



An
Bord
Pleanála

Inspector's Report ABP-306439-20

Development	Change of use of off-licence to public house with changes to north elevation including replacement of 2 windows with doors, remodelling of entrance on East Road and demolition of stair tower on front elevation.
Location	Seabank House, East Wall Road, Dublin 3
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	3769/19
Applicant(s)	Danring Limited
Type of Application	Permission
Planning Authority Decision	Split Decision
Type of Appeal	Third Party
Appellant(s)	Donnachadh Byrne
Observer(s)	None
Date of Site Inspection	17/03/2020
Inspector	Anne Marie O'Connor

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1.0 Site Location and Description

- 1.1. The site of the proposed development is located at the junction of East Wall Road and East Road, Dublin 3 adjacent to the Dublin docks area. The building is a three-storey structure (over basement) which is currently used as a public house (Seabank House) on the ground and first floors. The second floor is laid out as an office/ admin/ storage area. A smoking area is provided at an elevated ground floor level with an opening and safety balcony railing which is slightly raised above the East Road street level due to the gradient of the street.
- 1.2. An associated off-licence also occupied the ground floor on the East Wall Road side, accessed from the corner of the building. The incorporation of the unit into the public house had been carried out at the time of the site visit.
- 1.3. The building is modern in design, with an unusual tower shaped staircase on the East Road elevation at the far side of the building to the off-licence.
- 1.4. The immediately surrounding area is characterised by a mix of commercial, industrial and residential uses. Opposite Seabank House on East Road is an established community of 2-story former Council houses. A vacant site lies on the opposite side of East Wall Road, which is a busier road than East Road.

2.0 Proposed Development

2.1. Planning permission is sought for:

- Change of use of the off-licence to public house, to form part of the extension Seabank House public house.

In addition to the following works:

- Replacement of two windows on the East Wall Road frontage (currently serving the off-licence) with 2 double doors providing access to the proposed extended public house.
- Removal of the stair tower and external steps on the East Road (front) elevation. Replacement of the tower stair case with a more conventional internal stairs, and a ground floor frontage onto East Road comprising double opening doors, with a large glazed window on one side and a smaller window

on the other side. The existing external steps will be filled in within the building and the ground raised to the level of the existing adjacent smoking area. The internal wall between the smoking yard and newly created area will be removed.

- 2.2. A concurrent appeal/ application is submitted for the change of use of the first and second floors of the building to residential use (9 apartments). (ABP306435; Ref. ref. 3992/19).

3.0 **Planning Authority Decision**

3.1. **Decision**

Split Decision to:

Grant permission for the change of use of the off-licence to public house,

Refuse permission for the changes to the north elevation, to include replacement of 2 windows with doors, and the remodelling of the entrance on East Road to include demolition of the existing stair tower. The reasons for refusal are as follows:

1. The remodelling on East Road facilitates an increase to the balcony/terrace which would seriously injure residential amenity by reason of noise and general disturbance.
2. The description of the development and the works seeking permission have not been accurately described. The replacement of the two windows with doors along East Wall Road is to facilitate the provision of a new smoking section. This was not included in the public notices. The development by itself and by the precedent for which a grant of permission would set would be contrary to the Development Plan.

3.2. **Planning Authority Reports**

- 3.2.1. Planning Reports - The planner's report reflects the split decision.

- 3.2.2. Other Technical Reports

Drainage: No objection

3.3. Prescribed Bodies

TII: S49 (Luas C1) Supplementary Development Contribution Scheme levy to be applied if applicable.

3.4. Third Party Observations

An observation was received from the appellant. The issues raised are covered in the grounds of appeal as set out below.

4.0 Planning History

- 6749/07 Installation of two openable screens to balcony space. Grant.
- 29N.221012 (i) Retention of external balcony for use as an external smoking area
(ii) Retention of new shop front and railings associated with the balcony area. **Refused** on grounds of residential amenity.
- 4606/04 Provision of balcony space, new shopfront and railings. 2 year **temporary permission** for the balcony. Condition 2 required removal of balcony area and incorporation of area into the premises within 2 years unless separate grant of permission obtained.

5.0 Policy Context

5.1. Development Plan

The Dublin City Development Plan 2016-2022 is the County Development Plan for the area. The site is zoned **Z14** "To seek the social, economic and physical development and/or rejuvenation of an area with mixed use of which residential and Z6 would be the prominent uses". The site is located in the Docklands SDRA6.

Section 16.32 Nightclubs/ licensed Premises/ etc

SIO26 Protect residents of mixed-use developments from noise emanating from other uses such as public houses

CHCO28 Discourage over-concentration of large public houses in an particular area to ensure a balanced mix of cultural uses, while protecting residential amenities.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal set out the planning history and history of complaints associated with the site. The appellant welcomes the decision to refuse permission for the changes to the north elevation and the remodelling of the entrance on East Road including the demolition of the external stair tower.

The grounds of appeal in respect of the change of use from off-licence to public house can be summarised as follows:

- The conversion of the off-licence should have been granted only in-line with a full regularisation of the planning issues associated with the smoking balcony.
- The works to covert the off-licence were completed several months ago without planning permission. DCC planning enforcement have been notified. Other enforcement issues relating to the works after the fire are also raised.
- Failure to address the issue of noise/ disturbance to existing properties near the pub and future residences above the pub from the existing smoking balcony.
- At every stage where the impact of the balcony on residential amenity has been considered, the decision has been that the use of the smoking balcony will injure the residential amenity of those nearby homes.
- The balcony is unauthorised and the passing of time does not give a development planning permission. The planner and the applicant both state that the balcony does not have permission.
- The conversion of the off-licence has increased the overall floor area of the pub, increasing the numbers potentially using the smoking area.

