



An  
Bord  
Pleanála

## Inspector's Report 246897

### Development

Change of use from retail/  
commercial/ cultural use to assembly  
and leisure use comprising a 24  
hour, 7 day a week gymnasium, new  
signage and associated works at  
part ground part 1<sup>st</sup> floor of Block B,  
Smithfield Market, Dublin 7.

### Planning Authority

Dublin City Council

### Planning Authority Reg. Ref.

2737/16

### Applicant(s)

Pure Gym Ltd.

### Type of Application

Permission

### Planning Authority Decision

Grant permission

### Appellant(s)

1. Pure Gym Ltd.
2. Barry Walsh

### Observer(s)

None

### Date of Site Inspection

7<sup>th</sup> October 2016

### Inspector

Donal Donnelly

## 1.0 Site Location and Description

- 1.1. The appeal site is located in Smithfield to the west of Dublin City Centre. Smithfield Plaza is flanked on its eastern side by contemporary blocks of development consisting of ground and first floor commercial uses with apartments above. Block B forms part of Smithfield Market Square Apartments and the appeal site extends over two levels between the Haymarket Way and Queen Street frontages.
- 1.2. Haymarket Way is a pedestrian street that extends for a distance of approximately 85m north to south from Smithfield Market Square to Haymarket. The eastern side of the street at ground level comprises rear facades of ground floor commercial units fronting Smithfield Plaza, whilst opposite are the main frontages of units that back onto Queen Street. Most units on both sides of Haymarket Way are vacant.
- 1.3. The ground floor of the subject unit has a floor area of 605 sq.m. and frontages of 14m and 5m onto Haymarket Way and Queen Street respectively. The depth of the unit is approximately 47m. The first floor has an irregular layout with floor area of 1,015 sq.m. The frontages at this level do not correspond with the ground level and measure c. 18m and 2.8m respectively.

## 2.0 Proposed Development

- 2.1. The proposed development, as described in planning notices, is as follows:
  - Change of use from retail/ commercial/ cultural use to assembly and leisure use comprising a 24 hour, 7 day a week gymnasium;
  - Erection of new illuminated signage to the front elevation;
  - Installation of a new front entrance door;
  - All associated site works.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

- 3.1.1. Dublin City Council issued notification of decision to grant permission for the proposed development subject to 12 conditions.
- 3.1.2. Under Condition 2, the proposed office onto Haymarket Way shall be relocated internally at ground floor level and the proposed seating area shall be relocated to the front of the premises.
- 3.1.3. Condition 3 states that no classes shall be held and no background music shall be played between 2100 and 0700 hours and under Condition 4 noise levels shall not exceed 55 dB(A) between 0800 and 2000 Monday to Friday and 45 dB(A) at all other times.
- 3.2. Other conditions are attached relating to signage, glazing and advertising, drainage and site development works.

#### **3.3. Planning Authority Reports**

- 3.3.1. The recommendation to grant permission, as outlined in the Case Planner's Report, reflects the decision issued by the Planning Authority.
- 3.3.2. Under the assessment of the application, it is stated that the principle of a gymnasium is acceptable at this location. The proposal would expand the offer of cultural/ recreational uses when the existing unit is vacant and forming a dead frontage to Queen Street and Haymarket Way.
- 3.3.3. There are concerns regarding the frontage, particularly on Haymarket Way, and the level of animation onto the street. It is recognised that the frontage onto Queen Street is constrained but there is an opportunity to provide a more active frontage

onto Haymarket Way by switching the proposed office with the proposed seating/ water font area.

- 3.3.4. It is considered that the proposed gym could be operated on a 24 hours a day, 7 days a week basis without seriously detracting from adjoining residential amenities subject to implementation of the measures detailed in the acoustic report submitted with the planning application. It is acknowledged that the primary purpose of Z5 zoning is to sustain life within the city centre through intensive mixed use development and to sustain the vitality of the inner city both day and night.
- 3.3.5. It is stated that the proposed signage is not acceptable and should consist of individually mounted lettering that is backlit only.
- 3.3.6. The Case Planner considers that the proposed gym will serve the local residential and employment community and as such will not require a high level of parking. In addition, it is noted that bicycle parking is freely available in the immediate area.
- 3.3.7. It is stated that the presence of a number of other gym/ fitness uses in the area is not in itself sufficient reason to refuse permission for an additional gym in the area. In this regard, the Development Plan does not contain a policy resisting the proliferation/ concentration of gyms or fitness facilities in an area.

