



An
Bord
Pleanála

Inspector's Report ABP 300754-17

Development	Change of use of Ground Floor Retail unit to restaurant for consumption of hot food off the premises and, alterations to internal layout, modifications to elevations: replacement shopfront and signage, windows and doors, new extractor flue, replacement of flat roof at rear and minor works.
Location	Nos. 43 and 44 James Street, Dublin 8.
Planning Authority	Dublin City Council
P. A. Reg. Ref.	4199/17.
Applicant(s)	Christian Fraunfelter and Tanya Quinn.
Type of Application	Permission.
Decision	Grant Permission.
Type of Appeal	Third Party
Appellant	John Morris
Date of Site Inspection	13 th April, 2018.
Inspector	Jane Dennehy.

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1.0 Site Location and Description

- 1.1. The site is that of a four storey building with attic space which was constructed during the 1990s. It is located on the south side of James Street a short distance to the west of Echlin Street. At the south east side there is a gated residential development (St. James Court) which has access from Echlin Street. At the rear is a car repair business (Allens) The building to the east side based on external visual inspection appears to date from the eighteenth century with significant historic fabric intact although it has been significantly altered.
- 1.2. The upper floors of the building are in multiple occupancy with six apartments, two each on the first, second and third floors. The ground floor is a vacant retail unit with a small refuse yard and rear access door at the rear, a shopfront entrance and a separate entrance to a staircase to the upper floors from James Street. The total stated floor area is 175 square metres and the total floor area of the entire building is 592 square metres.

2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for:
 - change of use of the retail unit on the ground floor to use as a restaurant providing to consumption of hot food in the restaurant and off the premises.
 - a new replacement shopfront, inclusive of new signage and replacement ground floor windows and doors.
 - alteration of the existing projecting sign.
 - a new extractor ventilation unit and flue at the rear.
 - replacement of a flat roof at the rear.
 - Waste storage comprising three bin segregated waste with a collection system for cooking oil.

According to the written submission accompanying the application, the applicant intends to comply with the Dublin City Council 's, Shopfront Design Guide published in 2001, requirements with regard to litter and refuse collections and drainage arrangements.

3.0 Planning Authority Decision

3.1. Decision

By order dated, 5th January, 2018 the planning authority decided to grant permission for the proposed development subject to eight conditions.

Under Condition No 2 a compliance submission is required for, (a) materials and colours for the fascia panel and lettering, (b) dimensions for the lettering and means of fixtures to the fascia and (c) shopfront signage illumination which is to be externally lit.

Under Condition No 3 (a) there is a requirement for permanent removal of the existing projecting sign; (b) external illumination only for the shop sign. (c) no display of free standing advertising on the public footpath.; (d) retention of the glazing free of stickers and advertising etc. and under (d) exempt development entitlements in relation to advertising and signage are removed.

Under Condition No 5 (a) there is a requirement for a compliance submission with details of a scheme for control of fumes and odours which his to be implemented prior to commencement of the operations.

Under Condition No 8 (a) any change to the uses indicated in the application are subject to a separate grant of planning permission and alterations are subject to a compliance agreement.

Under Condition No 8 (a) use as a take-away is not permitted except for take away facilities ancillary to the primary use of the premises as a restaurant.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning officer notes the existing residential development within the building and development within the immediate environs and indicates satisfaction with the proposed development subject to the requirements of the conditions which are attached to the decision to grant permission.

3.2.2. **Other Technical Reports**

The Drainage Division in its report indicates no objection to the proposed development subject to standard conditions.

3.3. **Third Party Observations**

- 3.3.1. Issues of concern indicated by third parties in their submissions relate to the proposed design, residential amenities, traffic congestion and demand for parking and anti-social behaviour.

4.0 **Planning History**

P. A. Reg. Ref. 4046/15: Permission was granted for change of use of the fourth-floor attic level storage space to an apartment with additional mezzanine space increasing the building height and a replacement balcony.

P. A. Reg. Ref. 4269/08: Permission was granted for an attic conversion providing for an extension to the provide for conversion of the third-floor apartment at the front of the building into a duplex unit with additional fenestration.

P. A. Reg. Ref. 2735/01: Permission was granted for development of seven apartments in the four floors above the ground floor retail unit.

5.0 **Policy Context**

5.1. **Development Plan**

The operative development plan is the Dublin City Development Plan, 2017-2023 according to which the site comes within an area subject to the zoning objective Z4: *“To provide for and improve mixed service facilities”*. Restaurant use is a permissible use.

6.0 The Appeal

6.1. Grounds of Appeal

An appeal was received from John Morris of the MACE store at the adjoining property, Nos 45-47 James Street on 19th January, 2018. According to the appeal:

- It not apparent among the conditions attached to the planning authority decision as to whether alcohol can be sold at the premises. Mr Morris indicates concern about impact on the residential amenities of the apartments on the upper floors of the building and on the businesses operated in adjoining buildings by potential noise and nuisance associated with the restaurant use proposed.
- Mr. Morris refers to Article 7 (c) of the Intoxicating Liquor Act, 2008 as he considers the proposed development to be unrelated to the needs of the local resident as several premises in the area serve alcohol and food: (The Malt, (2), McCanns and (3) The Stoutman's.)
- The layout and design is deficient in that there is no external access from the rear of the property. A sole access from the front is potentially hazardous for patrons and members of the public in the event of fire or any other serious incident. The proposed development may not comply with Health and Safety Legislation.

