



An  
Bord  
Pleanála

## Inspector's Report PL29N.249326

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<b>Development</b>	Change of use from retail to café / restaurant use, including internal alterations and associated signage
<b>Location</b>	22 Lower Ormond Quay, Dublin 1
<b>Planning Authority</b>	Dublin City Council
<b>Planning Authority Reg. Ref.</b>	3032/17
<b>Applicant(s)</b>	Cosgrave Developments Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third-Party
<b>Appellant(s)</b>	Ibrahim Abdelrazek
<b>Observer(s)</b>	Transport Infrastructure Ireland
<b>Date of Site Inspection</b>	19 <sup>th</sup> December 2017
<b>Inspector</b>	Colm McLoughlin

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## 1.0 Site Location and Description

- 1.1. The appeal site has a stated area of 51sq.m and occupies the ground floor of a 5-storey terrace building constructed in the Georgian style. It is located on Lower Ormond Quay on the northside of Dublin city centre, overlooking the Millennium pedestrian bridge.
- 1.2. It contains a vacant ground-floor retail unit, C.Q. Communications, which is stated to have been used as a retail unit since the 1990s and it appears to have been most recently used for the sale of technology equipment. Access to the unit is only available off Lower Ormond Quay. The shopfront features pilasters topped by console brackets, a fascia board and external shutters.
- 1.3. The upper floors directly above the appeal site are stated to be used as apartments that are accessed via an entrance from the front-street level. Adjoining to the west is a café unit, Panem, which is in the ownership of the applicant, and further to the west is another café, Mochaland. Adjoining to the east is an office and further to the east is a restaurant, Wallace's Taverna. The surrounding area is characterised by uses typical of an inner-urban setting, including a range of cafés and restaurants, and various commercial and residential uses.

## 2.0 Proposed Development

- 2.1. The proposed development comprises the following:
  - Change of use of retail unit with a stated area of 51sq.m, to a café / restaurant;
  - Associated revised signage to shopfront and internal alterations.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. The Planning Authority decided to grant permission subject to ten conditions, the majority of which are of a standard nature, but also including the following requirements:

- C.2** no takeaway or delivery element;
- C.3** no amalgamation with adjoining café;
- C.4** details of signage to be submitted.

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

The initial report of the Planning Officer (July 2017) noted the following:

- No objection to the principle of the development;
- Proposals do not provide for amalgamation of the unit with the adjoining café;
- Proposed unit would form part of a cluster of similar facilities.

Further Information requested regarding the following:

- Proposed hours of operation;
- Existing uses above the unit;
- Proposals for air extraction and ventilation;
- Proposals for refuse storage.

The final report of the Planning Officer (September 2017) noted the following:

- Details submitted in the Further Information response are acceptable;
- Daily collection of refuse is standard procedure in the area.

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

- Engineering Department (Drainage Division) - no objection subject to conditions;
- Roads & Traffic Section (Planning Division) – no response.

## **3.3. Prescribed Bodies**

- Transport Infrastructure Ireland (TII) – response states ‘no observations’;
- National Transport Authority (NTA) – no response.

### **3.4. Third-Party Submissions**

- 3.4.1. One submission was received during consideration of the application and the issues raised are covered in the grounds of appeal.

## **4.0 Planning History**

### **4.1. Appeal Site**

- 4.1.1. None.

### **4.2. Surrounding Sites**

- 4.2.1. There have been numerous permissions for development on neighbouring properties, although those relating to café and restaurant uses have not been subject of recent permissions.

## **5.0 Policy Context**

### **5.1. Development Plan**

- 5.1.1. The appeal site has a zoning objective 'Z5 – City Centre' within the Dublin City Development Plan 2016-2022 with a stated objective 'to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity'. A 'restaurant' or 'café' is defined in the Plan as 'a building where the primary function is for the sale of food, meals/refreshment for consumption on the premises'. A café / restaurant is a permissible use on 'Z5'-zoned land.
- 5.1.2. The frontage to the site is located within a Conservation Area that includes buildings fronting onto the north Quays. Chapter 11 of the Plan notes under policy CHC4 that development in such areas should contribute positively towards the character and distinctiveness of the area.
- 5.1.3. Section 14.8.5 of the Plan states that the primary purpose of the 'Z5' zoning is 'to sustain life within the centre of the city through intensive mixed use development' and 'to provide a dynamic mix of uses, which interact with each other, help create a

sense of community and which sustain the vitality of the inner city both by day and night'. It is stated that, ideally, the mix of uses should occur both vertically through the floors of the building and horizontally along the street frontage. A general mix of uses including residential is desirable; however, retail should be the predominant use at ground floor level on principal shopping streets.

5.1.4. The following planning policies relating to cafés and restaurants are contained in the Development Plan:

- 'CEE12: (i) To promote and facilitate tourism as one of the key economic pillars of the city's economy and a major generator of employment and to support the provision of necessary significant increase in facilities such as hotels, apart hotels, tourist hostels, cafés, and restaurants, visitor attractions, including those for children'.
- 'CEE18: ... (iv) To recognise 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 a part of the city's innovation ecosystem; and to encourage the provision of new cafés and restaurants, including on Category Two Retail Streets.'

