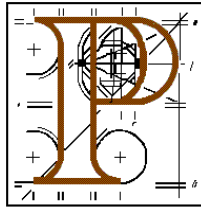


An Bord Pleanála



Inspector's Report

PL 29S.243467

Development

Description: Change of use of ground floor unit from offices to daytime retail use (with ancillary cafe) and night time live music (licensed) venue and associated works at a Protected Structure

Address: 9-10 Eustace Street, Temple Bar, Dublin 2

Planning Application

Planning Authority: Dublin City Council
Planning Authority Reg. Ref.: 3619/13
Applicant: Kevin Kelehan and Suzanne Consentino
Type of Application: Permission
Planning Authority Decision: Split Decision

Planning Appeal

Appellants: Mike Ryan
Type of Appeal: Third Party
Observers: None
Date of Site Inspection: 28/7/14
Inspector: Louise Kiernan

Appendices: Appendix 1: Site Context Map
Appendix 2: Key Map & Associated Photos
Appendix 3: Zoning Map
Appendix 4: Dublin City Development Plan 2011-2017 (written extracts)

1.0 SITE LOCATION AND DESCRIPTION

The site is located at 9-10 Eustace Street, Temple Bar, Dublin 2 (appendix 1: site context map). The site contains a four-storey over basement terraced building dating from the mid 18th century. The building which is a Protected Structure reads as a large 3 bay, four-storey elevation of classical proportions. Granite stone at ground floor level creates a large commercial street frontage. The upper floors are of red brick finish with granite quoins and 3 bays of timber sash windows. A parapet extends from roof level. The rear of the building forms the southeast corner of Meeting House Square and has a modern rendered finish. The basement is occupied by a restaurant accessed from Meeting House Square. The ground floor and upper floors have an office use, but there is currently an application for residential use on the third floor which is under appeal to the Board as per PL 29S. 243582 (reg. ref. 3546/13). The site is located within a Conservation Area. Eustace Street is characterised by cultural, restaurant and office uses. The Temple Bar Music Centre, Irish Film Institute, The Ark Cultural Centre and Meeting House Square are within close proximity. The site and surrounding area are further documented in appendix 2: key map and associated photos.

2.0 PROPOSED DEVELOPMENT

The proposed development consists of change of use of ground floor unit from offices to daytime retail use (with ancillary cafe) and night time live music and cultural (licensed) venue and associated works at a Protected Structure. The ground floor unit comprises of 3 rooms; one to the front of the building and two to the rear. The main use proposed is a change of use of the ground floor unit from offices to live performance and cultural venue. The venue would be used as a night time performance venue for jazz music and theatrical performances. The performance area would be in the larger of the rear rooms. The retail component sought is ancillary to the desired use for the property and is intended to make use of the building during daytime trading hours. The proposed day time retail use would operate from the main reception room at the front and the smaller of the rear rooms. Permission is also sought for works to the buildings protected facade associated with the change of use sought and minor works to the rear of building and roof space.

3.0 FURTHER INFORMATION SOUGHT AND RECEIVED

On 29/1/14 the Planning Authority sought further information in relation to the following issues:-

1. The applicants state in the cover letter that the day time use would comprise of a retail unit selling comparison goods with an ancillary cafe. However the floor plans do not read as a comparison store with ancillary cafe as there is no display shelving indicated on the plans. Address the concerns of the Planning Authority and provide more details regarding both the retail and cafe elements of the proposed development.

2. The Planning Authority has concerns in relation to the night time live music venue proposed to the rear of the property given that there are windows onto Meeting House Square which hosts public performances. The proposed live music venue may conflict in terms of noise on the public performances in the Square. The Planning Authority would therefore not look favourably upon this use.

On 12/4/14 a response to the aforementioned further information request was submitted which is summarised as follows:-

- Change to attached drawings – The original design reflected a split between daytime and night time uses within the space. As the use is now seen as predominantly daytime, the bathroom revisions have been scaled back from 4 to 2 toilets. The revision respects the original room configurations by reducing the footprint of bathrooms into the ‘middle room’ at the northwestern corner. The dividing wall shall be in line with the wall of the upper floors. No wall will be removed close to the rear of the staircase with the 2 no. ancillary rooms remaining as storage.
- Use (General) – The use is a mix of comparison goods retail and cafe. To ensure the cafe is promoted there will be some level of seating in the front space and some level of retailing of comparison goods. The specific configurations of the rear rooms will depend upon the operational needs of the retail use with any surplus space used as cafe. The cafe use is seen as essential to subsidise the retail use since the space is too large to justify a purely retail rent.
- Specific Uses – There are 3 specific types of uses. Use 1 is clothing/cafe, use 2 is interiors/cafe and use 3 is an antique shop/café, all of which are proposed in the front and middle spaces and the large rear room. In the front space free standing displays would be used in a number of the windows with a single window being a table and chairs to highlight the cafe use. The front room would be a mix of tables and chairs and free standing rails or mannequins and shelving. The shelving would be free standing in the form of Victorian bookcases with the top doors removed and stored off site if original. If original is not available, sympathetic free standing reproductions would be built in softwood and these would have a painted finish. There would also be pieces of period furniture and or glass door display cabinets for the antique shop. In relation to the middle space it is indicated that this is to be as per the front space save the absence of a serving counter. In relation to the large rear room it is indicated that a large free standing wardrobe would be built as storage for clothing to be hung in reserve. This would be built using the period panelling used in the hall. A mix of free standing rails and shelving would be mixed with tables and chairs.

