



An  
Bord  
Pleanála

## Inspector's Report

### ABP-314490-22

#### Development

The material change of use of no. 55 Fountain Street to a restaurant and for planning permission is also sought for no. 54 Fountain Street, to convert the existing shop into a restaurant. Both of 54 and 55 to combine and operate as a single restaurant.

#### Location

54-55 Fountain Street, Ferrybank,  
Waterford

#### Planning Authority

Waterford City and County Council

#### Planning Authority Reg. Ref.

211149

#### Applicant(s)

The Ship Restaurant Bar (Dunmore East) LTD.

#### Type of Application

Permission.

#### Planning Authority Decision

Grant Permission.

#### Type of Appeal

Third Party versus decision.

#### Appellant(s)

Kathleen Searson.

**Observer(s)**

None.

**Date of Site Inspection**

15 July 2023.

**Inspector**

Stephen Rhys Thomas

# Contents

1.0 Site Location and Description .....	4
2.0 Proposed Development .....	4
3.0 Planning Authority Decision .....	4
3.1. Decision .....	4
3.2. Planning Authority Reports .....	5
3.3. Prescribed Bodies .....	5
3.4. Third Party Observations .....	5
4.0 Planning History.....	5
5.0 Policy Context.....	6
5.1. Development Plan.....	6
5.2. Natural Heritage Designations .....	6
5.3. EIA Screening .....	6
6.0 The Appeal .....	7
6.1. Grounds of Appeal .....	7
6.2. Applicant Response .....	7
6.3. Planning Authority Response .....	8
7.0 Assessment.....	9
8.0 Recommendation.....	12
9.0 Reasons and Considerations.....	12
10.0 Conditions .....	12

## 1.0 Site Location and Description

1.1. The appeal site is located along the R711, also known as Fountain Street in Ferrybank, an eastern suburb of Waterford City. The site comprises two adjacent properties with ground floor commercial uses. The buildings are two storey in height with shopfronts to the ground floor fronting the street. The appeal site forms part of a parade of mixed commercial premises with the Marymount residential estate to the north.

## 2.0 Proposed Development

2.1. The proposed development comprises:

- The amalgamation of numbers 54 and 55 Fountain Street and change of use to a single restaurant.
- Construction of a flat roofed single storey extension to the rear to provide a bin storage area, at 55 Fountain Street.
- Construction of a two storey rear extension to 54 Fountain Street to comprise a dining room at ground floor and a first floor extension to the existing flat.
- Construction of a Velux window and chimney flu to the front roof slope of 54 Fountain Street.

Further information was submitted (4 July 2022), that detailed floor areas more clearly, car parking proposals, water services details, access arrangements for services, relocated bin store and signage details. The ground floor extension has been slightly elongated to accommodate an integrated bin store.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. The Planning Authority decided to grant permission subject to 16 conditions, all conditions are standard and technical in nature.

## 3.2. **Planning Authority Reports**

### 3.2.1. Planning Reports

3.2.2. The Planning Authority decided to grant permission subject to 16 conditions, the basis of their decision can be summarised as follows:

#### Report 1

- A change of use to restaurant would be acceptable in the land use zoning general business.
- Drawings do not clearly show floor areas, further information required.
- Car parking and access arrangements require further information.
- Third party submissions have concerns about residential amenity, proximity of a bin store and parking.

Further information was requested in accordance with the report of the Planner.

#### Report 2

- All items of further information submitted acceptable, grant permission.

### 3.2.3. Other Technical Reports

1. Water Services: No objections subject to conditions.
2. Environment Section: No objections subject to conditions.

## 3.3. **Prescribed Bodies**

Irish Water – no objections.

## 3.4. **Third Party Observations**

Two submissions received, issues revolve impacts to residential amenity, the location of bins stores, service access and car parking.

## 4.0 **Planning History**

### 4.1. **Site:**

PA ref: 09500202 – Change of use of the ground floor only, from the current retail use to use as a Credit Union.

PA ref: 02500399 - Change of use at ground floor level from residential to General Business & carry out alterations to front wall & front elevation of building & all associated works

PA ref: 00505848 - Shop

## **5.0 Policy Context**

### **5.1. Development Plan**

The site is governed by the policies and provisions contained in Waterford City and County Development Plan 2022-2028.

The appeal site is located on lands subject to zoning objective GB - General Business, to provide for and improve General Business uses; this includes suburban district retail and local neighbourhood centres. Restaurant and residential uses are permitted in principle on lands zoned GB.

