



An
Bord
Pleanála

Inspector's Report ABP-300331-17

Development

Change of use from retail to restaurant/café bar at basement and ground floor level; with replacement of external windows & doors to include bifold windows & doors & upgrading of the ground floor facade with integrated seating along Cope Street. Works to include the provision of a kitchen, toilets & staff facilities with provision of a bar, seating areas and WC. All with associated signage, lighting and site works.

Location

17, Crown Alley /3-4 Cope Street,
Temple Bar, Dublin 2

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

3232/17

Applicant(s)

Robert and Siobhan Woodnut

Type of Application

Permission

Planning Authority Decision

Grant

Type of Appeal	Third Party
Appellant(s)	Temple Bar Residents
Observer(s)	None
Date of Site Inspection	13 th March 2018
Inspector	Ronan O'Connor

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1.0 Site Location and Description

- 1.1. The appeal site is located on the corner of Cope Street and Crown Alley and on site is a four storey over basement building, with a retail use (vintage clothes store) at basement and ground floor levels with residential on the upper floors. The retail unit is accessed from Crown Alley and the residential use above is accessed via Cope Street.
- 1.2. To the immediate south is the former Central Bank Building, which is undergoing redevelopment. To the east, west and north are a variety of uses including residential, retail, café/restaurant, public house and office uses.

2.0 Proposed Development

- 2.1. Change of use from retail to restaurant/café bar at basement and ground floor level; with replacement of external windows & doors to include bifold windows & doors & upgrading of the ground floor facade with integrated seating along Cope Street. Works to include the provision of a kitchen, toilets & staff facilities with provision of a bar, seating areas and WC. All with associated signage, lighting and site works.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Grant permission with conditions. Conditions of note include:
 - Condition 2(a) Development to be carried out in accordance with the mitigation measures as set out in the Acoustic Report.
 - Condition 4: Operation as a takeaway will require separate permission.
 - Condition 12: Shall only be used as a licensed restaurant and shall not be used as a public bar with prior granting of planning permission.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

The report of the planning officer reflects the decision of the planning authority.

Points of note are as follows:

- Further information was requested in relation to noise mitigation measures/acoustic appraisal.
- Acoustic report submitted as Further Information/Omission of the timber seating and bi-fold windows along Cope Street.
- Further Information submission addressed the initial concerns raised.
- Unlikely to have a negative impact on the residential amenity of adjoining properties.
- Proposed new use and related upgrades to the facades is likely to improve the visual amenities of the area.
- Recommends that permission be granted.

3.2.2. Other Technical Reports

Environment Health Officer – Initial requests for further information/no objection subject to conditions following receipt of further information.

Drainage Division – No objection.

Roads Division – No objection subject to conditions.

Waste Management Division – No objection subject to conditions.

3.3. **Prescribed Bodies**

3.3.1. Transport Infrastructure Ireland – No observations to make.

3.4. **Third Party Observations**

3.4.1. 2 no. Third Party Observations were received. The main issues raised are covered in the Grounds of Appeal.

4.0 Planning History

5446/07 – Grant – Variation to 2758/05.

6503/06 - Refuse - Variation to 2785/05 – Refused for one reason relating to archaeology.

2785/05 - Grant - Mixed use development of five apartments and retail use at 3-4 Cope street.

5.0 Policy Context

5.1. Development Plan

5.1.1. The relevant development plan is Dublin City Council Development Plan 2016-2022.

Relevant policies and standards include:

- Policy CHC4 – To protect the special interest and character of all Dublin’s Conservation Areas
- Policy CEE12 –To promote and facilitate tourism as one of the key economic pillars of the city’s economy – This supports the increase in tourist facilities including cafes and restaurants
- Section 16.29 – Restaurants- Provides guidance for the consideration of restaurant proposals.
- Section 16.32 - Night Clubs/Licensed Premises/Casinos/Private Members’ Clubs
- Appendix 24: Protected Structures and Buildings in Conservation Areas.

5.1.2. The site is zoned Z5 - Land-Use Zoning Objective Z5: - This allows for mixed-use development within the City Centre.