4.0 PLANNING HISTORY

PL 29S. 243582 (3546/13) – permission granted by the Local Authority for change of use of the third floor of this building from office to residential. This is currently the subject of a separate appeal.

This decision is currently on appeal to An Bord Pleanála as per PL 29S. 243582.

5.0 DEVELOPMENT PLAN AND NATIONAL POLICY

Dublin City County Development Plan 2011-2017

The site is zoned objective 'Z5' *'to consolidate and facilitate the development of the central area, and to identify, reinforce and strengthen and protect its civic design character and dignity'*. The site contains a Protected Structure and lies within a Conservation Area (appendix 3: Zoning Map). The following sections are noted (appendix 4): -

15.10.5 City Centre – Zone Z5

17.10.1 Works to Protected Structure

17.10.2 Development within the Curtilage of a Protected Structure

17.10.4 Uses and Protected Structures

17.10.8.1 Development in Conservation Areas

17.25.3 Signs of Shopfronts and Other Business Premises

17.30 Restaurants

17.34 Night Clubs/Licensed Premises

6.0 REPORTS RECEIVED

Conservation Officer Report dated 13/12/14

A grant of permission is recommended subject to conditions.

Engineering Department (Drainage Division) report dated 24/1/14

No objection subject to conditions.

Environmental Health Officer

'In the development description permission is sought to have live music and cultural performances at the venue at night time. From the information provided on the GIS Intranet 9-10 Eustace Street is currently listed for commercial use on all floors. If the floors above the ground floor were residential this would give concerns for the potential of complaints owing to the noise break out from the live performances'. If permission is granted it is recommended that a number of conditions are attached to the permission.

Railway Procurement Agency (RPA)

'The proposed development falls within the area set out in the Metro North Section 49 Levy Scheme...If the above application is successful, as a condition of the grant please include a Section 49 Metro North Levy'.

7.0 PLANNING AUTHORITY'S DECISION

Dublin City Council issued a split decision as follows:-

Schedule 1: Grant permission for the change of use from office to daytime use of retail with ancillary cafe in the room to the front of the property fronting onto Eustace Street subject to 13 no. conditions.

Schedule 2: Refuse permission for the change of use from office to music and cultural night time use in the rooms to the rear of this property at ground floor level fronting onto Meeting House Square for the following reason:-

'It is considered that the proposed live music venue which has windows overlooking Meeting House Square would conflict in terms of noise on the public performances in the Square and therefore would seriously injure the amenities of property in the vicinity and would be contrary to the proper planning and sustainable development of the area'.

8.0 GROUNDS OF APPEAL

This is a Third Party appeal prepared by 3D Architects on behalf of Mike Ryan of the Merchant House, No. 8 Eustace Street against the decision of Dublin City Council to grant permission for the proposed development. The main issues raised are summarised as follows:-

- There is wide room for interpretation as to what *'daytime use of retail with ancillary cafe'* might mean. For example when there is daylight still present up to 10.30 pm and present again at 5.00 am, might 5.00 am to 10.30pm opening and trading be interpreted to constitute *'daytime use of retail with ancillary'*.
- There may be a level of noise associated with the commercial enterprise. This is understandable and acceptable to a degree at certain times of the day and less so at other times.
- The appellant in running and operating a 5 star accommodation facility within no. 8 immediately next door, is in need of being able to provide as much reassurance as possible to his residing guests regarding noise.
- It would be beneficial were the Board to define the hours deemed to constitute *'daytime use'*.

