



An
Bord
Pleanála

Inspector's Report PL29N.248789

Development

Retain use of ground floor level as a Coffee Shop and change of use of first floor level from residential unit to kitchen and storage, together with two-storey flat roof extension.

Location

191 Botanic Road, Glasnevin, Dublin 9.

Planning Authority

Dublin City Council.

Planning Authority Reg. Ref.

2764/17.

Applicant

Garrett McMahon.

Type of Application

Permission and Retention of Permission.

Planning Authority Decision

Grant.

Type of Appeal

Third Party -v- Grant.

Appellant

Bernadette Ward.

Observers

None.

Date of Site Inspection

12th September, 2017.

Inspector

Paul Caprani.

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1.0 Introduction

PL29N.248789 relates to a third party appeal against the decision of Dublin City Council to issue notification to grant planning permission for the retention of a ground floor use as a coffee shop (previously used as an off-licence) and a change of use of first floor level from residential unit to kitchen and storage associated with the coffee shop. Permission is also sought for the construction of a two-storey flat roof extension to the rear of the property totalling an area of 22 square metres. The grounds of appeal argue that the proposed development has morphed from a small neighbourhood café to a significant commercial food preparation business. Concerns are also expressed that the extension will impact on the amenity of residential neighbours through noise, lack of privacy and overshadowing. The subject site is located on Botanic Avenue, Drumcondra.

2.0 Site Location and Description

- 2.1. The appeal site is located on the corner of Botanic Avenue and Botanic Road in the north Dublin inner suburban area of Drumcondra. The site is located directly opposite Our Lady of Dolours Catholic Church and Glasnevin National School. The Botanic Gardens are located on the western side of Botanic Road to the west of the site.
- 2.2. The premises occupies two buildings (no. 191 and number 212 Botanic Road). The application and appeal appears to relate to only one portion of the building - No.191. No. 191 comprises of a two-storey structure which is nestled in amongst a row of two-storey commercial dwellings. Contiguous uses include the Glasnevin Academy of Music, a barber shop and a solicitor's office. The row of buildings incorporates an external cladding of brick and plaster render finish and appear to date from the 1930s. Separate doorways are provided at ground floor level adjacent to the commercial shopfronts and these doorways appear to provide access to residential development above. It is not altogether clear what percentage of the upper floors are currently occupied by residential development at present.

- 2.3. The subject site currently accommodates a coffee shop at ground floor level and comprises of an amalgamation of two separate units (No.212 and No. 191). Seating is provided both indoors and outdoors.
- 2.4. A corridor to the rear of the premises leads to a narrow elongated yard with a single-storey shed to the rear. The eastern boundary of the yard backs onto a narrow yard associated with the appellant's residential dwelling and other dwellings which back onto the eastern boundary of the site. The south-western boundary of the site backs onto a yard associated with the barber shop and other commercial development adjacent.
- 2.5. The first floor of the building currently accommodates a two bedroomed apartment with a living room, small kitchen and bathroom.

3.0 Proposed Development

Planning permission is sought for the following:

- The retention of the use of the ground floor of no. 191 as a coffee shop. According to the information contained on file the premises was previously used as an off-licence.
- The change of use of the first floor from a residential unit to a kitchen and storage unit associated with the coffee shop.
- The construction of a two-storey flat roof extension to the rear of the property comprising a total area of 22 square metres.
- The upstairs is to accommodate a larger food preparation area together with the large storeroom, staff bathroom and washing up area. The new extension to the rear is to accommodate a stairwell leading to first floor level together with circulation area and fridges.

4.0 Planning Authority's Decision

4.1. Decision

On 30th June, 2017 Dublin City Council issued notification to grant retention of planning permission for the proposed development subject to seven standard conditions.

4.2. Planning Authority Assessment

- 4.2.1. A report from the Engineering Department Drainage Division states that there is no objection to this development subject to the developer complying with the Greater Dublin Regional Code of Practice for Drainage Works. Two other standard conditions are included in the report.
- 4.2.2. A letter of objection from the current appellant was submitted in respect of the application the contents of which are similar to the concerns raised in the current grounds of appeal.
- 4.2.3. The planner's report notes that the current café extends to the adjoining site at No. 212 Botanic Road (while forming part of the existing commercial premises it appears that No. 212 is not located within the subject site). It notes that the café use is permissible within the zoning objective as it relates to the site thus there is no objection in principle to the café and related use at ground and first floor level.
- 4.2.4. In respect of the extension, it is noted that the proposed extension is bounded on all sides by existing development and while the issues raised in the observation objecting to the development are noted, it is stated that no new windows are proposed on the first floor rear extension and that the scale and layout of the development does not impinge on the visual amenities of the area and would not result in undue overshadowing or overlooking. It is therefore recommended that planning permission be granted subject to standard conditions.

