



An  
Bord  
Pleanála

## Inspector's Report

### ABP-306071-19

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<b>Development</b>	RETENTION: the retention of change of use from a shop to restaurant.
<b>Location</b>	UNIT 4, Drury Hall, Stephen Street Lower, Dublin 2
<b>Planning Authority</b>	Dublin City Council South
<b>Planning Authority Reg. Ref.</b>	3501/19
<b>Applicant(s)</b>	Sisu Izakaya
<b>Type of Application</b>	Retention
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Drury Hall Management Ltd.
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	9 <sup>th</sup> April 2020
<b>Inspector</b>	Irené McCormack

## 1.0 Site Location and Description

- 1.1. The site located on Stephens Street Lower, Dublin 2 and comprises of a ground floor and basement level unit in a five-storey building with the upper floors forming part of the Drury Court Hotel.
- 1.2. The site is located adjoining the South City Retail Quarter Conservation Area. The site is within the Zone of Archaeological Potential for the recorded monuments: Dublin City, Church and Graveyard, and Hospital Site.
- 1.3. The surrounding area accommodates a mix of office, commercial, medical and restaurant uses associated with the city centre.

## 2.0 Proposed Development

- 2.1. The development comprises:
  - The retention change of use from shop to a restaurant.
- 2.2. The works included the retention of shopfront and associated signage and all ancillary works.
- 2.3. The floor area of the restaurant is 113sqm over basement and ground floor levels. The hours of operation for the restaurant are 12pm to 10pm.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. The planning authority granted permission subject to six conditions. The following conditions are of note:

**C.2.** The projecting sign and illuminated strips noted from a site visit shall be removed from the premises.

Reason: In the interest of clarity.

**C 3.** Within six months of this grant of permission the developer shall submit a drawing indicating the bin storage on site for the written approval of the Planning Authority.

Reason: To ensure the provision of refuse facilities

**C 4.** Within six months of this grant of permission the developer shall submit the following drawings for the written approval of the Planning authority, details of where the existing ducting system terminates and the location of the nearest habitable dwelling with an openable window. The distance from the termination point to the nearest openable window must be indicated on the drawing.

Reason: In the interest of clarity and to ensure an adequate standard of development

**C 5.** The Developer shall comply with the following requirements of the Planning Authority:

- a) All emissions to air associated with the development must be free from offensive odour.
- b) The information and recommendations relating to odour control supplied by D Architecture received by the Planning Department on 19/10/2019 must be implemented in full.
- c) The ventilation system including the proposed odour suppression must be maintained and serviced.
- d) The ducting must be cleaned two times a year by contract cleaners and the grease canopies must be cleaned daily.

Reason: To ensure an adequate standard of development

## 3.2. Planning Authority Reports

### Planning Reports

- 3.2.1. Further Information was requested on the 12<sup>th</sup> September 2019 regarding signage and strip lighting, details relating to bin storage, measures to control fumes and house of operation.

The Area Planners report (12<sup>th</sup> November 2019) reflects the decision to grant permission and notes that restaurant use is a permissible use in a Z5 zoning and subject to the conditions attached the proposed development is acceptable and in accordance with the 2016 development plan and the proper planning and sustainable development.

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

**Environmental Health** – Report dated 16<sup>th</sup> November 2019 included conditions to be attached to any grant of planning permission in relation to emissions and odour control.

**Draining Division** –No objection

### 3.3. **Prescribed Bodies**

3.3.1. The **TII** in their report dated 7<sup>th</sup> August 2019 notes the site falls within the area set out in the Section 49 Development Contribution levy scheme for light rail.

### 3.4. **Third Party Observations**

The planning officer notes the following submissions/observations were made in relation to the development. A brief summary of the issues raised are set out below:

- Odour emissions from the restaurant and the impact on the residential above
- Improper disposal of oils and fatty waste
- Fire safety concerns

## 4.0 **Planning History**

Site

DCC Reg. Ref. E0247/19: Enforcement file in relation to restaurant in operation without planning permission.

DCC Reg Ref. 2291/91 – Permission granted in 1992 for a six storey over basement level building comprising retail/storage at basement levels, retail/office at ground floor and apartments overhead.

