



An  
Bord  
Pleanála

## Inspector's Report PL29S.248284.

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### Development

Temporary markets to operate in excess of the specified exemptions of the above location one day per week.

### Location

Northern and Southern Banks of canal adjacent to Wilton Terrace, Dublin 2 and Mespil Road D4.

### Planning Authority

Dublin City Council.

### Planning Authority Reg. Ref.

WEB1020/17.

### Applicant(s)

Waterways Ireland.

### Type of Application

Permission.

### Planning Authority Decision

Grant.

### Type of Appeal

Third Party

### Appellant(s)

1. Cormack Manning & David O' Donoghue, Donnybook Fair.
2. Fresh Life Foods.

### Observer(s)

Michael Quinn, The Lansdowne Hotel.

### Date of Site Inspection

03<sup>rd</sup> of July 2017.

**Inspector**

Karen Hamilton.

## 1.0 Site Location and Description

- 1.1. The subject site includes an area of amenity space along the northern (Wilton Terrace, D2) and the southern (Mespil Road, D4) of the Grand Canal, connected via a walkway over Lock C4. A two-way cycle track runs along the northern edge adjacent to Wilton Terrace and there is no vehicular access from Mespil Road. The surrounding area is characterised by a mix of commercial uses, e.g. Mespil Hotel, with a scattering of residential properties intertwined.
- 1.2. The area along the northern bank consists of hard standing which included a motorised coffee dock and the area along the southern bank is grassland which has been significantly eroded in parts. A food market is currently operational on a Thursday.

## 2.0 Proposed Development

- 2.1. The proposed development relates to operation of a temporary market on a Thursday and may be summarised as follows:
  - Inclusion of 16 stalls, 5 to the north of Lock C4 and 11 at the south.
  - Proposed hours of operation 7am to 5pm with set up between 7 am and 10am.

## 3.0 Planning Authority Decision

### 3.1. Decision

Decision to grant permission with 6 conditions of which the following are of note:

C 2: The use of the market for 1 day per week for a three-year period unless subject to a separate permission.

C 5: A scheme for litter control shall be submitted for the written agreement of the planning authority within 3 months, including the provision of storage facilities.

C 6: The market shall not overspill outside the red line of the proposed site boundary and stalls 1 & 2 shall be located in a safe distance from the cycling lanes. Loading,

servicing and parking on market days shall be agreed in writing with the Planning Authority.

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

#### **3.2.1. Planning Reports**

The report of the area planner reflects the decision to grant permission and refers to the policies of the development plan which support the provision of markets. The planner refers to the busy commercial nature of the surrounding area and the location of the stalls would not impact on the use of the canal for amenity.

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

Roads & Traffic Department – No objection subject to conditions.

Drainage Division – No objection subject to conditions.

### **3.3. Prescribed Bodies**

None received.

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

Seven observations were received from surrounding businesses and residents and the issues raised are addressed in the grounds of appeal.

## **4.0 Planning History**

### **1163/13**

Permission granted, for a period of three years, to operate a market in excess of those times restricted in the exempted development (excess of 30 days in any year) to one day per week. Condition No 6 required the submission of a litter scheme for the written agreement of the planning authority.

Similar type development at Charlemont Place

**1164/13**

Permission granted for temporary markets to operate in excess of the specified exemptions (one day per week) at the Northern Bank of the Grand Canal adjacent to Charlemont Place.

Similar type development at Percy Place.

**1021/17**

Permission refused for operation of a temporary market along the northern and southern banks of Grand Canal for reasons of impact of the amenity use referred to in the Z9 zoning due to the removal of the pedestrian path and the negative impact on the residential properties directly adjoining this section of the canal.

**29S.242521 (1162/13)**

Permission granted for the operation of a temporary market in excess of the exemption for a three-year period for on the northern and the southern banks, adjacent to Herbert Place.

Similar type development at Waterways Ireland Visitor Centre

**WEBSSDZ1035/17**

Permission granted for permission to permit temporary markets to operate in excess of the specified exemptions for a period of three years and between the hours of 07.00 and 17.00.