6.2. Applicant Response

A submission was received from "A2" Architects on behalf of the applicant on 8th Mach, 2018 in which it is submitted that the proposed development accords with good planning policy and practice standards. According to the Appeal:

- The sale of alcohol is not a planning issue and is a matter for the District Court according to The Intoxicating Liquor Act, 2008.
- With regard to the concerns about residential amenities, the proposed development is entirely in accordance with the zoning objective Z4: To provide for and improve mixed services facilities". The policies, standards and the retail strategy in Chapter 7 and Appendix 3 of the Development plan

refer. In addition, Policy CEE12 provides for increased supply of facilities, including restaurants to facilitate the promotion of tourism as one of the key economic pillars of the economy and employment generation.

- With regard to the reference to the three existing licensed premises that serve food it is submitted that (a) the proposed development accords with the LAP for the Liberties encouragement of development of cafes, bars restaurant venues to facilitate improvement of the the cultural and tourist offer in the area and (b) The development at the hospital at St James Hospital Campus and Environs SDRA and St James Street Gateway according to SDRA 15 in the development plan strategic development and regeneration areas bring direct demand for amenities such as shops cafes restaurants etc.
- Fire safety standards are to be addressed by way of a Fire Safety Certificate. The proposed development complies with requirements for a single, one directional escape route as provided for in TGD Part B 2006 – 1.2.2.5 Single Escape Route as the layout comprise thirty seats and inclusive of staff the occupancy loading is under fifty persons.

6.3. Planning Authority Response

There is no submission from the planning authority on file.

7.0 Assessment

7.1. Consistency with the zoning objective.

- 7.1.1. The proposed change of use is consistent with and permissible within areas subject to the zoning objective. Z4: *“To provide for and improve mixed service facilities”*. In principle there is no objection to the proposed change of use which, it is considered is appropriate for the site location, is potentially functional to regeneration and contributes to the availability of services and facilities with a busy employment area and tourist destination. Subject, as sought in the application and required under conditions attached to the planning authority decision the purchase of food for consumption of the premises, if it is ancillary to the restaurant use is also considered acceptable and appropriate to the site location.

- 7.1.2. Licensing for the sale or serving of alcohol as pointed out in the applicant's submission is subject to a separate legislative code. Although it is unclear as to whether a license has been sought or indeed been obtained, it is considered that the availability of alcohol for consumption within a restaurant is relatively immaterial. Sale of alcohol for consumption off the premises, such as an off-licence outlet would require a separate planning application.
- 7.1.3. The proposed restaurant use, subject to good management, would not unduly affect the residential amenities of the properties in close proximity. St James Court which is to the south east appears in which the dwelling units are primarily occupied as a main place of residence and which comes under the zoning objective Z1: *to protect, provide for and improve residential amenities.*
- 8.0 The appellant claims that there is no rear access to the premises. There is a rear access door to a service yard which would be available for access by staff. At the time of inspection, the area was enclosed and covered in overgrown vegetation and waste material. was overgrown. It would appear to be suitable for external storage, although limited in size and enclosed. It is acknowledged that external refuse yard area is not an escape route in that it is enclosed by third party properties. Nevertheless, the applicant has submitted that a one directional escape route is acceptable for a development of the intensity and nature proposed. This is a matter to be addressed in the assessment of the application for a fire certificate which is separate from the planning code. (TGD Part B 2006 refers.)
- 9.0 While the applicant indicates a commitment to installation of an extraction and ventilation system to the required standards, detail have not been provided with the application. It is essential that the location of the installation, serving the kitchen facilities be such that noise or fumes from these facilities do not encroach on or affect third party residential property at St James Court. This matter can be addressed by inclusion of a condition with a requirement for compliance submission should permission be granted.
- 9.1. **Appropriate Assessment.**
- 9.1.1. Having regard to limited scale and nature of the proposed development, no Appropriate Assessment issues proposed development would not be likely to have a

significant effect individually or in combination with other plans or projects on a European site.

10.0 Recommendation

10.1. Following review of the application and the appeal by Mr. Morris, it is concluded the planning authority decision to grant permission should be supported including the insertion of conditions with the requirement for the removal of the existing projecting sign and the other requirements for which compliance submissions are required, by condition. Draft Reasons and Considerations and Conditions follow.

11.0 Reasons and Considerations

Having regard to the zoning objective for the site location; Z4: “*To provide for and improve mixed service facilities*” according to the Dublin City Development Plan, 2017-2023 it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or the residential amenities of property in the vicinity and would be in accordance with the proper planning and sustainable development of the area.

12.0 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 particulars.

Reason: In the interest of clarity.

2. Prior to the commencement of the for installation of ventilation and extraction facilities serving the development inclusive of the proposed location for the flue

development that applicant shall submit and agree in writing, full details of the proposed arrangements.

Reason: In the interest of clarity and amenity.

- 3 No external security shutters shall be erected on any of the commercial premises unless authorised by a further grant of planning permission. Details of all internal shutters shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity

- 4 The proposed shopfront shall be in accordance with the following requirements:-

- (a) Signs shall be restricted to a single fascia sign in sign writing, hand-painted lettering or individually mounted lettering,
- (b) Lighting of the fascia and shopfront shall be by means of external illumination only.
- (c) The existing projecting sign shall be removed prior to occupation of the unit. No awnings, canopies or projecting signs or other signs shall be erected on the premises without a prior grant of planning permission
- (d) no adhesive material shall be affixed to the windows or the shopfront.
- (e) No free-standing advertising structures may be erected in front of the premises.

Reason: In the interest of visual amenity.

5. The premises shall not be used as an independent take-away facility. Take-away facilities shall be confined to that which is ancillary to the main use as a restaurant.

Reason: In the interest of amenity.

6. Waste within the development, including the provision of facilities for the storage, separation and collection of the waste and, recyclable materials shall be in accordance with the requirements of the planning authority. Full details shall be submitted to and agreed in writing with the planning authority prior to the commencement of the development.

Reason: To provide for the appropriate management of waste and recyclable materials.

Jane Dennehy
Senior Planning Inspector
16th April, 2018.