



An
Bord
Pleanála

Inspector's Report PL 29S 248980

Development	Change of use and reconfiguration of ground floor and mezzanine, basement and mezzanine of Unit B5 and Ground floor entrance and basement of Unit B1B from Restaurant/bar/dance area to retail use, demolition of dividing wall and lower mezzanine, provision of new escalators, offices signage, façade alterations and associated site works.
Location	St. Stephen's Green Shopping Centre, Nos. 128 – 140 St. Stephen's Green, Dublin 2.
Planning Authority	Dublin City Council.
P. A. Reg. Ref.	2997/17.
Applicant	Irish Life Assurance, Ventasker Ltd., MIRELF VI Irish Investments ICAV.
Type of Application	Permission
Decision	Grant Permission.
Type of Appeals	Third Parties
Appellant (1)	Bryan Maher.
Appellant (2)	Chicago Rock Café Limited.
Date of Site Inspection	22 nd and 27 th November, 2017.
Inspector	Jane Dennehy.

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1.0 Site Location and Description

- 1.1. The site subject of the application comprises the basement, ground floor and mezzanine levels within Units B5 and the ground floor entrance and basement levels of Unit B1B within the St. Stephen's Green Shopping Centre. The units have frontage onto St Stephen's Green West. Unit B5 was formally occupied by "The Dandelion" restaurant and Unit B1B is occupied by "TG Fridays" restaurant. There are three bays to the south side of TG Friday's unit, which also includes a fire escape exit door for the Fitzwilliam Hotel. St Stephen's Green (Park) is located to the east on the opposite side of the street and the LUAS Green Line track and stop.
- 1.2. The total stated area of the site is circa 1,285 square metres and the total stated floor area of the existing development is 2,400 square metres. The Fitzwilliam Hotel occupies the floors above ground floor level and St Stephen's Shopping Centre is to the north side and occupies two floors above the ground floor level which is also in retail use. (Mothercare and Bennetton.)

2.0 Proposed Development

- 2.1. The application lodged with the planning authority on 25th May, 2017 indicates for change of use from bar/restaurant/dancing to retail use, reconfiguration of the interior to include demolition of internal walls and partitions, stairs, part demolition of the lower mezzanine level and demolition in entirety of the upper mezzanine of dividing walls and installation of escalators and reconfiguration of circulation space, provision for changing rooms, office and ancillary facilities. The external works include new aluminium / timber clad shopfronts along with individual internally illuminated lettering on signage panels external works. The first escape route for the Fitzwilliam Hotel is to be retained and incorporated the shopfront design.

2.2. Planning Authority Decision

2.3. Decision

By order dated, 19th July, 2017, the planning authority decided to grant permission for the proposed development subject to conditions of a standard nature including a

requirement under Condition No 2 for details of the shopfront and signage to be subject to a compliance submission.

2.4. **Planning Authority Reports**

2.4.1. Planning Reports

The planning officer, having reviewed the relevant sections in the Dublin City Development Plan, 2016-2022 indicated satisfaction with the proposed development.

2.4.2. Other Technical Reports

The Drainage Division of the Engineering Department in its report indicates no objection to the proposed development.

The Waste Management Section in its report indicates a recommendation for construction and demolition waste management plan to be prepared in accordance with the standards within Circular WPR 07/05 DOECLG, July, 2006 and for standard requirements for waste collection, segregation storage and removal at operational stage.

2.5. **Prescribed Bodies**

A submission from Dart Underground/Iarnrod Eireann indicates that the site location is within the zone of influence for the DART Underground but that it is satisfied that the proposed development would not adversely affect its integrity.

2.6. **Third Party Observations**

Cover letters from the two Appellant Parties indicating an intention to lodge observations with the planning authority are on file. These submissions are acknowledged by the planning officer who, in his report notes that no specific comments on the proposed development have been included.

3.0 Planning History

According to the planning officer report there are two prior relevant grants of permission which provided for replacement shopfronts, signage and entrances. (P.A. Reg. Refs. 3645/11 and 2687/06 refer.)

