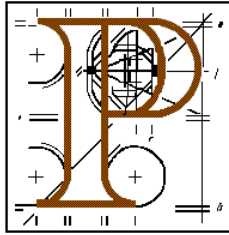


An Bord Pleanála



Inspector's Report

Appeal Reference No:	PL29S.246208
Development:	Change of use of ground floor unit 5 from retail use to use as a fast food take away premises, and the reinstatement of the previous use of unit 6 as a crèche / childcare facility on the site of a mixed use development.
Location:	Barleyhouse, 90-97 Cork Street and Marrowbone Lane, Dublin 8.
Planning Application	
Planning Authority:	Dublin City Council
Planning Authority Reg. Ref.:	2425/15
Applicant:	Green Label Investments Limited
Planning Authority Decision:	Split Decision (Grant change of use to take away and refuse change of use of Unit 6 to crèche / childcare facility)
Planning Appeal	
Appellant(s):	Barleyhouse Management Limited
Type of Appeal:	Third Party
Date of Site Inspection:	14 th April, 2016.
Inspector:	Stephen Kay

1.0 SITE LOCATION AND DESCRIPTION

The appeal site is located at the corner of Cork Street and Marrowbone Lane in Dublin 8. The site is developed in a mixed use residential and commercial scheme which was originally granted in 2003. This existing development comprises a building of between 2 and 7 storeys in height with frontage onto both Cork Street and Marrowbone Lane.

The part of the site which is of relevance to the subject appeal comprises two ground floor retail / commercial units which are on the Marrowbone Lane elevation. These units, Units 5 and 6 in the development, have floor areas of 62 sq. metres and 171 sq. metres respectively. The upper floors of the development are stated by the third party appellants to have a total of 77 no. residential apartments. The total area of the site as outlined in red is 2,996 sq. metres.

The units on site which are the subject of the change of use applications are currently unoccupied and it would appear from the planning history that the unit which the public notices state as proposed to be reinstated to use as a crèche / childcare facility (Unit 6) was never used as a crèche. The application documentation also indicates that Unit No.5 (that proposed for fast food use) has never been occupied.

2.0 PROPOSED DEVELOPMENT

The proposed development comprises what is advertised as the change of use of Unit No.5 from permitted retail use to use as a fast food take away and for the reinstatement of the previous use as a crèche / childcare facility at Unit No.6.

3.0 PLANNING HISTORY

- Dublin City Council Ref. 1408/03; ABP Ref. PL29S.203642 – Permission granted by the Planning Authority and decision upheld by An Bord Pleanála for the demolition of existing buildings on the site and the construction of a mixed use development comprising basement car parking with 82 no. cars with the scale of development ranging from 2 and 3 storeys to the courtyard to 5 and 6 storeys on the frontages to Marrowbone Lane and Cork Street and a 7 storey element at the corner of the two streets. The development incorporates 708 sq. metres of commercial space at ground floor level and 228 sq. metres at first floor. Vehicular access to the site is

provided off Cork Street with access to the basement car parking area provided off Marrowbone Lane.

- Dublin City Council Ref. 5335/05 – Permission granted by the Planning Authority for alteration to development permitted under ref. 1408/03. The changes mainly relate to elevational alterations including changes to the access to ground floor retail / commercial units.
- Dublin City Council Ref. 1283/06 – Permission granted by the Planning Authority for the for extension of the range of permissible uses to ground floor retail units previously permitted under planning ref; 1408/03. Proposed changes include c) Retail unit 5; extension of permissible uses from permitted retail use to proposed retail with the option of hot food takeaway. d) Retail unit 6; change of use from retail unit to crèche.
- Dublin City Council Ref. 2365/07 – Permission granted by the Planning Authority for alteration to development permitted under ref. 1408/03. The changes mainly relate to the amalgamation of commercial units 2, 3 and 4 into a single large unit.
- Dublin City Council Ref. 4406/08 – Permission granted by the Planning Authority for alteration to development permitted under ref. 1408/03. The changes relate to change of use of permitted units 2, 3 and 4 from retail use to office use.

4.0 PLANNING AUTHORITY DECISION

4.1 Planning and technical reports

Planning Officer - The report of the Planning Officer notes the planning history and the internal reports. Concern is expressed regarding the level of detail submitted in relation to the crèche and childcare facility including details of the nature of the facility, child and staff numbers and compliance with relevant standards. An initial report recommended further information and a second report subsequent to the submission of a response to this FI request recommended a split decision consistent with the Notification of Decision which issued.

