



An
Bord
Pleanála

Inspector's Report

ABP-314378-22

Development	Retention of change of use of part of the rear yard to a beer garden, including two clear corrugated roofs as constructed.
Location	Parnell House, Parnell Street, Waterford.
Planning Authority	Waterford City and County Council
Planning Authority Reg. Ref.	211014
Applicant(s)	Causeway Hospitality Ltd
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Causeway Hospitality Ltd
Observer(s)	None
Date of Site Inspection	3 rd of October 2023
Inspector	Angela Brereton

Contents

1.0 Site Location and Description	4
2.0 Proposed Development	4
3.0 Planning Authority Decision	5
3.1. Decision	5
3.2. Planning Authority Reports	5
3.3. Other Technical Reports	8
3.4. Prescribed Bodies	8
3.5. Third Party Observations	8
4.0 Planning History.....	8
5.0 Policy Context.....	9
5.1. Waterford City and County Development Plan 2022-2028.....	9
5.2. Natural Heritage Designations	11
5.3. EIA Screening	11
6.0 The Appeal	12
6.1. Grounds of Appeal	12
6.2. Planning Authority Response	14
6.3. Observations	14
6.4. Further Responses.....	14
7.0 Assessment.....	14
7.1. Introduction and Context	14
7.2. Policy Considerations.....	15
7.3. Rationale and Usage.....	16
7.4. Reason 1 - Residential Amenity issues.....	18

7.5. Reason no. 2 – Location of Development	24
7.6. Appropriate Assessment	26
8.0 Recommendation.....	26
9.0 Reasons and Considerations.....	26
10.0 Conditions	26

1.0 Site Location and Description

- 1.1. The site is located in Waterford City Centre to the rear of a block of buildings bounding Parnell Street to the north and John Street (R860) to the west. There is an existing private lane 'Waterside Close' to the south of the site which provides gated/locked access to the rear of the premises and separately to St. John's Catholic Church to the northeast.
- 1.2. The site forms part of a larger land/property holding which includes the Factory nightclub, The Cave, The Yard, and The Woodman Bar. It forms a covered rear beer garden area serving a number of adjoining public house/entertainment venues. The area is accessible by walking through these individual premises to the combined rear beer garden area. There is a high wall along the side adjoining the church grounds and the adjoining private lane to the south. There are locked gated including fire escape accesses from the licenced premises, along this lane. There is a bin storage area to the rear of The Woodman Bar. The beer garden area is covered by a Perspex roof type structure.
- 1.3. There is no parking along the road frontage nor is there onsite parking available to serve these premises. The site is within the 'Town Core' area close to the junction of Parnell Street and John Street. There is a residential estate in 'Waterside Close' to the south and it is not known as to whether there is some residential in the top floors of the adjacent premises facing John Street to the south of the private lane. Some signage advertising the beer garden venue was seen on premises in the local area.

2.0 Proposed Development

- 2.1. This proposal is for the indefinite retention of change of use of part of the rear yard to a beer garden at Parnell House, Parnell Street, Waterford, and for the 2no. as constructed clear corrugated roofs, all with associated site development works.

3.0 Planning Authority Decision

3.1. Decision

On the 21st of July 2022, Waterford City and County Council refused permission for the proposed retention development for the following 2no. reasons:

1. Having regard to the site's location, the nature of the development for retention and the details provided with the planning application and in response to the request for further information the Planning Authority is not satisfied that the beer garden will not detract from the residential amenity of adjoining residential properties by reason of noise and general disturbance or that a suitably sized area for the waste storage is retained within the site to serve the business premises with access to the yard area and the proposed development would therefore be contrary to Development Management DM26 of the Waterford City & County Development Plan 2022-2028. The proposed development would contravene the Waterford City & County Development Plan 2022-2028 and would seriously injure the amenities of property in the vicinity and would therefore be contrary to the proper planning and sustainable development the area.
2. On the basis of the details provided by way of further information relating to the intended use of the beer garden to serve the two licenced premises identified it is the opinion of the Planning Authority that the development address provided with the application is not sufficient to accurately identify the location of the development for retention and intended use. The Planning Authority is, therefore, precluded from granting retention permission for the development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning had regard to the locational context of the site, planning history and policy and noted that no submissions were made. Their Assessment included the following:

- The submitted site layout plan indicates the yard area to the rear of the Woodman Bar, the Factory Nightclub, Parnell House and the Espresso restaurant and a bookmaker converted to a 'beer garden' and which includes two roofed sections.
- As indicated on the submitted site layout the existing beer garden is accessed from The Woodman Bar (John Street) and the layout indicates an access to the beer garden from Parnell House which is currently in use as a storage area. A small yard area serving the Espresso restaurant also has an access to the yard area and there are door from the nightclub to the beer garden.
- Owing to the beer gardens access/serving The Woodman Bar and the permitted use of Parnell House for storage only they have concerns that the development description may not accurately describe the development for which retention permission is sought.
- There is some discrepancy in the description of development relative to the site address. Also, there is a lack of detail in relation to the intended use of the beer garden.
- The Environment Section, indicate that a Noise Report should be submitted by way of F.I. Details should be included in relation to storage areas and noise assessment.
- No appropriate assessment issues arise in this case.