4.0 Policy Context

4.1. Development Plan

The operative development plan is the Dublin City Development Plan, 2016-2022 according to which the site location comes within an area subject to the zoning objective. Z5: *“To consolidate and facilitate the development of the central area and to identify, reinforce, strengthen and protect its civic design character and dignity”.*

Guidance on shopfront design is set out in Section 16.24.2 and Policy RD 15 provides for promotion of the principles of good shopfront design a requirement for high quality design and finishes for new and replacement shopfronts, signage and advertising. The City Council also published Shopfront Design Guidelines in 2011.

The site location is a short distance to the south of the area of the Grafton Street and Environs Architectural Conservation Area, (ACA) the southern edge of which is on the north side of King Street South and St. Stephen’s Green North. St Stephen’s Green (Park) comes within an area designated as a Conservation Area in the Development Plan. (It is not within the aforementioned statutory Architectural Conservation Area.)

The St Stephen’s Green Shopping Centre at the corner of South King Street and Grafton Street are at the southern edge of the Category 1 Retail Street network in the Central Shopping Quarter.

5.0 The Appeals

5.1. First Third Party Appeal. Bryan Maher

- 5.1.1. An appeal was received from Mr Maher on his own behalf on 11th August, 2017. An outline summary follows:

- 5.1.2. The shopfronts proposed will not improve the frontage or enhance the conservation area. A retail unit (2,400 square metres) beside the main entrance to Ste Stephen's Green would have significant detrimental impact on the Conservation Area and will encroach on the setting of Stephen's Green. The existing restaurant uses are less intrusive and more passive than fully glazed frontage.
- 5.1.3. The St Stephen's Green Park Conservation Plan, 2015-2020 prepared by OPW was not taken into consideration in the assessment of the application. High profile shop units conflict with the objectives for protection of the historic setting of Stephen's Green, its archaeological and architectural heritage, and to present it to the best advantage. The setting of the park must be protected and kept at a discreet distance from surrounding retail and commercial activities. The proposed development seriously encroaches on the central role of St Stephen's Green as a passive recreational area.
- 5.1.4. The planning authority failed to notify the Minister for Arts, Heritage and the Gaeltacht, The Heritage Council and An Taisce of the application.

5.2. **Second Third Party Appeal.**

- 5.2.1. An appeal was received from a representative of the Chicago Rock Café Ltd., which has operated a restaurant in one of the units since 1989 on 3rd August, 2017.
- 5.2.2. It is submitted that some sources of flooding have not been identified and that adequate consideration was not given in the application to potential flooding risk, it being noted that part of the site is below ground level. The Appellant is concerned because it has been noted that some storm drains in the vicinity have been ruptured and may overflow when the water table rises. There are also references in the appeal "underground river courses" called "The Stein" and "The Poddle".

5.3. **Applicant Response**

A submission was received from Tom Phillips Associates on behalf of the applicant on 5th September 2017. Attached is a Technical Note on flooding and drainage matters by LMC Consulting. In response to the Appeal by Chicago Rock Café Ltd. It is submitted that at the time of the design and construction of the St. Stephen's Green Shopping Centre, measures were taken in construction of the basement level

walls and floors to prevent ingress of ground water. Drained cavity construction measures have been used to ensure suitable conditions for retail use in the upper basement level. The proposed works and change of use to not penetrate or interfere with the existing protection of the basement. The planning authority attached a suitable condition to address the issue and it is noted that the Drainage Division has no objection to the proposed development.

The observations on the Appeal by Bryan Maher can be outlined as follows:

- It is not clear if there is objection based on proximity to the ACA or Conservation Area where reference is made to the location beside the main entrance and to detrimental impact on the Conservation Area. Planning authority policy supports change of use consistent with the zoning objective and positive contribution to character function and appearance of conservation areas and Architectural Conservation Areas and settings.
- The proposed change of use is in keeping with the intended function of the location as a predominantly retail district and it is on a Category 1 Retail Street. Category 1 Streets, according to the development plan include shopping streets and shopping malls and arcades and order retail use at ground level is favoured as a means of strengthening the retail offer of the city centre with other uses being open to consideration provided that the primary retail function is not undermined.
- The St Stephen's Green Conservation Management Plan referred to in an appeal does not preclude or discourage retail use. It is acknowledged that development around St Stephen's Green is subject to the planning code with assessment against the relevant development plan policies and objectives.
- There is no change in distance from St Stephens Green Park involved. Modest modifications to the streetscape only are involved and it is of note that the planning office commended in his report that the proposed development would improve the visual appearance of the frontage and enhance the conservation area.
- As the site does not include a protected structure and does not come within a statutory Architectural Conservation Area there is no requirement or necessity for notification to the Minister of Arts, Heritage and the Gaeltacht.

