



An
Bord
Pleanála

Inspector's Report ABP 301263-18

Development	Retention of Change of Use from newsagent to delicatessen for sale of hot and cold food and off license to gourmet salad bar and Retention of new shopfront and permission for revised fascia signage and ancillary works.
Location	No 109 Grafton Street, Dublin 2.
Planning Authority	Dublin City Council
P. A. Reg. Ref.	4590/17
Applicant	Chopped Grafton Limited.
Type of Application	Permission and Permission for Retention
Decision	Refuse Permission and Permission for Retention
Type of Appeal	First Party against Refusal
Appellant	Chopped Grafton Limited.
Observer	Transportation Ireland Ltd.
Date of Inspection	6 th and 9 th July, 2018.
Inspector	Jane Dennehy

1.0 Site Location and Description

- 1.1. No 109 Grafton Street is a five storey two bay building over basement on the east side of Grafton Street opposite the Provost's House at Trinity College and north of the junction with Suffolk Street and Nassau Street. The ground floor and basement level space which is occupied by the applicant's business and shopfront and fascia are subject of the application. The total stated floor area is 112 square metres. The existing shopfront and fascia are in a light green colour with individually mounted lettering and salad symbols. The interior is fitted out as a takeaway with a countertop for the display and sale of food to one side and some seating for customers. A beauty salon is based on an upper floor and has a separate entrance at ground floor level to the side of the shopfront.
- 1.2. The northern end of Grafton Street is curved and comprises four storey buildings with ground floor retail and commercial uses at ground floor. Over recent years there a clustering of quality retail businesses focussing on the tourist market has been emerging at the northern end.

2.0 Proposed Development

The application lodged with the planning authority on 21st December, 2017 indicates proposals for permission for retention of:

- (a) Change of Use from newsagent to delicatessen for sale of hot and cold food and off license to gourmet salad bar and,
- (b) Retention of new shopfront and,
- (c) Permission to alter the fascia signage and ancillary works.

The proposed development incorporates a double height fascia, in black with white mounted lettering and fresh salad symbols in colour.

3.0 Planning Authority Decision

3.1. Decision

By order dated, 29th March, 2018 the planning authority decided to refuse permission based on the following reason.

“The proposed retention and permission for the change of use to gourmet salad bar/delicatessen for the sale of hot and cold food would result in a loss of a ground floor retail unit and presence on Grafton Street, a Category 1 shopping street, where the state policy to protect the primary retail function of these streets as the principal shopping streets in the retail core with an emphasis on higher order comparison retail and a rich mix of uses.

The proposal therefore would seriously injure the amenities of the area detract from the retail character, result in an undesirable precedent for future non-retail development on this street and therefore would be contrary to the proper planning and sustainable development of the area.”

3.1.1. Planning Officer Report

The planning officer notes the loss of availability of the premises for retail use as envisaged for Category 1 Shopping streets, the policy for which is protection of the primary retail function according to the CDP. The planning officer also considers the proposed shop frontage and signage to be preferable to that previously proposed under P. A. Reg. Ref: 4027/16. (See section 4 below)

3.1.2. Other Technical Reports

The report of the Drainage Division indicates no objection to the proposed development.

4.0 Planning History

P. A. Reg. Ref: 4027/16: Permission was refused for modifications to the shopfront for reasons relating to the proportions and design detail resulting in conflict with the key objectives of Category 1 Shopping Streets within the Grafton Street Area of Special Planning Control and the Grafton Street and Environs ACA and Section 16.24.1 of the Dublin City Development Plan, 2016-2022 (CDP)

P. A. Reg. Ref. 5948/06: the Permission was granted for change of use from news agent and convenience retail use to newsagent convenience and off license retail space.

5.0 Policy Context

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 protects its civic design character and dignity.*”
- The Grafton Street and Environs Architectural Conservation Area. (ACA) according to which Grafton Street is a Category 1 Shopping Street. It is also within the Special Area of Planning Control for Grafton Street, 2013.