Drainage Division – No objection subject to conditions.

City Archaeologist – No objection subject to conditions.

Roads and Traffic Planning Division – Initial report recommends that further information be requested relating to the scale of the crèche and the arrangements for set down and parking to serve this crèche use. A second report subsequent to the response to further information indicates that there are serious concerns regarding the lack of set down / delivery spaces for both the crèche and the take away use and that provision for such spaces should be submitted.

Environmental Health Officer – Accepts subject to conditions, the information submitted in response to the further information request specifically as it relates to the ventilation of the proposed take away unit.

4.2 Further Information

Prior to the issuing of a Notification of Decision the Planning Authority requested further information on the following issues:

- (a) Details of the nature of the childcare facility including hours of operation, child and staff numbers, parking, play areas and details of the previous use of the site as a crèche.
- (b) Ventilation for the take away, parking, bin and refuse arrangements, internal layout and proposed take away operational hours.

The main issues / information raised in the response to further information submitted can be summarised as follows:

- Stated that the development of the crèche will accommodate 44 no. children and 4 staff with hours of operation between 8am and 6pm Monday to Friday.
- That the facility is for full day care.
- That the amenity space for the crèche would be part of the yard area at the rear of the unit.
- Stated that the unit was approved as a crèche under ref. 1283/06. No details regarding the numbers of children accommodated provided.
- Stated that the take away use would not involve home deliveries, that hours of opening would be 12.00 pm to 12.00 am and that the refuse storage area would be located in the basement (indicated on plan).
- An outline of a proposed ventilation system was submitted.

4.3 Planning Authority Decision

A split decision was issued on the proposed development with a Notification of Decision to Grant Permission issued in respect of the proposed take away (change of use of unit 5 from retail to take away / fast food) and Notification of Decision to Refuse Permission for the Permission for the reinstatement of the previously permitted crèche use in Unit 6.

- The basis of the reason for refusal of the restoration of the crèche use relate to the substandard nature of the development in terms of the floor space provision per child and the inadequate set down provision at the site.

The following is a summary of the most significant conditions attached to the grant of permission for the change of use to take away of unit 5:

- Condition No.3 requires that the ventilation system shall be installed as per the design option submitted as part of the further information response. This flue is to be screened from view and signage shall be restricted to a maximum height of 400mm with no projecting signage.
- Condition No. 4 requires that the opening hours of the take away use shall be restricted to 10.00 – 02.00 hrs. and that no refuse shall be placed on the public footpath except on bin collection day.
- Condition No. 7 states that noise from the development shall not be such as to give reasonable cause for annoyance to persons in the vicinity.
- Condition No.8 requires that a carbon filtration system for the control of fumes and odours shall be installed.

5.0 GROUNDS OF APPEAL

A third party appeal submissions against the Notification of Decision to Grant Permission has been received. It is noted that this appeal has been submitted on foot of a successful leave to appeal application (Ref. 29S.LV3278) which was granted on the basis that the implementation of condition No.1 (development in accordance with submitted plans and particulars and further information submitted) and specifically the revised proposals for ventilation and bin storage submitted as part of the response to further information and which was not made the subject of further submissions, would have a significant implications for the appellants property.

The following is a summary of the main issues raised in this appeal submission:

- That the proposed development would have a significant negative effect on residential amenity of apartments in the development. The development would be contrary to the Objective Z4 land use zoning objective.
- That the application as submitted was piecemeal and significant details were omitted.
- That the proposed development would be contrary to the provisions of 17.26 of the development plan relating to fast food – takeaway developments.
- That access to Unit 5 which is proposed for fast food use is only from Marrowbone Lane. There is no rear access or adequate provision for bin storage.
- That access to the bin storage area indicated in the plans submitted as further information is constrained by adjoining car parking spaces. Access to this area would also involve use of the vehicular access ramp or the resident's stairs. There is a significant potential conflict between use of this bin storage area by the fast food outlet and residential use.
- That there is inadequate provision for deliveries and drop off / set down for both units.
- That the content of the report from Ventilation Ireland submitted as part of the FI response indicates that there are concerns regarding noise. The implementation of the recommendations for extraction / ventilation of the fast food unit (Unit 5) would intrude on the main residential amenity space in the Barleyhouse development and would have an adverse impact on residential amenity.
- That the fast food use would lead to noise, disturbance, litter and fumes that would have a negative impact on residential amenity and particularly for the residential units that are located immediately above Unit 5.
- That there has been no consultation with the management company of the Barleyhouse development (the third party appellants in this case) regarding the use of the basement bin storage area and no consent to such use is given.
- It is submitted that a crèche / childcare facility may be suitable for the ground floor of the site however a revised design and layout is required.
- Requested that the Board uphold refusal of permission for the crèche and refuse permission for the proposed fast food takeaway.

