2023, it is considered

that subject to compliance with the conditions below, the proposed development would contribute to the range of city centre activities and facilities, would not seriously injure the amenities of the area, would provide for a satisfactory standard of development and would be in accordance with the proper planning and sustainable development of the area.

Jane Dennehy
Senior Planning Inspector
26th September, 2022.