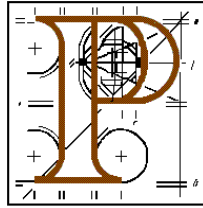


An Bord Pleanála



Inspectors Report

Development: Permission for Blucaffe to be located at Unit 3 Aston Quay, together with new shop front. Retention permission for relocation of Gypsy Rose Bar from Unit 5 to Unit 4 at ground level and retention of reduction in floor area of Gypsy Rose at basement level, all at Units 3,4 and 5 Aston Quay, Dublin 2.

Planning Application

Planning Authority: Dublin City Council
Planning Authority Reg. Ref. 2057/16
Applicant: Rock and Blues Ltd.
Type of Application: Permission and Retention Permission
Planning Authority Decision: Grant

Planning Appeal

Appellant(s): Alan and Aine Deacon & Others

Observers: None

Type of Appeal: Third Party
Date of Site Inspection: 20/09/16

Inspector: Gillian Kane

1.0.0 SITE LOCATION AND DESCRIPTION

1.0.1 The subject site is located on the ground and basement floors of units 3, 4 and 5 Aston Quay, Dublin 1. Aston Quay is a four storey development fronting the Liffey, with retail and associated uses at ground level and residential on the upper floors. Currently unit 5 is vacant, unit 3 is under construction and unit 4 is set out as the Gypsy Rose public house. At basement level, an associated music venue occupies the basements of units 3 and 4.

1.0.2 Photographs and maps in Appendix 1 serve to describe the site and location in further detail.

2.0.0 PROPOSED DEVELOPMENT

2.0.1 Permission was sought for the location of 'Blucaffe' in Unit 3 Aston Quay and new shop front. Retention permission is sought for the relocation of the Gypsy Rose bar from Unit 5 to Unit 4 at ground level and the retention of a reduction in floor area of the Gypsy Rose music venue from Units 3,4 and 5 to Units 3 and 4 only at basement level.

2.0.2 Details provided in the application form: total site area is 393.m. Blucaffe 56sq.m. at ground level, Gypsy Rose bar 107sq.m. at ground level and 230sq.m. at basement level.

2.0.3 The application was accompanied by a letter of consent to the making of the application.

2.1.0 Reports on File following submission of application

2.1.1 **Drainage Division Engineering Dept:** No objection subject to developer complying with the Dublin Regional Code of Practice for Drainage Works.

2.1.2 **TII:** site is within Metro North Section 49 Supplementary Contribution Scheme. Levy to apply.

2.1.3 **EHO:** Condition to be attached: "No speakers shall be erected outside any of the premises or projecting into external areas".

2.1.4 **Planning Report:** No objection in reduction of music venue floor area in basement. Proposed coffee shop at ground floor is acceptable in principle but further details are required. Onus is on applicant to ensure that new use will not be detrimental to residential amenity in terms of noise. Development of super pubs will be discouraged. Details of previous use of ground floor required.

2.2.0 Request for Further Information

- 2.2.1 The applicant was requested to submit the following details:
1. Clarification of proposal involves a change of use at ground floor of Unit 4, details of most recent use required.
 2. Clarification of proposed use for Unit 3: details of coffee shop required
 3. Details of proposed noise attenuation measures, signage, hours of operation storage and collection areas for waste required.

2.3.0 Response to FI Request

- 2.3.1 The applicant responded to the FI request as follows:
1. Unit 4 was previously occupied by the Blucaffè as an ancillary space to the Gypsy Rose Bar in Unit 5, both associated with the Bluesclub located in the basement. An opening between units 4 and 5 is now closed.
 2. No food will be served in the Blucaffè. The development will not include a kitchen.
 3. Acoustic details provided by Consulting Engineer. Waste disposal, signage details provided. No change to hours of opening.
- 2.3.2 **Planning Report:** Submitted information is acceptable. Recommendation to grant permission subject to 4 no. conditions.

3.0.0 PLANNING AUTHORITY DECISION

- 3.0.1 By order dated 03/06/2016 an order of intention to GRANT permission subject to 7 no. conditions issued. Condition no. 3 states:
3. "The music venue in the basement shall be restricted to a period of three years only. Reason: To allow for a fuller appraisal of any meaning potential negative impacts on both adjoining properties and on the immediate area".

