



Planning and Development Acts 2000 to 2018

Planning Authority: Dublin City Council

Planning Register Reference Number: 2123/18

Appeal by David O'Donoghue of 33 Kinvara Park, Navan Road, Dublin and by Others against the decision made on the 9th day of August, 2018 by Dublin City Council to grant subject to conditions a permission to BOL Property Investment Limited care of AKM Design of Unit 4, Orchard Business Centre, 2009 Orchard Avenue, Citywest, Dublin in accordance with plans and particulars lodged with the said Council:

Proposed Development: Change of use of existing laundry to family restaurant with ancillary take-away use, new shop front and signage and fire escape doors to side and rear, single storey rear extension 124 square metres and internal alterations to ground floor. Relocation of existing stairs to first floor apartment with new front door at ground floor, internal alterations and associated site works at 43, Kinvara Park, Dublin.

Decision

GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Reasons and Considerations

Having regard to Objective Z3 'to improve for and provide neighbourhood facilities' which pertains to the bulk of the site, to Objective Z1 'to provide for and improve residential amenities' which pertains to a small part of the site to the rear and the lands to the north, south and immediately west of the site respectively, as set out in the Dublin City Development Plan, 2016-2021, to the planning history of the site, and to the pattern of development in the area including the location of the proposed development at the end of a row of four commercial units, the Board considered that, subject to compliance with the conditions set out below, the proposed development was in accordance with the land use zoning, would not seriously injure the residential amenity of properties in the vicinity to the site by reason of odour and noise, would not pose a risk to pedestrian and traffic safety and would, therefore, be in accordance with the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's recommendation to refuse permission, the Board concurred with the view of the planning authority that the proposed development which comprises a restaurant use with sit-down area would provide a beneficial amenity to the residential area and, subject to compliance with the conditions set out below, would not have a negative impact on the residential amenities in the area. In making its decision, the Board were cognizant that the take-away element of the proposed development would be ancillary to the main restaurant use and therefore considered that the proposed development would not generate significant parking or set-down requirements. Furthermore, the proposed restaurant would be sited within a noise insulated building and that operating hours, noise, odour, litter and waste would be appropriately controlled through the imposition of conditions. The Board therefore considered that the proposed development was 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 13th day of July 2018, 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 restaurant use hereby permitted shall not be used as a take-away or for the sale of hot food for consumption off the premises, other than where such use is clearly subsidiary to the main use as a restaurant.

Reason: In the interest of residential amenity.

3. The restaurant shall only operate between 0900 hours and 2300 hours on Monday to Sunday.

Reason: In the interest of residential amenity.

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

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

5. (a) All entrance doors in the external envelope shall be tightly fitting and self-closing.

(b) All windows and roof lights shall be double-glazed and tightly fitting.

(c) Noise attenuators shall be fitted to any openings required for ventilation or air conditioning purposes.

Details indicating the proposed methods of compliance with the above requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

6. No advertisement or advertisement structure (other than those shown on the drawings submitted with the application) shall be erected or displayed on the building or within the curtilage of the site in such a manner as to be visible from outside the building, unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

7. 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 and for the ongoing operation of these facilities for the restaurant and residential unit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan. The enclosed waste storage area at the south-west corner of the extension hereby approved shall be provided for the sole use of the residential occupier on the site and shall not be used for any other purpose.

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

8. Water supply and drainage arrangements shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

9. Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

10. The construction of the development shall be managed in accordance with a 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, noise management measures and off-site disposal of construction/demolition waste.

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

11. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Maria FitzGerald

**Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.**

Dated this day of 2018.