6.0 RESPONSES / OBSERVATIONS TO GROUNDS OF APPEAL

6.1 Planning Authority Response

No response on file.

6.2 First Party Response

No first party response on file.

7.0 POLICY CONTEXT

The appeal site is located on lands that are zoned Objective Z4 ‘*to provide for and improve mixed services facilities*’ under the provisions of the *Dublin City Development Plan, 2011-2017*. Under this land use zoning objective take away and childcare facility are both listed as being Permissible Uses.

Paragraph 17.26 of the Plan relates to takeaways and states that it is the intention of the council to control the location of such uses to prevent an excessive concentration and that the location of these uses will be controlled having regard to, inter alia, noise and amenity issues, traffic considerations and issues of litter and ventilation.

8.0 ASSESSMENT

The following are the main issues arising in the assessment of the subject appeal:

- Principle of Development
- Impact on Residential Amenity
- Design and Layout of Proposed Crèche / Childcare Facility
- Other Issues

8.1 Principle of Development

8.1.1 The appeal site is located in an area that is zoned Objective Z4 ‘*to protect, for and improve mixed services facilities*’ under the provisions of the *Dublin City Development Plan, 2011-2017*. Both of the uses proposed for the units on the site (fast food / takeaway and crèche) are identified as being Permissible Uses under the development plan.

- 8.1.2 It is noted that while the appeal submitted relates to the Notification of Decision to Grant Permission for the proposed change of use of Unit 5 from retail to fast food use, the application also provides for the reinstatement of the crèche use at unit 6. I also note the fact that the third party appellant states that they do not object in principle to a childcare facility at the site but that a revised application should be prepared to accommodate this use in a satisfactory manner within the development. While the appeal relates solely to the element of the proposal which was permitted by the Planning Authority (fast food use at Unit No.5), it is considered appropriate that the entirety of the application, including the proposed childcare / crèche use, would be considered de novo.
- 8.1.3 With regard to the planning history of the site, it would appear from the information presented that under Ref. 1283/06 permission was granted by the Planning Authority for the change of use of Unit 5 from retail to retail with the option of a hot food take away component, and for Unit 6 to change from retail to use as a crèche. Despite the wording of the current application indicating that the proposal for unit 6 provides for the reinstatement of crèche / childcare use it would appear from the information available that no crèche use ever operated from Unit 6.

8.2 Design and Layout of Proposed Crèche / Childcare Facility

- 8.2.1 The report of the Planning Officer sets out a number of concerns with regard to the design and layout of the proposed crèche / childcare facility at Unit No.6. These concerns primarily relate to the ability of the unit to accommodate the number of children proposed. In response to a further information request from the Planning Authority the applicant states that the intended number of children to be accommodated is 44 with a gross floor area per child of 3.47 sq. metres. A minimum of 4 no. staff are proposed and the hours of opening are proposed to be 08.00 am to 18.00 hrs. with most children stated to be collected at 12.30. No breakdown of the age cohorts of the children was provided with the further information response.
- 8.2.2 The report of the Planning Officer identifies the fact that the childcare use at Unit 6 permitted under Ref. 1283/06 would not appear to have been implemented and that there is therefore no established use on this part of the site. It is also noted that there is an apparent discrepancy between the floor area of the unit as set out in the 2006 application and the current proposal. The stated floor area of unit 6 under the current application is 171 sq. metres however as noted by the Planning Officer the floor area calculation per child should be undertaken on the basis of clear unobstructed floor area less areas such as kitchens, toilets, hall, reception area etc. When allowance is

made for such areas the report of the planning officer states that the maximum clear floor available is c. 100 sq. metres.