5.4. **Planning Authority Response.**

There is no submission from the planning authority on file.

6.0 **Assessment**

6.1. The issues raised on the two appeals are quite distinct. The appeal by Mr. Mahon, relates to concerns about the nature of the proposed use and architectural heritage and amenity whereas The appeal by Chicago Rock Café Limited (second third party) relates to concerns about flooding risk. Each appeal is considered separately below.

6.2. **Appeal by Mr. Bryan Mahon, (First Third Party.)**

6.2.1. The Appeal by Mr. Mahon, is over a contention that the proposed change to retail use by a single occupant at the site location is incompatible, insensitive to and negatively impacts on the protected structures in the vicinity, on Grafton Street and Environs (statutory) Architectural Conservation Area and, the area designated as a Conservation Area to the east in the Dublin City Development Plan which includes St. Stephen's Green Park, in respect of which the OPW has published a Conservation Management Plan. In addition, it is argued that the planning authority erred in not issuing a Notification of the application to the Minister for Arts, Heritage and the Gaeltacht. (Department of Culture, Arts and the Gaeltacht.) These matters are considered below:

6.2.2. It can be confirmed that there are no protected structures within the site and that the site does not come within the area of any statutory Architectural Conservation Areas. However, the site location is in the immediate vicinity of some protected structures and the Grafton Street and Environs Architectural Conservation Area. As it is at the discretion of a planning authority as to whether notification of relevant prescribed bodies as provided for under Section 28 of the Planning and Development Acts, 2000 – 2016 (the Act) is warranted. Such notification by the planning authority is not mandatory and the planning authority is not at fault in this regard. Furthermore, given the nature of the proposed development, discretionary notification under Section 28 of the Act to the Minister and other relevant prescribed bodies, by the Board prior to the determination of the decision is not recommended.

- 6.2.3. It appears, based on the information on the plans and accompanying application documentation that it is intended the proposed change of use to facilitate possible future occupation by a one retailing tenant. The northern end of St Stephen's Green West, that is frontage immediately to the south side of the entrance to the St. Stephen's Green Shopping Centre is at the southern edge of the Category 1 street within the City Centre's Retail Core. Contrary to the assertion in the applicant's submission, all, or most of the site area for the proposed development lies just outside the area within the Category 1 Street according to Figure 3.1 of the Dublin City Development Plan, 2016-2022.
- 6.2.4. Nevertheless, the location has the benefit of the Z5 zoning objective in which retail use is acceptable in principle. The Appellant party's assertion as to "gradual creep of high profile units" is understandable, given the peripheral location relative to the Category 1 Street designation. However, it is reasonable to regard the location is somewhat transitional linking the retail, to the commercial, institutional and restaurants land use in twentieth century blocks interspersed with historic buildings to the south along the remainder to Stephen's Green West. Subject to high quality, sensitive presentation of the shopfronts, signage and internal display to the windows, it is considered that the proposed development would represent a significant improvement on the existing street frontage presentation of the units. To this end, the remarks to this effect by the planning officer in her report area fully supported.
- 6.2.5. The number of units involved and length of the frontage is not excessive for occupation by one operator. The historic plot widths and vertical emphasis and rhythm of the streetscape is recognised and retained in in the relatively simple but quality shopfront presentation proposed. Should permission be granted, a compliance condition is necessary to provide assurance as clarity and quality of the finer details and a satisfactory and well-integrated ground floor presentation within the streetscape.
- 6.2.6. The proposed development has good severance and distance from St. Stephen's Green Park on the opposite side of the street and LUAS Green line stop. The shopfronts will not be visible from within the interior of the Park, except at the entrance. The applications apply to the ground floor and lower ground levels only and therefore do not include any proposals for façade alterations, signage, or lighting above the ground floor shopfront level. Furthermore, it is not demonstrated that

there is an argument to support the claim as to how a single occupant retail use, irrespective of whether the tenant is high profile, is less compatible than multiple tenants at the units involved. It appears that the proposed development would be less likely to give rise to anti-social behaviour, noise and pollution than the proposed single occupant retail use.

