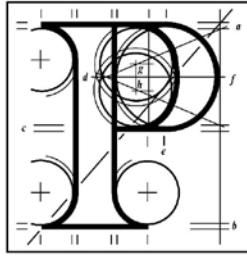


An Bord Pleanála



Inspector's Report

Development: Change of use to vacant unit from financial institution to restaurant with new internal surface finishes, lighting and layout with reconfiguration and enclosure of rear external yard area of unit to provide bin storage and storage facilities increasing the overall internal area by 27 sq m at 211 Lower Rathmines Road, Rathmines, Dublin 6 (Protected Structure).

Application

Planning authority: Dublin City Council
Planning application reg. no. 3106/15
Applicant: Cofran Limited
Type of application: Permission
Planning authority's decision: Grant, subject to 11 conditions

Appeal

Appellant: Cofran Limited
Type of appeal: Applicant -v- Condition 4
Observers: None
Date of site inspection: 8th & 22nd January 2016
Inspector: Hugh D. Morrison

Site

The site is located centrally within Rathmines town centre in a position on the western side of Rathmines Road Lower between the junctions formed, to the north, by this Road and Castlewood Avenue North and, to the south, by this Road and Wynnefield Road. This site lies within a row of street-fronted, multi-storey, retail/commercial properties. Thus, adjoining it to the north is the former Stella cinema and to the south a butcher's shop.

The site is of regular shape and elongated form. It extends over an area of 213 sq m. This site presently accommodates a vacant building, which was formerly used as a bank. The principal elevation to this building displays a mixture of architectural styles, which range from Neo-classical to Art Deco. The main portion of the building comprises the former banking hall with a double pitched roof over, which is supported on painted king post roof trusses. The northern roof plane contains two rows of rooflights. The rear portion of this hall is at a lower level, as are the ancillary toilet and storage facilities to the rear of the hall itself. Beyond the building is a small yard with a further storage building on the far side of it. This yard is accessed via a passageway and doorway from Wynnefield Road, i.e. between No. 1 Wynnefield Road and Nos. 217 – 219 Lower Rathmines Road (odd, inclusive).

Proposal

The proposal would entail a change of use of the vacant building on site from a financial institution to a restaurant. This change of use would be facilitated by new internal surface finishes, lighting, and layout, and the reconfiguration and enclosure of the rear yard area to provide bin storage and other storage facilities. The new build element of these works would add 27 sq m and so the overall floorspace would increase from 146 sq m to 173 sq m, i.e. 108 sq m being a public front of house seating/dining area and 65 sq m being private back of house facilities.

Planning authority's decision

Following receipt of further information, draft permission was granted subject to 11 conditions, including the following two:

4. *No deep fat frying is to take place on site.*

Reason: In the interests of the proper planning and sustainable development of the area.

7. *Before the use hereby permitted commences, a scheme shall be submitted to, and approved in writing by the planning authority for the effective control of fumes and odours from the premises. The scheme shall be implemented before the use commences and thereafter permanently maintained.*

Reason: In the interests of the amenities of both the immediate neighbours and surroundings.

Technical reports

- Conservation: No objection, subject to conditions.
- Drainage: No objection, subject to conditions.
- Rathmines Initiative: Further information requested.
- Roads and Traffic Planning: No objection, subject to conditions.

Grounds of appeal

- The effect of condition 4 would be to unduly restrict the variety of meals that could be served.
- The proposed extraction system would ensure that air borne odours and grease are removed. This system would be regularly maintained.
- The proposed extraction fan and ductwork would be selected on the basis of a series of parameters that the applicant has specified.
- Extracted air would be treated by means of either units designed to remove odours or carbon filtration.
- The fire rating of the proposed extraction fan and ductwork would be prepared separately for any fire safety certificate application.

Response

The planning authority has not responded to the above grounds of appeal.

Planning history

None

Development Plan

Under the Dublin City Development Plan 2011 – 2017 (CDP), the site is shown as lying within an area that is zoned Z4, wherein the objective is “To provide for and improve mixed-services facilities.” Restaurants are permissible uses within this zone. The site also lies within Rathmines town centre, which is a designated Key District Centre. Section 17.30 of the CDP relates to restaurants.