4.0.0 PLANNING HISTORY

- 4.0.1 **DCC reg. ref 2483/15:** Planning permission granted for adjustment to ground floor units at 2-4 Aston Quay to reinstate separate shop unit at unit 3, closure of existing opening between unit 2 and unit 3 and reinstatement of shop front at unit. 3
- 4.0.2 **DCC reg. ref 3547/11:** Planning permission granted for alterations to existing shop front at unit 4

- 4.0.3 **DCC reg. ref 2784/11:** Planning permission refused for change of use from retail to licensed premises at Unit 4
- 4.0.4 **DCC reg. ref 3782/05:** Planning permission granted for alterations to 3264/04 to include change of use of basement to extended nightclub at units 4 and 5.
- 4.0.5 **DCC reg. ref. 3264/04:** Planning permission granted for change of use of basement of unit 4 from stores to toilets, cloakroom, staff accommodation, stores, fire stairs and new access
- 4.0.6 **DCC reg. ref. 2869/98:** Planning permission granted for attic floor single storey extension to four storey building to include additional living space and roof terraces to apartments 9 & 10 additional office space and roof terraces to apartments 5 & 6 studio/office extension to third floor at rear of apartments 5 & 6, at 1-4 Aston Quay.

5.0.0 LOCAL POLICY

5.0.1 DUBLIN CITY DEVELOPMENT PLAN 2011 - 2017

5.0.2 The subject site is zoned “Z5” in the Dublin city development plan, with the stated objective “*to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity*” (‘Z5’ - City Centre). Uses that are permissible in principle in Z5 zones include: nightclub, public house, restaurant, take-away and shop.

5.0.3 Section 15.10.5 of the development plan states that the primary purpose of this use zone is to sustain life within the centre of the city through intensive mixed-use development. According to the development plan the strategy is to provide a dynamic mix of uses, which interact with each other, creates a sense of community and which sustains the vitality of the inner city both by day and night. As a balance and in recognition of the growing residential communities in the city centre, adequate noise reduction measures must be incorporated into development, especially mixed-use development, and regard should be given to the hours of operation.

5.0.4 Development management standards for Z5 zones include:

- Plot ratio: 2.5-3.0
- Site coverage: 90%

5.0.5 Policies and objectives of relevance to the subject development include:

SIO84 To protect residents of mixed use developments from noise emanating from other uses such as shops, offices, nightclubs, late night busking, public houses and other night time uses through the Planning System.

5.0.6 Section 17.34 outlines the Councils policy in relation to nightclub / music venues. The plan states that in recognition of the importance of Dublin as a thriving and multi-dimensional capital city, there is a need to facilitate the concept of the 24-hour city particularly in the city centre and other key district centres. Dublin City Council will encourage entertainment/ culture/music uses and uses such as internet cafés, which help create an exciting city for residents and tourists alike, and are capable of attracting people in cutting edge industries such as digital media. The plan notes that there is a need to strike an appropriate balance between the role of these entertainment uses in the economy of the city, the need to maintain high quality retail functions on the primary city centre streets and ensure a balanced mix of uses and to protect the amenities of residents from an over-concentration of late night venues. In relation to noise, the plan states that noise emanating from and at the boundaries of these establishments are issues which will need to be addressed in the submission of a planning application. Noise insulation and reduction measures, especially to any air-conditioning or ventilation plant and including entrance lobbies, will be required to be submitted with the planning application. Section 17.34 states that the development of ‘super pubs’ will be discouraged and the concentration of pubs will be restricted in certain areas of the city where there is a danger of overconcentration of these to the detriment of other uses. In these areas it will be a priority to preserve the form, character and scale of the traditional Dublin pub.

6.0.0 GROUNDS OF APPEAL

6.0.1 An agent on behalf of six owners and residents of Aston Court has submitted an appeal against the decision of the Council to grant permission. The appeal states that the appellants homes / properties are immediately above or adjacent to the subject site. The board is requested to refuse permission on the grounds that the proposed development will seriously injure the residential amenity of the residents of Aston Court. The grounds of the appeal can be summarised as follows

6.0.2 Compliance with the Development Plan

- The proposed development in a building with primarily residential use. It is submitted that a number of the policies in the development plan support residential uses on the upper floors of mixed use developments and the promotion of sustainable neighbourhoods: policy QH5, policy QH21, policy NC1, policy NC2, policy NC24.
- It is submitted that the proposed development does not protect or reinforce the civic character of the central area. The development to date has been an intrusive and discordant neighbour to the residential development which existed long before the subject development due to noise disturbance, noise reverberation and anti-social behaviour.
- It is submitted that it is impossible to insulate against the noise that is carried through the building. This creates a severe nuisance for the residents.
- The proposed development does not promote a neighbourhood development that builds on local character nor does it harmonise with the unique character of the area.
- The proposed development results in serious disturbance and injury for the adjoining residential properties.
- The proposed development materially contravenes the zoning objective for the area as it fails to sustain the vitality of the inner city by day or night, it fails to strike a balance or provide adequate noise reduction measures or reasonable hours of operation.

