



An  
Bord  
Pleanála

## Inspector's Report PL.06D.247791

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<b>Development</b>	Change of Use from Retail to Restaurant.
<b>Location</b>	21 Patrick Street, Dún Laoghaire, Co. Dublin.
<b>Planning Authority</b>	Dún Laoghaire - Rathdown County Council.
<b>Planning Authority Reg. Ref.</b>	D16A/0733.
<b>Applicant</b>	Conall Doorley.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant with conditions.
<b>Type of Appeal</b>	Third Party Vs Grant.
<b>Appellants</b>	Adrian Corcoran & Genevieve Carbery
<b>Observers</b>	Ann & Michael Lynch.
<b>Date of Site Inspection</b>	15 <sup>th</sup> March 2017.
<b>Inspector</b>	Dáire McDevitt.

## 1.0 **Site Location and Description**

- 1.1. The site is located along the western side of Patrick Street within Dún Laoghaire Town Centre. The street is characterised in the main by 2 storey terraced units and a mix of uses ranging from retail, office and residential. Pay & Display car parking is located along the western side of Patrick Street.
- 1.2. No. 21 Patrick Street was originally a mid-terraced 2 storey unit. The existing ground floor retail unit is vacant with signage in place associated with its last use as a pet store. It is bounded to the north by the appellant's house, No. 20, a three storey contemporary style semi-detached residential unit with a fake shop front (JJ Arthur Watchmaker) that was built in 2016 to replace the original No. 19 & 20 mixed use units which formed part of the terrace. To the south, No. 21 is bounded by the observer's house, No. 22, a residential property which appears to be vacant and in need of refurbishment. There is a pedestrian lane running along the northern boundary (rear) of the site which is shared with No. 20, 22, 23 & 24 which accesses onto Lynch Lane off Cross Avenue.
- 1.3. Maps, Photographs and aerial images in file pouch.

## 2.0 **Proposed Development**

- 2.1. Permission for change of use of existing retail unit (c.100sq.m) to a restaurant at ground and first floor. The proposal includes new shopfront, signage, windows and internal alterations to facilitate the proposed use.
- 2.2. The overall site has a stated area of c.70sq.m which corresponds with the footprint of the building.

## 3.0 **Planning Authority Decision**

### 3.1. **Decision**

Permission granted subject to 6 conditions. These included condition no. 3 restricting the use of the flat roof to the rear as an access for maintenance purposes only and condition no. 4, restricting opening hours and prohibiting any takeaway services outside these hours.

### 3.2. **Planning Authority Reports**

#### 3.2.1. **Planning Reports (24 November 2017)**

This formed the basis of the Planning Authorities' decision, the main issues dealt with the principle of the development, residential amenities and access.

#### 3.2.2. **Other Technical Reports**

**Transportation Planning (9<sup>th</sup> November 2016).** No objection subject to conditions.

**Drainage Division (8<sup>th</sup> November 2016).** No objection subject to conditions.

### 3.3. **Third Party Observations**

Two Observations were submitted to the Planning Authority. One by the current appellants (A. Corcoran & G. Carbery) and one by the third party observer to this appeal (A. Lynch). The issues raised are largely in line with the grounds of appeal and those raised in the observation and shall be dealt with in more detail in the relevant sections of this Report.

## 4.0 Planning History

**Planning Authority Reference D09A/0660** refers to a new shop front granted in 2009.

### **Adjoining property (No. 19 & 20)**

**Planning Authority Ref. No. D14A/0705 (An Bord Pleanála Reference PL.06D.244418)**. Permission refused in 2015 for the change of use of 2 no. retail/residential buildings to 2 no. residential units with an additional 3<sup>rd</sup> floor. The Boards reason for refusal referred to the overall design, scale and roof profile of the proposal which was considered would injure the visual amenities of the area. The Inspector had also included a reason for refusal relating to non-compliance with adopted policy and that the proposal would undermine the retail core which was not included in the Board's Direction. (file attached).

**Planning Authority Reference No D15A/0540**. Permission granted in October 2015 for 2 no. Residential Units with 2 commercial work spaces at ground floor.

