



An  
Bord  
Pleanála

## Inspector's Report

**ABP-321767-25**

|                                     |   |
|-------------------------------------|---|
| <b>Development</b>                  | Permission for the development which consists of the retention permission to retain existing timber outdoor furniture on a permanent basis to existing outdoor seating are as previously granted under PA Ref 12/311. |
| <b>Location</b>                     | No. 33 Newcastle Road, Galway.  |
| <b>Planning Authority</b>           | 2460351   |
| <b>Planning Authority Reg. Ref.</b> | Galway City Council.  |
| <b>Applicant(s)</b>                 | Atlantic Enterprises Ltd.   |
| <b>Type of Application</b>          | Retention Permission.   |
| <b>Planning Authority Decision</b>  | Grant Retention Permission.   |
| <b>Type of Appeal</b>               | Third Party   |
| <b>Appellant(s)</b>                 | Michael Dolan.  |
| <b>Observer(s)</b>                  | None.   |
| <b>Date of Site Inspection</b>      | 3 <sup>rd</sup> April 2025.   |

**Inspector**

Kathy Tuck.

## **1.0 Site Location and Description**

- 1.1. The site, which has a stated area of 0.04ha, is situated in on the southern end of Newcastle Road, approx. 100m to the south of University Road and is directly opposing University College Hospital. The site is located within a row of mixed use premises including a parade of shops and premises providing services at ground floor level such as a bank, grocery stores, clinics, pharmacy, café, restaurant and public house.
- 1.2. The appeal site comprises a long, narrow, detached building which is in use as a fast-food restaurant. The outdoor seating area to the front currently comprises of 2 no. picnic benches. The building is set back from the public footpath by approx. 5-6m.

## **2.0 Proposed Development**

- 2.1. This is an application for the retention of existing timber outdoor furniture on a permanent basis located at the existing outdoor seating area as previously granted under PA Ref. No. 09/490 and PA Ref. No. 12/311.
- 2.2. The area currently comprises of 2 no. picnic benches which are utilised by the fast-food restaurant on site.

## **3.0 Planning Authority Decision**

- 3.1. The Planning Authority granted permission for the development subject to 6 no. conditions on the 2<sup>nd</sup> January 2025. Condition of note are as follows:

*Condition no. 3:*

The developer shall comply with the following:

- a) The outdoor seating area shall not be used during the hours of midnight to 0800.
- b) The number of patrons being seated shall not exceed 16 at any one time.
- c) The tables and chairs shall be of high specification and uniform design. No timber seating picnic benches allowed.
- d) Any barriers around the seating area shall not be used for advertising purposes.

- e) No awnings, canopies or umbrellas shall be used to cover the outdoor seating area and no advertising, whether mobile, temporary or permanent, shall be displayed within the designated seating area, or on the forecourt without a prior grant of planning permission.
- f) The tables, chairs and any barriers shall be stored indoors outside of business hours and shall be removed at midnight each evening.
- g) Within two months of the grant of planning permission, submit for written agreement, a revised site layout map (scale 1:200) clearly showing the exact layout and dimensions of each of the tables and chairs and in particular that they can be accommodated within the confines of the outdoor seating area as shown in the site plan submitted on the 04/11/24.

REASON: In the interests of orderly development.

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

The report of the Planning Authority notes the site location, a brief description of the development, relevant planning history, relevant national and local planning policy, a summary of reports received from internal and external consultees and sets out AA and EIA screening determinations.

While the assessment noted that no submission or observations were received, I note that 1 no. observation was received and is discussed within section 3.4 of my report below.

The assessment considers that the works seeking retention permission was acceptable and as such a recommendation to grant retention permission was made.

### **3.2.2. Other Technical Reports**

Active Trave – no objection subject to condition recommending that permission be granted for a period of 3 years in the event of a land take being required on Newcastle Road as part of the City Centre access network.

Drainage Section - no objection subject to condition.

### 3.3. Prescribed Bodies

None received.

### 3.4. Third Party Observations

1 no. submission was received by the Planning Authority which raised the following concerns:

- In breach of previous conditions of grant of permission.
- Warning and Enforcement notices have been issued.
- Clear attempt to overturn previous decision of An Bord Pleanála.