**1161/13**

Permission granted for a temporary market for a period of three years at Grand Canal Quay. A condition was included restricting the placing of any structure within 7.2m of the southern elevation of the Altro Veltro building (i.e. the southern elevation of the Art and Coffee premises).

## **5.0 Policy Context**

### **5.1. The Retail Planning Guidelines 2012**

#### **Section 2.2.6 Local Shopping**

Shopping at the most local level is provided by a mixture of neighbourhood shops in suburban areas and village stores/post-offices in rural areas. In addition, another sector in the Irish retail market is the casual trading sector, including 'farmers' markets'.

Such markets can present a welcome addition to the retail options of urban areas and can complement and augment the existing retail and non-retail uses.

#### **Section 4.11.8 Casual Trading**

Casual trading includes trading markets and the increasingly popular farmers' markets. If properly regulated such casual trading can make a significant contribution to the local economy.

Casual trading should be promoted in the retail centres of cities and town where it can create an ambiance which can contribute to the vitality and viability of such centres.

### **5.2. Dublin City Development Plan 2016-2022**

The subject site is located within a Z9 zone where it is an objective *"To preserve, provide and improve recreational amenity and open space and green network"*

- Uses open for consideration include tea room and café/restaurant.

#### **Policies and Objectives relating to the location of Markets.**

**CEE18:** (v) To recognise that Markets, indoor and outdoor, food and other products have major economic potential, including as key tourist attractions and supports for start-up enterprises

**RD7:** To facilitate indoor and outdoor markets both in the city centre and throughout the city, and to promote the clustering of complementary uses that add character and vitality to an area.

**CHC46:** To encourage active uses of public spaces for the enjoyment of individuals, families and visitors to Dublin city and contribute to a sense of place by encouraging and facilitating the provision of fit-for-purpose, multi-

functional outdoor spaces for festivals, events, public art, markets etc. in accessible, traditional and non-traditional locations.

### **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 nearby residents,
- Traffic considerations,
- Waste storage facilities.

The site is located along the banks of the Grand Canal; therefore, the following **Natural Heritage** polices are relevant:

**GI13:** Public open space should be protected,

**GI14:** Soft landscaping and SUDS in open space,

**GI16:** Improve the character and ecological value of rivers.

The site borders the **Grand Canal 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.

### **5.3. Natural Heritage Designations**

The site is located c. 2.3km from the edge of the South Dublin Bay SAC and the South Dublin Bay and River Tolka Estuary SPA.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The grounds of appeal are submitted from the same agent on behalf of both appellants who are interested parties (Donnybrook fair and fresh foods) and may be summarised as follows:

- The proposed use does not come within the remit of the Z9 zoning on the site and the use of the stalls may not be classified as restaurant/ café as the primary function is for the consumption of food on the premises and tea room is for the sale of light refreshments.
- There was illegal parking for loading and unloading along Mespil Road and Wilton Road, a public footpath and driving over a cycle way, which obstructed both pedestrians and cyclists and photographic evidence has been submitted to support this statement.
- As a consequence of the market there is an uncontrolled pedestrian crossing across the main roads adjoining the site, therefore causing a traffic hazard.
- There is inconsistent approach to the Z9 zoning as Dublin City Council have refused permission (WEB1021/17) a similar development 500m to the east of the site for reasons that the market would seriously injure the green infrastructure and the amenity of the canal, therefore contrary to the zoning. The proposal is essentially a takeaway and policies in the development plan restrict these uses. The market does not contribute to the vitality and viability of the area therefore it does not comply with RD7.
- The proposed use is a material contravention of the development plan as the use is not permissible and it contravenes those objectives of the plan which require the retention of green infrastructure free from development for ecological and amenity reasons (GI10, GI15, GI17, GIO20, GI23, GI24, GI26).
- The proposal to date has had a negative impact on the grassed area along the northern and southern banks and there has been no regrowth. In addition to tents there are motorised vehicles parked on the amenity area which is also a traffic hazard.



