



An
Bord
Pleanála

Inspector's Report PL29S.248262.

Development	Continuation of the restaurant use as permitted by Dublin City Council Reg. Ref 2533/13.
Location	25A Bath Avenue, Dublin 4.
Planning Authority	Dublin City Council.
Planning Authority Reg. Ref.	2018/17.
Applicant(s)	Farmer Brown Eatery Ltd.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party
Appellant(s)	Farmer Brown Eatery Ltd.
Observer(s)	None.
Date of Site Inspection	26 th of June 2017.
Inspector	Karen Hamilton.

1.0 Site Location and Description

- 1.1. The subject site is a ground floor restaurant, Farmer Browns, located within a terrace fronting onto Bath Avenue, a residential area within the inner suburbs of Dublin City. There is an apartment above the restaurant which is accessed via the main door. The subject site is located 100m to the east of a neighbourhood area within Sandymount which includes an array of facilities such as restaurants, dentist, shops and takeaways. There is a public house, The Bath, on the opposite site of Bath Avenue which includes outdoor seating and associated canopies within the front public area.
- 1.2. There is an enclosed canopy to the front of the restaurant, accommodating c. 8 seats with a retractable façade. The rear of the subject site is accessed via Shaws Lane, the same as the other dwellings along this row, which contains other small scale commercial premises including a gymnasium.

2.0 Proposed Development

- 2.1. The proposed development is for the continuation of a restaurant use (93m²) permitted in PL29S.242244.

3.0 Planning Authority Decision

3.1. Decision

Decision to refuse permission for reasons of the conflict of the use of the restaurant and impact of the outdoor dining on the adjoining residential amenities of the area, in particular noise and general disturbance.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the area planner reflects the decision to refuse permission and refers to the following:

- Section 16.29 of the development plan includes criteria for assessing the impact of restaurants.
- There are on-going issues of non-compliance with the operating hours specified in the planning conditions.
- It was noted upon site inspection that the enclosed area to the front and signage did not have permission.
- The temporary permission granted by the Board allowed for the impact of the proposal on the residential amenities and there are serious concerns over intensity on the site.

3.2.2. Other Technical Reports

Drainage Department- No objection subject to conditions.

3.3. Prescribed Bodies

None requested.

3.4. Third Party Observations

Three submissions were received in relation to the proposed development which related to impact of the proposed development on the adjoining residential area by reason of noise, non-compliance with the conditions relating to operation times, use of the outside dining area, unauthorised signage, unauthorised enclosed structure to the front of the premises and unauthorised takeaway operations.

4.0 Planning History

PL29S.242244 (Reg. Ref 2533/13)

Permission granted, following a refusal from Dublin City Council, for a temporary period of three years for the retention of a change of use from butchers to restaurant, front awning and all ventilation ducting and flues to the rear and use of forecourt for outdoor seating. Conditions of note include:

C 2: Temporary three-year permission.

C 3: Restriction on the hours of operation and waste handling before 10.00pm and outdoor seating before 08.00pm, no seating past the canopy to the front and no advertising signs to the front of the premises.

C 4: Restrictions were placed on noise levels (55 d B(A) during the day and 45 d B(A) at night).

C 5: Restriction on odour concentration emission.

C 7: Requirement for the implementation of the landscaping scheme to the front of the canopy and removal of external illumination.

C 8: No hot-food takeaway permitted.

5.0 Policy Context

5.1. Dublin City Development Plan 2016-2022

The subject site is zoned as Z1 where it is an objective *“To protect, provide and improve residential amenities”*.

Restaurant is open for consideration.

Section 9.5.8 Noise Pollution

Minimise the impact of noise pollution by controlling developments which are noise sensitive away from more sensitive areas such as residential areas. If it is likely to create disturbance due to noise, a condition can be imposed limiting the hours of operation and level of noise generation.

Section 14.7 Transitional Zone Areas

- It is important to avoid abrupt transitions in scale and use zone permitted in each zone
- It is necessary to avoid developments that would be detrimental to the amenities of more environmental sensitive zones
- In zones abutting predominantly mixed-use zones, particular attention should be paid to use, scale, density and design of proposal and to landscaping and screening proposals in order to protect the amenities of residential properties.