5.1.5. Section 16.29 of the Plan outlines matters to consider when assessing proposals for restaurants and cafés, including:

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

5.1.6. Table 16.1 outlines that no car parking is required for restaurants and cafés in this part of the city (zone 1).

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. The appellant states their address as being a neighbouring café unit, 'Mochaland', approximately 8m to the west of the appeal site. The principal grounds of appeal to the proposed development can be summarised as follows:

- Absence of details relating to the type of restaurant / café proposed and whether or not a take-away element is proposed;
- Lack of details regarding proposed opening hours, whether or not alcohol would be for sale, air extraction, waste volumes and the number of staff;
- Comments provided regarding the layout of the proposed unit including the location of appliances relative to the fire escape.

### 6.2. Applicant's Response

6.2.1. A response to the grounds of appeal was received on behalf of the first party, which may be summarised as follows:

- Appeal should be dismissed as it is frivolous and without substance or foundation;
- There is no requirement to clarify the type of restaurant / café proposed;
- Condition 2 confirms that a take-away or delivery element is not permitted, which the applicant does not wish to appeal;
- Liquor licensing and fire safety are not material planning issues;
- Proposed opening hours were stated in the Further Information response and are restated;
- Air extraction proposals are outlined in the application and these proposals are in compliance with Section 16.29 of the Development Plan;
- Refuse would be collected daily, as is currently undertaken for Panem café;
- Staffing and other details are a matter for the end-user.

### 6.3. **Planning Authority Response**

6.3.1. The Planning Authority did not respond to the grounds of appeal.

### 6.4. **Observations**

6.4.1. A submission from TII confirms that they have no observations to the appeal. Observations were requested from the Department of Culture, Heritage & the Gaeltacht, the Heritage Council, An Taisce, The Arts Council and Fáilte Ireland. No responses were received.

## 7.0 **Assessment**

### 7.1. **Introduction**

7.1.1. I note that in the applicant's response to the grounds of appeal, they request that the appeal be dismissed, as in their opinion it is frivolous and without substance or foundation. I have examined the appeal submission and while I note that many of the issues raised are addressed within the application Further Information response and conditions of the Planning Authority notification to grant permission, I am of the opinion that the grounds of appeal raise valid planning issues requiring assessment at appeal stage. Therefore, I would not recommend that the Board dismiss the appeal on grounds that it is vexatious or frivolous.

7.1.2. Consequently, I consider the main planning issues arising from the grounds of appeal and in assessing the proposed development are as follows:

- Principle of the Development;
- Impact on Local Amenities.

### 7.2. **Principle of the Development**

7.2.1. In accordance with the terms of the Dublin City Development Plan 2016-2022, a restaurant / café is a 'permissible' use on lands zoned 'Z5 – City Centre'. Section 16.29 of the Development Plan sets out general principles for consideration when assessing proposals for restaurants and cafés. Policy CEE12 of the Development Plan notes that it is important to continue to develop tourism infrastructure in the city, including a range of restaurants and cafés. The Plan recognises the positive



contribution that restaurants and cafés, including their clustering, can make to the city, while also recognising the need to safeguard the vitality and viability of shopping areas and maintaining a suitable mix of retail uses.

- 7.2.2. Lower Ormond Quay would not be considered a principal shopping street (Category 1), the area is linked by the Millennium Bridge to the Temple Bar area and the immediate area hosts a variety of cafés and restaurants that are recognised in the Development Plan as performing an important function in developing tourism in the city, as well as providing employment and informal work space. The proposed development would add to the clustering of such facilities, would support Development Plan policies CEE12 (i) and CEE18 (iv) and would make a positive contribution to the city, occupying a vacant retail unit. Given the retail subsidiarity of the street, I do not consider that the proposed development would represent an excessive concentration of cafés and restaurants, particularly considering the context and surrounding tourism and employment function of this part of the city. In conclusion, I consider that the proposal for an additional café / restaurant in this location would not result in a preponderance of such uses within this part of the city centre, such that it would be harmful to the vitality and viability of the city centre or contrary to the zoning objectives for the site.
- 7.2.3. Within the application, it was outlined that the adjoining café is in the ownership of the applicant and that the occupant intends to expand into the subject site, but that it is not intended to amalgamate the units and 'the walls will remain with no significant breakthrough'. The Planning Authority attached a condition restricting amalgamation of the unit with the adjoining premises, Panem, at No.21 Lower Ormond Quay. The applicant did not contest the imposition of this condition, and I consider it necessary, as it would require further consideration given the location of the site frontage as part of a collection of buildings in a Conservation Area fronting onto the north Quays. Furthermore, the Planning Authority attached a condition restricting a takeaway and delivery element to the café / restaurant and the applicant notes in their response to the grounds of appeal that they do not wish to appeal this condition. I consider this a necessary condition in light of the traffic constraints along Lower Ormond Quay.
- 7.2.4. In conclusion, I am satisfied that the principle of changing the use of the subject retail unit to a café / restaurant is acceptable, subject to conditions restricting the use and

amalgamation of the unit, and also subject to the impacts on local amenities, as assessed below.