**Planning Authority Reference D15A/0143**. Permission granted in April 2015 for the removal of the commercial work space at ground floor and its replacement with a living room resulting in 2 no. 3 bed 3 storey residential units with vehicular access off Lynch's Lane.

## 5.0 Policy Context

### 5.1. **Dún Laoghaire- Rathdown County Development Plan 2016-2022.**

- Dun Laoghaire is identified as a **Major Urban Centre** in the Core Strategy and, along with Dundrum, is the highest order town in the County.
- The GDA Retail Strategy identified Dún Laoghaire as a level 2 Major Town.
- The site is located on lands zoned under Land Use Objective MTC *to protect, provide for and/or improve major town centre facilities.*

- Appendix 12. **Dún Laoghaire Urban Framework Plan** sets out a clear and coherent vision to assist and guide ongoing development that will contribute to the physical regeneration of Dún Laoghaire town centre, focusing on connectivity to the waterfront, creating vitality and strengthening links with adjacent areas. Four Quarters are identified in the Framework Plan, the application site is located within the designated **Town Centre Quarter**.

#### **Retail & Major Town Centres:**

**RET2** refers to the GDA Retail Strategy (2008-2016) and to maintain Dún Laoghaire as one of the primary retail centres in the County. This will be reflected in the nature and scale of the retail and services permitted and by the integration of leisure, entertainment and cultural facilities.

**RET3** sets out the retail hierarchy for the County. Dún Laoghaire is identified as 1 of 2 Major Town Centres in the County and an overall strategy is set out which includes that Major Town Centres should facilitate a full range of retail services ranging from newsagents to department stores and a high level of mixed uses including the arts and culture to create a vibrant living space.

**RET 4** refers to the retail strategy for Major Town Centres and the need to promote the identified Major Town Centres (Dún Laoghaire and Dundrum) beyond simply retailing by encouraging their vital social, cultural and employment function in the context of their future growth. Reference is also made to the Quarters identified within the Dún Laoghaire Urban Framework Plan and the sites location within the **Town Centre Quarter** which includes George's Street – from Bloomfield's shopping centre to Corrig Avenue - the northern part of Patrick Street and the central part of Marine Road.

**Specific Local Objective 152** refers to the need to enhance the character, ambiance and quality of the environments, historic streetscapes and public

realm in the areas adjoining Lower George's Street to the standard provided for other residential and business districts adjoining Upper and Lower George's Street

### **General Development Management Standards for Restaurants**

**Section 8.2.4.5** refers to the car parking standards for the County and Table 8.2.3 sets out the specific standards where Restaurants in designated areas require 1 space per 15 sq.m of g.f.a. However, reduced parking may be acceptable in certain circumstances as referred to in section 8.2.4.5 which includes town centre locations and where there is availability of on-street parking controls in the immediate area.

#### **5.2. Natural Heritage Designations**

None of relevance.

### **6.0 The Appeal**

#### **6.1. Grounds of Appeal**

The Third Party appeal received on behalf of Adrian Corcoran and Genevieve Carbery, 20 Patrick Street, Dún Laoghaire, Co. Dublin is summarised as follows:

Use:

- The proposed entertainment use is not in keeping with the predominant residential uses along this section of Patrick Street. Recent permissions along the street have been for change of use from commercial to residential, therefore, the area is now characterised predominantly by residential uses and not mixed use.

- The unit is not suitable for use as a restaurant as it is a mid-terrace house with limited rear access via a shared pedestrian lane and no outdoor space to the front or rear.
- The Proposal does not comply with Specific Local Objective 152 which seeks to protect and enhance the residential areas.

#### Noise:

- The noise, ambiance and traffic associated with a restaurant would detract from the residential amenities of the adjoining properties.
- Use of the flat roof as a terrace/balcony for people to congregate and the associated noise would detract from the adjoining residential amenities.
- Music, extractor fans, etc would create a noise nuisance.

#### Waste

- There is no outdoor space associated with the restaurant with the back door linking directly to a shared lane. There is no designated bin store or segregation area for waste within the site and concerns are raised that the shared lane way would be used for the storage of waste.
- No parking proposed and there are also concerns that the delivery element will generate further traffic congestion in the area.

