



An
Bord
Pleanála

Inspector's Report PL29S.247786.

Development	Integration of Unit B & C into one unit and change of use to a hot-food takeaway and provision of public seating/ eating area.
Location	Units B & C, Pier 19, Usher's Island, D8.
Planning Authority	Dublin City Council.
Planning Authority Reg. Ref.	3570/16.
Applicant(s)	Junaid & Juwayriyah Nayyar.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Part.
Appellant(s)	Junaid & Juwayriyah Nayyar.
Observer(s)	James O Reilly.
Date of Site Inspection	06 th of March 2017.
Inspector	Karen Hamilton.

1.0 Site Location and Description

1.1. The site is located on the south quays between the Mellows Bridge and the James Joyce Bridge, Dublin City Centre. The quay is known as Usher's Island and the site forms part of the ground floor of a five storey modern building fronting onto the quayside. The upper floors are residential and the ground floor has a mix of commercial units of which only one is occupied at present. There is an area of wasteland to the east of the site and mix of commercial with residential along other streets in the vicinity.

2.0 Proposed Development

2.1. The proposed development may be summarised as follows:

- Integration of unit B (54m²) and C (36m²);
- Change of use from commercial to hot-food takeaway with the integration of seating area.

3.0 Planning Authority Decision

3.1. Decision

Decision to refuse permission for reason of the negative impact of a required mechanical extraction on the residential apartments on the upper floors.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the area planner reflects the decision to refuse following the submission of further information:

- Clarification on the window treatment of Unit C;
- Proposal for individually mounted letters for the signage;
- Proposals for two ventilation grills incorporated into the fascia along Usher Quay;

- Access to the shared bin store;
- Proposed opening hrs from 8.00 am to 11.00 pm.

3.2.2. Other Technical Reports

Environmental Health Officer- Recommendation to refuse permission based on the negative impact from the mechanical ventilation system and the noise disturbance on the upper residential properties.

Drainage Division- No objection.

3.3. Prescribed Bodies

Iarnrod Eireann- No objection in relation to the DART underground.

3.4. Third Party Observations

Six observations were received in relation to the proposed development stating the proposed development will have a negative impact on the surrounding area and the residential properties.

4.0 Planning History

4140/09

Permission granted for modifications to previously approved hot food takeaway to incorporate public seating and eating area.

4724/07

Permission granted for the amalgamation of Units B & C for use as a hot food takeaway, this permission was never implemented.

Adjoining Unit D & E.

2416/16

Permission granted for change of use from retail to a live/work unit.

5.0 Policy Context

5.1. Dublin City Development Plan 2016-2022

The site is zoned as Z5 “City Centre” where it is an objective *“To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity”*

Takeaway is included as a permissible use and the purpose of the zoning objective is to sustain a mixed use development which respects residential communities and regard should be given to hours of operation.

- **Takeaway.**
 - Section 16.24 Restriction on excessive concentration of takeaways and assessment of proposals to include the effect on noise, general disturbance, hours of operation, traffic, litter control, integrated design of a ventilation system, bin waste and other facilities within a 1km facility.
- **Mixed use development**
 - Section 16.10.11- In new development, internal ducting or flues shall be incorporated so that grounds floor units have the potential for fumes to be extracted to and discharged at roof level.
- **Noise**
 - Section 16.36- Have regard to the Dublin Agglomeration Noise Action Plan 2013-2018.
 - Objective S1O26: To protect residents of mixed-use development from noise emanating from other uses such as shops, office, nightclubs, late night busking, public houses and other night time uses though the planning system.

The site is located within a **Conservation Area**, therefore the following polices apply:

- **CHC4:** To protect the special interest and character of all Dublin's Conservation Areas. Development will contribute positively the character and distinctiveness of the appearance and setting.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal have been submitted from the agent on behalf of the applicant and may be summarised as follows:

- The planning history on the site 2641/91, 4724/07 and 4140/09 allow for the proposed use on the site.
- The same mechanical system was permitted in two previous permissions (4724/07 and 4140/09).
- The details of the ventilation system submitted as part of the further information request specified the methods to remove any form of intrusion through cooking fumes or noise.

6.2. Planning Authority Response

The planning authority have responded requesting the decision to be upheld.

6.3. Observations

One observation received from the occupier of an adjoining unit which may be summarised as follows:

- A recent grant of permission was received for Unit D & E (3570/16) for a work/live unit and the smells from the hot food takeaway would have a negative effect on the amenity of the residents.
- The proposed use is not in keeping with the current office use on the ground floor.