## 5.0 **Policy Context**

### 5.1. **Development Plan**

5.1.1. The subject site is zoned **Z5 City Centre**, which has the stated objective ‘to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity’.

5.1.2. **Section 14.8.5** of the development plan states that the primary purpose of this use zone is to sustain life within the centre of the city through intensive mixed-use development. Permissible uses within the mixed use Z5 zone include hostel, hotel, office and residential.

5.1.3. **Policies and objectives**

5.1.4. Section 16.29 of the 2016 Dublin City Development Plan provides guidance on restaurants. The positive contribution of café and restaurant uses and the clusters of such uses to the vitality of the city is recognised.

In considering applications for restaurants, the following will be taken into consideration:

- The effect of noise, general disturbance, hours of operation and fumes on the amenities of nearby residents
- Traffic considerations
- Waste storage facilities
- The number/frequency of restaurants and other retail services in the area (where a proposal relates to a Category 1 or 2 shopping street as defined in, 'City Centre Retail Core, Principal Shopping Streets' in Chapter 7 and Appendix 3).
- The need to safeguard the vitality and viability of shopping areas in the city and to maintain a suitable mix of retail uses.

5.2. Shop Fronts:

5.2.1. RD15: To require a high quality of design and finish for new and replacement shopfronts, signage and advertising. Dublin City Council will actively promote the principles of good shopfront design as set out in Dublin City Council's Shopfront Design Guidelines

5.2.2. Section 16.24.2 Shopfronts

Shopfronts are one of the most important elements in defining the character, quality, and image of the streets in both the city centre and our urban villages/radial streets. Dublin City Council seeks to protect and retain traditional and original shopfronts and to encourage new and contemporary shopfronts that are well designed. This will protect local character and foster vibrant and successful retail centres. There should

be a regular change and rhythm to shopfronts to create visual interest, preferably a new shopfront, or a change to the design of a long shopfront, every 5-8 metres.

New shopfronts or alterations to existing shopfronts should:

1. Relate satisfactorily to the design, proportions, materials and detail of the upper parts of the building
2. Complement their context and the quality and character of adjoining shopfronts, especially where these form part of a consistent group of traditional shopfronts
3. Wherever possible, be accessible to all and provide a level threshold to the entrance
4. Re-instate missing architectural detail, where appropriate
5. Not harm or obscure original architectural detail such as corbels, console brackets, fascias, pilasters and stallrisers, or involve the removal of existing shopfronts of historic or architectural interest
6. Not involve the installation of solid or perforated external shutters
7. Not be entirely or largely openable
8. Be of good quality contemporary design, where appropriate.

Shopfront signage should:

1. Be located at fascia level
2. In the case of shop blinds, comprise traditional retractable canvas awnings.

### **5.3. Natural Heritage Designations**

The site is not located within or directly adjacent to any Natura 2000 sites. The South Dublin Bay SAC site code 000210 and South Dublin Bay and River Tolka SPA site code 004024, are the nearest Natura sites, located c 3.8km away

### **5.4. EIA Screening**

Having regard to the nature and scale of the proposed development, the receiving environment, and to the nature, extent, characteristics and likely duration of potential impacts, I conclude that the proposed development is not likely to have significant effects on the environment and that the submission of an Environmental Impact Statement is not required. The need for environmental impact assessment can,

therefore, be excluded at preliminary examination. An EIA - Preliminary Examination form has been completed and a screening determination is not required.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- The appeal submission queries the validity of the application in the absence of the requisite consent of the landowners to lodge an application.
- It is set out that the development represents numerous residential and environmental amenity concerns including noise, odour, conflict with residential, facility management, vermin control.
- It is set out that the original grant of planning in February 1992 specifically excluded restaurants.
- It is set out that air extraction is not an option due to overhead apartments.
- It is set out that the use does not marry with the predominant residential use.