- An appropriate assessment screening should have accompanied the application as the proposal has the potential to intensify the use along the Canal.
- The Grand Canal is a proposed Natural Heritage Area (p NHA) and the site forms part of blue/ green corridor designated as part of the green infrastructure in the development plan, therefore an important ecological corridor.
- The proposal will have a negative impact on the Grand Canal Conservation Area as it does not positively contribute to the character of the area.
- The markets do not have to comply with a host of health and safety etc. therefore the other business in the area cannot compete and it does not comply with the Retail Planning Guidelines 2012 (section 2.2.6).
- The temporary “*Flying banners*” which may be located in the market is contrary to Appendix 19 of the development plan (advertising control).
- There are no proposals for crowd management/ water safety or the provision of toilet facilities.
- The current market does not have any provision for the collection of waste during the day and those public bins in the vicinity are generally full by 1pm.

## 6.2. Applicant Response

A response from the applicant was received in relation to the grounds of appeal which may be summarised as follows:

- Traffic Issues: Waterway Ireland will agree in writing with Dublin City Council the locations of loading, parking etc. on market days to avoid disruption to traffic.
- Variations in Planning Decisions: The reason for refusal at a different location included the impact on the residential amenity, this site has a majority hardstanding and is not located close to a residential area.

- Impact on the Amenity of the Canal: Waterways Ireland intended to repair any localised impact on the grounds, prohibit vehicle parking and agree the location in writing with any market operator.
- Appropriate Assessment: There is no impact on any Natura 2000 site.
- Ecology: The current ground is species poor amenity space and the proposed development is for once a week with no discharges to the waters.
- Markets Policy/ Character of the Grand Canal: The market will provide a lively public space for people to enjoy and it will not harm buildings, spaces street patterns etc. of the area.
- Character of the Market: The market cannot reasonably be classified as a takeaway as it is generally food consumed on site by local workers.
- Advertising: Advertising will only be temporary and placed on the local for the duration of the market.
- Crowd Safety: A crowd management plan will be agreed with waterways Ireland and the market operators.
- Toilet Facilities: It is not expected to operate toilets as most customers are expected from walking distance with the market.
- Waste Management: It will be a condition of any licence that an operator will remove their rubbish.
- Compliance with legislation: All conditions attached to the grant of permission any relevant environmental and health and safety legislation will be complied with.

### 6.3. Planning Authority Response

No response received.

### 6.4. Observations

One observation was received from a representative of a hotel in the vicinity of the site and the issues raised are the same as the grounds of appeal and may be summarised as follows:

- The development will create a traffic hazard due to the large amount of pedestrians.
- The decision is a material contravention of the Z9 zoning in the development plan.
- The market has a negative impact on the amenity of the Grand Canal and is at odds with the designated conservation area.
- The proposed development has an adverse effect on the ecology of the area and no appropriate assessment was undertaken.
- It does not contribute to the vitality of the area and impacts on the permanent business in the area.
- It does not comply with the health and safety requirements of the event guidelines and it creates a significant amount of litter and waste.

### **Further Responses**

6.5. A further response was received in relation to the observations on behalf of the Pembroke Road Association which may be summarised as follows:

- The use of the area as a market will prevent a possible tourism walk linking local features of historical interest e.g. birthplace of Thomas Davis and Sisters of Mercy building.
- Reference has been made to a similar development (WEB102/17) which was refused by Dublin City Council.
- A disorganised market will not enhance the quality of residents in the vicinity (e.g. Wilton Place & Mespil Road).
- The inclusion of the bins, fast food units, cooking smells, lack of facilities and advertising will detract from the amenity space and have a negative impact on the Patrick Kavanagh bench.
- The proposed development will have a negative impact on the Health and Safety e.g. crowds around deep water, all of which is outside the remit of Waterways Ireland.

- Policies in relation to green infrastructure should be observed, e.g. GI13, GI14, GI15, GI106 and Section 10.5.2.1 within the context of the Z9 zoning. The proposed development will have a negative impact on the ecology.
- Local traders are losing profit as the market caters for lunch time trade.
- The proposed development will have a negative impact on the traffic and cyclists in the vicinity.

6.6. Dublin City Council responded to the submission from the Pembroke Road Residents Association to state that the original planners report included the reasoning for the decision.