Section 16.29 Restaurants

The positive contribution of café and restaurant uses and the clusters of such uses to the vitality of the city is recognised.

In considering applications for restaurants, the following will be taken into consideration:

- The effect of noise, general disturbance, hours of operation and fumes on the amenities of the nearby residents.
- Traffic considerations
- Waste storage facilities
- The need to safeguard the vitality and viability of shopping areas in the city to maintain a suitable mix of retail uses.

Dublin City Council's Shopfront Design Guidelines.

- Fascia signage: Only the name and street number of the shop should be on the fascia panel. Box signs are unacceptable and individually mounted letters are appropriate and should not be greater than 40cm. Illumination shall be discreet.
- Security Shutters: Roller shutters shall be located behind the window display.

5.2. Natural Heritage Designations

The site is located 1.2km from the edge of South Dublin Bay and River Tolka Estuary SPA and the South Dublin Bay SAC.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are submitted by an agent on behalf of the applicant which may be summarised as follows:

- There are currently notices within the restaurant relating to the limitation on the hours of use.

- The Planning Office inspected the premises in relation to an unauthorised signage and no enforcement notice has been issued in relation to the canopy or signage.
- The alleged breaches of conditions are not of concern to the planning authority if no action has been undertaken.
- The Fire Officer has inspected the canopy and did not raise any issue in relation to the closed canopy.
- The extent and location of the seating remains the same as the previous grant of permission.
- The planning authority concedes that there appears to be some difficulty in both adhering to and enforcing the conditions.
- The temporary permission was to assess the impact of the proposed development of the surrounding residential area and the planner appears to have only considered the adjoining residential properties.
- The canopy area is similar to that used in The Bath public house on the opposite side of the road.
- There is no scientific proof the proposed development has increased noise or odours.
- The applicant is prepared to accept an alteration of opening hours to mitigate against the alleged negative impact.

6.2. Planning Authority Response

The response of the planning authority refers to the reasons included in the Planners Report.

6.3. Observations

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
- Visual Amenity
- Appropriate Assessment

Principle of development

7.2. The site is located in an inner city location, 100m from a neighbourhood area, within a Z1 zoning, where it is an objective “*To protect, provide and improve residential amenities*”. The reason for refusal states that the restaurant conflicts with the current zoning, in particular the use of the outdoor dining area to the front of the premises and the proximity to the neighbouring houses. The grounds of appeal argue that the grant of permission on the site, PL29S.242244, meant the principle of the restaurant use is acceptable.

7.3. There is a historical commercial use on the site and it is stated in both the grounds of appeal and the planners report there was previously a butcher’s shop on the site. The Z1 zoning includes restaurant use as open for consideration and based on the proximity of the subject site to an inner-city neighbourhood area, I consider the site may be defined as a transitional area. Section 14.7, transitional zones, of the development plan encourages a mix of uses in these zones to prevent abrupt transitions, subject to scale, density and design.

7.4. Therefore, based on the location of the site, the zoning and the commercial nature of the site I have no objection to the principle of the use site as a restaurant subject to complying with other planning requirements as addressed in the following sections.

Residential Amenity

7.5. The existing restaurant is located on the ground floor of a terrace of two storey dwellings. Observations were submitted to the planning authority from surrounding residents in relation to the impact of the current use on the residential amenity, in particular the noise emanating from the outdoor seating. A three-year temporary permission, PL29S.242244 (20th of November 2013) was given in order “*to enable*

the effect of the development on the residential amenities of the property in the vicinity, having regard to the close proximity of dwellings". Conditions included restriction on the hours of operation, use of the front of the site, noise etc. which were deemed necessary to protect the residential amenity of adjoining properties. The planners report refers to observations received on the planning application and complaints received by the enforcement section and concludes that the mix of commercial and residential in this instance, appears to be contentious. I have assessed the impact of the proposed development on the residential amenity in particular the hours of operation, noise and odours from the kitchen use.