Further Information request

The Planning Authority sought F.I which in summary, this included the following:

- The applicant was advised to provide details, as to the lack of clarity concerning the development address. They were asked to provide full details of the premises the beer garden is associated with.
- To submit a noise impact assessment to clearly identify noise sensitive locations, a survey of existing background noise levels to be included and details of noise levels associated with the beer garden. To provide details of noise levels to apply to the venue.

- To provide details showing storage locations for bins within the curtilage of the property which are suitably sited to cater for all existing uses within the larger landholding in the developer's ownership the site forms part of in this location.
- Details of the intended use/hours of operation of the beer garden and clarify if the beer garden retention is to be used as a nightclub.
- To submit details to demonstrate the use of the beer garden and that it will not conflict with the usage of adjoining properties. Legal title, rights of way, fire safety certificate etc.
- They note that the Site Layout Plan indicates 'proposed new connections to Factory Nightclub', and request that full details be provided.

Further Information response

Causeway Facilities Management response includes the following:

- They note that Parnell House is a multi-unit development, which consists of 7no. units and provide details of these.
- They enclose copies of a Noise Impact Assessment carried out by iAcoustics and provide details of this.
- They enclose copies of an Operational Waste Management Plan for the overall development and associated Waste Storage Area drawings.
- The beer garden area serves the licensed premises and therefore would be open the same hours as same. They provide details of this.
- The beer garden will not impede the ongoing use of the rear yard area and they include details. This includes land registry maps relative to legal title etc.
- They note that the text 'proposed new connection to Factory Night Club as shown on drawing no 1.03 is shown in error and provide that an updated drawing with this text omitted is enclosed.
- Revised Public Notices were submitted.

Planning Authority response

This had regard to the F.I submitted and their response includes the following:

- The submitted noise impact assessment does not assess the development which is the subject of retention and the waste management plan does not identify the storage location for all bins required.
- The development relates to a beer garden serving two licenced premises and based on the details provided with the application and in response to the request for F.I it has not been demonstrated that the development will not detract from the amenities of nearby residents.
- They refer to planning policy in the Waterford City and County DP 2022-2028 relative to nighttime entertainment uses.
- They recommend that retention permission be refused.

3.3. Other Technical Reports

Environment Section

They requested that F.I be submitted to include a noise mitigation plan and details of noise levels, monitoring and noise limitation methods. This being to protect the residential amenities of properties in the vicinity of the site.

In response to the F.I submission they requested further clarification as regards the operational Waste Management Plan and the Noise Impact Assessment.

3.4. Prescribed Bodies

There are no consultations noted on file.

3.5. Third Party Observations

The Planner's Report notes that no submissions have been received.

4.0 Planning History

Planning History relative to the subject site includes the following:

- Reg.Ref. 21/932 – Permission granted subject to conditions for material alterations at 6 Parnell House, Parnell Street, namely for change of use for as granted storage areas under Planning Reference 11/150 to use as public

house with internal connection to existing licensed premises, all with associated site development works, known as at Factory Night Club Parnell House Parnell Street.

This includes Condition no.2 relative to amplified music or other specific entertainment noise from the development and restrictions on noise levels.

Condition no.3 refers to the submission of a Noise Assessment Report

Other Conditions include relative to disposal of waste, signage, no installation of additional external plant and emergency exit,

- PL31.240021 - Reg.Ref. 11/500150 – Permission granted subject to conditions by the Council and subsequently by the Board for a change of use from laundrette, storage and offices to use as cold rooms, storage areas, means of escape, service elevator and offices associated with the Foundry Nightclub at Parnell House. Also, for the raising of parapet at street frontage to accommodate new internal stairs and lift, for elevational changes to the existing shopfront and associated site works, all at Unit 6, Parnell House, Parnell Street, Waterford.
- PL31.240022 - Reg.Ref.11/500150 – Permission granted subject to conditions by the Council for the Erection of a 55sq.m extension at first floor level to an existing bar area, and associated site works. The proposed extension to be located to the rear of the property and supported on metal columns over the existing single storey ground floor extensions and would have a retractable roof, all at the Foundry Nightclub, Parnell Street, Waterford.

Condition no. 3 was relative to noise restrictions.

Copies of these Board decisions are included in the History Appendix of this Report.

5.0 Policy Context

5.1. Waterford City and County Development Plan 2022-2028

Volume 1 – Written Statement

Chapter 3 deals with Waterford City & MASP.

Section 3.3.9 seeks to facilitate sustainable development in the City Centre.

Section 3.4 refers to the Vitality and Viability of the City Centre.

Policy Objective: W City 09 relates and includes:

- *Promote and enhance the evening economy in the City Centre with a view to enhancing the function of the broader City Centre area in this regard.*

Section 3.4.1 refers specifically to Entertainment and Evening/Night-Time Uses.