- 6.2.7. In view of the foregoing, it is not accepted that the proposed development would be incompatible with and would adversely affect the integrity and context of the protected structures, the Grafton Street and Environs Architectural Conservation Area and the area to the east that is designated as a Conservation Area in the Dublin City Development Plan, 2016-2022. It can be concluded that the proposed development is consistent with the zoning objectives and the sensitive historic central city location having regard to the conservation designations and objectives for the area.

6.3. Appeal by Chicago Rock Café Limited appeal, (Second, third party)

The reason for the appeal is based on serious concern about potential for flooding risk on grounds that it is understood there are two underground watercourses in close proximity, (The Poddle and the Stein), and that when the water table rises, the storm drains in the vicinity which are ruptured may overflow.

It is considered that the proposed development, which does not require any interventions to the structure of the shopping centre as originally constructed other than removal of internal walls, part of mezzanine staircase and partitions and a fit out which includes new partitions and escalators should not give rise to any concerns as water ingress, to potential flooding of the basement or underground space. It is considered that there is no basis on which there is doubt as to the adequacy of the measures for protection from water ingress incorporated in the original design for basement floor slabs and retaining walls and subsequent construction. It is accepted that the standards are appropriate to habitable space for both by way of the existing uses and the proposed uses taking the works involved into account.

It can be concluded that the extent and nature of the proposed development is such that it is immaterial to any potential for flooding risk.

7.0 Recommendation

In view of the foregoing, it is recommended that the planning authority decision be upheld and the appeals be rejected. Draft reasons and considerations and conditions follow.

8.0 Reasons and Considerations.

Having regard to:

- the existing land uses and to the nature and extent of the proposed retail use;
- the site location on St. Stephen's Green West at the St. Stephen's Green Shopping Centre within an area subject to the zoning objective for the area: Z5: *"To consolidate and facilitate the development of the central area and to identify, reinforce, strengthen and protect its civic design character and dignity"* in the Dublin City Development Plan, 2016-2022;
- the limited extent of the proposed works required to facilitate the proposed change of use and,
- the materials, finishes and design of the proposed shopfronts and signage and,
- the original construction of the shopping centre incorporating protective measures to prevent water ingress

It is considered that, subject to the conditions set out below, the proposed development, would be in accordance with the development objectives for the area, would not detract from or be seriously injurious to the historic architectural integrity and character of the historic built environment in the vicinity which includes protected structures, the Grafton Street and Environs Architectural Conservation Area and, the designated Conservation Area in which St. Stephen's Green Park is located, would not be prejudicial to public health by reason of flooding risk and, would be in accordance with the proper planning and sustainable development of the area.

9.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and lodged with the application except as may otherwise be required 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.

Reason: In the interest of clarity

2. Details of colours and textures of all external materials, textures, colours and finishes, lettering inclusive of samples, and external illumination shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. No posters or advertising shall be displayed on the shopfront.

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

3. Notwithstanding the provisions of the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, no advertisement signs including any signs installed to be visible through the windows, advertisement structures, banners, canopies, flags, or other projecting elements shall be displayed or erected on the buildings or within the curtilage of the site, unless authorised by a further grant of planning permission.

Reason: To protect the visual amenities of the area.

4. Hours of construction shall be confined to the hours of 0800 and 1900 Mondays to Fridays excluding bank holidays and 0800 hrs and 1400 hrs on Saturdays only. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

5. The developer shall pay to the planning authority a financial contribution of in respect of public infrastructure and facilities benefiting development in 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 in respect of the retail unit only and 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.

Jane Dennehy
Senior Planning Inspector
27th November, 2017,