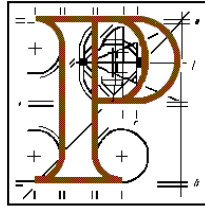


An Bord Pleanála



Inspector's Report

PL 29S.245872

Development

Permission to amend opening hours within a previously approved gym.

32F Macken Street and 18 Hanover Street East, Dublin 2

Planning Application

Planning Authority: Dublin City Council

Planning Authority Reg. Ref.: 3667/15

Applicant: Rosebud Sport Ltd.

Type of Application: Planning permission.

Planning Authority Decision: Grant permission

Planning Appeal

Appellant(s): Pearse Square residents Association

Type of Appeal: Third v grant

Observers: One

Date of Site Inspection: 4th February 2016

Inspector: Karla Mc Bride.

1.0 INTRODUCTION

1.1 Site and location

The appeal site is located on the S side of Dublin City and the surrounding area is characterised by a mix of residential, business, cultural and recreational uses. The appeal site is located within an existing gym on the corner of Macken Street and Hanover Street East and the appeal premises comprises a converted warehouse building. The site is bound to the N, S and W by terraced houses and to the E by the Grand Canal Theatre and apartments blocks. Pearse Square Residential Conservation Area is located to the W of the site.

Photographs in Appendix 1 describe the site and location in some detail.

1.2 Proposed Development

Planning permission is being sought to amend the opening hours of the existing gym facility which was granted permission under Reg. Ref. 3587/12:

- 0700-2300 hours as normal hours,
- 2300-0700 hours as extended hours,
- Subject to implementation of management and operational mitigation measures within the previously permitted gym.

- A Noise and Vibration Survey was submitted.

1.3 Planning Authority's Decision

The Planning Authority decided to grant planning permission for the proposed development subject to 5 standard conditions.

- Condition no.2 required the following in the interest of amenity:
 - (a) The installation of a floating floor system in all areas where weights are used. The floor must provide an adequate level of isolation at frequencies below 50Hz for weights up to 200kg.
 - (b) Classes should only be held between the hours of 7am to 9pm. All music played within the premises should be controlled through a limiter system
- Condition no.3 restricted the proposed extension of operational hours to 24 hours to 2 years to allow for a fuller appraisal of any meaningful negative impacts on adjoining properties and the immediate area.

This decision reflects the report of the City Planning Officer.

The Drainage Division had no objection to the proposed development.

The Environmental Health Officer had no objection to the proposed development subject to compliance with very specific conditions.

Public submissions:

Several submissions received (including a petition) which raised concerns in relation to excessive noise, inappropriate operational hours in a residential area and ongoing unauthorised hours of operation and excessive noise.

1.4 Planning history

Reg.Ref.3587/12 – Permission granted for a change of use to a fitness centre, with no pool (Class11 (3)), with extended mezzanine over changing area in the existing warehouse building (c.1790sq.m.) with signage.

Condition no.1 required that the development shall be carried out in accordance with the plans, particulars and specifications lodged with the application. In relation to noise, the application stated that:

- The development should comply with Council and EPA requirements for noise emissions and noise levels outside any residence should not:
 - Not contain tones and pure tones
 - Not exceed the background level by 10dB (A) or more or exceed 55dB (A) by the day or 50dB (A) by evening and 45dB (A) by night, whichever is the lesser.
- Noise emissions emanating from the gym should be in accordance with the typical limit values:
 - Daytime (07.00 to 19.00 hours) 55dB LAr, T
 - Evening (19.00 to 23.00 hours) 50dB LAr, T
 - Night-time (23.00 to 07.00 hours) 45 Db, LAr, T
- Opening hours will be approximately 7am to 10pm

2.0 DEVELOPMENT PLAN

Zoning objective:

The site is located within an area zoned with the objective “Z2” in the Dublin City Development Plan 2011-2017 which seeks “To protect and/or improve the amenities of residential conservation areas.”

Heritage objectives:

- The site is located within a Conservation Area.
- The site is located adjacent to Pearse Square and all of the houses on the square are Protected Structures.

3.0 APPEAL

3.1 Third Party appeal

The Pearse Street Residents Association submitted a Third Party appeal:

- Insufficient clarity as to the legal timeframe within which the gym is obliged to carry out remedial works.
- Insufficient clarity as to the acceptable level of sound emanating from the gym via music and the proposed use of a “limiter system” is not an acceptable measurement and a clear limitation should be set.
- There is no date for inspection of works proposed.
- Pearse Square contains protected structures dating from c.1839 with single glazed sash windows and protected facades which cannot withstand the noise nuisance.
- The gym should cease trading from 2200 to 0700 until all of the remedial works have been carried out, inspected and signed off.
- There are several 24 hour gyms in the city which are best equipped to serve the small number of clients who require alternative hours.
- Noise nuisance and inappropriate location within a residential area.