Objectives W City 10 and W City 11 apply. These include regard to the effect of the proposed development on the amenities of the area including residential amenity.

W City 11: We will support proposals for development involving evening and late-night commercial, retail, cultural, food and beverage or entertainment uses within, or immediately adjacent to, the defined city/town centres or local service centre, where it can be demonstrated that the development will enhance the character and function of the area and will not have a detrimental impact on the existing amenities of the area (including residential); this may include but is not limited to; extended opening hours, proposals for outdoor dining and event spaces, and proposals for the greater utilisation and public access to existing heritage assets.

As shown on Figure 3.6 the subject site is outside of the Waterford City Retail Core.

Volume 2 – Development Management Standards

Non-Residential Development

Section 5.16 refers to 'Take-Aways, Amusement Centres, Night Clubs/Licensed Premises/Public Houses, Off-Licences, Betting Offices, Casino's/Private Members Clubs and seeks to avoid an excessive concentration of such to ensure the intensity of any proposed use is in keeping with both the scale of the building and the pattern of development in the area.

Development Management Objective DM26 refers:

The provision of any of the above will be strictly controlled, having regard to the following, where appropriate:

- *The amenities of nearby residents, i.e. noise, general disturbance, hours of operation, and litter.*

- *Location of vents and other external services and their potential impact on adjoining amenities in terms of noise/odour/visual impact.*
- *The need to safeguard the vitality and viability of shopping areas in the city and county and to maintain a suitable mix of retail uses.*
- *Traffic considerations.*
- *The number/frequency of such facilities/events in the area.*
- *The scale of the development proposed in keeping with the scale of the building and the pattern of development in the area.*
- *The treatment of shopfront advertising and window display.*
- *The operators come to a satisfactory arrangement with the Council in relation to litter control.*
- *The larger leisure complexes which contain a mix of uses, e.g. cinema, bowling, and restaurant will be treated on their merits*

Land Use Zoning

Section 11 refers to Zoning and Land Use. Table 11 provides the Land Use Zoning Objectives.

As shown on Map 2 the site is within the 'TC' – Town Core land use zoning where the objective seeks to:

Provide for the development and enhancement of town core uses including retail, residential, commercial, civic and other uses.

5.2. Natural Heritage Designations

The Lower River Suir SAC (site code: 002137) is located c.0.7km to the east of the site.

5.3. EIA Screening

Having regard to the nature and small scale of the proposed development, the nature of the receiving environment, and proximity to the nearest 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 at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

A First Party Appeal has been submitted on behalf of the Applicant by Causeway Hospitality Management Limited. The Grounds of Appeal against the Council's reasons for refusal include regard to the following:

Background

- Parnell House provides a mixed-use property comprising seven self-contained units on ground floor with a night club at first floor. Details are provided of the Entertainment Premises currently in operation in the block and run by Causeway Hospitality.
- Located in Waterford City Centre at the junction of John Street, the Manor and Parnell Street, it sits centre of Waterford City's Entertainment district. The overall area of the premises extends to 2,452sq.m.
- There are four entertainment venues within Parnell House currently, that the Causeway Hospitality Ltd owns and runs, with planning permission for an additional premises in no.6 Parnell House (granted under Reg.Ref. 21/932). Details are provided (including the floor areas).
- During the Covid Pandemic they have been using the yard area to the rear of Parnell House (which is private land abutting a licenced premises – Woodman Bar, Lounge Bar & Factory Nightclub), as an 'outdoor seating area' as allowed for under Civil Law (Miscellaneous Provisions) Act 2021.
- The yard area is associated with these premises that have been used as licenced premises for many years. They want to continue to use this area.
- No objections or submissions were lodged by anyone from the properties in the vicinity of the proposed development.

Compliance with Planning Policy

- The subject site is located in an area that is zoned as 'City Centre Commercial' in the current Development Plan and the purpose of this objective is to protect, provide for and improve City/Town Centre amenity, viability and vitality.
- Having regard to the site history, the established use of the site and the city centre zoning, they consider that the proposed development is acceptable.

Reason no.1

- They provide details of the planning history relative to the site. The planning application for the Change of Use for no. 6 Parnell House was granted (Reg.Ref.21/932), that for retention of the yard was refused (21/1014 – current application).
- They note that F.I was requested for both applications and that the Noise Impact Assessment and the Operational Waste Management Plan submitted were the same for both applications and they provide details of these.
- They submit that if the development at no. 6 does not detract from the residential amenity of adjoining properties by reason of noise and disturbance to achieve a grant of permission, then neither therefore does the Yard.
- Also, that if the development at no. 6 had a suitably sized area for waste storage retained within the site to serve the business to achieve a Grant of Permission, then so therefore does The Yard.

Reason no.2

- The Yard to which this application relates to, forms part of the Parnell House development.
- They provide details of the Parnell House mixed use property comprising seven units and note the Entertainment Premises currently in operation and run by Causeway Hospitality.
- They enclose a copy of the Folio no. which shows an outline of the overall development, including the Yard.