5.0 Planning History

There appears to be no planning history associated with the subject site.

6.0 Grounds of Appeal

- 6.1. The grounds of appeal object to the decision to grant planning permission for this application and specifically highlight concerns in relation to the two-storey planned extension to the rear. The appellant's property shares a party wall with the rear of No. 191 where the permission to be build a two-storey extension has been granted. It is stated that the two-storey extension will block the appellant's light and overshadow the appellant's yard. It will also directly impact on adjoining privacy and the ability to enjoy the rear garden and yard of the appellant's home.
- 6.2. The café business includes significant outdoor off-site catering businesses where large amounts of food are prepared for sale at other sites including market cafes etc. Work starts at 7.00 a.m. in the morning. Adding further space to what is already a busy commercial kitchen together with extractor fans etc., will cause significant early morning noise disruption for surrounding residential development. The existing buildings are old with poor noise insulation. The enterprise will have transformed from a small neighbourhood café to a significant commercial food preparation business.
- 6.3. It is stated that the area has flooded badly in 2002 as the drains could not cope with the volume of water and sewage discharged. It is suggested that the drainage in the area could not cope with a significant increase in commercial activity. Photographs are attached.

7.0 Appeal Responses

- 7.1. A response was received on behalf of the applicants from Clonliffe Architects. It states that the two-storey extension to the rear of No. 191 Botanic Avenue will not affect the right to light of the appellant's yard. Included in an Appendix is an ordnance survey map and a drawing which highlights the location of the extension. It is stated that there is no possibility of overshadowing given the location of the respective properties in relation to each other.
- 7.2. It is stated that the café at No. 191 Botanic Avenue will continue to operate as a neighbourhood café. No intensification of use is proposed and the proposal fully accords with the zoning objectives.

- 7.3. The proposal will not lead to a significant increase in commercial activity. With regard to drainage, it is stated that the proposal will result in an increase in roof area of approximately 12 square metres over an area that currently constitutes a hard surface. This will not adversely affect the drainage of the area. No increase in sanitary facilities are intended.
- 7.4. In conclusion it is stated that the proposal will not lead to any serious loss of amenity to the appellant.

8.0 Planning Authority's Response to the Grounds of Appeal

- 8.1. The Planning Authority's response sets out the site description and the proposed development. It states it is not proposed to respond in detail to the grounds of appeal as the Planning Authority considers that the comprehensive planning report deals fully with the issues raised and justifies the decision.

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 is zoned Z3 – neighbourhood centre. The objective is to provide for and improve neighbourhood facilities. Restaurant use is a permissible use under this zoning objective.
- 9.3. Policy CEE18 seeks to recognise that the major economic potential of the café/restaurant sectors including as an employment generator making the city more attractive for workers, residents and visitors providing informal work and business meeting spaces to be part of the city's innovation eco-system and to encourage the provision of new cafes and restaurants including on Category 2 retail streets.
- 9.4. Section 16.29 specifically relates to restaurants. It notes that positive contributions of café and restaurant uses and clusters of such uses to the vitality of the city is recognised. In considering applications for restaurants the following will be taken into consideration.
1. The effect of noise, general disturbance, hours of operation and fumes on the amenities of nearby residents.

2. Traffic considerations.
3. Waste storage facilities.
4. The number/frequency of restaurants and other retail services in the area (where a proposal relates to a Category 1 or 2 shopping street as defined in “city centre retail core, principle shopping streets” in Chapter 7 and Appendix 3).
5. 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, visited the site and its surroundings and have had particular regard to the issues raised in the grounds of appeal. I consider the critical impertinent issues in determining the current application and appeal are as follows:

- Principle of Restaurant Use on the Subject Site
- Impact on Amenity Arising from the Proposed Extension
- Drainage Issues

10.1. Principle of Restaurant Use on the Subject Site

10.1.1. Planning permission is currently sought to retain the ground floor use as a coffee shop at No. 191 Botanic Road and permission is also sought to change the use from residential use to ancillary restaurant use namely kitchen and storage area at first floor level. It appears from the information contained on file that the change of use only relates to the western portion of the subject site. The Board will note from the photographs attached that the coffee shop currently occupies No. 191 Botanic Avenue and No. 212 Botanic Avenue yet the drawings submitted indicate that the application for retention of planning permission only relates to No. 191. This implies that the existing coffee shop/restaurant use at No. 212 is a permitted and established use within the row of buildings occupying the corner of Botanic Road and Botanic Avenue. It further appears from the information contained on file that the subject site (Nos. 191) was formerly used as an off-licence which in my view is a similar-type use

in terms of its land-use implications (for visitor numbers, business hours etc.) Finally, in relation to the principle of development, the Board will be aware that the subject site is zoned to provide for and improve neighbourhood facilities. The use of the subject site as a restaurant/café provides an appropriate neighbourhood facility to serve the local community and is permitted in principle under this land use zoning.