## 7.0 Assessment

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

- Principle of Development
- Residential Amenity
- Impact on the Natural and Built Environment
- Traffic and Access
- Appropriate Assessment

### Principle of Development

7.2. The proposed development is for temporary market, with 12 stalls, one day per week along the northern and southern canal bank at Lock C4 of the Grand Canal. The grounds of appeal argue the proposed development is a material contravention of the development plan which I have addressed in conjunction with the planning history to assess the principle of the development at this location.

7.3. Development plan: The site is located on lands zoned as Z9 in the development plan where it is an objective “*To preserve, provide and improve recreational amenity and open space and green network*”. Markets are not listed as uses “permissible” or “open for consideration” although other relevant uses open for consideration include tea room and café/restaurant. The grounds of appeal have argued that markets do not fall within either of these categories as it should be classified as a takeaway and

therefore Section 16.24 of the development plan, prevention of excessive provision of takeaway, is relevant. The response from the applicant states that the majority of the food purchased in the stalls are consumed on site and therefore the use is more akin to a café than a takeaway. I noted a large number of members of the public resting and eating along the canal and within the vicinity at lunch time. Therefore, based on the occasional use and nature of the stalls I consider it reasonable to assess the temporary market under the open space use of the Z9 zoning.

- 7.4. Retail Planning Guidelines: The site is surrounded by hotels, offices and residences and the site is currently well used by members of the public at lunch time. The Retail Planning Guidelines supports the diversity of uses to provide validity and viability in in a town and the guidelines acknowledge the benefits markets can have urban area as they can complement and augment the existing retail and non-retail uses. Therefore, I consider the market complies with national guidance.
- 7.5. Planning History: The proposed development was one of three sites for temporary markets submitted by Waterways Ireland, the other locations included Grand Canal Quay and Percy Place. Temporary planning permission was granted in 2013 at all three locations for similar development. Planning permission has been recently refused at the Percy Place location (1021/17) for reasons of impact of the amenity use referred to in the Z9 zoning due to the removal of the pedestrian path and the negative impact on the residential properties directly adjoining this section of the canal, and the grounds of appeal argue that in the interest of consistency this proposal should be assessed in the same way. I note a previous grant of permission (29S.242521 Reg Ref 1162/13), at the same location for a similar development. I note the location dwellings directly opposite the site at Percy lane and the location of the stalls along a narrow part of the canal walkway and I consider the proposal significantly different to the subject site which is separately from any properties by two busy roads. I consider the planning history on the site and other similar development in the vicinity further support the principle of development within the Z9 land use zoning.
- 7.6. Therefore, based on the national and local guidance and the planning history, subject to complying with other planning requirements as addressed in the following sections, the principle of the proposal is acceptable.

## **Residential Amenity**

- 7.7. There is currently a mix of residential properties in the vicinity of the property on the opposite side of both the Mespil Road and Wilton Terrace. The grounds of appeal refer to a recent refusal of a similar development at Percy Place (Reg Ref 1021/17) in particular the refusal reasons for the impact on the residential amenity. As discussed above, I do not consider this history can be used as a precedence as the issues on both sites are different. This aside I have considered the potential impacts on the residential amenity in terms of noise, odour and litter, below.
- 7.8. Noise: The proposed development does not include any devices which should lead to a significant increase in the noise levels in the area, this aside the use of stalls may include ancillary generators or amplified music on market days. Therefore, based on the proposed use, I consider it reasonable to restrict noise levels on market day to levels which are considered acceptable beside any noise sensitive receptor, residential area, which can be included as a condition.
- 7.9. Odour: The limited size of the proposed stalls (9m<sup>2</sup>) means there is restricted space for a significant amount of cooking on site. Therefore, based on the location of the site on the opposite side of a busy roads, the separation distance of the site from any buildings and the temporary nature of the stalls, I do not consider the markets would have a negative impact on the amenity of any residential properties.
- 7.10. Litter: Submissions received on the proposed development refer to the negative impact on the amenity area from littering on the site. Condition No 5 included a condition requiring the submission of a “scheme of litter control” for the written approval of the planning authority, which I consider reasonable. I note the inclusion of numerous public bins in the vicinity and I consider in conjunction with condition on litter management on market day, the proposed development would not have a negative impact on the surrounding area.