- They provide that the development address is correct, as they are applying for retention of Change of Use of the Yard.
- They cannot overstate the importance of the outdoor seating areas to the viability of the business's at Parnell House.
- Causeway Hospitality Limited staff of each entertainment venue are from the same pool of employees. If the yard area were to close the business would not be viable and they would have to close each premises with a loss of up to 35 jobs.

6.2. **Planning Authority Response**

There is no response from the Planning Authority to the grounds of appeal.

6.3. **Observations**

None noted on file.

6.4. **Further Responses**

None noted on file.

7.0 **Assessment**

7.1. **Introduction and Context**

7.1.1. This is a First Party Appeal against the Council's decision to refuse retention permission for the proposed development. Having regard to the documentation submitted, to planning history and policy, the issues raised in the First Party Grounds of Appeal, and to my site visit, I would consider that the issues primarily centre on:

- Policy Considerations
- Rationale for Retention
- Reason for Refusal no.1
- Reason for Refusal no.2

- Appropriate Assessment

7.1.2. It is noted that this proposal was considered by the Council, under the Waterford City Development Plan 2013-2019 and that their Assessment and that of the First Party Grounds of Appeal, includes reference to policies and objectives made under this plan. This has now been superseded by the policies and objectives of the current Waterford City and County Development Plan 2022-2028, and those of relevance have been noted in the Policy Section above and further in the Assessment below.

7.2. Policy Considerations

7.2.1. As noted on Table 2.2 ‘Settlement Hierarchy and Typology’ of Volume 1 of the Waterford City and Development Plan 2022-2028, Waterford City Metropolitan Area is within Class 1 of the Hierarchy. The Core Strategy is supportive of a range of sustainable social and economic development and uses that enhance the character of the area. Section 3.3.9 refers to the City Centre. Section 3.4 to Vitality and Viability concepts which are central to sustaining and enhancing the city centre, compact growth and placemaking. Policy W City 09 seeks to: *promote and enhance the evening economy in the City Centre with a view to enhancing the function of the broader City Centre area in this regard.*

7.2.2. Section 3.4.1 supports the nighttime economy and sustainable ‘Entertainment and Evening/Night-time Uses’. Policy Objective W City 10 refers. This includes regard to proposals relative to such uses including pubs and nightclubs and seeks to avoid undue proliferation. In summary, it recommends that proposals have regard to the effect of the development on the amenities of the area, including residential amenity, on the existing mix of land uses and activities including the retail function, in a particular locality. Also, on the size, scale and location of existing similar type and mix of uses in the vicinity. W City 11 supports such proposals where it can be demonstrated that the development will enhance the character and function of the area and will not have a detrimental impact on the existing amenities of the area (including residential). It is noted that: *this may include but is not limited to: extended opening hours, proposals for outdoor dining and event spaces...*

7.2.3. As shown on Map 2 of Volume 4 of the said Plan, the site is within the ‘TC’ – Town Core land use zoning where the objective seeks to: *Provide for the development and*

enhancement of town core uses including retail, residential, commercial, civic and other uses. Table 11.2 shows the Zoning Matrix. Night Uses (Nightclub, Pubs, Fast Food Takeaways) are 'Permitted in Principle' in the 'TC' Town Core Zoning.

Therefore, the proposed retention of the beer garden use to the rear of the adjoining public houses is acceptable in principle within this land use zoning.

- 7.2.4. The Council's reason no.1 for refusal refers to the proposed development for retention as being contrary to Development Management DM26 (Section 5.16 Volume 2 of the WCCDP 2022-2028 refers). This is concerned to prevent an excessive concentration of such nighttime entertainment uses and to ensure that the intensity of any proposed use is in keeping with the scale of the building and the pattern of development in the area. It provides that such uses will be strictly controlled, having regard to a number of criteria which include: *The amenities of nearby residents, i.e. noise, general disturbance, hours of operation, and litter.*
- 7.2.5. I would note that this application is for the indefinite retention of change of use of part of the rear yard to a beer garden at Parnell House, Parnell Street, Waterford and for the 2no. as constructed clear corrugated roofs, all with all associated site development works. As provided in the details submitted and as seen on site, the rear yard contains a beer garden area, serving adjoining public house premises. The issue with a retention permission, is despite the use being in operation, and currently unauthorised, would permission have been granted for it in the first place.
- 7.2.6. Regard is had to the planning history and to the rationale provided for the proposed retention development, and also to its impact on the character and amenities of the area (including residential) and to the proper planning and sustainable development. These issues, taking into account, the Council's reasons for refusal, are discussed further in this Assessment below.

7.3. **Rationale and Usage**

- 7.3.1. The First Party Appeal, provides some background details relevant to the site location and the development proposed for retention. They note that Parnell House provides a mixed-use property comprising seven self-contained units on ground floor with a night club on first floor. That there are four entertainment venues within the Entertainment Premises currently in operation and run by Causeway Hospitality.