## 4.0 Planning History

PA Ref 12/311      Retention Permission GRANTED for the retention of changes to previously granted permission (09/490) to include: Changes to the front facade as constructed to include the reduction in height and associated alterations. Advertising signage to the front and side facades. Realignment of the pedestrian walkway to the centre as originally provided, removal of car parking spaces, and inclusion of outdoor seating area, consisting of tables, chairs and windbreakers to the front of the existing premises. Omission of first floor seating area. All associated siteworks. (The area is stated as 0.03816ha. The GFA stated as 200.4m<sup>2</sup> and seating area given as 60 seats). This decision was upheld on appeal to An Bord Pleanála under PL 61.242214. the Following condition is of note:

Condition 3:

The developer shall comply with the following:

- a) The pedestrian walkway leading from the public footpath to the main entrance to the restaurant shall be a minimum of 1.8 metres in width and shall be delineated and marked

out by means of different paving materials. The walkway shall be kept free from obstruction during opening hours.

- b) The outdoor seating area shall not be used during the hours of midnight to 0800.
- c) The number of patrons being seated shall not exceed 16 at any one time.
- d) The tables and chairs shall be of high specification and uniform design.
- e) Any barriers around the seating area shall not be used for advertising purposes.
- f) No awnings, canopies or umbrellas shall be used to cover the outdoor seating area and no advertising, whether mobile, temporary or permanent, shall be displayed within the designated seating area, or on the forecourt without a prior grant of planning permission.
- g) The tables, chairs and any barriers shall be stored indoors outside of business hours and shall be removed at midnight each night.

Details, including samples of the materials, colours and textures of all external finishes, shall be submitted to, and agreed in writing with, the planning authority within two months of the date of this Order.

Reason: In the interests of traffic safety and the amenities of the area.

PA Ref 09/940      Permission GRANTED for the construction of a new front elevation and new first floor restaurant seating area (115m<sup>2</sup>) over existing ground floor area to include modifications to ground floor entrance, along with all associated site works. This included a reduction in the number of parking spaces to two at the front.

PA Ref 01/217      Permission GRANTED for new front elevation and roof, subject to 5 conditions. The proposal included raising the height of the

front section, extending the building forward of the front building line, introducing large glazed areas with powder coated aluminium and Supermac's related signage and polished stone quoins. Condition 2 required the setting back of the proposed frontage to the rearward position of the central portion of the original frontage and the reduction in the level of projection of the polished stone. The reason given was to increase the depth of the frontage available for car parking. This condition was appealed to the board (125406). The Inspector recommended retention of the condition in full on the basis that the restaurant is a major generator of traffic, especially at night and that the entire frontage is required for parking. The board decided to amend the condition by requiring the setting back of the shopfront as specified by the P.A. but omitting the second part of the condition relating to the polished stone projection.

|               |  |
|---------------|--|
| PA REF 00/144 | Permission refused for an additional first floor for restaurant on the grounds of traffic impact and inadequate on-street parking provision in the area.                               |
| PA Ref 95/195 | Permission granted for modifications to front elevation of restaurant.   |
| PA Ref 89/537 | Permission granted for extension to restaurant at 33 Newcastle Road in Sept 1989 subject to conditions, one of which prohibited the sale of hot food for consumption off the premises. |

## **5.0 Policy Context**

### **5.1. Galway City Development Plan 2023-2029**

The site is zoned under Zoning Objective R (Residential) which seeks to provide for residential development and for associated support development which will ensure the protection of existing residential amenity and will contribute to sustainable residential neighbourhoods.

The site is located in the inner Residential Area, as defined under Section 3.7 of the Galway City Development Plan 2023-2029 (CDP).

- Policy 3.6 Sustainable Neighbourhoods: Inner Residential Areas
  - Protect the quality of inner residential areas including Claddagh, Shantalla and Newcastle (to Quincentenary Bridge) by ensuring that new development through consolidation, infill and redevelopment does not adversely affect their character and has regard to the prevailing pattern, form and density of these areas.
  - Enhance inner residential areas such as Claddagh, Shantalla and Bohermore, through the implementation of environmental improvement schemes and the protection of all open spaces, including existing green spaces.
  - Prioritise the provision of new homes on designated Regeneration and Opportunity Sites in the Inner Residential Areas at appropriate scales to enable the development of new sustainable communities.