6.0.3 Injury to Residential Amenity

- The proposed operation of the subject site as a music venue will seriously injure the residential amenity of the area. Such a use should be located in a building with no residential component. The existing building was not designed for such a use and the proposed use causes on-street activity with noise disturbance.
- It is submitted that condition no. 4 of the Councils decision to grant will be impossible to implement having regard to the nature of the existing building structure.

6.0.4 Nature and Scale of proposed development

- The proposed development by reason of its scale and form results in a super-pub and by reason of its noise and disturbance seriously injures the residential amenity of the area.
- The proposed development would be contrary to the proper planning and sustainable development of the area.

6.0.5 It is submitted that Temple Bar has ample bars and music venues where there is no immediately adjoining residential property. The appellants have committed to inner city living and appreciate the vitality of the city. The proposed development makes the situation unbearable. The Board is requested to protect the residential amenity of the residents and refuse permission for the proposed development.

6.0.6 The Board is requested to note the judgement of Judge Karen Fergus regarding a licence at 5 Aston Quay, directly adjacent to the subject site. It is stated that the judge concluded that the existing number of licensed premises in the neighbourhood is adequate.

7.0.0 OBSERVATIONS

7.0.1 None on file.

8.0.0 RESPONSES

8.1.0 Planning Authority Response

8.1.1 The substantive planning matters and reasons on which the Planning Authority's decision was based are set out in the planning report. This report still stands. The inspector is requested to uphold the decision of the Planning Authority.

8.2.0 First Party Response to Third Party Appeal

8.2.1 New issues raised in the response can be summarised as follows:

- The proposed development comprises a reduction in floor area and therefore a reduction in noise levels.
- The Gypsy Rose Bar (previously The Viper Room) has existed at this location for a considerable time.
- The applicants are happy to comply with the conditions of the Councils decision.
- Holes in the concrete slab separating the Gypsy Rose Bar from the apartments will be filled and sealed before a new independently supported double slabbed acoustic ceiling will be fitted to comply with BS4142. This is in addition to the acoustic proposals outlined in the response to the Councils request for additional information.
- The applicants are seeking a derogation to that part of BS4142 which relates to impulsive assessments in relation to the delivery / collection of kegs and bottles. It is stated that delivery /

collection is usually 10 minutes during the day time and such delivery / collections are ubiquitous to the Temple Bar area.

9.0.0 ASSESSMENT

9.0.1 On reading of all documentation submitted with the appeal, I consider the issues to be:

- Principle of the development
- Noise
- Appropriate Assessment

9.1.0 Principle of the Development

9.1.1 The proposed development refers to three units at ground and basement level of Aston Quay. Currently unit no. 3 Aston Quay is empty. It is proposed to re-locate the 'Blucaffe' coffee shop to half of the ground floor of unit. 3 and provide a new shopfront with double door and advertising signage over. Nightclub, public house and restaurant / cafe use are all permissible uses in Z5 zones.

9.1.2 The Gypsy Rose Bar previously occupied units 4 and 5 at ground level and units 3, 4, and 5 at basement level (associated music venue). Permission is sought to retain the vacation of unit 5 entirely and reduction of the floor area of the music venue to the basements of units 3 and 4. At ground level permission is sought to retain the vacation of unit 5 and the relocation of the Gypsy Rose Bar to unit 4 and a section of unit 3 to the front addressing the street.

9.1.3 The appellant states that the proposed development is contrary to the development plan as it negatively affects the residential use in the rest of the building, does not promote the neighbourhood character and by reason of noise pollution will seriously injure the residential amenities of the residents of the building.

9.1.4 The development plan refers to the concentration of entertainment uses both in the city centre and the Temple Bar area, whilst recognising the importance of facilitating residential development in such areas. The plan recognises the need to provide a balanced mix of uses and to protect the amenities of residents from an over-concentration of late night venues. In relation to noise, the plan states that noise emanating from and at the boundaries of these establishments must be addressed in development applications.