### **5.2. Natural Heritage Designations**

5.2.1. None relevant to this site.

### **5.3. EIA Screening**

5.3.1. Having regard to the nature and scale of the proposed development, comprising a change of use and minor extensions, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. A third party appellant, Kathleen Searson of 22 Marymount has appealed the decision of the planning authority to grant permission, the grounds of appeal can be summarised as follows:

- As a neighbouring property the proposed use for restaurant would impact upon property values.
- Many of the properties along Fountain Steet started out as residential units and have changed to commercial purposes, there is insufficient car parking. Service vehicles and customer parking sometimes takes place in Marymount, this is inconvenient.
- A bin store is located too close to residential property, will attract vermin and emit odours.
- A loss of privacy will result from the first floor extension.
- A portion of the shared boundary is a hedge, it should be retained as it provides security.

### 6.2. Applicant Response

6.2.1. The applicant has prepared drawings with annotations highlighted to clearly describe a response to the issues raised in the grounds of appeal, and a written response, that can be summarised as follows.

- There is a 1.2 metre difference in site levels, the appellant's garden is higher and at least 2.5 metres separates the proposed extension from the boundary, this is sufficient.
- The character of Fountain Street has changed this is accepted.
- The bin store has been located as per drawing 20-9-004 Rev A.

- Car parking and delivery arrangements are acceptable to the planning authority and other issues to with car parking in the wider area are beyond the scope of this application.
- There will be no overlooking from the infill bathroom at first floor.
- The hedge will not be removed.
- Deliveries will take less than ten minutes, no issues envisaged.

### 6.3. **Planning Authority Response**

None.



## 7.0 Assessment

7.1. The main issues in this appeal are those raised in the grounds of appeal, and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Residential Amenity
- Boundaries
- Traffic and Parking
- Other Matters
- Appropriate Assessment

### 7.2. Residential Amenity

7.2.1. The appellant occupies the dwelling that is located to the north, 22 Marymount. They have a number of concerns that their residential amenities will be negatively impact upon. In their mind the impacts will range from the location of bin stores and the potential for vermin and odour nuisance, and a loss of privacy from the first floor apartment extension. The applicant has responded to these concerns and explains that the bin stores have been relocated away from the boundary, their use will be controlled by condition and that the first floor bathroom will occupy an infill space and not increase any overlooking.

7.2.2. The proposal to amalgamate two premises and create a single restaurant is a permissible use in the land use zoning GB General Business. The GB zoning seeks to provide for and improve General Business uses; this includes suburban district retail and local neighbourhood centres. Restaurant and residential uses are permitted in principle on lands zoned GB. Hence, the proposal to locate a restaurant at this parade of shops would be acceptable in principle, subject to the usual planning considerations. In this instance, it is the operation of the restaurant in terms of servicing, bin storage, odours and overlooking from the apartment that causes concern.

7.2.3. Bin Stores – The initial planning drawings indicated a bin store, right up against the boundary with 22 Marymount to the north. From my observations on site, I note that

there is a level change between sites and that the appeal site is lower than the appellant's garden level. According to the applicant this level difference amounts to 1.2 metres and drawings prepared show this. Drawings submitted in response to further information now show the bin store integrated into the proposed ground floor extension and away from the shared boundary. In order to achieve the repositioned bin store, the overall extension at ground floor has been pushed out towards the shared boundary, drawing 20-9-004 Rev A refers. I am satisfied that the relocated bin stores addresses the concerns raised by the appellant and any outstanding issues to do with day to day operations can be managed by an appropriately worded condition.

- 7.2.4. Overlooking – the appellant is concerned that the proposed first floor extension to the apartment at 54 Fountain Street will result in overlooking of their property. The proposed first floor extension comprises a bathroom that will fill in a gap to the east of the existing kitchen. The kitchen will change to a bedroom and the bathroom window should be fitted with obscure glazing. In any case, a separation distance of over 15 metres will be maintained between the proposed first floor extension and the gable of 22 Marymount. I also observed that the first floor kitchen of the apartment at 54 Fountain Street is already in place and does not cause any issues of overlooking. The appeal site is at a lower level than the appellant's house and garden, I anticipate that the addition of a bathroom window will not make any perceptible difference to privacy on this occasion.
- 7.2.5. Boundary Hedge – the appellant is concerned that a boundary hedge will be removed to facilitate the development and this would impact on the security of their property. The applicant is sure that no works are proposed in the vicinity of the hedge and that a low retaining wall is already in place and will remain. I am satisfied that the hedge that currently divides the two sites will remain in place, however, a suitably worded condition will ensure that if any plant suffers damage or is removed it will be replaced by a suitable substitute.