- 7.6. Hours of operation: Condition No 3 of PL29S.242244 included several restrictions on the use of the site, including the opening hrs of the restaurant at 10.00pm, use of the outdoor seating area before 08.00pm and the handling of refuse between 10.00am and 10.00pm. The grounds of appeal states that *"The planning authority concede that there appears to be some difficulty in both adhering to the conditions and also enforcing them"* although the applicants also state they are prepared to alter the opening hours, within reason, to facilitate the residents of the adjoining properties. I do not consider a condition relating to the control of hours of operation unreasonable to protect the amenities of adjoining residences and based on the sensitive location directly under an apartment and adjacent to two dwellings, I consider it reasonable to include a condition to restrict operation on the site to the daytime (09.00 am to 06.00pm).
- 7.7. Noise: Section 14.7 of the development plan includes guidance for uses within "Transitional Zones" and refers to the need to protect the amenities of residential properties and assess the impact of proposals in environmental sensitive zones. As the subject site is entirely surrounded by residential properties, I consider it an environmental sensitive area. A noise monitoring report was submitted with the grounds of appeal, with two monitoring points, N1 at the northern boundary at the front and N2 along the southern boundary to the rear of the site. The report recorded noise levels at N1 of 60 L(A)_{eq} dB during the day and 61 L(A)_{eq} dB in the evening and N2 of 50 L(A)_{eq} dB during the day and 48 L(A)_{eq} dB during the evening. It concluded that the recorded levels were higher than those required by condition no 4 of permission PL29S.242244 (55 d B (A) during the day and 45 d B(A) at night) and attributed the reason for an increase in noise levels to the frequency of passing

vehicles along the road to the front and the gym to the rear, at Shaws Lane. I note the noise levels are recorded as an average, therefore higher levels are possible and I do not consider the noise levels submitted comply with condition no 4 of temporary permission, PL29S.242244. Therefore, based on the noise monitoring results it is evident that the restaurant at this noise sensitive location has not proved compatible with the Z1 zoning where it is an objective *“To protect, provide and improve residential amenities”*, therefore I do not consider the use adequately protects the amenities of the adjoining residential properties.

7.8. Odours: The kitchen area is located to the rear of the site and the existing flue extends through the flat roof to the rear past the upper floor apartment and above the eaves of the roof. Condition no 5 of PL29S.242244 included a restriction of the odour concentration arising from the kitchen. No details of compliance have been received, although I note the location of the extraction system above the eaves the building and I consider it would prevent disturbance through odour emissions on adjoining properties.

7.9. **Visual Amenity**

7.10. The existing restaurant includes an outdoor seating area at the front of the premises, within the forecourt, enclosed by a plastic canopy and covered screen. There is a large plastic sign which extends across the facade. The drawings submitted refer to a retractable awning and roller shutter door, with no signage details.

7.11. Canopy: PL29S.242244 included an awning over the front ground floor, along the façade. The submitted drawings include the same awning, which I note does not correlate with the closed canopy structure on site. The grounds of appeal submit that both the planning officer and fire prevention officer have been on site and no enforcement proceedings have been issued to date by the Local Authority. I consider the proposal, as submitted on the drawings, has a minimal impact on the surrounding area although I consider the current enclosed canopy on site which protrudes c.2.5m forward of the building line and is positioned to the front of a residential property at the west dominates the both the existing dwelling and the facade of the subject site and has a negative impact on the visual amenity.

7.12. Signage: Chapter 5 of the Retail Guidelines of the development plan require the design of the new shopfronts to contribute to the public realm and respect the

character of the surrounding area. In addition, guidance in the Dublin City Council's Shopfront Design Guidelines require individual letters and does not accept box signs and security shutters on the outside. No signage details have submitted and I note the existing large plastic sign does not comply with the shopfront design guidelines. I do not consider the existing canopy on the site contributes to the public realm and I consider the use of the design and materials detracts from the visual amenity and therefore does not comply with the shopfront guidelines.

- 7.13. Therefore, based on the design and use of materials, I consider the canopy and signage, as present on site, has a negative impact on the visual amenity of the surrounding area.

Appropriate Assessment

- 7.14. 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 restaurant directly adjacent to residential properties, the Z1 zoning on the site, the guidance in Section 16.24 of the development plan for the appropriate location of restaurants, Section 14.7 for uses within transitional zones and the shopfront guidelines, it is considered that the proposed development, consisting of a restaurant, would seriously injure the residential and visual amenities of the area by reason of noise emissions and protruding canopy for outdoor seating and would be contrary to the proper planning and sustainable development of the area.

Karen Hamilton
Planning Inspector

03rd of July 2017