These are the Woodman Bar (109sq.m), Lounge Bar (104sq.m), Factory Nightclub (726sq.m) and The Yard (218sq.m), to which this appeal relates. Permission was recently granted (Reg.Ref. 21/932 as noted in the Planning History Section above) for an additional unit at no. 6 Parnell House (332sq.m) which they hope to develop in the future. Regard is had to the long-term entertainment usage in the Planning History Section above.

- 7.3.2. Access is had from a number of these premises to the yard area at the rear. The Yard area has been associated with the Woodman Bar, Lounge Bar and the Factory NightClub for many years. There is a covered beer garden area that jointly serves these premises (as per the F.I submitted this area does not serve the nightclub premises, other than for fire escape purposes).
- 7.3.3. As shown on the drawings roof covering has been erected and the applicant's have applied for indefinite retention (area shown colour coded). Drawings note that the extent of the proposed retention of change of use from Yard to Beer Garden is 216.4sq.m. The overall extent of the rear yard area is 272sq.m. and the extent of the overall site is 0.149ha. Drawing no.1.04 shows in yellow 'the extent of the proposed retention of 2no. as constructed clear corrugated roofs'. I noted on site that this covered beer garden area contains tables and chairs.
- 7.3.4. The First Party provide that during the Covid Pandemic, Causeway Hospitality have been using the yard area to the rear of Parnell House (which is private land abutting a licenced premises – Woodman Bar, Lounge Bar & Factory Nightclub) as an 'outdoor seating areas' as allowed for under the enacted Civil Law (Miscellaneous Provisions) Act, 2021. That this has been successful and has helped to maintain the businesses at these premises, during a difficult time for the hospitality and entertainment industries.
- 7.3.5. They provide that if the yard area is not retained, they cannot offer their valued employees sufficient hours of work across the various venues in any given week or guarantee the success of the pub venues. If the latter close, they will not be able to staff a nightclub facility which only operates two nights a week (one night in the summer when the students are not in Waterford). That if they are forced to take away The Yard area, the businesses would not be viable, and they would close each premises with the loss of up to 35 jobs.

7.4. Reason 1 - Residential Amenity issues

- 7.4.1. The Council's first reason for refusal in summary provides that the Planning Authority is not satisfied that the beer garden will not detract from the residential amenity of adjoining residential properties by reason of noise and general disturbance or that a suitably sized area for the waste storage is retained on site to serve the businesses with access to the rear yard area. As such, they provide that the development proposed for retention would be contrary to Development Management DM 26 of the Waterford City and County Development Plan 2022-2028. I would note that this Objective is concerned with the scale and use being in keeping with the pattern of development in the area and the entertainment usage being strictly controlled and having regard to impact on residential amenity i.e noise, general disturbance, hours of operation, litter and has been quoted in the Policy Section above.
- 7.4.2. Having visited the site, I would note that there is a residential development, 'Waterside Close' to the southeast of the site (c.14m at its closest to the yard), with vehicular access off a separate road by the river, 'Waterside' to the south. Details have not been submitted as to whether there is residential above in the adjoining premises to the south, facing John Street. However as shown on the floorplans it is noted that the 'Factory nightclub' (not the subject of the current application) is a long established first floor use above the licenced premises. I also noted that there is a high stone wall along the boundary with 'Waterside Close' lane to the south of the site, that also serves as a rear access to 'St John's Catholic Church'. That, there is a locked gateway from the yard area of the premises to this laneway.
- 7.4.3. In view of its locational context, I would consider that the development to be retained would have no impact on the privacy of any adjacent residential property, given its location to the rear of the pub and that the space is generally enclosed along its boundaries, with canopies provided overhead.

Noise issues

- 7.4.4. The Council's Environment Section requested F.I relative to Noise Mitigation measures. Subsequently, the Planning Authority requested that a Noise Impact Assessment be submitted as part of their F.I request. This was to clearly identify noise sensitive locations, provide a survey of background noise levels associated with the beer garden area.