#### **3.4. Third Party Observations**

- 3.4.1. Third party observers make the point that there is an operational leisure centre in Block G approximately 150m north of the site and it is considered that the area is already well served by this facility

#### 4.0 Planning History

Dublin City Council Reg. Ref: 2502/99 (PL29N.121296)

- 4.1. Permission was granted in 2001 for a mixed development including residential, commercial, retail and office uses at a 2.82 acre site at Haymarket, Queen Street and Smithfield.
- 4.2. Condition 6 of this permission stated that *“the area designated as the Children’s Museum Workshop shall be developed for retail use with the workshop relocated within the Museum proper. The retail units fronting onto Market Lane and Smithfield (three number) shall be developed as single units with frontage onto both streets. Additional retail units shall be provided at ground floor level on Museum Square...”*  
The reason for this condition was *“to add to the vitality of the area and to increase the mix of uses.”*

Dublin City Council Reg. Ref 4867/06

- 4.3. Permission granted in November 2006 for changes to previously approved plans (Reg. Refs: 0170/03 and 6237/05) to include:
- Relocation of 161 sq.m. of museum space and the omission of 165 sq.m. of office incubator space from level 1 of Block B, both to be replaced with a combined area of 326 sq.m. of office space;
  - Cultural space to be relocated to ground level of Block B to replace 257 sq.m. of retail workshop studio space onto Queen Street. The remaining 51 sq.m. of office incubator space on level 1 to be changed to cultural space;
  - A further 57 sq.m. of ground level retail workshop studio space is to be changed to a first floor escape stair and exit corridor onto Queen Street and an area of 70 sq.m. at ground level previously approved as an escape stair from first floor with exit corridor is to be omitted and replaced with cultural space resulting in an overall gain of 204 sq.m. in total cultural space.

- Provide 69 sq.m. of additional office space within the existing double height office entrance foyer of Block B facing onto Haymarket. Provide additional glazing to new first floor office space in Block B at level 1 in place of stone cladding and louvered panels.
- Replace one shop entrance door onto Queen Street with a fire escape exit and omit one previously approved fire escape exit. Signage to office entrance.

## 5.0 Development Plan

5.1.1. The appeal site is zoned “Z5 – City Centre” where the objective is *“to consolidate and facilitate development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity.”* Amusement/leisure complexes and cultural/recreational uses are permissible under this zoning category. A Cultural/ Recreational Building is described in the Development Plan as *“a building, or part thereof, used for purposes of a concert hall/music hall, theatre, conference centre, cinema, bingo hall, swimming pool, skating rink, gymnasium, squash centre, health studio, and most indoor sports facilities not involving the use of firearms or motorised vehicles. It also includes:*

- *An art gallery (but not for the sale or hire of works of art)*
- *A museum*
- *A public library or public reading room*
- *A public hall*
- *An exhibition hall*
- *A social centre, community centre, or non-residential club, but not a dance hall.”*

5.1.2. Smithfield Plaza and Haymarket are designated as a conservation area.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. A first party appeal against conditions and a third party appeal against the Council's decision have been submitted to the Board. The third party appellants are the occupier and owner of Block G, Smithfield Market. The grounds of appeal and main points raised in each submission can be summarised as follows:

#### First Party

- Glazing to the east elevation is to remain unaltered with the exception of light manifestation to the provide privacy – “dead street frontage” will not occur due to the office remaining in this position.
- Position of the office is to provide natural lighting to officer employees – if office is relocated, no natural lighting will be provided to the office.
- Office is also doubling up as a reception area where members pay their membership and ideally should be located at the front of the unit.
- Condition relating to hours of operation for proposed classes and background music is considered to be quite restrictive.
- Appellant feels that the detailed acoustic report submitted with the planning application addressed the issue of noise pollution from the unit adequately – there would be no adverse effects from noise pollution to the surrounding area.
- Applicant requests that the restriction of the running of classes is extended from 0700 to 2300 – classes between 2100 and 2300 are to facilitate people who work evening shifts and for parents who have to put children to bed. This will promote healthy living for these people.