5.2. Natural Heritage Designations

None

6.0 The Appeal

6.1. Grounds of Appeal

The Grounds of Appeal, as submitted by the Third Party Appellants, are as follows:

- Overconcentration of licenced premises in Temple Bar – this issue not given adequate consideration by the planning officer.
- Circuit Court judge declined to grant a declaratory order to facilitate another pub.
- Welcome conditions in relation to noise – however other premises in the area have not complied with planning conditions – i.e. Bad Ass Café is trading as a pub despite not having permission to do so.
- No effective enforcement action is taken by the planning authority.
- No balanced mix of uses in the Temple Bar area.
- Long term impact of having such a concentration of pubs was not considered when Temple Bar was planned.
- Mix of uses/concentration of restaurants and cafes not adequately assessed in the planners report.
- City Plan should seek to retain the few surviving retail units along the route from the ex Central Bank to the Ha’penny Bridge and beyond.
- Area around the Eager Beaver is about to undergo a dramatic transformation with the development of the former Central Bank – currently the subject of a Third Party Appeal.
- Essential that existing retail units around the Central Bank, on Cope Street and Fownes Street should be retained to contribute to a balanced mix of uses in Temple Bar.
- Urge An Bord Pleanála to refuse planning permission for the proposed change of use.

6.2. Applicant Response

6.2.1. The First Party Response to the First Party Appeal is summarised below:

- Noise mitigation measures will be implemented as part of the proposal.
- Proposal is seen as a positive contribution.
- Condition 12 precludes the use of the premises as a bar – applicant will comply with this condition – has not appealed against the condition.
- This appeal is in no way related to the Bad Ass Café and comments in relation to same should be disregarded.
- Applicants are long standing business people in this location.
- Appellants have no knowledge of the viability or otherwise of the existing retail unit.
- Comments regarding pubs and superpubs are irrelevant.
- Applications should be assessed in line with the Development Plan guidelines.
- Proposal is fully in line with Development Plan policy.
- Retail aspect of the city was not deemed relevant/small scale nature of the existing retail premises and the limited scale of the proposed restaurant.

6.3. **Planning Authority Response**

6.3.1. None.

6.4. **Observations**

6.4.1. None.

6.5. **Further Responses**

6.5.1. None.

7.0 **Assessment**

7.1. The following assessment covers the points made in the appeal submissions, and also encapsulates my *de novo* consideration of the application. The main planning issues in the assessment of the proposed development are as follows: -

- Principle of the proposed development
- Residential Amenity Impact
- Other Issues
- Appropriate Assessment

7.2. Principle of Development

7.2.1. No objection to the principle of a café/restaurant use was raised by the Planning Authority. I note that, under the Z5 zoning, a restaurant is a permissible use. The zoning matrix does not specifically state café is a permissible use but within the Development Plan the terms café and restaurant are used in conjunction with each other. Appendix 21 of the City Development Plan classes a café and a restaurant as the same use. The principle of a café/restaurant use in this location is therefore acceptable.

7.2.2. Policy CEE12 supports in the increase in tourist facilities including cafes and restaurants. Section 16.29 'Restaurants' states that the positive contribution of café and restaurant uses and the clusters of such uses to the vitality of the city is recognised and states that when considering applications for restaurants, the following will be taken into consideration:

- The effect of noise, general disturbance, hours of operation and fumes on the amenities of nearby residents
- Traffic considerations
- Waste storage facilities
- The 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, Principal Shopping Streets' in Chapter 7 and Appendix 3).
- The need to safeguard the vitality and viability of shopping areas in the city and to maintain a suitable mix of retail uses.

7.2.3. The Third Party appellants have raised the issue of the loss of the existing retail unit, and the need to preserve a retail presence. The First Party has argued that this is not relevant to this appeal. However, I note the site does not lie within the area identified as the Principal Shopping Streets (Category 1 and Category 2 streets),

where the overall aim is to preserve the primary retail function of these streets, and as such there is no specific policy objection to the loss the loss of the retail unit.

- 7.2.4. The issue of overconcentration of licenced premises has been raised by the Third Party Appellants. The First Party has noted that the proposal is not for a pub use and concerns regarding other pub uses are not relevant to this appeal.
- 7.2.5. While I note there are number of other cafe/restaurant uses in the area, the concentration of same needs to be considered where the proposal relates to a Category 1 or 2 shopping street, which is not the case in this instance. Section 16.32 notes that pub uses will be restricted in certain areas of the city where there is a danger of overconcentration of these to the detriment of other uses. The proposal is not for a pub use and as such the concentration of such uses is not applicable to the consideration of this appeal.
- 7.2.6. A further criteria set out in Section 16.29 is the need to safeguard the vitality and viability of shopping areas in the city and to maintain a suitable mix of retail uses. While not a Principal Shopping Area, the site does lie within the central shopping area, as defined in Figure 8 of the Development Plan. As such, the issue of vitality and viability is relevant to this appeal. I note the need to maintain a suitable mix of retail uses in the area. In this regard, I note there is a number of retail units along Fownes Street Upper with two retail units remaining on Cope Street (not including the vacant unit at 5 Cope Street). I do not consider the loss of this retail unit would undermine fundamentally the vitality and viability of the area.

