

An Bord Pleanála



Inspector's Report

PL06F.246390

DEVELOPMENT:-

Renewal of temporary planning permission for market comprising of 5 shops, two pairs of covered access gates to the front, seasonal market to the rear and all associated works at 3A Harbour Road, Howth, County Dublin.

PLANNING APPLICATION

Planning Authority: Fingal County Council
Planning Authority Reg. No: F15A/0553
Applicant: Greg Rickard
Application Type: Permission
Planning Authority Decision: Grant

APPEAL

Appellant: Mark Wright
Types of Appeal: 3rd Party -v- Condition No. 8
Observers: None
Date of Site Inspection: 26th May, 2016.

INSPECTOR: Paul Caprani

1.0 INTRODUCTION

PL06F.246390 relates to a third party appeal against conditions relating to the decision of Fingal County Council to issue notification to grant permission for renewal of a temporary planning permission for a market comprising of 5 shops, two pairs of covered access gates to the front and a seasonal market to the rear and all associated works at 3A Harbour Road, Howth, County Dublin. The grounds of appeal specifically relate to Condition No. 8 which requires that Units Nos. 1 and 5 shall be used as café/hot food take-away.

2.0 SITE LOCATION AND DESCRIPTION.

The subject site is located adjacent to Howth Harbour on the southern side of the Howth Road facing towards the west pier of Howth Harbour. The site is located in close proximity to Howth Dart Station. The site is bounded to the rear by a large retaining wall and embankment beyond which Deer Park Golf Course and Howth Demesne are located. Lands to the immediate east of the subject site formerly accommodated St. Laurence's Hotel but now is occupied by Findlaters Restaurant with a three storey block of apartments to the rear. Lands to the west accommodate a terrace of former two storey dwellinghouses which now accommodate retail and commercial uses at ground floor level.

The site itself accommodates a row of five single storey shops with a total area of 108.6 square metres. These shops front directly onto Harbour Road. Unit No. 1 and Unit No. 5 are in use as cafés. The shops are of timber construction with front and rear timber doors. Unit 1 and Unit 5 are detached from the three central units 2, 3 and 4. The gaps between Unit 1 and Unit 2 and Unit 4 and Unit 5 provide access to the rear of the subject site which is currently undeveloped. Each of the units are relatively small. Each have a gross floor area of between 10 and 13 metres. A fascia board runs along the entire length of the front of the site. The front elevation incorporates slightly projecting elements between the units which provide access to the rear of the site. The two entrances to the rear of the site accommodate large sliding wooden doors.

Lands to the rear of the site accommodate a seasonal market without outdoor stalls which are laid out in rows adjacent to the side and rear boundaries. A total block is located in the south-western corner to the rear of the site.

3.0 PROPOSED DEVELOPMENT

Planning permission is sought for the renewal of a 5 year planning permission granted under Reg. Ref. F11A/0433 (PL06F.240659) for the 5 single commercial units together with the seasonal market incorporating outdoor stalls on the subject site.

4.0 PLANNING AUTHORITY'S DECISION

The planning application was lodged on 27th November, 2015. A covering letter was submitted with the application stating that the operation of the extant permission did not give rise to any amenity issues.

A report from the Planning and Strategic Infrastructure Department – Water Services Section states that there is no objection to the proposed development and that the conditions of the parent permission (F11A/0433) will apply.

A report from Irish Water likewise stated that it has no objection to the proposed development.

A report from the Transport Planning Section states that there is no objection subject to the development continuing on a temporary basis.

A report for the Conservation Office states that there are no specific comments or observations on this matter.

A report from the Heritage Officer states that there are no observations to make in respect of the application.

The planner's report notes that the primary issues for assessment includes compliance with the zoning objective of the development plan, the impact on the visual and residential amenity of the area and transport and water and drainage issues. In respect of zoning it is stated that the proposed development complies with the zoning objective for the area and is therefore acceptable in principle. The proposed retail shops which front onto the Harbour Road are modest in scale and present active frontages to this section of the street. It is also considered that while of timber construction the shops and shopfronts have been maintained in good order and therefore do not adversely impact on the visual amenity of the area. The signage is also considered to be

acceptable. While it is noted that there is residential apartment block to the south-east of the subject site it is considered that subject to appropriate conditions that the proposed development will not give rise to significant amenity issues. It is therefore recommend that planning permission be granted for the proposed development. Condition No. 3 of the Planning Authority's notification to grant planning permission limited the life of the permission to 5 years. Condition No. 8 stipulated that Unit 1 and Unit 5 only shall be used as cafés/hot food take-aways.