- Applicant requests that background music be allowed in the gym during the hours of 2100 to 0700 that will be under the required 45 db level. Noise levels will not exceed 55 dB(A) between 0800 and 2000 Monday to Friday and 45 dB(A) at all other times along the boundary of the site.
- It is proposed to provide branded manifestation to the glazing to the gym to enable privacy.

### Third party

- Since the original planning permission was granted, the quantum of cultural space within the development has slowly been diminished.
- Queen Street side of the development is characterised by quiet day-time uses, which are considered appropriate for a residential street. Any use that would bring 24-hour activity to the area, in particular Haymarket Way, is a concern to the appellants.
- Residents of the area should not have to accept a 24-hour commercial facility operating in close proximity to their homes, particularly in a transitional area.
- Users of the facility would likely drive and this would generate significant additional noise with vehicles accessing the basement car park.
- Another gym in Smithfield will be the antithesis of everything the Board imagined that the development would be when it was first granted permission.
- Original layout of the building was to be commercial uses at the Queen Street and Haymarket Way frontages with cultural uses located internally.
- The area proposed to be used for the 24-hour gym should be retained for cultural use as per the original grant of permission.
- A 24-hour gym will have no regard to the amenities of residents and once operational will be too late to address the residents' concerns.



- Original permission included a number of retail units on Queen Street and Haymarket Way and the proposed gym will further erode the potential footfall and intended retail nature of both streets.
- Gym or leisure facilities are neither permitted or open for consideration in Z1 areas and the transitional location of the building must be taken into account – 24-hour gym in residential area is considered a “bad neighbour”.
- There are a significant number of gyms and training facilities in the city centre area, 6 of which are within 500m of the site. There is no market for another gym of c. 1,600 sq.m. in close proximity to a gym of 3,500 sq.m. (1escape) only 200m away.
- A worrying trend in Dublin is the closure of swimming pools under treat from low cost and small scale gym operators.
- The principles of the sequential test used in retail planning should be applied in this case – market for gyms has reached saturation point and the cultural focus of Smithfield is being eroded.

## 6.2. Planning Authority Response

- 6.2.1. It is stated in the response that the Planner’s Report still stands and the Board is requested to uphold the Planning Authority’s decision.

## 7.0 Assessment

- 7.1. I consider the key issues in determining this appeal are as follows:

- Development principle;
- Impact on residential amenity;
- Impact on streetscape; and

- Appropriate Assessment

## 7.2. Development principle

- 7.2.1. The appeal site is zoned “Z5 – City Centre” where the objective is *“to consolidate and facilitate development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity.”*
- 7.2.2. It is stated in the Development Plan that the primary purpose of this use zone is to sustain life within the centre of the city by providing a dynamic mix of uses that interact with each other, create a sense of community and sustain vitality through day and night. Adequate noise reduction measures and limitations on hours of operation should be incorporated within mixed use developments and the predominant use at ground level on principal shopping streets should be retail.
- 7.2.3. The proposed development is for the change of use from retail/ commercial/ cultural use to recreational/ assembly use in the form of a 24-hour gymnasium. Amusement/ leisure complexes are permissible uses under this zoning category; however, the proposed gymnasium use falls under the Development Plan definition of a cultural/ recreation building as *“a building, or part thereof, used for purposes of a concert hall/music hall, theatre, conference centre, cinema, bingo hall, swimming pool, skating rink, gymnasium, squash centre, health studio, and most indoor sports facilities not involving the use of firearms or motorised vehicles...”*. Cultural/ recreational buildings are also a permissible use under the Z5 zoning objective.
- 7.2.4. It is unclear what the actual permitted use of each part of the appeal site is. The planning application material does not denote the usage of floor space and it appears that the irregular shape of the unit has resulted from various subdivisions and occupation of surrounding units over time. It is stated that the ground floor is permitted as retail to the Haymarket Way frontage and commercial/ cultural to the

rear onto Queen Street. The unit has been vacant for some time and there is no established or operating use.