Other relevant sections of the City Plan are as follows:

- DM Standard 11.4.5 Uses
  - Where café / restaurant use is proposed, noise and odour nuisance shall be avoided through mitigation measures and adequate storage provision for recycling of waste and street furniture.
  - In High Street, Quay Street and Woodquay the Council will prevent the enlargement of existing licensed premises and night-clubs (except within the confines of the site) and prevent change of use to licensed premises of existing premises.
- DM Standard 11.5 Shop Front
- DM Standard 11.6 Advertisement and Signage
- DM Standard 11.11 Transportation (Section 11.11.1 Parking Space Requirements and Table 11.6 Parking Space Requirements for Different Types of Development Maximum Standards)
- DM Standard 11.22 Street Furniture, Signs and Structures.



Application for licenses for street furniture, signs and structures shall be considered under Section 254 of the Planning and Development Act, 2000 (as amended) and Part 17, of the Planning and Development Regulations 2001-21. Further guidance is available in the Councils Licensing of Street Furniture, Signs & Structures Policy Document 2011 and Galway Shop Front and Signage Design Guidelines 2012. It is important to ensure that certain uses in the public realm, including elements of street furniture do not obstruct public footpaths for pedestrians, in particular for people with disabilities and mobility issues.

## **5.2. Natural Heritage Designations**

The site is not located within or directly adjacent to any Natura 2000 sites. The site is located c.445m to the west of the Lough Corrib SAC (site code 000297) and c.1.4km to the north of the Galway Bay Complex SAC (SAC 000268).

## **6.0 EIA Screening**

The development does not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations, 2001, (as amended), and therefore is not subject to EIA requirements (See Appendix 1).

## **7.0 The Appeal**

### **7.1. Grounds of Appeal**

This is a third-party appeal against the decision of Galway City Council to grant retention permission at 33 Newcastle Road, Galway. The appeal was submitted by the neighbouring landowner to the immediate south of the appeal site. The grounds can be summarised as follows:

1. Non-compliance with previous permissions.
  - Subject matter of this application has already been dealt with under condition 3 of ABP Ref PL 61.242214 (PA Ref 12/311).
  - Condition 3 stipulates that:
    - outdoor area not to be used between mid-night and 8am.

- Furniture to be removed and stored indoors after business hours.
- Removed after midnight.
- This application is a clear attempt to overturn the decision of ABP.
- Condition no. 3 was put in place following a full assessment of submissions from 3<sup>rd</sup> parties and alleviated the concerns raised.
- Since this decision a number of conditions have not been complied with.
- Failure to comply with ABP conditions continues to adversely affect the use of property where access to rear of property is being blocked.

## 2. Local Authority Conditions

- Condition no. 2 of the grant of permission states that the permission will expire within a period of 3 years of the final grant of permission.
- Not clear why 3 years is stipulated.
- Decision of Planning Authority prolongs negative impact of this development on adjoining property and streetscape.

### 7.2. Applicant Response

None received.

### 7.3. Planning Authority Response

None received.

### 7.4. Observations

None received.

## 8.0 Assessment

Having examined the application details and all other documentation on file, including the reports of the local authority, and having inspected the site, and having regard to the relevant local and national policies and guidance, I consider that the substantive issues in this appeal to be considered are as follows:

- Non-compliance with previous conditions.
- Conditions of the Planning Authority.

### **8.1. Non-compliance with previous conditions**

- 8.1.1. The appellant has raised concern over the lack of compliance with conditions attached to a permission which was previously granted by An Bord Pleanála under PL 61.242214 pertaining to the subject site. It is contended that the subject matter of this application has already been dealt with and that the stipulations set out under condition no. 3 of PL 61.242214 are not being adhered to. It is argued that this has implications for the operations of the appellants property which is located immediately to the south of the appeal site. The 3<sup>rd</sup> Party Appellant has noted that the subject site is subject to on-going enforcement proceedings.
- 8.1.2. Notwithstanding the concerns raised, I note that the non-compliance with conditions attached to previous planning decisions is a matter that is dealt with through enforcement and that the enforcement process is a matter for the Planning Authority to pursue through the appropriate channels.
- 8.1.3. The Planning Authority under their assessment of the current application subject to this appeal included for a similar condition to that included by An Bord Pleanála under PL 61.242214. Condition no. 3 stipulates the hours of operation, the number of patrons aloud at one time, and the specifications of the furniture allowed. In the interest of the management of development I consider that this condition should be retained in the event that the Board are minded to uphold the decision of the Planning Authority.