- Any extension of pub opening hours during the week is liable to result in nuisance extending until very late during mid-week.
- The appellant must get up at 5.15 in order to leave for work and therefore being able to sleep is extremely important. He has been forced to undertake sound reduction measures such as triple glazed windows to alleviate noise issues from the balcony. The measures have helped but not alleviated the problem.

6.2. Planning Authority Response

No comments received to the grounds of appeal.

6.3. Applicant response to the grounds of appeal

The applicant's response to the grounds of appeal can be summarised as follows:

- DCC decided to grant permission for the change of use.
- The applicant has decided not to appeal the decision to refuse permission for the changes to the north elevation and remodelling of the east Road entrance.
- The upper floors of the premises were damaged in a fire in December 2018.
- The public house element, although not part of the fire, suffered flood damage resulting from the extinguishment of the fire. Refurbishment works were carried out including removal of walls under Section 4(1)(h) exempted development works.
- The applicant, especially under the concurrent residential application is seeking to reduce the size of the pub element overall.
- There is an extant public house use.
- Whereas a smoking area on the adjacent pavement at East Wall Road would be useful, the applicant has made no application for this element. The applicant has, however, approached the Council to obtain the relevant area and the Council has agreed the matter in principle. The matter has been passed to the Council's legal department.

- The subject premise complies with the zoning and is located on East Wall Road, the R131 regional road, and on East Road, a heavily trafficked road,

7.0 Assessment

- 7.1. The grounds of appeal welcome the decision to refuse planning permission for all works except the change of use of part of the ground floor of the building from off-licence to public house by way of incorporation into the existing pub 'Seabank House'. The applicant states that a decision was taken not to appeal the decision to refuse planning permission for the proposed replacement of 2 windows currently serving the off-licence with double doors, and works to the East Road elevation effecting the smoking balcony. I am satisfied therefore, that the Board may restrict its consideration to the proposed change of use.
- 7.2. It is evident from the planning history and the submissions on the file that there is a long history relating to the smoking area on the East Road elevation which faces an established residential community. This area is on the ground floor but is significantly elevated above the street level due to the sloping gradient of the adjacent footpath. The smoking area has two openings, one to the front on East Road, and one in a side return adjoining the staircase which it was proposed to fill-in and incorporate into the smoking area. Shutters are provided in both openings.
- 7.3. The grounds of appeal argue that the smoking balcony is unauthorised and generates an unacceptable level of noises and disturbance to neighbouring residents. While I note in particular that the Board previously refused planning permission for the smoking balcony on the grounds of impact on residential amenity enforcement matters are outside of the Board's jurisdiction and are a matter solely for the planning authority. The appellant does however argue that the change of use would result in a larger public house, generating more noise and disturbance as an increased number of customers use the smoking balcony. Issues relating to noise and disturbance are relevant considerations in relation to this appeal and will be considered below.
- 7.4. In this regard, I note that the appeal site is located in a Z14 mixed use zoning which allows for a mix of uses. Policy SIO26 seeks to protect residents of mixed-use developments from noise emanating from other uses such as public houses.

Seabank House is, however, an existing public house with an associated adjacent off-licence. The incorporation of the off-licence into the pub provides an additional c.51m² which is not significant in the context of a reasonably sized pub. In terms of the impacts, including noise and disturbance arising from the use of all parts of the building I do not consider that the additional impacts would be such as to warrant a refusal of planning permission in this instance.

Other Matters

- 7.5. Having regard to the nature, comprising a change of use to an existing building in a serviced urban area, and the distance to the nearest European sites, I am of the view that no **appropriate assessment** issues arise, and that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. Having regard to the above, it is recommended that a **split decision** be issued as follows:

That permission be **granted** for the change of use of off-licence to public house for the reasons and considerations (1) and subject to the conditions set out at Schedule A below.

That permission be **refused** for changes to the north elevation, to include replacement of 2 no. windows with doors, and remodelling of the entrance on the East Road to include demolition of existing external stair tower for the reasons and considerations (2) set out at Schedule B below as per the planning authority decision which was not the subject of an appeal.

9.0 Reasons and Considerations / Conditions

Schedule A

Having regard to the zoning objectives for the area and the pattern of development in the area, it is considered that, subject to compliance with conditions below, the proposed development would not seriously injure the amenities of the area or of

property in the vicinity and would, therefore, be in accordance with the proper planning and sustainable development of the area.

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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. 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.

Schedule B

Reasons and Considerations (2)

1. The remodelling of the entrance on East Road facilitates an increase to the balcony/terrace. Having regard to the use of the balcony/ terrace as a smoking area and its proximity to residential property on the upper levels of Seabank House and the vicinity, it is considered that the increase in area to the balcony/ terrace would seriously injure the residential amenities of these properties, by reason of noise and general disturbance and would therefore be contrary to the proper planning and sustainable development of the area.

2. The description of the developemtn and the works seeking permission have not been accurately described. The replacement of 2 no. windows with door to the north elevation along East Wall Road is to facilitate the provision of a new smoking section. This is not included within the public notices, Modifications to the north elevation and the provision of a smoking area should be subject to a separate application. The development by itself and by the precedent for which a grant of permission would set, would be contrary to the stated provisions of the City Development Plan 2016-2011 and to the proper planning and sustainable development of the area.

Anne Marie O'Connor
Planning Inspectorate

17 March 2020