

An Bord Pleanála



INSPECTOR'S REPORT

PL 29S 246040

DEVELOPMENT: Change of Use of Ground and basement level retail unit with to restaurant and take-away internal alterations and reconfiguration and enclosure of rear basement yard to provide for plant and bin storage, new shopfront façade and illuminated signage.

LOCATION: No. 36 Parliament Street, Dublin 2.

PLANNING APPLICATION

Planning Authority: Dublin City Council.
P. A. Reg. Ref: 3915/15
Applicant: Morgan Crowe and Brid Large.
Decision: Refuse Permission.

APPEALS

Party Appellant: Morgan Crowe and Brid Large.
Type of Appeal First Party against Decision to Refuse of Permission.

Date of Inspection: 19th April 2016.

Inspector: Jane Dennehy.

1. **SITE LOCATION AND DESCRIPTION:**

- 1.1 No 36 Parliament Street is a five storey over basement building on the west side of Parliament Street. The ground and basement levels which have a stated floor area of ninety seven square metres are vacant and understood to have been in retail use as a computer and IT sales outlet. Short term residential letting units are on the upper levels to which there is a separate entrance adjacent to the shopfront.
- 1.2 A "Subway" restaurant is located at ground floor in the adjoining premises on the north side adjacent to The Front Lounge whereas a restaurant is located on the south side which is adjoined by a pizza restaurant which is on the corner site with Cork Hill. Most of the buildings along Parliament Street are in office and residential (short term letting) and hotel use at the upper floor levels. At street level there is a mix of bars, restaurants and cafes. A Centra convenience store is located on the east side of the street.
- 1.3 Parliament Street which is to the west of the Temple Bar area is an important thoroughfare for both private and public transport and pedestrians with an important terminating vista to the City Hall at the southern end and views across the river along Capel Street to the north.

2. **THE PROPOSED DEVELOPMENT:**

- 2.1 The application lodged with the planning authority indicates proposals for change of use of the ground floor and basement floors to a restaurant and takeaway use. Seating capacity for twenty eight, ancillary office and storage space are shown on the basement floor plan. At the rear there is direct access to a plant room and storage within covered in space in the existing year yard which increases the total gross floor area to 117 square metres from 97 square metres. At ground floor level the servery and food preparation are shown at the rear with counter seating in the space to the front. Shopfront and signage incorporates a syntha pulvin shopfront frame, painted hardwood surrounds, and stainless steel internal illuminated signage.

3. **PLANNING HISTORY.**

- 3.1 There is no record of recent planning history for the ground and basement floors within the building. There is a concurrent application under P. A. Reg. Ref. 3916/15 relating to proposals for balconies and balustrades for the upper floor short term letting residential units.

4. **DECISION OF THE PLANNING AUTHORITY.**

- 4.1 By order dated, 17th December, 2015, the planning authority decided to refuse permission on the basis of the reason which is reproduced in full below:

“The proposed development by virtue of its limited seating area at ground floor and its poor quality shopfront would result in a sub standard quality restaurant with ancillary takeaway, which would negatively impact on the amenity of neighbouring properties and given the existing quantum of restaurants, takeaways and public houses which are primarily night time activities on this historic street. The proposed development is considered to be contrary to the Z5 zoning objective which is to consolidate and facilitate the development of the central area, and to identify reinforce and strengthen and protect its civic design character and dignity. The proposed development is therefore considered to seriously injure the amenity of property in the vicinity and as such is contrary to the proper planning and sustainable development of the area.”

- 4.2 The planning officer indicates concern that the take away element is not subsidiary to the restaurant use, about loss of retail offer on Parliament Street and about protection of the residential amenities of apartments on the street.
- 4.3 The technical reports indicate no objection to the proposed development subject to conditions.
- 4.4 An objection was received in which issues of concern expressed are:

Decline in retail use which is a key challenge that is supported in the development plan policies.

Over provision of restaurant and takeaway uses with adverse impact on the pedestrian environment and public realm and,

Poor quality shopfront design.

5. **THE APPEAL.**

- 5.1 An appeal was received from O’Connor Whelan on behalf of the applicants on 15th January, 2016.

According to the appeal:

- The application was assessed as though it is a takeaway rather than a restaurant as indicated on the notices. It is complementary to the definition in the Development Plan for “Restaurant and Café” Deep fat frying will not take place. Closing time is 11 pm

weekdays and 10 pm Sundays. Due to the narrow floorplate a limited amount of seating can be provided at ground floor level but the high level seating will be replaced by tables and chairs. Restaurants operate successfully out of basements.

