



An
Bord
Pleanála

Inspector's Report PL29N.248707

Development	Change of use from hairdressers to restaurant use, new signage and site works.
Location	Ground Floor Unit No. 27 Liffey Street Lower, Dublin 1.
Planning Authority	Dublin City Council.
Planning Authority Reg. Ref.	3175/16.
Applicant	Peter van der Goudenhart.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party -v- Grant
Appellant	Linevana Limited.
Observers	None.
Date of Site Inspection	21st September, 2017.
Inspector	Paul Caprani.

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1.0 Introduction

PL29N.248707 relates to a third party appeal against the decision of Dublin City Council to issue notification to grant planning permission for a change of use from an existing hairdresser to restaurant use together with new signage and associated works at No. 27 Liffey Street Lower, Dublin 1. The grounds of appeal argue that there are procedural issues associated with assessing the application and the proposed use as a restaurant is contrary to the land use zoning objectives of the site and it is incompatible with the existing retail activity in the area because of issues relating to noise and odour etc.

2.0 Site Location and Description

- 2.1. The subject site is located on the western side of Liffey Street approximately 70 metres north of Batchelor's Walk. Liffey Street together with surrounding streets forms part of the central business district of the city and forms part of a wider area that accommodates the commercial and retail core of the north inner city. The subject site is located directly opposite the North Lotts and North Lotts Bar which runs parallel to, and to the immediate north of Batchelor's Walk. Liffey Street is almost exclusively commercial in nature accommodating a variety of retail, restaurant (including fast food) cafe and other uses including professional services such as hairdressers etc. On the eastern side of Lower Liffey Street, Batchelor's Walk apartments are located which accommodate retail and commercial uses at ground floor level with residential uses above.
- 2.2. No. 27 Liffey Street (indicated on the site location drawings as No. 26) comprises of a two-storey gable fronted building which forms the central element of three gable fronted buildings fronting onto the eastern side of Liffey Street near its junction with Great Strand Street. The ground floor is currently unoccupied. Likewise the adjacent unit to the north was currently vacant. A Kebab House is located in the unit to the immediate south. The second floor accommodates office use and does not form part of the current application before the Board. A small laneway runs to the rear of the site accessed from Great Strand Street.

3.0 Proposed Development

Planning permission is sought for a change of use from the existing hairdressing unit to a restaurant use together with new signage and associated site works. The planning application form indicates that the change of use involves an area of 74 square metres. The restaurant is to accommodate a food preparation area together with staff changing and toilet facilities to the rear of the premises, while a serving area and a seating area is provided for approximately 32 patrons.

4.0 Planning Authority's Decision

4.1. Decision

Dublin City Council issued notification to grant planning permission for the proposed development subject to 12 standard conditions.

4.2. Additional Information Request

- 4.2.1. The planning application was lodged on 23rd June, 2016. It was accompanied by a letter from the owner of the property giving consent for the application to be lodged by the current applicant.
- 4.2.2. A number of observations were submitted from retailers and restaurateurs in the vicinity objecting to the proposed development on both planning grounds and commercial competition grounds. One observation was also submitted in support of the proposed development.
- 4.2.3. A report from the Engineer Department Drainage Division stated that there was no objection subject to conditions.
- 4.2.4. A report from the Senior Environmental Health Officer states that the proposed development must comply with all relevant health and safety standards.
- 4.2.5. The original planner's report requested that further information in relation to:
 - The nature of the restaurant activity to be provided on site.
 - Further details in relation to a waste management strategy.

- Further details in relation to the proposed shopfront materials and elevational treatment.
- Further details in relation to the control of fumes and odours arising from the premises.

5.0 Applicant's Response

5.1. The Planning Authority granted an extension of time in respect of the further information request and further information was received on 28th April, 2017. It states the following:

- There is a lack of restaurants and eateries in the area since the Epicurian Foodhall was closed last year. The primary function of the street is a retail function and the proposal is fully in accordance with the development plan for Category 1 Retail Streets. The proposed new restaurant will have a high end European food for sale and there will be no take-away element associated with the proposal.
- In terms of a waste management strategy, it is stated that a dedicated refuse storage area will be provided in the rear yard with access off Strand Street. Licensed waste contractors will collect general waste recyclables and waste oil. Waste bins will be securely concealed from public view. The waste contractors provide the same service for similar units in the vicinity.
- Details of the materials and colours proposed are provided. The fascia board will be lit on both sides by LED (fixed lights).
- Details of measures for the control of fumes and odours are set out in a separate letter prepared by Ventilation Ireland. It is stated that there will be a fresh air intake duct to the rear yard and mechanical extract ducts to the toilets. It is argued that the proposal will not have a negative impact on the amenity of the first floor building or any adjoining building.