- 7.4.5. In response the applicants engaged iAcoustics to undertake a noise assessment relating to the then concurrent application Reg.Ref. 21/932 i.e for material alterations at 6 Parnell House, Parnell Street namely 'Change of use for as granted storage areas under Reg.Ref. 11/150 to use as a public house with an internal connection to existing licensed premises, all with associated site development known as Factory NightClub, Parnell House, Parnell Street, Waterford. Therefore, this Report, while it related to an adjoining premises, did not relate specifically to the subject retention application. However, it is of note that the site description in the Noise Impact Assessment Report, refers to the area shown as 'The Yard' and notes that it is a covered outdoor seating area shared by several licenced premises. The drawings therein, show no. 6 Parnell Street and the Yard area at the rear colour coded, with the Factory nightclub above. Therefore, I would consider it relevant to the subject retention application for the beer garden area.
- 7.4.6. The Report noted that the primary sources from this complex are music noise and patron noise. That both of these are audible from the outdoor covered area and dominant at the nearest noise sensitive location. Low frequency noise emissions are audible from the Factory nightclub when it is operational. That, there are no significant low-frequency noise emissions from any other part of the complex. It has regard to Standards and Guidance on how to reduce noise emissions from pubs and clubs to minimise the adverse impact on the local community. It notes that the CoP on The Control of Noise from Pubs and Clubs emphasises the importance that entertainment noise is inaudible inside noise sensitive dwellings between 23-00 hrs and 10.00hrs.
- 7.4.7. Section 2 presents the Noise Survey and has regard to Survey Methodology. This notes that a single noise monitor was placed at a noise sensitive location to the rear of the residential development in Waterside Close. It provides details of the measurement standards referenced and includes Figures showing photographs. It has regard to measuring equipment and provides this conforms with standards. Section 3 provides Results from the Outdoor Fixed Monitoring System and Section 3.2 Front of House Monitoring, having regard to indoor ambient noise. A Statistical Analysis is provided, detailing when the nightclub use is operational and when the use has ceased. It notes that based on the assumptions given that the noise levels represented were approximately 9 d B(A) higher when the premises (including the

Factory nightclub) is operational compared to that representative when no activity takes place.

- 7.4.8. Section 4 provides an Acoustic Assessment of the Proposed Development. It is noted that this relates to the Parnell House application and assumes the extended nightclub use as a worst-case scenario. Noting that significant levels of entertainment noise were observed within no.6 Parnell House when the Factory nightclub was operational. It provides, that the existing roof structure would not be capable of providing adequate levels of sound insulation performance, particularly at low frequencies. They recommended that a suspended 'acoustic' ceiling is provided in no. 6 Parnell House and details are given relative to its construction. It also has regard to the separating wall between the existing Factory nightclub and that of no. 6 Parnell House. Details of mechanical installations have not yet been developed for the proposed development. That in the absence of this information it is appropriate to specify noise emission limits at nearby noise-sensitive locations. That post acoustic modelling may be required to ensure no adverse noise impacts. They note that plant emissions from the development should not exceed the noise levels specified (table provided), based on Guidance levels.
- 7.4.9. Section 4.6 has regard to Patron Noise Impacts. iAcoustics understands that the outdoor cover area has the capacity for up to 120 customers. They note that when they carried out the noise survey as described in section 2 of this report, the outdoor seating area appeared to be fully occupied from about 8pm until closing. As such, they provide that the noise data shown in Section 3 may be viewed as a worst-case scenario when the outdoor area is fully occupied.
- 7.4.10. The Noise Assessment provides that there will be no additional provision for outdoor seating for the proposed new bar at no.6 Parnell House. However, they do note that there could be an additional 20 patrons from no.6. using the outdoor area at busy times. They note that Table 4-3 shows such an increase in patrons would result in an overall increase in noise levels of less than 1 d B(A), which they provide is negligible. As such I would consider this of relevance to the current retention application, relative to the beer garden area.
- 7.4.11. Section 5 of the Report sets out 7 Recommendations to reduce the overall accumulative noise impact from the complex, including the new development at no.6

(as noted the latter is not part of the subject retention application). These generally have regard to acoustic design and measurements. The Conclusion notes that the re-development of no.6 Parnell House is expected to reduce the accumulative noise impact of the Factory nightclub on noise sensitive locations. In its undeveloped condition noise escapes from the factory nightclub into no. 6 Parnell House via a lightweight stud wall; the noise escapes into the surrounding environment through a single-skin metal roof sheet, which offers minimal sound insulation performance. That an upgraded 'acoustic' roof structure will prevent excessive noise breakout and result in an overall positive impact on the surrounding environment. It also provides that audio limiting devices shall be installed in the new development. That music levels should be calibrated to ensure that music is not audible at nearby noise sensitive locations.

- 7.4.12. The Council's Environmental Services response to the subject application provides that the noise impact assessment submitted for the development as part of the F.I received does not assess the development which is the subject of this retention application. That the noise impact assessment assesses the additional impact of the new development covered in application 21/932, but does not assess the existing impact of the development which is the subject of this retention application. They requested that the applicant provide a noise impact assessment which measures the impact of this development and provides mitigation measures for the development.
- 7.4.13. The Planning Authority did not request this C.F.I but considered that the F.I has not demonstrated that the development will not detract from the amenities of nearby residents. They noted that the 6 month additional information time period has elapsed and that therefore a request for clarification to allow the developer to address the outstanding issues is not open to the P.A in this instance. They also noted that it is stated in the F.I submitted that the beer garden will serve the licenced premises and operate at the same opening hours i.e.10.30 am to 11.30pm weekdays and 10.30am to 12.30pm weekends. That it is stated that the Factory Nightclub does not use the beer garden area as part of their facilities. This nightclub has its own smoking area at first floor level but does have 2no. fire escapes which exit into the area and it is important that these be kept clear.
- 7.4.14. The Board may decide to refuse relative to insufficient information being submitted relative to the Noise Impact Assessment for the subject retention application for the

change of use to a beer garden area. However, it must be noted that the Parnell House complex, which is in Waterford City Centre, has been in use as an entertainment venue, which includes a nightclub and licenced premises for some time. The beer garden appears to be ancillary to the use of the licenced premises. I note permission has recently been granted for material alterations to no. 6 Parnell House, which includes *an internal connection to existing licensed premises, all with associated site development works, known as Factory Night Club, Parnell House*. I note that Conditions nos. 2 and 3 of the Council's permission relative to Reg.Ref. 21/932 relative to noise restrictions. I would consider that in view of the usage by patrons of the covered yard area to the rear of the premises that the Noise Impact Assessment does have relevance to the subject retention application.