#### Fire:

- Inadequate firewalls and the risk of fire spreading through the buildings as the structure is not appropriate for a commercial kitchen.
- The use of the lane should be restricted to an emergency exit route only.

#### Conditions:

If the Board is of a mind to grant permission the following mitigation conditions are requested to be included:

- Fire Safety Certificate required.

- The means of rear access to the property when the only rear access is via a narrow pedestrian lane.
- Fire proofing between buildings given the existing shared attic space with No. 22.
- Soundproofing to reduce internal noise.
- Omission of the bi-fold windows or similar type that open on the street.
- No outdoor seating area or smoking area should be permitted.
- No external speakers for music.
- Any fan permitted should be of sufficient power to ensure high exit velocity of fumes during all weather conditions.
- Extract fumes should be emitted to the outer air via a stack erected to a minimum height of 1 metre above the eaves of adjoining premises.
- No cowl should be placed on top of the stack, and if there is a bend in the stack, it should be directed away from the neighbouring residences.
- The applicant should be conditioned to provide a designated area for waste storage and sorting and this should exclude the shared lane.
- The shared lane has access onto Lynch's Lane via gates. This is the only rear access to the restaurant and should be conditioned to be used in exceptional circumstances only.
- No takeaway element should be permitted.

## 6.2 Applicant Response

The applicant's response to the grounds of appeal is summarised as follows:

Use:



- The proposed use is a neighbourhood pizzeria with no takeaway element and should not be considered an entertainment use.
- A restaurant operated at No. 21 from the 1970s to the late 1990s after which it was a member's club. Its last use was as a pet store. Therefore, the proposed use would be reverting back to a former use.
- Patrick Street is characterised by a mix of residential, retail and office uses located in the centre of the town. The Adjoining site changed from mixed use to residential use in 2016. This change of use was originally refused by An Bord Pleanála and reference is made to the Inspectors comments at the time regarding the loss of commercial space along Patrick Street which would impact on the vitality and viability of the area and undermine the retail core.

#### Noise:

- Music would be played at ambient level; no external speakers are proposed. The applicant is willing to carry out additional soundproofing if required by the Board.
- No mechanical extraction systems are proposed.
- No outdoor seating is proposed at street level. The timber framed bi-folding windows are to help ventilate the restaurant in the good weather.
- The flat roof terrace is not proposed as an outdoor area for patrons.

#### Waste/Bin stores

- There is a rear yard (13 sq.m) where the bins shall be stored.
- Rear access (1.6m wide lane) would only be used in exceptional circumstances as an emergency exit. No storage of waste or the use by staff as a smoking area is proposed along the pedestrian laneway.

- HSE has no objection to the proposed waste management system. The majority of the waste would be in the form of recyclable packaging.

Fire Safety:

- There is no shared attic space with No. 20 as the structure is not attached to No.21. The attic is partitioned from that of No. 22 by a solid brick wall which is typical of terraced construction.
- Chimney flue to serve the oven would be located to the rear of the structure.

### **6.3 Planning Authority Response**

The Board is directed to the original Planner's Report as it is considered that the grounds of appeal do not raise any new matters which would justify a change in attitude to the proposed development.

### **6.4 Observations**

One Observation has been received from Ann & Michael Lynch, 35 Richmond Grove, Monkstown, Co. Dublin (joint owner of No. 22 Patrick Street).

The main issues raised are largely in line with the original submission to the Planning Authority and is summarised as follows:

- Reference to nuisances that arose with previous uses of the site.
- The structure is not designed to hold a commercial kitchen and concerns raised in relation to the spread of fire due to the terraced nature of the buildings.
- Noise disturbance from staff, patrons and kitchen equipment.
- Access concerns regarding emergency exit and the use of the shared pedestrian lane.
- Proposed use as a restaurant is not consistent with the pattern of uses along the street.

## **7.0 Assessment**

The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Principle of the Development.
- Residential Amenity.
- Appropriate Assessment.