- 8.2.3 I would agree with the Planning Officer that it is appropriate that the level of floor area to be taken into consideration for accommodating children should be reduced from the gross floor area stated and note that provision for the omission of ancillary areas is provided for in Appendix 20 of the Development Plan. A calculation of the appropriate floorspace required to cater for the proposed 44 no. children is not possible as the applicant has not submitted details of the age cohorts of the children to be accommodated. Assuming an average requirement of c. 2.75 sq. metres per child and a clear floorspace of 100 sq. metres, the maximum number of children that can be accommodated would be c. 36. I would agree therefore with the Planning Authority that the proposed number of children cannot be accommodated at the site however it would appear feasible that the development could be conditioned to accommodate a lower maximum level of occupancy. Similarly, I note the comments of the Planning Officer regarding the inadequate level of staff provision cited in the FI response. In the event of a grant of permission the occupant would be required to comply with the relevant provisions of the Childcare Regulations with regard to staff ratios. In this regard it is also noted that the further information request sought confirmation that the applicant had consulted with the HSE preschool officer and that the HSE approved of the facility proposed. No such confirmation was submitted by the applicant.
- 8.2.4 The proposed layout provides for an open space area to the rear of the unit of c. 55 sq. metres. The scale of this open space is considered to be adequate to cater for the floor area proposed to be changed to crèche / childcare use, however I would have some concerns with regard to the proximity of this area to residential properties on the upper floors and the potential impact in terms of noise for residents.
- 8.2.5 I note that the Roads and Traffic Planning Division of the Council have concerns regarding the lack of adequate provision for a set down area for children travelling to the crèche by car. The road outside the unit (Marrowbone Lane) is busy, particularly so in this location close to the junction with Cork Street where a queue of traffic fronting the development was observed at the time of inspection. The section of Marrowbone Lane approaching the Cork Street junction where the appeal site is located is characterised by double yellow lines on both sides of the road and also by a continuous white line in the centre of the road. There is therefore no on street parking or set down area fronting the site. To the north on Marrowbone Lane there is a short section of kerb where parking is possible on the western side of the road with double yellow lines on the balance of this section. Overall therefore, while it is likely that a significant number of

users of a crèche facility would travel by foot, I would have significant concerns regarding the provision of adequate set down arrangements and parking to serve the proposed crèche / childcare use. In addition, while I consider that the principle of the use of Unit 6 or an expanded unit at ground floor level of the Barleyhouse building for a crèche / childcare facility, I consider that an application for permission should be accompanied by more detail regarding the age cohorts of children to be accommodated such that a more detailed assessment of the suitability of the building in floor area and layout terms can be made. In the absence of such information as part of the further information response or in a response to the third party appeal submission it is my opinion that permission should be refused on the basis that it has not been demonstrated that the requirements of the Childcare Guidelines and the Dublin City Development Plan would be met.

8.3 Impact on Residential Amenity

- 8.3.1 The basis of the third party appeal submitted relates to the proposed change of use of Unit No.5 from permitted retail use to use as a fast food takeaway. The ground for objection relate to issues of noise and residential dis amenity, and accessibility to bin storage and arrangements for collection.
- 8.3.2 With regard to residential amenity and noise, the further information response submitted by the applicant includes a report by ventilation Ireland which specifies the type of extraction and ducting to be used to ventilate the cooking area of the fast food unit. The route of the ventilation is out the rear wall of the unit and upwards to vent above roof height. The information submitted states that an odour abatement unit should also be used. A report from the Environmental Health Officer states that the proposed arrangement is satisfactory however it is noted that the four levels above the proposed unit comprise residential units. I would also note the fact that the location of the vent at roof level adjoins the roof top terrace to which residents have access.
- 8.3.3 In addition to noise from the ventilation of the unit, the proposed use would clearly result in additional noise from persons using the take away. The further information response of the applicant states that it is not intended that there would be deliveries from the unit which is appropriate given the lack of set down or parking available. In addition, the further information response states that the intended opening hours are 12.00 pm to 12.00 am which I assume means midday to midnight. The location of the appeal site is already an area characterised by significant noise levels from traffic and on street activity. Notwithstanding the details submitted as part of the further information response I would have significant concerns regarding the noise impact of the proposed development (both mechanical noise and noise from

users of the facility) and the resulting impact on residential amenity of the units located on the upper floors of the development.