- 7.2.5. The parent permission (PL29N.121296) provided for cultural uses within the overall development amounting to 7,571 sq.m. and to date approximately 6,570 sq.m. of this type of use have been delivered. The third party appellant contends that the proposed gymnasium use will further erode the quantum of cultural space within the development and this would be contrary to the overall intention of the Smithfield area.
- 7.2.6. In my opinion, the main consideration is whether the proposed use is permissible under the zoning objective. It may be desirable to retain a cultural dimension within the Smithfield scheme and I would be satisfied that this has been achieved elsewhere. However, the emergence of the area as a successful urban living quarter must allow for a certain amount of flexibility in terms of change of use. When a unit, or in this case the majority of units within a new pedestrian street, have lain vacant for considerable time, I would take the view that the planning system should facilitate appropriate occupancy.
- 7.2.7. The impact of the proposed development on the surrounding residential amenities and the streetscape is assessed in more detail below. However, I would be satisfied that the proposed change of use is acceptable in principle being a permissible use under the zoning objective. Furthermore, it is noteworthy that the proposed recreational use is categorised alongside other cultural uses within the land-use definitions contained in Appendix 29 of the Development Plan.
- 7.2.8. Finally, I consider that the proposal complies with Development Plan Policy RE11 which seeks *“to promote and facilitate the use, including the temporary use, of vacant commercial space and vacant sites, for a wide range of enterprise including cultural uses.”*

### 7.3. Impact on residential amenity

- 7.3.1. The appeal site is set within the ground floor and first floor of a mixed use 7-storey block that contains apartments in upper floors. The issue of impact on residential amenity is a source of conflicting arguments from both first and third parties.
- 7.3.2. Dublin City Council attached conditions to its notification of decision to grant permission preventing classes and background music from being held in the premises from 21:00 and 07:00 hours and limiting noise levels at the boundary of the site.
- 7.3.3. The first party considers that the condition relating to hours of operation for proposed classes and background music is quite restrictive having regard to the fact that a detailed acoustic report was submitted with the planning application that adequately addressed the issue of noise pollution from the unit. It is requested that classes are permitted up to 23:00 hours to facilitate people who work evening shifts and for parents who have to put children to bed. The applicant also requests that background music be allowed in the gym during the hours of 21:00 to 07:00 that will be under the required 45 db level. It is submitted that noise levels will not exceed 55 dB(A) between 08:00 and 20:00 Monday to Friday and 45 dB(A) at all other times along the boundary of the site.
- 7.3.4. The third party appellant, on the other hand, contends that residents of the area should not have to accept a 24-hour commercial facility operating in close proximity to their homes. It is pointed out that whilst the area has a mixed use zoning, gym or leisure facilities are neither permitted or open for consideration in Z1 residential zoned areas. Furthermore, the transitional location of the appeal site between different zonings raises the issue of “bad neighbour” development.
- 7.3.5. The applicant proposed a number of structural and operational mitigation measures to minimise the impact of noise transferring to surrounding properties, including

second floor apartments above. These include acoustic wall lining; placement of weight training equipment at ground level; and no holding of group classes or background music being played between 23:00 and 07:00 hours.

- 7.3.6. In my opinion, the noise impacts associated with a gym use can be reasonably well contained internally during normal hours. Furthermore, I do not foresee any issue with patrons accessing the facility on a 24-hour basis. I disagree with the first party appellant, however, that the hosting of classes and playing of background music between the hours of 23:00 to 07:00 hours will not give rise to noise pollution to the surrounding area. The measures put forward by the applicant to contain noise are appropriate for daytime hours and I would be unconvinced that noise can be completely contained at night time when ambient levels are lower. There is always the possibility of noise escaping when windows/ doors are opened, and moreover, due consideration should be given to the very close proximity of the nearest apartments separated from the proposed gym by the width of a floor.
- 7.3.7. Having regard to the above, I consider that it would be appropriate in this case to allow the gym to operate on a 24-hour basis and that the conditions attached by the Planning Authority relating to noise should be retained. I have also perused a number of recent decisions by the Board relating to gym uses, none of which allow for classes and background music to operate throughout the night (in most cases 21:00 to 07:00 hours).
- 7.3.8. The Board may wish to consider the granting of permission in this case for a temporary period to allow for a review of the development having regard to the proximity of apartments overhead, the hours of operation and also to promote the use of this vacant space for a wider range of enterprises than the previous permission, (Policy RE11). However, I would be satisfied that there will be appropriate safeguards in place to protect the amenities of the area.