5.0 PLANNING HISTORY

Under Reg. Ref. F11A/0433 Fingal County Council issued notification to grant planning permission on the subject site for a temporary permission for the erection of 5 single storey retail shops, two pairs of covered access gates to the front and a seasonal market to the rear for outdoor stalls together with a toilet block and ancillary development works. The decision was subject to two third party appeals.

An Bord Pleanála under PL06F.240659 upheld the decision of Fingal County Council and granted planning permission for the proposed development subject to 14 conditions. Condition No. 2 limited the life of planning permission to 3 years.

6.0 GROUNDS OF APPEAL

The decision was appealed on behalf of Mark Wright a proprietor of the adjoining Findlaters Bar and Restaurant and this appeal specifically related to Condition No. 8 of the notification to grant planning permission. The appeal arose from a successful application for leave to appeal granted by the Board on 21st March under Reg. Ref. 06F.LV3283 (file attached). It is stated that the appellant has no objection to the extension of duration of the original approved temporary permission subject to an amendment to Condition No. 8. It is stated that in the grant of the original permission under F11A/0433 additional information was submitted which incorporated a revised layout that indicated food stalls to the western side of the market only and 5 small non take-away shop units would be located to the front/street elevation. It is very important that the layout approved under the original permission is maintained and the location of food stalls are kept away from the adjoining apartments to the east. It is also noted that Condition No. 8 of An Bord Pleanála's grant of planning permission under Reg.

Ref. PL06F.240659 required that the 5 retail shops should only be used as shops and that any change of use to these shops to cafés or hot food take-aways should be subject to a further planning application.

The current application seeks only to extend the duration of temporary permission for a further 5 years. The reason for the incorporation of Condition No. 8 in the current application is not altogether clear. It is noted that the applicant did not seek any change in terms of the original permission granted. The legality of permitting a specific use by condition when no such change was sought is very questionable. The Planning Authority have inadvertently imposed this condition without fully appreciating the importance of the An Bord Pleanála condition which arose as outlined from objections made to the original application and appeal. Having two take-aways immediately adjoining a high quality licenced premises (Findlaters Restaurant) detracts from the street and visual character of the setting on the approach to Howth Harbour which is a major tourist destination. The proximity of the units to the residential apartments will affect the enjoyment of these by reason of late night noise and smells. The residential amenity of these dwelling units will be adversely affected to an unacceptable degree.

7.0 APPEAL RESPONSES

The applicant submitted the following response to the grounds of appeal.

It is stated that Unit No. 1 is operated as a coffee shop since it opened approximately 3 years ago and Unit No. 5 is operated as a deli for a similar period.

Specifically in relation to the grounds of appeal it is stated that the Planning Authority have re-examined the potential impact of the proposal on residential amenity and it is clear to the Planning Authority that the development is operated in an appropriate manner and Condition No. 8 of the Planning Authority's decision is recognition of this and consolidates the diversity and attractiveness of the market for all by seeking to consolidate and retain the current uses of Units 1 and 5. The applicant is of the opinion that the current uses of Units 1 and 5 are not cafés or hot food take-aways but they are shops. Unit 1 is a coffee shop with very minimal seating and the vast majority of products are being sold in a normal retail manner. It is important to note that neither the applicant nor any neighbours have raised any objections or made any

complaints in relation to the current uses of Units 1 and 5. In fact the appellant has also stated that there is no objection to the continuance of a market on this basis. It is further apparent that the appellant's objection does not relate to the existing use but the possibility of the units being converted to fast food outlets such as fish and chip shops or take-away. The applicant has not sought or is not seeking a general café/hot food take-away for Units 1 and 5. An Bord Pleanála is therefore requested to reject the appeal on the basis that the appellant has not demonstrated how the retention of Condition No. 8 would either detract from the amenity of the apartments.

If the Board decide that there is merit in the appeal and that the condition permitting the general use as a café/hot food take-away is not warranted the Board is urged to grant planning permission with the uses for Units 1 and 5 being retained as a coffee shop and a delicatessen respectively.

Fingal County Council's Response to the Grounds of Appeal

The response dated 29th April, 2015 states that the Planning Authority has no further comment to make in relation to this application.

8.0 DEVELOPMENT PLAN PROVISION

The site is governed by the policies and provisions contained in the Fingal County Development Plan 2011-2017.

The subject site is located within an area governed by the zoning provision TC "to protect and enhance the special physical social character of the town and district centres and to provide and/or improve urban facilities". Retail development is permitted in principle under this land use zoning objective.