Assessment

1. The current appeal relates to the attachment of condition 4 to the planning authority’s draft permission only. Under Section 139 of the Planning and

Development Act, 2000 – 2014, the Board has the discretion to consider the contested condition in isolation and so wave a *de nova* approach to the case. Having reviewed the current proposal, I consider that the Board should exercise the said discretion in this case.

2. Condition 4 states that “No deep fat frying is to take place on site”, “In the interests of the proper planning and sustainable development of the area.” The background to this condition entails a further information request with respect to the submission of a proposed floor plan of the building, within which the kitchen is identified, and proposed extraction arrangements for the same. The applicant duly submitted the requested information and the case planner in her subsequent assessment expressed the view that the size and siting of the kitchen suggested a café rather than a restaurant type format. She stated that the impact of fumes and odours would need to be monitored and thus the contested condition was attached to the permission. She also made clear that she had no amenity concerns with respect to neighbours. (This matter is addressed separately under condition 7 attached to the draft permission).
3. The City Conservation Officer advises that the conservation interest attendant upon the subject building, as a protected structure, relates to its principal elevation only and she expresses the view that the former banking hall would lend itself to use as a restaurant, as the retro fitting of mechanical services within this hall would be “straightforward”.
4. The submitted further information plans show new kitchen extract ductwork being routed from above the centrally placed kitchen through some of the painted king post roof trusses to exit through the rear gable, which abuts the flat roof above the lower rear portion of the former banking hall. Accordingly, there does indeed appear to be scope to route the said ductwork through this hall with minimal disruption to existing fabric.
5. Section 17.30 of the CDP relates to restaurants. Under this Section, a number of considerations are listed that pertain to the assessment of restaurant proposals. These include “The effect of noise, general disturbance, hours of operation and fumes on the amenities of nearby residents.” The amenities of patrons are not listed, presumably as it is in the interests of any restaurateur to ensure that this matter is attended to. Under licensing legislation, restaurants are normally required to have kitchens that are separate from dining areas. Where such separation occurs, the control of cooking fumes and odours is obviously facilitated. However, I am aware of situations where the preparation of food within the same space as that occupied by patrons is part of a restaurant’s appeal and so to exclude deep fat frying from such a format out of concern over cooking fumes and odours risks prejudging the efficacy of available extraction systems.

6. The applicant's grounds of appeal refer to how the selected extraction system would ensure that air borne odours and grease are removed from the atmosphere of the restaurant. To this end a technical specification for this system has been submitted and an undertaking is given that it would be regularly maintained.
7. The new kitchen extract ductwork is depicted on drawing no. 3-1-001 dated August 2015. In the event that a deep fat fryer is installed in the proposed kitchen, I would anticipate that the head to this ductwork may need to be lower and larger than that depicted, if it is to be effective. However, I do not consider that such additional ductwork would pose any conservation issues and as noted above the amenities of patrons are effectively self-regulated by restaurateurs.
8. I recognise that deep fat frying is often associated with hot food takeaways and that the planning authority's draft permission does not include a condition making explicit that the introduction of such a takeaway in this case would require a separate planning permission. I, therefore, consider that the replacement of the contested condition with one that makes such a requirement explicit would ensure that no doubt arises over this matter in the future.

Recommendation

I recommend that the planning authority be directed to omit condition 4 from the draft permission that it has granted to application reg. no. 3106/15 and to insert the following condition in its place:

4. The use hereby permitted is that of a restaurant only. Any subsequent proposal for a hot food takeaway shall require a further planning permission.

Reason: For the avoidance of doubt and in order to afford the planning authority control over the use in the interest of amenity.

Reasons and considerations

It is considered that condition 4 attached to the planning authority's draft permission granted to application reg. no. 3106/15 would be unreasonable insofar as any concern over the effect of cooking odours and fumes from deep fat frying on the amenities of patrons would be capable of being addressed by an extraction system, the presence of which would be compatible with the building's status as a protected structure. However, given the association of deep fat frying with hot food takeaways, a replacement condition making explicit the need for a separate planning permission, in the event that such a takeaway is proposed, would be warranted and so it would accord with the proper planning and sustainable development of the area.

Hugh D. Morrison

Inspector

22nd January 2016