### **8.2. Conditions of the Planning Authority.**

- 8.2.1. The appellant states that they are unclear as to why condition on. 2 of the grant of permission by the Planning Authority has stipulated that the furniture can remain in place for a further 3 years. It is contended that this only prolongs the negative impact upon their property and the streetscape of Newcastle Road. The appellant has requested that the decision be overturned, and retention permission be refused which will in turn make it easier for the Local Authority to force the removal of all street furniture.

- 8.2.2. In the first instance I note that from a review of all documentation available to me relating to this appeal that the report from the Active Travel Section of the Local Authority recommended that a condition be attached limiting the retention permission for a period of 3 years. The reasoning for this related to the provision of the City Centre Access Network and in the event of land take being required along this section of Newcastle Road.
- 8.2.3. From undertaking a site visit, I observed that the existing outdoor furniture currently comprises of 2 no. picnic benches which are contained within the footprint of the site as indicated on plans submitted with the application documentation. Furthermore, I witnessed that other premises located along this section of Newcastle Road have also been provided with similar outdoor dining furniture. I note that this site inspection there was no obstruction to the laneway to the south of the appeal site.
- 8.2.4. Overall, I do not consider that the existing furniture to be visually obtrusive or negatively impact upon the streetscape of Newcastle Road and having regard to the scale of the structures I do not consider that they impede upon the appellants access to the south of the appeal site.
- 8.2.5. With regard to Condition 2 of the Planning Authorities grant of permission, having regard to the comments of the Active Travel Team and the overarching aim of Galway City Development Plan 2023-2029 to promote and provide upgraded active travel measures, I consider that in the event the Board are minded to grant retention permission that this condition be included.

## **9.0 AA Screening**

- 9.1. I have considered the project in light of the requirements S177U of the Planning and Development Act 2000 as amended. The subject site is located at 33 Newcastle Street, Co. Galway c.445m to the west of the Lough Corrib SAC (site code 000297) and 1.4km to the north of the Galway Bay Complex SAC (SAC 000268).
- 9.2. The proposed development consists of the retention of existing timber outdoor furniture on a permanent basis to existing outdoor seating are as previously granted under PA Ref 12/311.

9.3. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because it could not have any effect on a European Site.

9.4. The reason for this conclusion is as follows:

- Nature of works and the limited scale of what is being proposed.
- The location of the site from nearest European site and lack of connections

9.5. I conclude, on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects. Likely significant effects are excluded and therefore Appropriate Assessment (under Section 177V of the Planning and Development Act 2000) is not required.

## 10.0 Recommendation

Having regard to the above, I recommend that retention permission be granted for the development based on the following reasons and considerations.

## 11.0 Reasons and Considerations

The development which is seeking retention permission for outdoor dining furniture complies with the provisions of the Galway City Development Plan 2023-2029. It is considered that, subject to compliance with the conditions set out below, the proposed development would not be out of character with the surrounding area, would not be visually detrimental to the area, would not impact negatively upon the current levels of amenity enjoyed at this location and is in keeping with the proper and sustainable development of the area.