5.2. Further Planning Assessment

A further planning report was prepared in response to the additional information submitted. In relation to the first item, it is stated that having regard to the

established mix of retail services and restaurant uses along Liffey Street, it is considered that the proposed development would not have an adverse impact on the vitality and viability of the shopping area.

Details in relation to waste management are also considered to be acceptable.

With regard to the external elevation treatment, the Planning Authority has concerns with regard to the signage and lighting. It is stated that the projecting lighting is unacceptable and should be omitted. It is stated that details in relation to signage can be dealt with by way of condition.

In relation to the final issue, it is stated that the letters submitted by the ventilation provider is a quotation for works to be carried out. No precise details of the final ventilation system have been submitted but again it is considered that this can be dealt with by way of condition.

The planner's report considers that the proposed development would not injure the amenity of property in the vicinity and would therefore be acceptable in terms of the proper planning and sustainable development of the area.

In its decision dated 22nd May, 2017 Dublin City Council issued notification to grant planning permission for the proposed development for 12 conditions.

6.0 Planning History

There appears to be no specific planning history associated with the appeal site. However, one history file (PL 29N 247192) is attached which relates to the contiguous unit to the south. Under this application and appeal permission was sought for a change of use from retail to restaurant use together with new signage and associated works. Dublin City Council issued notification to grant planning permission for the proposed development. The decision was the subject of a third party appeal which argued that the proposed development was contrary to the land use zoning objectives of the development plan which sought to protect the primary retail function of a premier shopping area. The Board in its decision dated 10th January, 2017 upheld the decision of the Planning Authority and granted planning permission for the proposed development subject to seven conditions. The decision was dated 10th January, 2017.

7.0 Grounds of Appeal

- 7.1. The decision of Dublin City Council to issue notification to grant planning permission was the subject of a third party appeal from the occupants of 24/25 Lower Liffey Street, Dublin 1. The grounds of appeal are outlined below.
- 7.2. The appeal argues that the proposed intensification of restaurant uses along this section of Liffey Street will make office work difficult due to amenity problems associated with odours, noise and possible anti-social activity. The proposal will also contribute to land uses on this street which is contrary to the sustainable survival and vitality of the street as a primary retail street as designated in the development plan.
- 7.3. The change of use would require compliance with the requirements of the Environmental Officer and Water Services Department which would make the appellant's working environment difficult.
- 7.4. Not all the development works have been indicated in the drawings submitted including extract flues, waste disposal, details of signage etc.
- 7.5. The applicant has not shown details of the small open yard to the rear of the planning application. Nor has he shown the necessary right of way to the rear of the premises to the street.
- 7.6. Concern is also expressed that a restaurant at ground floor level with offices overhead will raise fire safety issues. It is stated that there are difficulties in the area with regard to foul sewage back-up and overflow. No proper drainage details were included in the planning application.
- 7.7. The site of the proposed development is stated as 74 square metres in the public notices. However, the drawings submitted indicate a floor area of 86 square metres.
- 7.8. It is suggested that the ownership of the all the buildings in the area was not included in the subject planning application. Concerns were expressed that the appellants are excluded from any meaningful interaction with the Planning Authority during any compliance stage of the planning process.
- 7.9. Reference is also made to the policies and provisions contained in the Dublin City Development Plan and it is noted that when the application was lodged with the

Planning Authority the previous statutory development plan (2011 – 2017 was in force). Reference is made to various policies and provisions contained in the development plan and reference is made to specific key city centre retail objectives as they relate to the Plan. It notes that the policies of the Planning Authority for shopping streets which includes the subject street is to provide choice and locally accessible shopping in a quality environment. It is argued that to allow two contiguous ground floor units along the subject street would be contrary to the City Council's policies for Category 1 and Category 2 retail streets in the city centre.

- 7.10. It is argued that there is no waste disposal plan submitted with the application. There is no agreement in place between the existing stakeholders and the owners of the restaurant regarding waste disposal. No ventilation system from the restaurant has been shown nor has any information been provided in relation to the ventilation system required.
- 7.11. It is considered that the change of use together with the recently permitted change of use on the adjoining property (under Reg. Ref. PL29N.247192) the proposed development would be contrary to the policies and provisions contained in the Dublin City Development Plan and it is therefore contrary to the proper planning and sustainable development of the area.