- 7.4.15. Having regard to these issues, the noise concerns which have been raised by the Planning Authority are valid and the noise emissions from the covered beer garden area must be of an appropriate level to ensure that undue negative impacts do not arise with respect to the residential amenity of the neighbouring properties. The Board may decide that rather than a refusal which would serve to shut down the beer garden area, which is connected with the aforementioned licenced premises, to include conditions relative to strict noise limitations (noting those recommended by the Council's Environment Section). This could include conditions relative to sound proofing including provision for an upgraded 'acoustic' roof structure, which would present an improvement, on the current situation. In particular, relative to nearby residential, in Waterside Close. In my opinion, the noise emissions from the beer garden can be seen in the context of the overall entertainment venue and be reasonably managed including by ongoing noise monitoring. This matter can be addressed by way of planning condition in the event the Board decides to grant retention permission in this instance.

Waste Storage

- 7.4.16. The Council's first reason for refusal is also concerned that a suitably sized area for the waste storage has not been retained within the site to serve the business premises with access to the yard area of the proposed development. They consider this is the case relative to the subject retention application.

- 7.4.17. The Council's F.I request included that full details be provided showing storage locations for bins within the curtilage of the property which are suitably sized to cater for existing uses within the larger landholding in the developer's ownership the site forms part of at this location. That these details demonstrate that adequate space for storage of separate receptacles of adequate size and number for proper segregation, storage and collection of glass, recyclables, residual and food waste streams, within the waste storage areas. They also note that they have concerns in relation to the loss of an existing service yard for a number of the businesses.
- 7.4.18. The applicant's F.I response included the submission of an Operational Waste Management Plan for the Parnell House Hospitality Development in Waterford. This noted that Parnell House includes the Woodman Bar, Lounge Bar, Factory Nightclub, Yard outdoor seating area and Espresso Restaurant. This also had regard to the change of use of existing storage facility at no. 6 Parnell House (Reg.Ref. 21/932 refers). It provides that the OWMP has been prepared to ensure the management of waste during the operational phase of the development is undertaken in accordance with the current legal and industry standards and provides details of such.
- 7.4.19. The OWMP notes that there is a mixture of uses in the overall development (restaurant & entertainment). Their calculation methodologies and estimates are given per premises in the Tables provided. They provide details of their waste calculations per customer. Section 5 refers to Waste Storage and Collection. This notes that while the Woodman Bar, the Lounge Bar, the Yard, Factory NightClub and the proposed Licensed Premises at no.6 Parnell Street are all operated by Causeway Hospitality Ltd, Espresso Restaurant is operated by a separate business owner. It notes that there are therefore two dedicated Waste Storage Areas (WSAs) allocated within the development, both accessed at the rear entrance and approached from the laneway off John Street. One WSA for the restaurant and the other is for the Causeway Hospitality Ltd premises which will be a shared WSA. They note that the waste receptacles from the WSAs will be collected directly from the WSAs by facilities management or the waste contractor. Tables are included showing the waste storage requirements for the restaurant use and for the entertainment uses. They provide that the waste receptable requirements have been established from the distribution of the total weekly generation estimate into the

holding capacity of the receptable bin and details are given of such. They note that there are 3 collections per week and the need to have storage capacity and to segregate waste. They provide details of waste collection, noting that the businesses will be expected to segregate waste within their units and to take their waste to their allocated commercial waste store.

- 7.4.20. They conclude that the OWMP presents a waste strategy that complies with all legal requirements, waste policies and best practice guidelines and demonstrates that the required storage areas have been incorporated into the design of the development. That the waste strategy presented for waste storage will provide sufficient room for the required receptables in accordance with the details of this strategy. Attached drawings show the area for bin storage in the yard. These two separate areas are indicated as 'Existing stores' on the floor plans submitted.
- 7.4.21. The Environment Section notes that the proposed floor plan/site layout plan identifies the requirement for a greater bin storage area than that shown on the plans submitted. They requested clarification as to where exactly the bins identified as required in the OWMP will be stored. I would consider that if the Board decides to grant that it should be conditioned that revised plans be submitted to show the bin storage area has adequate capacity in accordance with the OWMP requirements. They should also show that fire escape doors into the lane are not blocked.