### **7.3. Traffic and Parking**

- 7.3.1. The appellant notes that car parking is a problem in the area and that cars are frequently parked all along Marymount. The appellant is concerned that the proposed development will make matters worse and that the apartment building,

under construction, in the area will accentuate the problem. The applicant dismisses the concerns about other developments that contribute to parking problems as not a matter for the appeal. The applicant also points out that car parking is available on site and three spaces are allocated for use. On the day of my site visit I observed that cars were parked all along the street leading through Marymount. The houses at Marymount are a combination of terraced and semidetached houses, some with driveways and many without. The proliferation of on-street parking is a consequence of high car ownership and a lack of in curtilage car parking. In addition, I note a significant construction site opposite the appellant's house that may attract construction traffic and parking. All of these issues are symptomatic of a wider problem to do with car ownership and the availability of local services. The proposed development will provide a restaurant use that does not currently exist in the vicinity and on the doorstep of a local clientele.

- 7.3.2. I acknowledge that the development plan sets out car parking standards, table 7.1 refers. According to the development plan just over four spaces would be required and this means there would be a shortfall. The applicant points out that there is sufficient car parking in the area and when office uses (solicitors office) and retail uses are not required they become available in the evening. I am satisfied that a restaurant use at this location is appropriate and car parking and service delivery operations can be accommodated given the transferability of car parking spaces between day and evening time use.

#### **7.4. Other Matters**

- 7.4.1. Property Values – The appellant is concerned that if the development is permitted it will decrease the value of their property and others in the area. No documentary evidence has been submitted to demonstrate that the development will adversely affect property values in the area, and it is likely that the provision of a restaurant and improved apartment unit will provide a desirability for the area as a whole. It may be the perception of the appellant that their residential amenities will be affected and hence the value of their property will decrease. I have already explained that residential amenities will not be impacted upon to any great degree. I am not satisfied that a demonstrable case has been advanced to be certain that property values will be adversely affected by the development as proposed and amended by the further information submitted to the planning authority by the applicant.

## **7.5. Appropriate Assessment.**

- 7.5.1. Having regard to the minor nature and scale of the development under consideration, the site location within an existing built-up area outside of any protected site, the nature of the receiving environment, the availability of public services, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

## **8.0 Recommendation**

- 8.1. Having regard to the above assessment, and based on the following reasons and considerations, it is recommended that permission be granted subject to conditions.

## **9.0 Reasons and Considerations**

Having regard to the pattern and character of existing development in the area, the design and scale of the development proposed, and the provisions of 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 accordance with the zoning objective for the site, would not detract from the visual amenity of the area, and would not seriously injure the residential amenity of surrounding properties. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## **10.0 Conditions**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 4<sup>th</sup> day of July 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 prior to commencement of

development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Details of all external elevations and signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of the amenities of the area/visual amenity.

3. The noise level shall not exceed 55 dB(A) rated sound level (that is, corrected sound level for a tonal or impulsive component) at the nearest noise sensitive residential location between 0700 and 1900 hours, Monday to Friday inclusive, and shall not exceed 45 dB(A) at any other time.

Reason: To protect the residential amenities of property in the vicinity of the site.

4. The developer shall control odour emissions from the premises in accordance with measures including extract duct details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of public health and to protect the amenities of the area.

5. a) Details of the grease trap to be provided within the curtilage of the site and submitted to, and agreed in writing, with the Planning Authority prior to commencement of the development.

b) No air conditioning extractor fans or other apparatus shall be mounted on the façade of the premises.

Reason: In the interest of public health and proper planning.

6. A plan containing details for the management of waste and, in particular, recyclable materials within the development, including the provision of facilities 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.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

7. 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.

Reason: In the interest of public health

8. (a) Prior to commencement of development, all trees, groups of trees, hedging and shrubs which are to be retained shall be enclosed within stout fences not less than 1.5 metres in height. This protective fencing shall enclose an area covered by the crown spread of the branches, or at minimum a radius of two metres from the trunk of the tree or the centre of the shrub, and to a distance of two metres on each side of the hedge for its full length, and shall be maintained until the development has been completed.

(b) No construction equipment, machinery or materials shall be brought onto the site for the purpose of the development until all the trees which are to be retained have been protected by this fencing. No work is shall be carried out within the area enclosed by the fencing and, in particular, there shall be no parking of vehicles, placing of site huts, storage compounds or topsoil heaps, storage of oil, chemicals or other substances, and no lighting of fires, over the root spread of any tree to be retained.

Reason: To protect trees and planting during the construction period in the interest of visual amenity.

9. 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 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.

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.

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.

---

Stephen Rhys Thomas

Senior Planning Inspector

18 July 2023