9.0 RESPONSES

First Party Response

- Unaware of precedent for restriction of opening hours for open retail consent.
- As the property is landlocked there are no traffic generation concerns.
- The third retail model is antique use. The business model envisaged sale of useful furniture and imported architectural fittings. The business model envisaged is where opening hours would be weighted towards evenings and viewings from web catalogue entries. To restrict opening hours would render this overreliant upon a single day of the week and undermine the objective of establishing the Category 2 retail use.
- This retail space was created between 1842-1843 and as such there is an established retail precedent. It is unreasonable to request a purpose

built retail unit that had a clear pre 1963 use have conditions attached on foot of a third party appeal, where the planners at first instance have seen fit to heavily condition to protect the structure but are satisfied that standard retail conditions are adequate.

- The appellant's accommodation is located within close proximity to uses detailed on the enclosed location map which include public houses, hotels with bars, night clubs, wine bars, late night takeaways and cultural uses. Surprising that the appellant wishes to appeal the retail use without opening hours in the context of existing uses.
- The appellant operates an adult shop from the ground floor of no. 8 Eustace Street which opens until 10pm Thursdays to Saturdays and generates raucous banter.
- Unaware of any Failte Ireland grading system for short stay apartments.
- The appellant on the Discover Ireland website describes his accommodation as minutes from restaurant, theatres, bars and historic landmarks, and thereby indicates that bars are an attraction for his business. Unfathomable that bars and restaurants can be an attraction whilst a retail shop with ancillary cafe would detract from same business.
- The appellant claims to have installed sound proof windows in his short stay accommodation. It is hard to understand how retail or ancillary cafe use would penetrate sound proofed windows or how these uses could reasonably be considered in anyway injurious to a business that lists bars as an attraction.
- Are trying to deliver a viable retail unit in line with the stated Development Plan objective of achieving a category 2 retail street.
- None of the alterations to the facade have been called into question.
- This is a frivolous appeal and should be dismissed.

10.0 REFERRALS

On 10/7/14 An Bord Pleanála being of the opinion that the proposed development, the subject of the appeal, would involve the carrying out of works to a Protected Structure, referred the appeal to the following bodies for comment; Department of Arts, Heritage and the Gaeltacht, Failte Ireland, An Chomhaile Ealaíon. No response was received.

11.0 ASSESSMENT

I am satisfied that the key planning issues in this appeal are as follows: -

1. Hours of Use
2. Other Issues

I will deal with each of these issues in turn: -

1. Hours of Use

11.1.1 Concerns have been raised by the appellant in relation to the lack of conditioning of opening hours. The appellant considers that there is wide room for interpretation as to what *'daytime use of retail with ancillary cafe'* might mean, and that during the summer months this could lead to very early and very late extended opening hours, with consequent negative impacts for surrounding residential properties. The appellant is the owner of a nearby short stay residential accommodation provider at no. 8 Eustace Street. I accept that there is a lack of clarity and vagueness in the interpretation of opening hours in this condition. I do not consider it appropriate that opening hours should be left open to such wide flexibility and interpretation in such a manner depending on daylight hours available, particularly taking account of the adjoining short stay residential accommodation, and also the potential for overhead residential units, which are currently under appeal to the Board as per PL 29S. 243582. Notwithstanding whether or not said overhead residential units are permitted on appeal, I nonetheless consider that in order to control the hours of operation that a condition stipulating the hours of use should be included. As such in order to alleviate any ambiguity and in order to protect the residential amenity of properties in the area, such as the existing residential overnight accommodation on the adjoining site at no. 8 from unwanted noise and general disturbance at unsocial hours, I consider that a condition stipulating the hours of business should indeed be included.

2. Other Issues

11.2.1 In relation to the proposed change of use from office to daytime use of retail with ancillary cafe in the room to the front of the property fronting onto Eustace Street, I concur with the Planning Authority that such a use is acceptable at this location. As per the Dublin City Development Plan 2011-2017 the site is zoned Z5 *'to consolidate and facilitate the development of the central area, and to identify, reinforce and strengthen and protect its civic design and character'*. Under this zoning matrix retail and restaurant use are permissible uses.

11.2.2 In relation to the external alterations works proposed, I note that same are to the satisfaction of the Conservation Officer subject to conditions. I consider that any concerns in relation to external works and signage can be adequately addressed by way of condition.

11.2.3 In relation to the change of use from office to music and cultural night time use in the rooms to the rear which front onto Meeting House Square, I note that the local authority refused permission as *'it is considered that the proposed live music venue which has windows overlooking Meeting House Square would conflict in terms of noise on the public performances in the Square and therefore would seriously injure the amenities of property in the vicinity and would be contrary to the proper planning and sustainable development of the area'*. In this

regard I consider that in relation to the operation of events in Meeting House Square, that it could be addressed by way of condition that conflicting events to coincide with those in Meeting House Square not be permitted. Upon site inspection of the existing uses fronting onto Meeting House Square, I noted that there are a number of cultural uses accommodated in a number of the buildings in the form of film centres etc.