3.2 Observers

Joan and Pat Sherwin who live at no.33 Pearse Square raised the following concerns in addition to those raised by the Appellant:

- Continued disturbance from noise and vibration despite management and mitigation measures which do not address issues such as:

- (a) Thudding and vibration from heavy weights.
 - (b) Airborne noise from music.
 - (c) Impacts on residential amenity.
 - (d) The elimination of quiet enjoyment of the family home.
- The operator operates outside the terms of the planning permission and has ignored complaints.
 - Serious impact on residential amenity, health and well-being.

3.3 First party response submission

The First Party response submission is summarised below:

- Condition no.2 contains the remedial works required by the EHO, (i) requires a floating floor and (ii) restricts the operational hours for classes and music.
- The applicant has engaged directly with the EHO in relation to testing weights and their related impact on Pearse Square, the AWN test results are attached, the specification for the floating floor as been agreed with DCC and the material has been fitted within the gym as requested by the EHO.
- There are no classes or music between 22.00-07.00, the fitness rooms are not in use, changing rooms are closed for security reasons, all plant and equipment is turned off, access is strictly controlled, and activities are confined to general fitness and the use of cardio vascular equipment only in the main building which is remote from neighbouring properties, and there is a constant staff presence.
- Maximum noise levels for music should not exceed a maximum noise level of 80dB (A) as per EPA standards and the applicant's AWN report, and generally noise levels should not exceed 55dB (A) at any point along the boundary, the noise level sought by the appellant is included in the planning documentation.
- The most recent EHO inspection on 09/12/2015 confirmed that the requirements set by Condition 2(i) which have since been progressed and installed and the applicant is waiting for the EHO to sign off on this.
- Gyms can operate within or adjacent to protected structures and architectural conservation areas.

- The availability of “extended hours opening” is increasingly important to gym members to cater for shift work especially in this commercial, digital and entertainment Docklands District.
- The issues raised by the appellants have been addressed.

The AWN Consulting Ltd. report concluded that:

- *Music noise outbreak:*
 - (a) The survey results indicated that music noise from the open studio area increase baseline noise levels within adjacent property above the relevant DCC criteria.
 - (b) The recommendations include the construction of a suspended ceiling, sealing off all gaps between the roof and gable wall and noise should not exceed the maximum noise level of 80dB(A).
- *Impact sources from weights:*
 - (a) A significant reduction in noise and vibration levels can be achieved with the use of 40mm tile mats for light weights.
 - (b) For the rest of the weights area, the tested floor build ups did not provide an adequate level of isolation at low frequencies to reduce structure borne noise within the adjacent dwelling.
 - (c) The use of a floating concrete floor is a remedial measure for the heavy weights area which should be designed to ensure an adequate level of isolation at frequencies below 50Hz.

3.4 Third party response

The Pearse Street Residents’ Association stated the following:

- The floating floor system has not been installed throughout the gym as it should have been, weights are still lifted in areas without insulation and neighbouring residents are woken at 5am by weight lifting noise.
- Query the date of noise inspections, the gym has not made a positive contribution to the community, it adversely affects the sleep patterns of nearby residents, and request that the opening hours return to 07.00 to 22.00.

3.5 Planning Authority response

The Planning Authority's response raised no new issues.

3.6 Prescribed Bodies

The appeal was not circulated to any Prescribed Bodies.

4.0 REVIEW OF ISSUES AND ASSESSMENT

The main issues arising in this case are:

1. Compatibility with zoning objective
2. Residential amenity
3. Other issues

4.1 Compatibility with zoning objective

The proposed development would be located within an area zoned “Z2” in the Development Plan which seeks “To protect and/or improve the amenities of residential conservation areas” and the proposed development is compatible in principle with this objective.

4.2 Residential amenity

The appeal premises is located within a mixed use area which comprises a variety of residential, commercial, entertainment and recreational uses and the site is bound on three sides by long established residential uses.

The applicant is seeking planning permission to amend the opening hours of the existing gym facility which was permitted under Reg. Ref. 3587/12 when the opening hours were specified as being approximately 7am to 10pm. The applicant is now seeking to have 7am to 11pm as the normal opening hours and 11pm to 7am as the extended opening hours. The applicant has confirmed that there will be no classes or music between 10pm and 7am and during that time the fitness rooms and changing rooms will not be in use, all plant and equipment will be turned off and activities will be confined to general fitness and the use of cardio vascular equipment.