### **7.1 Principle of Development**

7.1.1 In accordance with the zoning of the site as “MTC” (*to protect, provide for and/or improve major town centre facilities.*), a restaurant is listed under Table 8.3.8 as ‘permitted in principle’ under this land use objective.

7.1.2 No. 21 Patrick Street is located within the identified Town Centre Quarter in Dun Laoghaire as referenced in policy RET4 of the Development Plan and Section 3.1 of the Dún Laoghaire Urban Framework Plan. The strategy for the area is to create vitality through the promotion of appropriate uses. Patrick Street is characterised by a mix of residential, retail and office uses. I am, therefore, satisfied that the proposed development is acceptable in principle subject to compliance with the adopted policies, objectives and site specific planning considerations.

### **7.2 Residential Amenities**

7.2.1 Policy RET 4 of the Development Plan refers to the retail strategy for Major Town Centres and to the need to promote the identified Major Town Centre of Dún Laoghaire beyond simply retailing and encourage its vital social, cultural and employment function in the context of its future growth. Reference is also made to the designated Town Centre Quarter identified within the Dún Laoghaire Urban Framework Area where the site is located. The adopted policy in the Town Centre Quarter is to promote and strengthen the retail core which

will encourage the social and economic functions of the area through public realm improvements and accessibility.

- 7.2.2 The grounds of appeal outline that the proposed use would not be compatible with the predominant residential uses along Patrick Street. In my view, the bulk of the surrounding area is mixed use with the immediate adjoining properties in residential use. Reference is made by the applicant in their response to the appeal to the Inspector's comments in the Board's decision under Planning Authority Reference D14A/0705 (An Bord Pleanála Reference PL.06D.244418) for the change of use of No. 19 & 20 to residential use. At the time the inspector highlighted that the proposed change of use to residential only would be contrary to the policies and objectives aimed at preserving the vitality and viability of the established retail core and would undermine it. This was not included in the reasons for refusal issued by the Board which related to design and visual impact. Subsequently, No. 19 & 20 changed to residential after this site was redeveloped in 2016 on foot of a 2015 permission from the Planning Authority.
- 7.2.3 Both the appellant and the observer to the appeal have raised issues about the likelihood of noise generation at this location through patrons congregating/smoking outside the building, music from the development and through noise created by deliveries which would have a negative impact on their residential amenities. In my view, the noise levels associated with the restaurant would be minimal. I note that no external extractor fans, loudspeakers, seating area or smoking area are proposed that could contribute to such a nuisance. I am satisfied that the concerns raised can be dealt through the appropriate conditions.
- 7.2.4 Concerns have also been raised regarding the use of the flat roof area over the rear ground floor projection as a terrace/balcony which would have a detrimental impact on the residential amenities of adjoining properties. I am satisfied that this issue can be dealt with through an appropriate condition prohibiting the use of this area as a terrace or balcony.

- 7.2.5 With respect to the proposed bifold windows I am satisfied that these would not detract from the character of the area and their design would not be conducive to increasing noise levels which would be detrimental to the amenities of adjoining residences.
- 7.2.6 The Planning Authority included a condition limiting the opening hours of the restaurant to 23:00 hours on Thursday, Friday and Saturdays and no later than 22:00 on any other days and that no ancillary food delivery or collection services operate from the premises after these closing times. The applicant has reiterated in the appeal documentation that there is no take away element proposed with the development which is for a sit down pizzeria. I am satisfied that this issue can be dealt with by condition.
- 7.2.7 The lane to the rear of the site is not within the application site boundaries however, it is a shared pedestrian access which runs along the rear of the terrace and concerns have been raised that it would be used for the storage of bins and as an informal smoking area for staff. The applicant has highlighted that there is a yard to the rear of the site where bins will be sorted and waste segregated. I note that there is no such yard on site, the building occupies the site (see site Layout Plan on file), the area the applicant refers to appears to correspond with the section of the lane running to the rear of No. 21. Notwithstanding, I am satisfied, having regard to the location of the site in the town centre, that the issue of waste storage and disposal can be conditioned to be agreed with the Planning Authority.
- 7.2.8 Fire safety concerns have also been raised. In this regard I note that the applicant will require a Fire Safety Certificate which will address fire safety issues and appropriate mitigation measures. The applicant has outlined that the use of the shared pedestrian access would be for emergency use only.
- 7.2.9 The proposed development comprises a change of use from a retail use to a restaurant use. There is a pay and display parking spaces to the front of the premises along Patrick Street, which appear to serve the existing commercial