## 12.0 Conditions

|    |  |
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| 1. | The development shall be retained and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by the planning authority on the 4 <sup>rd</sup> November |
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|    | <p>2024, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p><b>Reason:</b> In the interest of clarity</p>   |
| 2. | <p>This permission will expire within the three years of the final grant and the furniture, barriers and other temporary structures shall be permanently removed unless a further grant of permission has been issued in the meantime.</p> <p>REASON: To enable the City Council to assess the impact of the proposed development on the street scene and the Galway Transport Strategy.</p>   |
| 3. | <p>The developer shall comply with the following:</p> <p>(a) The outdoor seating area shall not be used during the hours of midnight to 0800.</p> <p>(b) The number of patrons being seated shall not exceed 16 at any one time.</p> <p>(c) The tables and chairs shall be of high specification and uniform design. No timber seating picnic benches allowed.</p> <p>(d) Any barriers around the seating area shall not be used for advertising purposes.</p> <p>(e) No awnings, canopies or umbrellas shall be used to cover the outdoor seating area and no advertising, whether mobile, temporary or permanent, shall be displayed within the designated seating area, or on the forecourt without a prior grant of planning permission.</p> <p>(f) The tables, chairs and any barriers shall be stored indoors outside of business hours and shall be removed at midnight each evening. (g) Within two month of the grant of planning permission, submit for written agreement, a revised site layout map (scale 1:200) clearly showing the</p> |

|    |  |
|----|--|
|    | <p>exact layout and dimensions of each of the tables and chairs and in particular that they can be accommodated within the confines of the outdoor seating area as shown in the site plan submitted on the 04/11/24.</p> <p>REASON: In the interests of orderly development.</p>   |
| 4. | <p>(i) Notwithstanding the provisions of planning legislation, no additional signs, symbols, emblems, canopies or awnings shall be displayed or erected on the building or within the curtilage of the site without a prior grant of planning permission.</p> <p>(i) No advertisement or advertisement structure, the exhibition or erection of which would otherwise constitute exempted development under the Planning and Development Regulations, 2001, as amended, shall be displayed or erected on the building or within the curtilage of the site without the agreement of the planning authority.</p> <p>REASON: In the interest of visual amenity.</p> |

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.

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Kathy Tuck  
Planning Inspector

29<sup>th</sup> April 2025

## Appendix 1

### EIA Pre-Screening

|  |   |   |  |
|--|---|---|--|
| <b>An Bord Pleanála<br/>Case Reference</b>   | ABP-321767-25   |   |  |
| <b>Proposed Development<br/>Summary</b>  | Permission for the development which consists of the retention permission to retain existing timber outdoor furniture on a permanent basis to existing outdoor seating are as previously granted under PA Ref 12/311. |   |  |
| <b>Development Address</b>   | 33 Newcastle Road, Glaway.  |   |  |
| <b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b><br>(that is involving construction works, demolition, or interventions in the natural surroundings) | <b>Yes</b>  |   |  |
|  | <b>No</b>   | X |  |
| <b>2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?</b>  |   |   |  |
| <b>Yes</b>   |   |   | Proceed to Q3.                               |
| <b>No</b>  | X   |   | Tick if relevant. No further action required |
| <b>3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?</b>  |   |   |  |
| <b>Yes</b>   |   |   | EIA Mandatory EIAR required                  |
| <b>No</b>  | X   |   | Proceed to Q4                                |
| <b>4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?</b>   |   |   |  |
| <b>Yes</b>   | N/A   |   | Preliminary examination required (Form 2)    |
| <b>5. Has Schedule 7A information been submitted?</b>  |   |   |  |



|            |                     |  |
|------------|---------------------|--|
| <b>No</b>  | X                   | <b>Screening determination remains as above<br/>(Q1 to Q4)</b> |
| <b>Yes</b> | Tick/or leave blank | <b>Screening Determination required</b>                        |

**Inspector:** \_\_\_\_\_ **Date:** \_\_\_\_\_

## Appendix 2

### Screening the need for Appropriate Assessment: Screening Determination (Stage 1, Article 6(3) of Habitats Directive)

I have considered the project in light of the requirements S177U of the Planning and Development Act 2000 as amended.

The subject site is located at 33 Newcastle Street, Co. Galway. The site is located c.445m to the west of the Lough Corrib SAC (site code 000297) and 1.4km to the north of the Galway Bay Complex SAC (SAC 000268).

The proposed development is seeking Permission for the development which consists of the retention permission to retain existing timber outdoor furniture on a permanent basis to existing outdoor seating as previously granted under PA Ref 12/311.

Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because it could not have any effect on a European Site.

The reason for this conclusion is as follows:

- Nature of works and the limited scale of what is being proposed.
- The location of the site from nearest European site and lack of connections

I conclude, on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.

Likely significant effects are excluded and therefore Appropriate Assessment (under Section 177V of the Planning and Development Act 2000) is not required.