7.5. Reason no. 2 – Location of Development

- 7.5.1. The Council's second reason for refusal concerns that in their opinion there is a lack of clarity in the development address provided. That it not sufficient to accurately identify the location of development for retention and the intended use. In this respect their F.I request includes that it is the Planning Authority's opinion that the site address/development description does not provide sufficient information to adequately describe the full extent of the proposed development which includes the change of use of a yard to a beer garden to serve the Woodman Bar and Lounge Bar.
- 7.5.2. The First Party F.I response notes that Parnell House is a multi-development which consists of 7no. units. These units are Woodman Bar, Lounge Bar, Factory Night Club, Ladbrokes, Former Graphic Image Unit, Espresso Restaurant and No. 6

Parnell Street. As such, the existing yard area which forms this application serves all these units which is why the address given for the application is Parnell House, Parnell Street, Waterford. They enclose copies of the relevant Land Registry Folios to confirm same.

- 7.5.3. The Grounds of Appeal note that there are four entertainment venue within Parnell House currently that Causeway Hospitality owns and runs and details are given of these and have been noted in this Assessment above. They provide a copy of the relevant Folio no. which shows an outline of the overall development, including the Yard at Parnell House, Parnell Street, Waterford. They submit that the development address is correct, and they are applying for retention of Change of Use of the Yard at the above address.
- 7.5.4. Having visited the site (access had to be obtained through the premises to the rear beer garden area), I would consider that while the retention address is not specific, in that it relates to the beer garden to the rear of a number of adjoining premises, that the application site, is not difficult to find in that the beer garden appears to be jointly used to the rear of the entertainment venues. As such, in my opinion, the information which has been provided with the planning application is sufficient to illustrate the nature of the retained development and that the application can be appropriately assessed on this basis.
- 7.5.5. I note the Folio nos. submitted from Land Registry. It is of note that the issue of ownership is a civil matter and I do not propose to adjudicate on this issue. I note here the provisions of s.34(13) of the Planning and Development Act: "*A person shall not be entitled solely by reason of a permission under this section to carry out any development*". Under Chapter 5.13 'Issues relating to title of land' of the 'Development Management - Guidelines for Planning Authorities' (DoECLG June 2007) it states, inter alia, the following: "*The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts...*" In other words, the developer must be certain under civil law that he/she has all the rights in the land to execute the grant of permission.

7.6. Appropriate Assessment

Having regard to the nature and scale of the proposed development located within an existing serviced urban area, and the distance from the nearest European site, no Appropriate Assessment issues arise, and it is not considered 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 Retention Permission be granted subject to the conditions below.

9.0 Reasons and Considerations

9.1. Having regard to the location of the site within Waterford Town Centre and on lands zoned 'Town Core', in the Waterford City and County Development Plan 2022-2028, together with the existing entertainment uses associated with the subject site, and having regard to the pattern of development in the area, it is considered that, subject to compliance with the conditions set out below, the development proposed for retention, would not seriously injure the amenities of the area or of property in the vicinity and would not be detrimental to the character of the area. The development proposed for retention would, therefore, be in accordance with the proper planning and 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 20 th day of June 2022, and by the further plans and particulars received by An Bord Pleanala on the 17 th of August 2022, 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 within two months of the
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	<p>date of this retention permission and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interests of clarity.</p>
2.	<p>The retention development hereby permitted shall be used only for the purposes of a beer garden, incidental to the enjoyment of the associated licenced premises and it shall not be used ancillary to the NightClub use. It shall be used for no other purpose, without a prior grant of planning permission for change of use.</p> <p>Reason: In the interest of residential amenity.</p>
3.	<p>Within two months of the date of this retention permission the applicant shall submit details of the following for the written agreement of the planning authority:</p> <p>(a) A plan containing details for the management of waste within the development, including for the provision of adequate facilities and enclosed areas within the site for the storage, separation and collection of the waste and, in particular, recyclable materials shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.</p> <p>Reason: To provide for the appropriate management and storage area for waste and, in particular recyclable materials, in the interest of protecting the environment.</p>
4.	<p>(a) Amplified music or other specific entertainment noise emissions shall not exceed the background noise level by more than 3 dB(A) during the period 1000 to 2300 hours and by more than 1 dB(A) at any other time, when measured at any external position. The background noise level shall be taken as L90 and the specific noise shall be measured at LAeqT.</p> <p>(b) The octave band centre frequencies of noise emissions at 63 Hz and at 125 Hz shall be subject to the same locational and decibel exceedance criteria in relation to background noise levels as set</p>

	<p>out in (a) above. The background noise levels shall be measured at LAeqT.</p> <p>(c) 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>(d) 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>(e) 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. An acoustical analysis relative to the beer garden area shall be included with this submission to the planning authority, within two months of the date of this retention permission and the development shall be carried out and completed in accordance with the agreed particulars.</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>Water supply and drainage arrangements, including the attenuation and 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>

6.	<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 within three months of the date of this Order 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>Reason: 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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I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Angela Brereton
 Planning Inspector

13th of December 2023