### **6.2. Applicant Response**

- It is set out that the air circulation system proposed and odour control measures are adequate for the development.
- It is also stated that condition no. 4 requires the applicant to submit details of where the existing ducting system terminates and the location of the nearest habitable dwelling with an openable window. In addition, condition no. 5 (c) and 5 (d) requires the ventilation system including the proposed odour suppression must be maintained and serviced and that the ducting must be cleaned two times a year by contract cleaners and the grease canopies must be cleaned daily.
- The development includes the installation of a new extraction unit, including two no. ozone injection units to prevent odour emission from the premises. The extraction unit will be quiet when operating and will not create additional noise pollution.

- It is stated that the applicant is aware and compliant with the obligations set out by various agencies including DCC and the HSE with regard to the safe and sustainable management of restaurant uses within the city centre.
- In relation to waste facilities the applicant has provided additional information on the location of their bin store. It is further stated that there will be a daily waste collection from the site.
- It is stated that a cleaning roster has been agreed with the HSE officer with regards the maintenance and upkeep of the lane way to the rear.
- In terms of noise impact, it is set out that opening hours are from 12pm -10pm and as such will minimise disturbance. In addition to the installation of new interconnecting ductwork onto the existing ventilation system, which would accommodate the ozone injection unit and removes all odours emitted from the premises.
- It is argued that the application is for retention permission and the previous permission from 1992 does not apply and the use is permissible within the Z5 zoning.
- It is stated that the development is consistent with the Z5 zoning objectives and Section 16.29 of the Development Plan which promotes the development of restaurants in city centre locations.
- It is set out that there has been a restaurant use on site for five years.

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

None

### 7.0 **Assessment**

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:

- Principle of Development
- Impact on Residential Amenity
- Other Matters
- Appropriate Assessment

## 7.1. Principle of Development

- 7.1.1. The subject site is located within zoning objective Z5 which seeks ‘to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity’. No objection to the principle of a café/restaurant use was raised by the Planning Authority. I note that, under the Z5 zoning, a restaurant is a permissible use.
- 7.1.2. Policy CEE12 supports in the increase in tourist facilities including cafes and restaurants. Section 16.29 ‘Restaurants’ states that the positive contribution of café and restaurant uses and the clusters of such uses to the vitality of the city is recognised and states that when considering applications for restaurants, the following will be taken into consideration:
- The effect of noise, general disturbance, hours of operation and fumes on the amenities of nearby residents
  - Traffic considerations
  - Waste storage facilities
  - The number/frequency of restaurants and other retail services in the area (where a proposal relates to a Category 1 or 2 shopping street as defined in ‘City Centre Retail Core, Principal Shopping Streets’ in Chapter 7 and Appendix 3).
  - The need to safeguard the vitality and viability of shopping areas in the city and to maintain a suitable mix of retail uses.
- 7.1.3. I will address the matter of noise, general disturbance, waste etc in section 7.2 below.
- 7.1.4. However, I note the site does not lie within the area identified as the Principal Shopping Streets (Category 1 and Category 2 streets), where the overall aim is to preserve the primary retail function of these streets, and as such there is no specific policy objection to the loss the loss of the retail unit.

- 7.1.5. While I note there are number of other cafe/restaurant uses in the area, the concentration of same needs to be considered where the proposal relates to a Category 1 or 2 shopping street, which is not the case in this instance.
- 7.1.6. A further criteria set out in Section 16.29 is the need to safeguard the vitality and viability of shopping areas in the city and to maintain a suitable mix of retail uses. While not a Principal Shopping Area, the site does lie within the central shopping area, as defined in Figure 8 of the Development Plan. As such, the issue of vitality and viability is relevant to this appeal. I note the need to maintain a suitable mix of retail uses in the area. In this regard, I note the site is a five-minute walk from Grafton Street. I do not consider the restaurant use would undermine fundamentally the vitality and viability of the area.