#### 7.4. Impact of the streetscape

- 7.4.1. Condition 2 of the notification of decision to grant permission requires the rearrangement of the ground floor of the proposed gym so that the office element is relocated internally and the proposed seating area is positioned to the front of the premises onto Haymarket Way. The reason for this condition is to avoid a dead street frontage and to animate the streetscape.
- 7.4.2. The first party appellant submits that the office will also double up as a reception area and that natural lighting will be provided to the office at this location. It is stated that glazing to the east elevation will remain unaltered with the exception of a light manifestation to provide privacy and that a “dead street frontage” will not occur due to the office remaining in this position.
- 7.4.3. I would accept the first party appellant’s argument that the office may be best located to the front of the unit as a reception area. However, I note that the office is enclosed rather than being laid out in an open counter arrangement and I would be in agreement that the space to the front could be better laid out to present a more animated frontage to Haymarket Way. A kiosk is indicated and there may be space for seating without relocating the office. There is also a locker area that would attract footfall.
- 7.4.4. Having regard to the importance of the frontage and the need to enliven the street, I consider that a condition should be attached to any grant of permission requiring the applicant to submit to the Planning Authority detailed proposals for the internal layout to the front of the premises to include an open reception area, seating and kiosk. I agree that all glazing to the front and rear elevations should be kept clear from any stickers, posters and advertisements.
- 7.4.5. Overall, I consider that the proposal will help to achieve the principal aim of Z5 lands by creating a sense of community and vitality at all times of the day within a strip that

has suffered from vacancy and a general lack of activity. The proposed development, subject to appropriate frontage treatment, will provide animation and can act as a catalyst for further occupation of vacant units in the immediate area. The proposal will therefore have a positive impact on the streetscape.

- 7.4.6. The third party appellant refers to the presence of a number of other gyms in the immediate area. It is considered that the market for gyms has reached saturation point and this could result in the levels of vacancy increasing elsewhere. I would highlight that there is no specific policy to prevent the concentration of this type of use in any particular area. In my opinion, it is not a function of the planning system to inhibit competition.

## 7.5. **Appropriate Assessment**

- 7.5.1. Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely an urban and fully serviced location, no appropriate assessment issues arise.

## 8.0 **Recommendation**

- 8.1. I recommend that planning permission should be granted, subject to conditions, for the reasons and considerations as set out below.

## 9.0 **Reasons and Considerations**

Having regard to the nature, scale and location of the proposed development, the 'Z5' zoning objective for the site, as set out in the Dublin City Council Development Plan 2011 – 2017, which objective aims *'to consolidate and facilitate development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity'*, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential

amenities of the area or of property in the vicinity, and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 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 interests of clarity.

2. Prior to commencement of development, the applicant shall submit details of the internal layout of the proposed gym at ground level towards the front of the premises facing onto Haymarket Way. Provision shall be made for a seating area, an open plan reception, entrance lobby and kiosk. All glazing on this frontage and on the rear elevation shall be kept free of all stickers, posters, manifestations and advertisements.

**Reason:** To avoid dead street frontages and to animate the streetscape along Haymarket Way.

3. All signage fascias shall be no more than 1800mm in width and 780mm in height. Lettering shall be individually mounted and backlit. No additional signage, advertising structure/advertisements or other projecting elements,



including flagpoles, shall be erected within the site unless authorised by a further grant of planning permission.

**Reason:** To protect the visual amenities of the area.

4. No classes shall be held and no background music shall be played within the premises between the hours of 2100 and 0700 and the facility shall otherwise operate with all mitigation measures proposed within the Acoustic Review received by the Planning Authority on 22nd April 2016.

**Reason:** To protect the amenities of residential property in the vicinity.

5. The noise level shall not exceed 55 dB(A) (corrected for any tonal or impulsive component) at any point along the boundary of the site between 0800 and 2000 hours, Monday to Friday inclusive, and shall not exceed 45 dB(A) at any other time. Procedures for the purpose of determining compliance with this limit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The applicant shall provide any additional noise mitigation measures to comply with these noise levels as may be specified by the Planning Authority.

**Reason:** To protect the amenities of residential property in the vicinity.

6. 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.

7. Site development and building works shall be carried out only between the hours of 0700 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays or public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

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Donal Donnelly  
Planning Inspector

17<sup>th</sup> October 2016