### **7.3. Impact on Local Amenities**

- 7.3.1. The appeal site is within the city centre, proximate to a variety of cafés and restaurants and there are residential apartments on the upper floors of the subject building. The area is predominantly characterised by commercial businesses at ground floor and residential uses overhead.
- 7.3.2. As per the requirements set out in Section 16.29 of the Development Plan, it is vital that noise and other emissions from the proposed café and restaurant are controlled to avoid undue impacts on neighbouring residential amenities. The grounds of appeal query the opening hours of the proposed facility and the applicant initially confirmed the proposed hours opening hours in their response to the Planning Authority's Further Information request, stating that these would be 07:00 hours to 19:00 hours Monday to Wednesday, 07:00 hours to 22:00 hours Thursday to Saturday and 09:00 hours to 19:00 hours on Sundays. Taking into consideration the suggested opening hours and the city centre location, I do not consider that neighbouring residential amenities would be adversely impacted and the proposal would not give rise to any material changes in ambient noise levels. Waste from the unit would be disposed of daily according to the applicant, which the Planning Authority note is the established procedure in this part of the city. Furthermore, the applicant has outlined their proposals for air extraction, which would appear reasonable and would follow standard practice.
- 7.3.3. In conclusion, I consider that the proposed café / restaurant would not detrimentally impact on the amenities of neighbouring properties in the vicinity, primarily due to the nature and scale of the proposed facility and given the city centre location. Therefore, I recommend that permission should not be refused on the basis of the impact of the proposals on residential amenities.
- 7.3.4. The proposed works associated with the development would largely involve internal alterations with only minor alterations to the shopfront, primarily involving revised signage. The frontage to the property is located within a Conservation Area and the appeal site is adjacent to the west of a Protected Structure at No.23 Lower Ormond Quay. Considering the minor extent of the elevational changes, including signage

details to be agreed prior to commencement of the development, the existing pattern of development in the immediate streetscape and the reuse of a vacant unit, I am satisfied that this aspect of the proposals would not have a significant impact on the visual amenities of the area. Furthermore, the proposed development would not detract from the character or setting of the adjacent Protected Structure or the Conservation Area. Therefore, I recommend that permission should not be refused on the basis of the impact of the proposals on visual amenities.

- 7.3.5. Having regard to the above considerations, the development would not give rise to an unacceptable impact on local amenities and the proposed development should not be refused for this reason.

## **8.0 Appropriate Assessment**

- 8.1.1. Having regard to the minor nature of the proposed development and the location of the site in a serviced urban area and the separation distance 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.

## **9.0 Recommendation**

- 9.1.1. I recommend that planning permission should be granted, subject to conditions, as set out below.

## **10.0 Reasons and Considerations**

- 10.1.1. Having regard to the 'Z5 –city centre' zoning, the nature and scale of the proposed development, and the existing pattern of development in the vicinity, including the clustering of cafés and restaurants, the city centre location and policies CEE12 and CEE18 of the Dublin City Development Plan 2016-2022, which support the development of cafés and restaurants in suitable locations, it is considered that subject to compliance with the conditions below, the proposed development would not seriously injure the residential amenities of the area or of property in the vicinity, would be in accordance with the provisions of the Dublin City Development Plan

2016-2022 and would not detract from the character or setting of the Conservation Area and the adjoining Protected Structure. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by further information received by the planning authority on the 10<sup>th</sup> day of August 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 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 restaurant shall not incorporate a takeaway or a delivery element unless a further grant of permission is obtained in this regard.

**Reason:** To protect the amenities of the area and to limit the scope of the proposed development to that for which the application was made.

3. The premises shall not be amalgamated with the adjoining premises at No. 21 Lower Ormond Quay unless a separate grant of permission is obtained in this regard.

**Reason:** To protect the amenities of the Conservation Area and to limit the scope of the proposed development to that for which the application was made.

4. Details of the external shopfront and signage shall be submitted to, and

agreed in writing with, the Planning Authority, prior to commencement of development.

a) signs shall be restricted to a single fascia sign using sign writing or comprising either hand-painted lettering or individually mounted lettering;

(b) lighting shall be by means of concealed neon tubing or by rear illumination;

(c) no awnings, canopies or projecting signs or other signs shall be erected on the premises without a prior grant of planning permission;

(d) any internal shutter shall be only of the perforated type, coloured to match the shopfront colour;

(e) no adhesive material shall be affixed to the windows or the shopfront.

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

5. 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 and to ensure a proper standard of development.

6. Site development and building works shall be carried out between the hours of 0700 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 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 residential amenities of property in the vicinity.

7. (a) All entrance doors in the external envelope shall be tightly fitting and self-closing.

(b) All windows and roof lights shall be double-glazed and tightly fitting.

(c) Noise attenuators shall be fitted to any openings required for ventilation or air conditioning purposes.

Details indicating the proposed methods of compliance with the above requirements 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.

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Colm McLoughlin  
Planning Inspector

10<sup>th</sup> January 2018