## **7.2. Impact on Residential Amenities**

- 7.2.1. I note there are residential uses on the upper floors of this building, and on upper floors in adjacent buildings.
- 7.2.2. The appellants argue that development represents numerous residential and environmental amenity concerns including noise, odour, conflict with residential amenity, facility management and vermin control.
- 7.2.3. The First Party in their response to the request for further information set out that odour control will be managed through the use of the latest technology whereby all odours are removed between the canopy and the release of air out. The installation proposed is an ozone injection unit which would be installed inside the premises with new interconnecting ductwork connecting to the existing system. It is proposed to install two of these units. These units provide a high output of ozone which destroys grease and odour. I note that Environment Department of Dublin City Council raised no objection in this regard subject to conditions.
- 7.2.4. I further note the recommendation to grant planning permission issued by Dublin City Council included a number of conditions requiring that applicant to submit details of where the existing ducting system terminates and the location of the nearest habitable dwelling with an openable window. Should the Board be minded to grant planning permission, I consider this condition should be repeated in this instance. Condition no. 5 (c) and 5 (d) required the ventilation system including the proposed odour suppression units to be maintained and serviced and stipulated that the

ducting must be cleaned two times a year by contract cleaners and the grease canopies must be cleaned daily. Such works are required to ensure compliance with HSE and the Food Safety Authority requirements, I do not consider necessary to reimpose condition no. 5 in this in case. This is a matter of good hygiene and practice.

- 7.2.5. In relation to waste facilities the applicant has provided additional information on the location of their bin store to the rear of the site. It is further stated that a cleaning roster has been agreed with the HSE officer with regards the maintenance and upkeep of the laneway and that there will be a daily waste collection from the site.
- 7.2.6. In terms of noise impact that opening hours are stated as 12pm -10pm and as such will minimise disturbance. I consider these hours of operation to be reasonable in the context of the city centre location.
- 7.2.7. Subject to relevant conditions, it is my view that the proposed development will be not be injurious to surrounding residential amenity.

### 7.3. **Other Matters**

Legal consent to make application

- 7.3.1. The appeal submission queries the validity of the application in the absence of the requisite consent of the landowners to lodge an application. The planning application form submitted with the application indicates that the applicant is the leaseholder and a letter from the legal owner consenting to the planning application accompanied the planning application. I am satisfied that the applicant has demonstrated sufficient legal interest to make the planning application.

*Planning history*

- 7.3.2. The appellant states that the original grant of planning in February 1992 specifically excluded restaurants. The applicant argues that the application is for retention permission and the previous permission from 1992 does not apply and the use is permissible within the Z5 zoning. I would agree.

### 7.4. **Appropriate Assessment**

Having regard to the nature and scale of the proposed development within a serviced area and separation distance to 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 the conservation objectives of any European site.

## 8.0 Recommendation

I recommend that permission should be granted, subject to conditions, as set out below.

## 9.0 Reasons and Considerations

Having regard to the central city location, the zoning objective for the site and the policies of the current Dublin City Development Plan 2016-2022, it is considered that the proposed development would not seriously injure the residential or visual amenity of the area. 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 10th day of October 2019, 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 change of use hereby approved is for a restaurant only, and any proposal to operate as a takeaway (sale of fried goods) for the consumption on or off the premises shall be subject to a separate planning application.

**Reason:** In the interest of proper planning and development and in order to protect surrounding residential amenity

3. The development hereby permitted shall be used only as a licenced restaurant and shall not operate as a public bar without a prior grant of planning permission.

**Reason:** In the interest of the proper planning and sustainable development and in order to protect surrounding residential amenity.

4. The projecting sign and illuminated strips shall be removed from the shopfront.

**Reason:** In the interest of clarity.

5. The restaurant shall operate between the hours of 12pm to 10 pm.

**Reason:** in order to protect the amenities of residential property in the vicinity

6. Within six months of this grant of permission the developer shall submit an appropriately scaled and legible drawing indicating the bin storage on site for the written agreement of the Planning Authority.

**Reason:** To ensure the provision of refuse facilities.

7. Within six months of this grant of permission the developer shall submit the following drawings for the written agreement of the Planning authority, details of where the existing ducting system terminates and the location of the nearest habitable dwelling with an openable window. The distance from the termination point to the nearest openable window must be indicated on the drawing.

**Reason:** In the interest of clarity and to ensure an adequate standard of development.

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Irené McCormack  
Planning Inspector

15<sup>th</sup> March 2020