10.2. Impact on Amenity Arising from the Proposed Extension

- 10.2.1. The grounds of appeal expresses concern that the rear yard has been used for storage etc. Having regard to the confined nature of the site, it is reasonable in my view that the rear yard would be used for storage. Having inspected the site, I did not detect any significant odours or adverse visual impacts arising from the use of the yard for storage purposes. The use of the rear yard for outdoor storage would not materially impact on the amenity of adjoining neighbours. Any extractor fan to be located at first floor level to cater for the food preparation area will, in my view be sufficiently removed from any residential dwellings in the area so as not to give rise to any amenity issues. It is only in the case where extractor fans are located immediately below overhead residential uses that significant amenity issues arise in my view. In this instance, the drawings indicate the cooking area is located in the front portion of the building and therefore any odour associated with extractor fans is unlikely to impact on the residential amenity of the appellant's dwelling.
- 10.2.2. I do not consider that the proposed extension which is modest in scale, at 22 square metres, will have any impact on adjoining amenity in terms of overlooking, overshadowing or being overbearing in nature. The proposed extension for all intents and purposes relates to a small infill area which is currently surrounded by two-storey development. The proposed extension will not be readily visible or apparent from the appellant's dwelling. The size and scale of the proposed extension in the context of the appellant's dwelling is adequately illustrated in the aerial photograph attached in Appendix A of the applicant's response to the grounds of appeal. Having regard to the extension's location within the confines of existing two-storey development it cannot be reasonably argued in my view that the proposed development will have any material impact on the appellant's amenity in terms of overlooking or overshadowing. No windows are proposed on the proposed extension

which would result in any overlooking on the appellant's amenity, or any other property for that matter.

10.3. Drainage Issues

10.3.1. The proposed extension in this instance relates to the infill of an area of hardstanding to the rear of the existing building. The proposal will not give rise to any increase in surface water run-off nor will it give rise to the provision of any additional sanitary facilities at the site. The proposal therefore will not impact on surface water drainage regime of the general area and as such will not accentuate or exacerbate flooding in the area. I note the report contained on file from the Engineering Department Drainage Division of Dublin City Council. It specifically states that there is no objection to this development subject to the developer complying with the Dublin Regional Code of Practice for Drainage Works. I am satisfied therefore that the proposed development will not give rise to any adverse impacts in terms of drainage issues.

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 development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

12.0 Conclusion and Recommendation

Arising from my assessment above I consider it appropriate that the Board uphold the decision of the Planning Authority and grant planning permission for the proposed development based on the reasons and considerations set out below.

13.0 Decision

Grant planning permission for the proposed development based on the reasons and considerations set out below.

14.0 Reasons and Considerations

Having regard to the Z3 zoning objective for the site which seeks to provide for and improve neighbourhood facilities, it is considered that subject to conditions set out below, the proposed development would not seriously injure the amenities of the area or property in the vicinity, would not be prejudicial to public health and would generally be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

15.0 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 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. Details including samples of all materials, colours and textures of all the external finishes to the proposed extension shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

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

3. No advertisement or advertisement structures shall be erected or displayed on the building (or within the curtilage of the site) in such a manner as to be visible from outside the building unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

4. The developer shall control odour emissions from the premises in accordance with measures including extract duct detail which shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

Reason: In the interest of public health and to protect the amenities of the area.

5. The site and building works required to implement the development shall only be carried out between the hours of Monday to Friday 7 a.m. to 6 p.m., Saturday 8 a.m. to 2 p.m. and not at all on Sundays or Bank Holidays. Deviations from these times will be only be allowed in exceptional circumstances where prior written approval has been received from Dublin City Council. Such approval may be given subject to conditions pertaining to the particular circumstances being set by Dublin City Council.

Reason: In order to safeguard the amenities of adjoining residential occupiers.

6. 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.

7. The site development works and construction works shall be carried out in such a manner to ensure that the adjoining streets are kept clear of debris, soil and other material and if the need arises for cleaning works to be carried out on the adjoining public roads the said cleaning works shall be carried out at the developer's expense.

Reason: In the interest of visual amenity.

8. The developer shall pay to the planning authority a financial contribution of €2,851 (two thousand eight hundred and fifty-one euro) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Paul Caprani,
Senior Planning Inspector.

6th October, 2017.