- Redevelopment of the vacant shop unit contributes to revitalisation of the economy and is attractive to tourists.
- Residential amenity will not be affected due to the modest hours of operation and use of an extraction system incorporating attenuation measures. Noise and disturbance will be kept to a minimum.
- Traffic impact is not at issue.
- Parliament is neither a 'Category 1' or 'Category 2' Shopping Street as defined in the Development Plan so safeguarding of shopping areas is not at issue. There is no limitation in the development plan limiting the quantum of restaurants, takeaways and bars on other streets. There are three shops and two vacant shop units on the street, restaurants and cafes being the predominant use which is in line with the policy for Temple Bar of promoting the area as a cultural hub. The development is a daytime and evening use opening at 7.30 am in the mornings and 8.30 pm on Sundays.
- The footfall is low for a retail unit. It would be difficult to let the unit as a shop. The restaurant use and size will appreciably attract visitors to the area.
- Amendments to the shopfront design addressing the planning officer's concerns and to accord with the Shopfront Design Guide of 2001 are proposed as shown on the drawings attached to the appeal. Use of hardwood doors, anthracite coloured doors, a neutral shopfront colour, a sub fascia and pilasters with vertical emphasis are introduced. A retractable awning with no advertising will also be used. Signage is to be brushed steel individual mounted letters with internal perspex strip lighting. The applicant is willing to accept a condition with requirements for alterations to the proposed shopfront although the area is not a designated (statutory) ACA and is in an ACA in the development plan.

6. RESPONSE OF THE PLANNING AUTHORITY ON THE APPEAL.

- 6.1 According to a statement received on 4th February, 2016, it can be confirmed that the planning authority is satisfied with the decision to

refuse permission, reference is made to the planning officer's report and it is requested that the planning authority decision be upheld.

7. DEVELOPMENT PLAN.

- 7.1 The operative development plan is the Dublin City Development Plan, 2011-2017 according to which the site location is subject to the zoning objective: Z5: *"To consolidate and facilitate the development of the central area, and, to identify, reinforce and strengthen and protect its civic design, character and dignity"*. Restaurant and Take-away use is permissible within the Z5 zone.
- 7.2 The site location is also within the boundary of the Central Shopping Area and a Conservation Area.
- 7.3 Policy 3.1 provides for promotion of non-retail complementary activities such as cafes and restaurants at basement and first floor levels on their individual merits and local circumstances and a range of factors are to be taken into account in consideration of proposals for change of use. Policies, objective and criteria for consideration of take away development are set out in section 17.26 and for restaurant development in section 17.30 according to which the the positive contribution of clusters of restaurants and cafes to the vitality of the city is recognised.
- 7.4 Section 7.2.5.3 provides policies objectives and guidance for development in conservation areas. Section 17.25.2 and 3 and Policy RD 7 provide for criteria and guidance for high quality shopfront and signage design as set out in the Shopfront Design Guidelines 2001.

8. EVALUATION

- 8.1 The overall concern central to the determination of the decision is as to whether the proposed change of use from retail to restaurant and takeaway use is consistent with the strategic policy objectives for the Parliament Street which is within the boundary of the central shopping area and a Conservation Area. (The proposed use is 'permissible' within areas subject to the ZR 5 zoning objective.)
- 8.2 Having regard to the foregoing, the issues central to the determination of the decision are:

Impact of Proposed Change of Use.
Nature and Extent of Take-Away Use.
Impact on Residential Amenity.

In addition some observations are included the shopfront and signage in respect of which revised proposals were included in the appeal.

8.3 Impact of Proposed Change of Use.

It is considered that flexible and focussed interpretation and application of the development plan policies and objectives relating to the protection and enhancement of the retail offer and the encouragement of clustering of café, bar and restaurant use is essential in considering specific proposals for change of use in the central city area.

8.4 Restaurants, cafes and bars have clustered in Parliament Street during the past two decades most of which would have replaced small retail units. The proprietors are likely to have resided on the upper floors which are now primarily in use as hotel and short term letting accommodation and some office use. As a result there has been a major change in the land use mix and character towards day and night time hospitality use.

8.5 It is considered that it would be inappropriate and unreasonable to confine the use of the unit to retail use. The case made in the appeal that there is little likelihood that a retail use at the premises would be viable whereas there is good potential for an additional restaurant or café use to integrate and contribute to the vitality and viability of Parliament Street is supported and accepted. It should be borne in mind that the proposed use is “permissible” according to the zoning objective and that Parliament Street is at the edge of the Temple Bar and central shopping area defined in the development plan and has not been designated or prioritised in development plan specific objectives as a ‘Shopping Street’ or for retail use.