Condition no.2 of the Planning Authorities decision to grant permission required the following in the interest of residential amenity:

- (i) The installation of a floating floor system in all areas where weights are used. The floor must provide an adequate level of isolation at frequencies below 50Hz for weights up to 200kg.
- (ii) Classes should only be held between 7am to 9pm, and all music played should be controlled through a limiter system.

The gym is located inside a converted warehouse building and it has an open plan arrangement with treadmills in the S section, light weights in the middle section and heavy weights in the N section adjacent to Hanover Road East.

The dance area is located in the NW section of the gym adjacent to the houses in the N part of Pearse Square.

The neighbouring residents have raised concerns in relation to disturbance from noise and vibration throughout the night mainly as a result thudding when the weights hit the ground and dance music.

Condition no.2 (i) required the installation of a floating floor system in all areas where weights are used and this floor should provide an adequate level of isolation at frequencies below 50Hz for weights up to 200kg. The floating floor has already been installed in the N section of the gym where heavy weights are used and its installation is ongoing. Notwithstanding this, the thudding sound was clearly audible along the N site boundary with Hanover Road East and the N section of the W site boundary with no.33 Pearse Square. I carried out my site inspection on a mid-week afternoon when there was background noise from traffic and commercial activities. However when I carried out an internal inspection of the gym it was apparent that sheets of timber had been placed over the floating floor to provide a firmer surface for the weight lifters. This practice was inhibiting the noise absorption capacity of the tiles it should be discontinued during the night time hours in the interest of protecting the amenities of neighbouring houses. The extended opening hours should not come into operation until all of these works have been completed.

Condition no.2 (ii) specified that classes should only be held between 7am and 9pm and that all music played within the premises should be played through a delimiter system. The parent permission (Reg. Ref. 3587/12) specified that noise emissions emanating from the gym should not exceed the background level by 10dB (A), or exceed 55dB (A) by the day or 50dB (A) by evening and 45dB (A) night and the applicant has confirmed that there will be no classes or music between 10pm and 7am. I am therefore satisfied that the proposed extended opening hours will not give rise to noise disturbance during the night subject to compliance with the terms of the parent permission and the aforementioned Condition 2(ii). However the applicant should be required to submit details in relation to the delimiter system for the Planning Authorities written agreement and it should be installed and functioning before the extended opening hours become operational.

Condition no.3 of the Council's decision to grant permission also restricted the proposed extension of operational hours to 2 years to allow for a fuller appraisal of any meaningful negative impacts on adjoining properties and the immediate area. This is considered to be reasonable.

4.3 Other issues

Parent permission: The terms and conditions attached to Reg. Ref. 3587/12 should be complied with.

Heritage: The proposed development would not adversely affect the character and setting of the nearby Protected Structures at Pearse Square or the Conservation Area within which the existing gym is located.

Environmental services: The proposed arrangements are considered acceptable subject to compliance with requirements.

Appropriate assessment: The proposed development would not have an adverse effect on any European Sites.

5.0 RECOMMENDATION

Arising from my assessment of the appeal case I recommend that planning permission should be granted for the proposed development for the reasons and considerations set down below, subject to compliance with the attached conditions.

REASONS AND CONSIDERATIONS

Having regard to the provisions of the current Development Plan and to the nature and scale of the proposed development and to the pattern of development in the area, it is considered that subject to compliance with the following conditions, the proposed development would not seriously injure the amenities of the area or of property in the vicinity or give rise to a traffic hazard. The proposed development 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, 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 developer shall comply with the terms and conditions of the planning permission granted under Reg. Ref. 3587/12 save as amended by any of the following conditions.

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

3. The following requirements shall be strictly complied with:

- (i) A floating floor or equivalent flooring system shall be installed in all areas where weights are to be used. The floor must provide an adequate level of isolation at frequencies below 50Hz for weights up to 200kg. The extended opening hours shall not come into operation until all of these works have been completed. This floor should not be overlaid with any other material that would inhibit the noise and vibration absorbing capacity of the floor.
- (ii) Classes shall only be held between the hours of 7am-9pm. All music played within the premises shall be controlled through a limiter system. Details of the delimiter system shall be submitted for the written agreement of the Planning Authority before development commences and it should be installed and functioning before the extended opening hours become operational.

Reason: In order to ensure a satisfactory standard of development, in the interests of residential amenity.

4. The proposed extension of operation of hours to 24 hour operation shall be restricted to a period of two years only.

Reason: To allow for a fuller appraisal of any potential negative impacts on both adjoining properties and on the immediate area.

5. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of Irish Water and the planning authority for such works and services as appropriate.

Reason: In the interest of public health and to ensure a proper standard of development.

Karla Mc Bride

Senior Planning Inspector

11th February 2016