11.2.4 It is also noted that there is a concurrent appeal under consideration by the Board at this time as per PL 29S. 243582 for residential use on the third floor of this building. Should permission be granted for same, I consider that the music and cultural night time use of the rooms to the rear could have a possible negative residential amenity impact should the residential use on the third floor of this building be favourably considered by the Board. As such I consider that it is also important that should the Board consider the music and cultural night time use favourable that the hours of operation be controlled by way of condition.

11.2.5 As such I do not consider that it is necessary to refuse permission for the change of use from office to music and cultural night time use of the rooms to the rear of this property at ground floor level fronting onto Meeting House Square, as I consider that conditions can adequately control the impact of same.

12.0 CONCLUSION

I consider that the Planning Authority decision to grant permission for the change of use from office to daytime use of retail with ancillary cafe in the room to the front of the property fronting onto Eustace Street is acceptable at this location, subject to inclusion of a condition relating to the specification of the permitted opening hours in the interests of clarity and also to protect the residential amenities of property in the area. I also do not consider that it is necessary to refuse permission for the change of use from office to music and cultural night time use of the rooms to the rear of this property at ground floor level fronting onto Meeting House Square, as I consider that conditions can adequately control the impact of same.

13.0 RECOMMENDATION

In the light of the above assessment, I recommend that permission be granted for the following Reasons and Considerations and subject to the following conditions:-

REASONS AND CONSIDERATIONS

Having regard to the provisions of the Dublin City Development Plan 2011-2017, and the pattern of development in the area, it is considered that, subject to compliance with the conditions as amended, the proposed development

would not seriously injure the visual amenity or the character and residential amenities of the area, would, therefore, be in accordance with the proper planning and sustainable development of the area.

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 17th day of April, 2014, 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. The permitted retail use with ancillary cafe shall not be open to the public outside of the following hours:
08:00 – 21:00 hours Monday – Saturday;
12:00 – 22:00 hours Sunday, and on the Monday of bank holiday weekends.

Reason: In the interests of clarity and in order to protect the residential amenities of the area

3. The permitted music and cultural night time use shall not be open to the public outside of the following hours:
 - (i) 12:00 – 21:00 hours Monday – Thursday;
 - (ii) 12:00 – 22:00 hours Friday - Sunday, and on the Monday of bank holiday weekends.
 - (iii) Any hours in which any event is scheduled in Meeting House Square.

Reason: In the interests of clarity and in order to protect the amenities of the area

4. No other use, even within the same planning category, shall be implemented without a prior grant of planning permission.

Reason: To prevent uses that would not comply with the policies in the Development Plan.

5. (a) A Conservation Architect shall be employed to manage, monitor and implement the works on site and to ensure adequate protection of the historic fabric during the works.

(b) All works shall be carried out in accordance with best Conservation Practice and the Architectural Heritage Protection Guidelines and Advice Series issued by the DoEHLG.

(c) All permitted works shall be designed to cause minimum interference to the building structure and/or fabric. Any repair/upgrading works shall retain the maximum amount of surviving historic fabric in situ, including structural elements, historic linings and finishes and the original footprint.

(d) Prior to commencement of the development a site visit shall be scheduled with the Conservation Officer to agree site exemplars for brick work cleaning, raking out, trick repair and re-pointing.

Reason: To ensure that the integrity of the Protected Structure is maintained and that all works are carried out in accordance with best conservation practice.

6. Details including samples of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

7. A window display shall be maintained at all times, and the glazing to the shopfront shall be kept free of all stickers, posters and advertisements.

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

8. Notwithstanding the provisions of the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, no advertisement signs (including any signs installed to be visible through the windows), advertisement structures, banners, canopies, flags, or other projecting elements shall be displayed or erected on the building or within the curtilage of the site, or attached to the glazing unless authorised by a further grant of planning permission.

Reason: To protect the visual amenities of the area.

9. No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.

Reason: To protect the residential amenities of property in the vicinity and the visual amenities of the area.

10. The developer shall control noise emissions from the premises in accordance with measures 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 residential amenities of the area.

11. Ventilation and extraction shall be in accordance with the requirements of the planning authority of such works.

Reason: In the interest of the amenities of the area and to ensure a proper standard of development.

12. Water supply and drainage arrangements, including the 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 and to ensure a proper standard of development.

13. 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.

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

14. The construction of the development shall be managed in accordance with Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction / demolition waste.

Reason: In the interests of public safety and residential amenity.

15. 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. This contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 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.

16. The developer shall pay to the planning authority a financial contribution in respect of the Metro North Line in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

Louise Kiernan
Inspector
25th September, 2014