7.3. Impact on Residential Amenities

- 7.3.1. I note there are residential uses on the upper floors of this building, and on upper floors in adjacent buildings.
- 7.3.2. The appellants have raised the issue of noise in the Third Party Appeal, and the issue was also raised in submissions on the planning application. The First Party has noted the mitigation measures outlined in the Acoustic Review, submitted as part of a Further Information Request and included with the appeal submission.
- 7.3.3. The report carried out a number of tests in order to determine existing external and internal noise levels, and to measure the sound insulation value of the existing ceiling over the ground floor, between the proposed use and the first floor residential units. It is noted that external noise levels at times exceed recommended limits, but

during quieter periods, existing internal noise levels with the first floor residential units are within recommended limits.

- 7.3.4. This report recommends a number of mitigation measures including improving the first-floor level slabs acoustic performance, by the introduction of an imperforate dropped MF5 dropped metal frame ceiling, which will provide an additional 10-15db on existing sound insulation values.
- 7.3.5. It is further recommended that specified glazing is installed in the Crown Alley and Cope Street elevations, that entrance doors have a closing mechanism and are sufficiently soundproofed and that the proposed seating to the front is removed. Further measures include the use of a volume limiter and other measures to limit the noise breakout caused by music played internally.
- 7.3.6. I note that the Third Party Appellants have welcomed the noise conditions but are concerned in relation to non-compliance with same and note other examples of non-compliance with conditions in nearby premises. Enforcement of planning conditions is, however, a matter for the local authority.
- 7.3.7. In relation to the proposed hours of operation, I note the applicants intend to operate Sunday to Thursday 10.30am to 11.30pm and Friday to Saturday 10.30am to 12.30am. I consider these hours of operation to be reasonable.
- 7.3.8. Subject to relevant conditions, it is my view that the proposed development will be not be injurious to surrounding residential amenity.

7.4. Other Issues

- 7.4.1. In relation to design, I note an Architectural Heritage Assessment Report was submitted with the application documents. It is concluded within this document that the proposed development would have a neutral impact.
- 7.4.2. The main design intervention is the proposed new accessible entrance onto Cope Street and the lowering of the existing stall risers onto Crown Alley as well as other alterations to the existing facades. I note the building is a relatively modern structure, dating from 2009, according to the documents on file. Overall, the interventions to the facades are acceptable having regard to design.
- 7.4.3. In relation to waste, there is a designated area at basement level for bin storage. Bins will be taken directly from the bin enclosure to be emptied then returned to the

bin enclosure. This will ensure that no bins will be left on the pavements awaiting collection. Subject to conditions, waste proposals are acceptable.

7.5. Appropriate Assessment

- 7.5.1. Having regard to the nature and scale of the proposed development within a serviced area and separation distance to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on the conservation objectives of any European site.

8.0 Recommendation

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

9.0 Reasons and Considerations

Having regard to the central city location, the zoning objective for the site and the policies of the current Dublin City Development Plan 2016-2022, it is considered that the proposed development would not seriously injure the residential or visual amenity of the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 6th day of October 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 development shall be carried out in accordance with the mitigation measures as set out in Section 5 of the Acoustic Report prepared by Dalton Acoustic Limited dated 5th October 2017 (as submitted to the planning authority on the 6th day of October 2017).

Reason: In order to protect surrounding residential amenity.

3. The change of use hereby approved is for a café/restaurant only, and any proposal to operate as a takeaway (sale of fried goods) for the consumption on or off the premises shall be subject to a separate planning application.

Reason: In the interest of proper planning and development and in order to protect surrounding residential amenity.

4. The development hereby permitted shall only be used as a café/licenced restaurant and shall not operate as a public bar without a prior grant of planning permission.

Reason: In the interest of proper planning and development and in order to protect surrounding residential amenity.

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

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

6. No advertisement or advertisement structure, the exhibition or erection of which would otherwise constitute exempted development under the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, shall be displayed or erected on the buildings unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

7. Site development and building works shall be carried out only between the hours of 0700 to 1800 Mondays to Fridays inclusive, between 0800 to 1400

hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will 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.

8. The developer shall comply with the requirements set out in the Codes of Practice from the Drainage Division, the Roads and Traffic Department and the Noise and Air Pollution Section of Dublin City Council.

Reason: To ensure a satisfactory standard of development.

Rónán O'Connor
Planning Inspector

16th March 2018