The vision for this zoning objective seeks to maintain and build on the accessibility, vitality and viability of the existing urban centres in the county. Develop and consolidate these centres with an appropriate mix of commercial, recreational, cultural, leisure and residential uses and to enhance and develop the urban fabric of these centres in accordance with the principles of urban design, conservation and sustainable development. Retail provision will be in accordance with the country retail strategy, enhance and develop the existing urban fabric, emphasise urban conservation, and to ensure priority for public

transport, pedestrians and cyclists while minimising the impact of private car based traffic. In order to deliver this vision and to provide a framework for sustainable development, urban centre strategies will be prepared for centres in accordance with the Urban Fingal Chapter Objectives.

The site is also located adjacent to the Howth Architectural Conservation Area.

The Howth Urban Centre Strategy seeks to promote Howth as a thriving village and enhances cultural and tourism potential as well as providing an attractive public realm.

9.0 PLANNING ASSESSMENT

I have read the entire contents of the file and have had particular regard to the issues raised in the grounds of appeal. Having regard to the planning history associated with the site, the land use zoning objective for the site which permits retail use in principle and the overall vision for the zoning objective – town and district centre which seeks to promote an appropriate mix of commercial, recreational, culture and leisure uses I consider the principle of the development to be acceptable on the subject site.

Furthermore having regard to the fact that the grounds of appeal do not object to the said development in principle but merely seek an alteration/omission to one of the conditions attached I consider the principle of development to be acceptable on the subject site and I therefore consider the Board can restrict its deliberations to the issue raised in the grounds of appeal namely the incorporation of Condition No. 8 in any final grant of planning permission.

Condition No. 8 of Fingal County Council's notification to grant planning permission stipulates that Units 1 and 5 shall be used as cafés/hot food take-aways. The Board will note that the original application made to the Planning Authority did not specifically seek as part of the application for permission that Units 1 and 5 would be reserved as cafés/hot food take-aways. The Board will also note from my site inspection and from the applicant's response to the grounds of appeal that currently Unit No. 1 is occupied by a coffee shop and Unit No. 5 is occupied as a delicatessen. A delicatessen would constitute a shop under the definition set out in Article 5 of the Planning and Development Regulations 2001, as

amended. Unit 5 in this instance constitutes a structure where the sale and display are services is principally to visiting members of the public for the retail sale of goods as required under the Regulations. However the same could not be said in my opinion in respect of the coffee shop. While the premises for the sale of sandwiches or other food for consumption off the premises where the sale of such food is subsidiary to the overall main retail use would not apply in the case of the current coffee shop and as such the coffee shop could to be classed as a shop under the definition set out in the Regulations. This is an important consideration for the purposes of determining the appeal before the Board. The Board's original grant of planning permission under PL06F.240659 included Condition No. 8 which states that the retail shop shall only be used in accordance with the definition of shop set out in Article 5(1) of the Planning and Development Regulations 2001, as amended. Any change of use of these shops to cafés or hot food take-aways shall be the subject of a further planning application. It appears from the planning history that no such application was made in respect of Unit No. 1 for a change of use from a shop to a coffee shop. The use of a coffee shop is therefore unauthorised. It is inappropriate in my view that the Planning Authority would seek to retrospectively authorise a use by way of a condition where no such authorisation was sought as part of the original application put to the Planning Authority. The condition in this instance should not be used to secure a general tidying up in respect of uses which are presently unauthorised.

The use of a coffee shop in Unit No. 1 contravenes Condition No. 8 of the parent permission and as such constitutes an unauthorised use. The use in question therefore should be authorised in the context of a new planning application seeking a change of use and any such application should be evaluated on its merits in accordance with the proper planning and sustainable development of the area.

Having regard to the assessment above therefore I recommend that Condition No. 8 be omitted in any determination to grant planning permission issued by the Board.

Appropriate Assessment

The nearest Natura 2000 site is the Baldoyle Bay SAC (Site Code: 000199) which is located on the northern side of the Dart Railway line approximately 200 metres to the north-west of the subject site. The Howth Head SAC (Site Code: 000202) is located approximately 650 metres to the east of the subject site. Having regard to the nature and

scale of the proposed development which relates to the continuation of an existing established use on the subject site and the absence of construction works associated with the development it is considered that 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 and projects on the European site.

10.0 CONCLUSIONS AND RECOMMENDATION

Arising from my assessment above I consider it inappropriate that the Planning Authority would seek to retrospectively authorise an unauthorised use on the subject site by way of condition in the absence of a specific planning application seeking a change of use from retail to café/coffee shop. I therefore consider the condition in question to be ultra vires and recommend that this condition be omitted in any grant of planning permission issued by An Bord Pleanála.

**Paul Caprani,
Senior Planning Inspector.**

June, 2016.

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