8.0 Appeal Responses

- 8.1. The applicant has not submitted a response to the grounds of appeal.
- 8.2. Dublin City Council in its response received by the Board on 13th July, 2017 states that the reasoning of which the Planning Authority decision on this application was based in set out in the planning report which has already been forwarded to An Bord Pleanála. Therefore, it is not proposed to respond in detail to the grounds of appeal as the Planning Authority considers that the comprehensive planning report already deals fully with all the issues and justifies the decision in question.

9.0 Development Plan Provision

- 9.1. The site is governed by the policies and provisions contained in the Dublin City Development Plan 2016 – 2022.

- 9.2. The subject site together with the surrounding area is governed by the zoning objective Z5 – *‘to consolidate and facilitate the development of the central area and to identify, reinforce and strengthen and protect its civic design character and dignity’*.
- 9.3. Restaurant use is a permissible land use under the zoning objective for the site.
- 9.4. Section 7 of the Plan specifically relates to retail. Paragraph 7.6.1 states that in order to maintain and strengthen the retail character of the city centre retail core, which can be adversely affected by dead frontage and lower order retail uses, the premier shopping streets in the city centre retail core are designated as Category 1 and Category 2 shopping streets.
- 9.5. Policy RD13 seeks to reaffirm and maintain the status of the city centre retail core as a premier shopping area in the State, affording a variety of shopping, culture and leisure attraction having regard to the relevant objectives set out in the Retail Core Framework Plan (2007).
- 9.6. The purpose of the development plan is to protect the primary retail function of these streets as the principle shopping streets in the retail core with emphasis on higher order comparison retail and rich mix of uses. The designation controls the extent of provision of non-retail uses at ground floor level but also allows for uses complementary to the main shopping focus such as cafes, bars, restaurants and galleries.
- 9.7. Section 16.29 of the development plan specifically relates to restaurants. It states that the positive contribution of a café and restaurant uses and the cluster of such uses to the vitality of the city is recognised. In considering applications for restaurants the following is taken into consideration:
- The effect of noise, general disturbance, hours of operation and fumes on the amenity of nearby residents.
 - Traffic considerations.
 - Waste storage facilities.
 - The number and frequency of restaurants and other retail units in the area (where proposal relates to Category 1 or 2 shopping streets as defined in the city

centre retail core principle shopping streets as indicated in Chapter 7 and Appendix 3 of the development plan).

- The need to safeguard the vitality and viability of shopping areas in the city and to maintain a suitable mix of retail uses.

10.0 Planning Assessment

I have read the entire contents of the file, have had particular regard to the issues raised in the grounds of appeal and have visited the site and its surroundings. I consider the critical issues in determining the current application and appeal before the Board specifically relate to the following issues:

- Compliance with Development Plan Policy
- Impact on Amenity through Noise, Odour and Waste
- Details in Relation to Waste Management
- Procedural Issues

10.1. Compliance with Development Plan Policy

- 10.1.1. The Board will note that the previous statutory development plan for the area (2011 – 2017) categorised the principle shopping streets in the city centre retail core as Category 1 and Category 2 streets (see Figure 18 on page 152 of Dublin City Development Plan 2011 – 2017). I can find no such distinction being made under the more recently adopted plan. The more recently adopted plan sets out more general policy provisions as they relate to the city centre retail core. The emphasis in the development plan is to protect the primary retail function of principle shopping streets in the retail core with emphasis on higher order comparison retail and a rich mix of uses. While the designation controls the extent of the provision of non-retail uses at ground floor level it also allows for uses complementary to the main shopping focus and specific reference is made to bars and restaurants in this regard. I further note that under the Z5 zoning objective ‘restaurant use’ is permitted in principle.
- 10.1.2. Lower Liffey Street currently accommodates a range of retail and restaurant uses and it is noted that the restaurant use is well established on the subject street. The Board have previously determined in the case of PL29N.237192 that a restaurant

use on the subject street would not seriously injure the amenities of the area or property in the vicinity and the restaurant use of the nature and scale to that proposed under the current application would be suitable having regard to the pattern of development in the area. I would consider that the same conclusion could equally apply to the current application which is of a similar scale and size to that permitted under Reg. Ref. 29N.247192.