- 8.3.4 The third party appellants note the fact that the further information submission indicates that the bin storage area to serve the development is at basement level, that this storage area is currently used to serve the residential units on the site, that there is no direct access from Unit 5 to the bin store and that the management company for the Barleyhouse development (the third party appellants) have not consented to the use of the basement bin storage area for this commercial use.
- 8.3.5 From a review of the plans submitted as part of the further information response, I would share the concerns of the third party appellants regarding the provision for bin storage with the development. From the statement of the appellants on file there would not be consent from the management company to the use of the bin area identified by the applicant, though I am conscious that there is no response from the first party available to refute this. I would agree with the third party that the access to the bin store is constrained by adjoining car parking spaces and the only method of accessing the bin area from Unit 5 is via either the vehicle ramp to the car park or the stair core located to the south of Unit 5 which is an escape stairs. In short I would agree that the proposed bin storage arrangements are not satisfactory to serve a fast food unit and that the use of the bin store as proposed would, in addition to potentially not being permitted by the management company, would conflict with the residential use of the site and have a resulting adverse impact on residential amenity for occupants of the apartments.
- 8.3.6 I note that the application details does not make any proposals regarding a litter management plan. Such information is specified as required in paragraph 17.26 of the Development Plan as it relates to take away uses.
- 8.3.7 Similar to the case with the proposed change of use to crèche / childcare facility I note the concerns of the Roads and Traffic Planning Division regarding the lack of set down or delivery parking. Parking for customers of the proposed fast food outlet is not required however there is a lack of any area for deliveries or set down in proximity to the unit which could be used for deliveries or bin collection. I accept that this is true of all of the commercial / retail units at ground floor level of the Barleyhouse development however this is of particular concern given the proposed basement bin storage proposed and the poor access to this area.

8.4 Other Issues

- 8.4.1 I note that the application drawings indicate new signage to the commercial units. No details of this signage is provided in the application documentation and in the event of a grant of permission a condition requiring that details of the signage be submitted for agreement should be attached.
- 8.4.2 No screening for appropriate assessment was submitted with the application and none was undertaken by the Planning Authority. Given the limited scale of the proposed changes of use, the nature of the proposed uses and its location relative to Natura 2000 sites, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.
- 8.4.3 In conclusion, it is acknowledged that the units are currently vacant and that none of the ground floor retail / commercial units in the Barleyhouse development are occupied indicating that finding tenants has proven to be difficult. In principle, I would agree with the third party that there is potential for the accommodation of a crèche use on the site, however the level of detail accompanying the application is limited even after the submission of further information and for the reasons set out above I consider that further details need to be submitted regarding child age cohorts and how the layout meets the appropriate standards. It is also required that any future application would give consideration to the issue of parking and set down and that proposals to address this issue are submitted as well as consideration as to how the impact of the outside space on residential amenity could be minimised. With regard to the take away use, I note the proposals for ventilation however I remain concerned regarding the impact of mechanical noise from operation and the noise generated by visitors to the facility on the residential amenity of the adjoining apartments. I also consider that the proposed bin storage and arrangements for bin collection are inadequate to support the proposed use. For these reasons I consider that the proposal would be contrary to the criteria as set out at 17.26 of the City Development Plan. There may be some potential for ventilation of Unit 5 to be via the gable end of the premises and such a layout would ensure a greater separation to the windows of residential units above. However, such a layout would have to be such that it would not impinge on adjoining sites. Even with such a ventilation layout however I would retain significant concerns regarding the noise impact caused by patrons of the fast food outlet and the impact on residential amenity arising.

9.0 CONCLUSIONS AND RECOMMENDATION

Based on the above, it is recommended that the proposed development should be refused for the reasons and considerations set out below.

REASONS AND CONSIDERATIONS

1. Having regard to the design and layout of the proposed crèche facility, including the clear floor area of the unit and the lack of available car parking or set down area in the vicinity, it is considered that the proposed 44 no. children could not be satisfactorily accommodated on the site. The proposed development would be contrary to the Child Care Facilities (Guidelines for Planning Authorities), 2001 and Appendix 20 of the Dublin City Development Plan, 2011-2017, would lead to the creation of a traffic hazard in this location and would be contrary to the proper planning and sustainable development of the area.
2. Having regard to the layout and location of the proposed fast food unit, in particular the arrangements for ventilation of the unit, its proximity to residential units and the lack of a dedicated easily accessible bin storage area to serve the unit it is considered that the proposed change of use would have a significant adverse impact on residential amenity by virtue of noise and conflict with the residential use of the rest of the site. The proposed development would therefore seriously injure the amenities and depreciate the value of property in the vicinity and would be contrary to the proper planning and sustainable development of the area.

Stephen Kay

Inspectorate

Date: 20th April, 2016