## **Impact on the Natural and Built Environment**

- 7.11. The subject site is located with an amenity area along the banks of the Grand Canal. The grounds of appeal have raised both the ecological impact of the proposed development on the existing amenity space and the impact on the Grand Canal Conservation Area of which I have addressed separately below.

- 7.12. Ecological Impact: The grassed area around the subject site currently contains areas where the grass has been eroded, adjacent to the existing pathways along the canal. The grounds of appeal argue the proposed development will not support the inclusion of green infrastructure and have a negative impact on an important ecological corridor. I note the inclusion of a significant amount of mature trees and green space currently along the canal within the site and I do not consider the temporary use of the site for food stalls will significantly alter the ecological value of the site or prevent this area of the canal to continue to be used as green infrastructure.
- 7.13. Grand Canal Conservation Area: Policy CHC4 of the development plan states that any development within Dublin's Conservation areas should contribute positively to the character and distinctiveness of the appearance and setting. The 16 temporary stalls are single storey and located in close proximity. The site is separated from any protected structures to the north of the site by Wilton Terrace. Therefore, based on the size of the site, the design of the stalls and the use of the site one day per week, I do not consider the proposed development would detract from the appearance and setting of the conservation area or surrounding area.

### **Traffic and Access**

- 7.14. The proposed development includes 16 stalls along the northern and southern banks of the Grand Canal, on a Thursday, from 07.00 to 17.00. The subject site is bounded by two main roads, Wilton Terrace to the north and Mespil Road to the south. The grounds of appeal have submitted photographic evidence to illustrate vehicular access by market stall owners across the adjoining cycle paths, along Wilton Terrace, and over the double yellow lines, along Mespil Road.
- 7.15. The proposed development does not include any proposal for vehicular access to the site. The report of the Traffic Section has no objection to the proposed development subject to conditions and condition No 6 required stalls 1 & 2 to be located a safe distance from the cycle lanes and includes a requirement for the submission of proposed loading, servicing and parking on market days to be agreed in writing with the planning authority prior to development. I consider this condition reasonable to control the servicing of the site on market day and prevent any negative impact on the road users in the vicinity.

## **Appropriate Assessment**

- 7.16. The site is located c. 2.3km from the edge of the South Dublin Bay SAC and the South Dublin Bay and River Tolka Estuary SPA. The site does not have a distinct pathway to either of the Natura 2000 sites, therefore having regard to the temporary nature and scale of the proposed development 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. I recommend that planning permission should be granted, subject to conditions, as set out below.

## **9.0 Reasons and Considerations**

Having regard to the location of the site within the open space area along the Grand Canal, to the Z9 zoning objective, the temporary nature and scale of the proposed development, and the policies of the current Dublin City Development Plan 2016-2022, it is considered that subject to compliance with the conditions below, the proposed development would contribute to the active use and enhancement of this open space area and would not seriously injure the residential or visual amenity of the area, have an adverse effect on the character and setting of the conservation area or endanger public safety by reason of traffic hazard. 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 interest of clarity.

2. The market shall only operate between 0700 hours and 1700 hours on one day per week. The use shall cease on or before the expiration of a period of three years from the date of this order, unless prior to the end of the period, planning permission has been granted for this use for a further period.

**Reason:** To enable the impact of the development to be assessed at the end of this period.

3. The noise level shall not exceed 55 dB(A) rated sound level at the nearest noise sensitive location (closest dwelling). 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.

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

4. A traffic management plan including proposed loading, servicing and parking on market days shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of traffic safety.

5. Litter in the vicinity of the markets shall be controlled in accordance with a scheme of litter control which shall be submitted to, and agreed in writing with the planning authority prior to the commencement of development.

This scheme shall include the provision of litter bins and refuse storage facilities.

**Reason:** In the interest of the amenities of the area and the protection of the environment.

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.

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Karen Hamilton  
Planning Inspector

14<sup>th</sup> of August 2017