- 10.1.3. Having inspected the site and its surroundings I note that Liffey Street cannot be considered a primary core retail street such as O'Connell Street or Henry Street but is nevertheless an important shopping street located on the periphery of the primary shopping street. Having regard to its location adjacent to the primary shopping street I would consider it more suitable to accommodate a mix of retail, retail services and restaurant uses. For this reason, I do not consider that the provision of an additional restaurant would have a material impact on the mix of land uses along the section of the street. I note in the case of the previous application determined by the Board, the inspector's report makes reference to the mix of land uses along the street as per the information contained in Thom's Directory. It is clear that there has been in general over the previous decade, a 50/50 mix in terms of retail/retail services and restaurants/cafes and pubs. The proposed development will not significantly alter this mix and I therefore consider the use to be acceptable in principle.
- 10.1.4. I also consider the use of the subject site as a restaurant will not in any way diminish the vibrancy and vitality of Liffey Street.
- 10.1.5. Restaurants and cafes such as that proposed are likely to operate during the daytime as well as evening time and therefore will encourage and enhance pedestrian activity along the street during normal business hours as will be the case in any retail activity. I do not consider that the proposed restaurant activity therefore will diminish the footfall or reduce the status of Liffey Street in terms of attracting patrons to the area.
- 10.1.6. Therefore, having regard to the precedent set for a similar type development under Reg. Ref. 29N.247192, the fact that restaurants are a permitted use under the land use zoning objective and the fact that restaurants, bars and cafes are an established land use along Liffey Street, I consider that the proposal is acceptable in principle.

10.2. Impact on Amenity through Noise, Odour and Waste

10.2.1. I do not accept the argument that the proposed development would have an unacceptable impact on surrounding residential amenities in terms of noise. There are already a proliferation of commercial activities already established on Liffey Street and the surrounding area. Liffey Street is located within the central commercial core which in itself gives rise to significant noise generation through general commercial activity and traffic. A key objective of the development plan is to strengthen the vibrancy and vitality of such streets and such vibrancy and vitality will, by its very nature, result in noise generation. It would be completely inappropriate in my view to refuse planning permission for a commercial type activity in the central commercial core on the grounds that it might give rise to excessive noise.

10.2.2. The other amenity issue raised in the grounds of appeal relates to odour. While restaurants, cafes and bars can give rise to elevated levels of odour it is again reiterated that such uses are deemed to be acceptable and indeed are encouraged in city centre locations. Odour generation can be successfully mitigated through appropriate ventilation controls. I note that the applicant, by way of further information, has indicated that odour reduction can be appropriately installed to adequately address this issue (see quotations submitted by Ventilation Ireland submitted in the applicant's response to the grounds of appeal). As stated in the local authority's planner's report, I consider that odour mitigation measures can be appropriately addressed by way of condition.

10.3. Details in Relation to Waste Management

10.3.1. The grounds of appeal raise concerns in relation to waste management and argue that there is a sufficient lack of detail in relation to how waste is to be managed on site. The issue in respect of waste management was raised by the Planning Authority as per additional information request. The applicant has indicated that two licenced contractors (Key Waste and Frylite) have a permit, and are willing to collect waste, and details of this permit are referred to in the accompanying letter submitted with the additional information response. The applicant further states that waste bins will be securely concealed from public view at the rear of the premises within the building curtilage in compliance with guidelines set out in the development plan. There are numerous restaurants in the immediate vicinity and in the wider area of

the city which rely on licenced waste contractors in order to manage was associated with restaurants and similar type commercial premises. No cogent arguments have been put forward in the grounds of appeal which would indicate that the applicant would not be available to avail of similar type services when running the proposed development.

10.3.2. Concerns are also expressed that the sewage infrastructure may not be capable of catering for the proposed development as there have been a number of drainage problems associated with premises in the area. In relation to this issue, I would refer the Board to the report from the Drainage Department contained on file. It states that there is no objection to the development subject to the developer complying with the Greater Dublin Regional Code of Practice for Drainage Works. It further stipulates that there will be no discharge of trade effluent to Dublin City Council sewers except in accordance with a licence granted by Dublin City Council as required under the Local Government Water Pollution Acts. It appears therefore that the applicant will have apply for a separate licence to discharge trade effluent. Any such application would be assessed on its merits. I note however that the Drainage Department do not object to the proposed developments on grounds relating to drainage matters.