and office units. The restaurant use would be more inclined towards evening operations therefore the demand for parking would be less given that the other units would have ceased working after normal business hours and, therefore, reduce the demand for parking. Having regard to the modest scale of the development proposed and its central location within the town centre I am satisfied that the existing on-street parking can cater for the demand and additional parking is not required. The Council's Transportation Section has no objection to the proposal with no additional parking.

7.2.10 A restaurant at this location is considered an appropriate use for a vacant retail unit, the proposal would not detract from the residential amenities of the adjoining properties. The area is zoned under land use objective MTC and adopted policy emphasises that such centres should be maintained and strengthened where necessary. Given the availability of a vacant unit within the town centre quarter, it is my view that the addition of a restaurant use would contribute to the vitality and viability of the town centre therefore enhancing its sustainability in accordance with RET4 of the Development Plan.

### **7.3 Appropriate Assessment**

7.3.1 Having regard to the nature of the proposed development and the location of the site in a fully serviced built up urban area, 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 a European site.

### **8.0 Recommendation**

Having regard to proposed change of use to a restaurant use, that is 'permissible in principle' in MTC zoned land in the Dún Laoghaire-Rathdown County Development Plan 2016-2022 it is considered, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of properties in the vicinity and development

would be in accordance with the proper planning and sustainable development of the area

## 9.0 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 points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. The first floor flat roof to the rear of the property shall not be used as a terrace, smoking area or for any ancillary purpose associated with the restaurant.

**Reason:** In the interest of residential amenities.

3. The opening hours of the restaurant shall be restricted to closing not later than 23:00 hours on Thursday, Fridays and Saturdays and no later than 22:00 hours on any other day. No ancillary food delivery or collection services shall operate from the premises after these closing times.

**Reason:** In the interest of residential amenity.

4. a) Details of signage including method of illumination shall be submitted to the Planning Authority and agreed in writing prior to the commencement of development.  
b) Notwithstanding the provisions of the Planning and Development Regulations 2001, 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 building or within the curtilage of the site, or attached to the glazing unless authorised by a further grant of planning permission.

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

5. Prior to the commencement of development, the developer shall submit details regarding ventilation systems for written agreement with the planning authority. Such details should provide for the following;
- (a) Extract fumes shall be emitted to the outer air via a flue/stack erected to a minimum height of 1 metre above the eaves of the premises or adjoining premises,
  - (b) The flue/stack emitting fumes shall be positioned in an area from which the emissions will cause minimum nuisance,
  - (c) If a bend is provided to the flue/stack it shall be directed away from the neighbouring residences or offices,

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

6. Prior to commencement of development the developer shall submit, and obtain the written agreement of the planning authority to, a plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials, and for the ongoing operation of these facilities.

**Reason:** To provide for the appropriate management of waste and, in particular, recyclable materials, in the interest of protecting the environment

7. (a) During the operational phase of the proposed development, the noise level arising from the development, as measured at the nearest dwelling shall not exceed:-
- (i) An Leq,1h value of 55 dB(A) during the period 0800 to 2200 hours from Monday to Saturday inclusive.
  - (ii) An Leq,15 min value of 45 dB(A) at any other time. The noise at such time shall not contain a tonal component.

At no time shall the noise generated on site result in an increase in



noise level of more than 10 dB(A) above background levels at the boundary of the site.

(b) All sound measurement shall be carried out in accordance with ISO Recommendation 1996:2007: Acoustics - Description and Measurement of Environmental Noise.

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

8. 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 on Saturdays and not at all on Sundays and public holidays. Deviation from these times will 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.

- No additional development shall take place on the flat roof area, including
9. air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.

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

10. Water supply and drainage arrangements, including the attenuation and 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.

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Dáire McDevitt  
Planning Inspector  
7<sup>th</sup> April 2017