6.4. Further Responses

None received.

7.0 Assessment

7.1. The main issues of the appeal can be dealt under the following headings:

- Principle of development
- Residential Amenity
- Planning History
- Built Heritage
- Appropriate Assessment

Principle of development

7.2. The site is located in a city centre location within the Z5 zoning, where takeaway is a permitted use. The grounds of appeal argue the planning permissions 4140/09 and 4724/07, for hot food takeaway allow for the use although these permissions were not implemented and have now lapsed. Based on the zoning, the planning history and the commercial nature of the site I have no objection to the principle of the use site as a hot food takeaway subject to complying with other planning requirements as addressed in the following sections.

Residential Amenity.

7.3. The site is a ground floor unit of a five storey mixed use development, where the upper floors include apartments. The proposed development includes a ventilation grill above the door integrated into the existing shop frontage. The proposal includes internal connections from the kitchen at the rear of the site to the extraction fans at the front. The reason for refusal relates to the inclusion of a mechanical ventilation system, along the façade, which would discharge into the public domain and have a serious negative impact on the residents through cooking fumes and noise.

7.4. Section 16.24 of the development plan provides guidance for a proposed take-away, where such facilities will be strictly controlled, having regard to the effect of noise, general disturbance, hours of operation, litter and fumes on nearby residents. The

planner's report refers to the assessment of the environmental health officer following the submissions of further information on the extraction system, in particular it was considered that the grills are likely to cause an intrusion to those living at first floor through cooking and/ or noise and did not accept the proposed ventilation system. I note the location of the windows of the first floor residents directly above the unit and the balcony of the second floor apartments 2m above the proposed takeaway and I consider the use of the mechanical ventilation extraction system, which will omit odours, impacts directly onto this private amenity space. No details of the noise levels of the extraction system have been submitted.

- 7.5. I note the proposed development provides waste facilities in the form of an on-site bin with a communal collection, agreed by the management company, which I consider reasonable. It is stated in the application form that the hours of operation will be 08.00 to 23.00 which I consider excessive for a takeaway within such close proximity to residential accommodation. This matter could, however, be dealt with by a suitable condition.
- 7.6. Based on the location of the site below the residential units and the potential for odour emissions and noise, I consider the proposed development would be contrary the guidance of the development plan and would have a serious impact on the amenity of the adjoining residents.

Planning History

- 7.7. The grounds of appeal argue Dublin City Council approved the same ventilation system in two previous permissions 4724/07 and 4140/09, therefore the proposal is acceptable. Condition No 2 of 4724/07 required the submission of details on the proposed ventilation system so it protected residential amenities. Appendix C & D submitted in the grounds of appeal, refer to an agreement from the planning authority for compliance of condition for ventilation grills within the proposed signage. A letter of compliance is submitted by the applicant, from the planning authority for 4141/09, for an agreement to use the same ventilation system approved under 4724/07. I note the previous permissions on the site and the use of the extraction system, although in light of changing development plan policies and technologies to enable the removal of any negative impact on adjoining residential amenities, I consider the proposed development should be assessed on its current merits. An

observation has been received, referring to a recent grant of permission on an adjoining site, 2416/16, for a work/live unit, and the negative impact from the smell of the proposed use. I have addressed this impact above.

Built Heritage

- 7.8. The site is located within a conservation area which encompasses a significant area of land along each side of the Liffey River. The proposed development includes the change of use to an existing ground floor unit and alterations to the façade to include signage and extraction system. Policy CHC4 of the development plan requires that all new development respects the special interest of the Conservation Areas. I note the existing building is a modern structure with no distinctive features of special interest. Therefore, based on the design of the building and the scale of the works I do not consider the proposed development would have a negative impact on the character and settling of the conservation area.

Appropriate Assessment.

- 7.9. Having regard to the nature and scale of the proposed development within a serviced area and separation distance to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on the conservation objectives of any European site.

8.0 Recommendation

- 8.1. It is recommended that the proposed development is refused for the reasons and considerations as set out below.

9.0 Reasons and Considerations

Having regard to the location of the unit directly below the private amenity space of an established apartment development and the guidance in Section 16.24 of the development plan for the appropriate location of takeaways, it is considered that the proposed development, consisting of an extraction ventilation system within the existing shopfront fascia, would seriously injure the residential amenities of the area by reason of odour and noise emissions

and would be contrary to the proper planning and sustainable development of the area

Karen Hamilton
Planning Inspector

10th of April 2017