10.4. **Procedural Issues**

10.4.1. The grounds of appeal highlight a number of perceived procedural issues which according to the appeal should invalidate the application in question. Firstly, the grounds of appeal state that the floor area associated with the development amounts to 86 square metres and not 74 square metres as indicated on the planning application form and public notices. The drawings submitted with the application indicate that the proposed restaurant together with ancillary space (food prep area, toilets, staff changing etc.) amounts to an area of 74 square metres. In particular I refer to Drawing PVDG-16/PP/03 which indicates that the ground floor of the building is approximately 6.4 metres in width and 11.6 metres in length. This amounts to a gross floor area of 74.24 square metres. I therefore consider the information contained in the public notices and the planning application form to be correct.

10.4.2. It is also argued that there is no designated area for waste storage and that, in the absence of a waste storage area or agreed location for same, a proper compliant waste storage plan may not be achieved. Again I would refer the Board to the above

drawing. It clearly indicates details of the proposed secure bin store to be located to the rear.

- 10.4.3. The grounds of appeal also argue that the applicant has failed to give any information on ventilation, grease traps or cooking areas etc. In response to this issue I would again refer the Board to the above drawing. It indicates precisely where the ventilation areas are to be located together with the location of the extract duct from the food preparation area. I would consider that any further details that are required in relation to this issue can be agreed by way of condition. These are relatively minor issues and relate to points of detail as opposed to the overall principle of the development. I consider that any further details regarding same would appropriate be agreed between the Planning Authority and in particular the Environmental Health Officer and the applicant. I do not consider as suggested in the grounds of appeal that any details in relation to the same precludes or impinges upon any third party rights to a material extent.
- 10.4.4. Finally, in relation to procedural issues, it is argued that the ownership details of all land owned by the applicant was not indicated in the subject application. It is stated that this omission is significant and material. The Board will note from the information contained on file that the applicant is not in fact the owner of the premises in question. It appears that the applicant will be leasing the premises from the owner (The Hibernian Shirt Manufacturing Company Limited – see letters submitted to Dublin City Council on 23rd June, 2016). I would contend that as the applicant in this instance is not the owner of the subject site or any lands in the vicinity of the site, issues in relation to landownership as per the planning drawings submitted with the application is not relevant in this instance.

11.0 **Appropriate Assessment**

Having regard to the nature and scale of the proposed development and the nature of the receiving environment together with the proximity 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 and projects on a European site.

12.0 Conclusions and Recommendation

Arising from my assessment above I consider that An Bord Pleanála should uphold the decision of the Planning Authority in this instance and grant planning permission for the proposed development in accordance with the plans and particulars lodged based on the reasons and considerations set out below.

13.0 Reasons and Considerations

Having regard to the provisions of the Dublin City Development Plan 2016 – 2022 and in particular the Z5 zoning objective which relate to the lands in question together with the nature and scale of the proposed development and to the pattern of development in the area, it is considered that subject to compliance with the following conditions the proposed development would not seriously injure the amenities of the area or property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

14.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further information received by the planning authority on the 28th day of April 2017, 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 the 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. For the avoidance of doubt, the premises shall be used as a seated restaurant only and not for the sale of hot food for consumption off the premises.

Reason: In the interest of clarity.

3. The proposed projecting lighting shall be omitted and the fascia signage shall be provided using individually mounted lettering using high quality materials in lieu of painted signage. Details of the proposed signage and security shutters shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. No further advertisement signs (including any signs installed to be visible through the windows), security shutters, advertisement structures, banners, canopies, flags or other projecting elements shall be displayed or erected on the buildings, unless authorised by a further grant of planning permission.

Reason: To protect the visual amenities of the area.

4. The opening hours of the premises shall be restricted to between 08.00 hours and 22.00 hours Monday to Sunday, inclusive of public holidays.

Reason: In the interest of orderly development and to protect the residential amenities of the area.

5. Details of the proposed insulation measures to prevent noise nuisance for the occupiers of the neighbouring premises shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of orderly development and to protect the residential amenities of the area.

6. Water supply and drainage arrangements, including the disposal of surface water and internal basement drainage, 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 between the hours of 07.00 to 18.00 Mondays to Fridays inclusive, between 08.00 to 14.00 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 amenities of property in the vicinity.

8. Prior to the commencement of development, the applicant shall submit details for the effective controls of fumes and odours from the proposed development. Details of which shall be agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interest of the amenities of the area.

9. Details of all waste management measures including the storing, segregation and collection of waste shall be agreed in writing with the planning authority prior to the commencement of development.

Reason: To ensure a satisfactory standard of development.

Paul Caprani,
Senior Planning Inspector.

22nd September, 2017.