8.6 To this end, the proposed change of use to restaurant use is considered acceptable.

8.7 Nature and Extent of Take-Away Use.

On review of the plans, it is noted that kitchen / food preparation facilities are not shown at basement level where seating for twenty eight is shown; that there is no provision for a service lift between the floors and the building has no separate front entrance from the street to the basement level. Reliance on use the internal staircase to the front of the building for movement and circulation between the floors does not appear to be a suitable or a restaurant with full service at the tables. It would appear that the internal layout is best suited to café type use providing for light meals and that scope for further alterations could be considered in the event of any future requirement for additional kitchen and circulation facilities.

- 8.8 A takeaway outlet gives rise to concern with regard to the protection of amenity within the public realm given the location within the Conservation Area and the prominence and significance of Parliament Street within the city. The details and information available in the application and appeal submissions are insufficient to demonstrate that the proposed takeaway is subsidiary or ancillary to main restaurant use.
- 8.9 To this end, the concerns regarding the takeaway element indicated in the planning officer report are considered reasonable. Any potential for diminution in attainable amenity within this prominent street having regard to the conservation area designation should be avoided. The proposed hours of operation especially the 11 pm closing time are noted and would be desirable should permission be granted, particularly given the residential nature use of the upper floors of buildings on the street.

8.10 **Impact on Residential Amenity.**

Parliament Street at the edge of the Temple Bar area and is a principle cross city route along which there are predominant day and night time traffic movements, pedestrian circulation and day and night time restaurant and bar and hotel uses along with residential use mainly of a short residential letting nature. It is not accepted, given the hours of operation proposed that there is potential for significant adverse impact on amenities of residential properties in the immediate vicinity. The proposed enclosure of plant and storage and arrangements for extraction are noted in this regard along with the statement that cooking methods such as deep fat frying are not envisaged. Given the location, the proposed hours of operation and in addition, the recommended omissions, by condition of take away use it is considered that no significant residential amenity concerns would arise.

8.11 **The shopfront and signage.**

The applicant provided some revised proposals for a shopfront and signage in the appeal and it is considered that the modifications address the planning officer's concerns about characteristics of the original proposal. The materials, colours, lighting, sub fascia and fascia signage and lettering are considered acceptable and consistent with the development plan and with the recommendations in the City Council's publication, "*Shopfront Design Guidelines*" 2001. Details can be finalised by standardised condition.

- 8.12 It is concluded that there is an insufficient case to support the reason the refusal of permission for change of use attached to the planning authority decision and it is recommended that the appeal be upheld subject to the proposed takeaway use be omitted by condition.

8.13 Appropriate Assessment.

Having regard to the nature and scale of the proposed development 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 European sites

8.14 A draft order is set out overleaf.

DECISION

Grant Permission on the basis of the reasons and considerations set out below:

REASONS AND CONSIDERATIONS.

Having regard to the Dublin City Development Plan, 2011-2017 according to which the zoning objective ("Z5 - City Centre") provides for the consolidation and facilitation of the development of the central area, the location of the site inside a Conservation Area and the central shopping area but not on a designated shopping street and, to the existing cluster and mix of restaurants, bars, cafes and hotels in the vicinity, it is considered that, subject to compliance with the conditions set out below, the proposed development would contribute to vitality and viability, would not be seriously injurious to residential amenity and would 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, as amended by the further plans and particulars submitted to An Bord Pleanála on 15th January, 2016, 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 grant of permission excludes use of the premises as a take away for the sale of hot food and cold food for consumption off the premises.

Reason: In the interest of the protection of amenity the public realm and the significance and character of Parliament Street, within a Conservation Area according to the development plan.

The shopfront fascia shall be in accordance with the following requirements:

- (a) Signage shall be confined to the single fascia board using sign writing or comprising either hand-painted lettering.
- (b) Details of any lighting to be provided on the exterior of the premises shall be submitted to the planning authority for written agreement.
- (c) Notwithstanding the provisions of the Planning and Development Regulations, 2001 or any statutory provision amending or replacing them, no advertisement signs (including any signs installed to be visible through the windows), advertisement structures, banners, canopies, flags, or other projecting elements shall be displayed or erected on the building, unless authorised by a further grant of planning permission.
- (d) No adhesive material shall be affixed to the windows or the shopfront.

Reason: In the interest of visual amenity.

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

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

5. 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.

8. Prior to commencement of development the developer shall submit, and obtain the written agreement of the planning authority to, 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.

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

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 the 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 the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 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.

12. The developer shall pay to the planning authority a financial contribution in respect of Metro North in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

Jane Dennehy,
Senior Planning Inspector.
20th April, 2016.