9.1.5 Noting that the subject development proposes a reduction in floor area of an existing entertainment venue and noting the zoning objective of Z5 zones to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity, it is considered that the proposed development is acceptable in principle subject to other planning considerations discussed below.

9.2.0 Noise

9.2.1 The Aston Quay development is located in the city centre, in the Temple Bar area – likely the place where the greatest concentration of entertainment, cultural and restaurant venues exist in Dublin City. Residents of the area, no matter how long established, accept such neighbourhood uses when choosing to live in such an area. Notwithstanding that, however is the recognition of the importance of facilitating and protecting residential communities in inner city areas. As noted in the development plan the balance must be struck between protecting the residential amenity of the residents whilst allowing the entertainment activity to occur in a recognised area.

9.2.2 It is considered that the noise pollution impact of the proposed development on the residents of the Aston Quay apartment development will be reduced, given that the subject development proposes a reduction in floor area of the basement music venue. In addition, the development proposes the a number of acoustic insulation and control measures as outlined in the response to the request for further information. These include: spring / damper hanging brackets for loudspeakers, sound limiting devices, and facilities to monitor noise to be located in the apartment directly overhead the subject units. In addition, the applicant stated in the submission to the Board that a double slabbed acoustic ceiling will be fitted between the Gypsy Rose bar and the apartments overhead.

9.2.3 I do not accept the submission that the proposed development qualifies as an incremental super-pub. The proposed development results in a smaller floor area of both the Gypsy Rose bar and the associated music venue.

9.2.4 The judgement submitted with the appeal finds that the study area contains an adequate number of licensed premises and that a licence for a further premises would not be approved. Details of the 14 no. licensed premises in the area have not been submitted with

the judgement but one must assume that the existing Gypsy Rose Venue being an existing licenced premises is included in that number.

9.2.5 The proposed relocation of the Blucaffè coffee shop, the retention of the Gypsy Rose bar and music venue and associated signage are considered acceptable and in keeping with the pattern of development in the area.

9.2.6 I note the decision of the Council to restrict the life of the music venue in the basement to three years only. Section 7.5 of the development management guidelines state that a temporary permission will rarely be justified where an applicant wishes to carry out development of a permanent nature that conforms with the provisions of the development plan. The guidelines state that the material considerations to which regard must be had in dealing with applications are not limited or made different by a decision to make the permission a temporary one. Thus, the reason for a temporary permission can never be that a time limit is necessary because of the adverse effect of the development on the amenities of the area. If the amenities will certainly be affected by the development they can only be safeguarded by ensuring that it does not take place. Given that the proposed development to be retained is acceptable in principle and that concerns regarding noise pollution have been addressed, should the Board decide to grant permission, it is recommended that a temporary life should be not attached to the decision but that the developer be required to implement a suitable noise monitoring programme with annual reviews to be agreed with the Planning Authority.

9.3.0 Appropriate Assessment

9.3.1 Having regard to the nature and scale of the proposed development and / or the nature of the receiving environment, and / or proximity to the nearest European site, no appropriate assessment issues arise and it is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects, on a European site.

10.0.0 CONCLUSION AND RECOMMENDATION

I have read the submissions on file, visited the site, and have had due regard to the provisions of the Dublin City Development Plan 2011 - 2017, the planning history on the subject and adjoining sites and all other matters arising. It is considered that, subject to compliance with the conditions set out below, the proposed development would not injure the amenities of the area and would be in accordance with the proper planning and sustainable development of the area. I recommend permission be GRANTED subject to the following conditions:

REASONS AND CONSIDERATIONS

10.1.0 Having regard to the zoning objectives for the area and pattern of development in area, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or property in the vicinity and would be acceptable in terms of traffic safety, public health and convenience. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

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. 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 and to ensure a proper standard of development.

3. All necessary measures shall be taken by the contractor to prevent the spillage or deposit of clay rubble or other debris on adjoining roads during the course of the works.

Reason: In the interest of residential amenity

- 4 A noise monitoring programme shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development, to include an annual review undertaken by a qualified acoustic engineer at the nearest noise sensitive location. The developer shall carry out any amendments to the subject development requested by the planning authority subject to the review.

Reason: In the interest of protecting the amenity of the nearby residential properties.

5. Notwithstanding the provisions of the Planning and Development Regulations 2001, as amended, 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 buildings or within the curtilage of the site, unless authorised by a further grant of planning permission.

Reason: To protect the visual amenities of the area.

Gillian Kane
Planning Inspector
03/10/16