Standards, policies and objectives for shopfronts are set out in section 16.24 incorporating objectives RD13-17 inclusive and guidance is within the ‘*Shopfront Design Guidelines*’ published by Dublin City Council in 2001.

Standards, policies and objectives for Architectural Conservation Areas, (ACA) are set out in section 11.1.5.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. An appeal was received from Hughes Planning on behalf of the application on, 21st March, 2018 attach to which is a statement about high street leasing and evolution of retail mix prepared by Savills. The appeal submission includes detailed accounts of the planning history, the background by the applicant company, the range of food sold and the planning context for the site location and the extent and nature of the development for which permission for retention is sought.
- 6.1.2. In the appeal it is also stated that the applicant would be willing to accept a grant of permission for a period of five years on grounds that such a decision would provide

for a fair outcome, having regard to the provisions relating to temporary permission within the *Development Management: Guidelines for Planning Authorities, 2007*. The applicant could then continue operating the use while allowing the planning authority to monitor the effect of the use on the location.

6.1.3. According to the appeal:

- The proposed development is a higher order health food offer and accords with Policy CEE1 of the CDP for promotion and enhancement of competitiveness.
- The decision to refuse permission is unrealistic due to limitations relating to the floor plate access and the LUAS alignment and architectural heritage protection and Policy CEE5 promoting diversity of uses that foster innovation with city centre areas within the Z5 zone.

- The proposed development does not undermine the primary retail function of Grafton Street. It is not a hot food outlet as described in the planning officer report. No cooking or frying is involved.
- It should be regarded as a *sui generis* use, and as a health food shop, which can be considered under the zoning objective and the Special Planning Control Scheme, (SPCS) Non- retail uses which can be considered on their own merits according to section 3.7 of the Retail Strategy for Category 1 Streets. (Vol 2 of CDP refers.) It is a unique health food delicatessen offering replacing an off-license. An ice-cream shop is based at No 110 Grafton Street.
- This proposed *sui generis* use is consistent with policies for non-conforming use in section 14.6 of the CDP and it constitutes “higher order retail” within the category of food retailing.
- The proposed development is small scale, the net floor area being 43 square metres and the gross floor area being 58 square metres. It involves no structural alterations.
- The premises is not conducive to retail use especially higher order retail due to floor size constraints, adjacent protected structures lack of loading

facilities, the compromising alignment of the of the LUAS line and, pressure from on line retailing. The premises will not attract a higher order comparison retailer as discussed in the accompanying statement by Savills in which supporting data is provided.

- The planning policy for Grafton Street is not suited to current high street retail climate and the proposed development, which is similar to an ice-cream shop was not appropriately assessed by the planning authority.
- The application for the retention of the shopfront and to modify it and the fascia level signage presents a façade consistent with the ACA and protected structures and seeks to address the reasoning for refusal of permission for the application under P. A. Reg. Ref: 4027/16. The design approach is similar to the shopfront for the “Chopped” premises on the Westmoreland Street Fleet Street corner. The proposed shopfront and signage is more stylish. It is high quality, desirable and accords with the requirements of the CDP, Policy Objectives RD14 and RD15 therein and the *Shopfront Design Guidelines, 2001*.
- In the accompanying statement by Savills there is a comprehensive survey and commentary on the retail sector in the area, on challenges to the retail sector particularly from “E-Commerce” as well as commentary on changes to the services sector affecting the function of central business districts. According to the statement the existing mix at the lower end of Grafton Street of thirteen units cannot be considered as higher order, main stream retail. There have been several store closures which have been replaced by a profile of general and tourist focussed and conveniences uses.

6.1.4. **Planning Authority Response**

There is no submission from the planning authority on file.

6.1.5. **Observations**

A submission was received from **Transportation Infrastructure Ireland**, (prescribed body) on 16th April, 2018 according to which two conditions should be attached if permission is granted, one relating to the carrying out of works in close proximity to

the LUAS light rail system for which consent is required and the second of which relates to a Code of Practice for the light rail system.

7.0 **Assessment**

7.1. There are two distinct elements to the proposed development which are considered separately below. They are:

- (i) the proposed retention of the change of use and,
- (ii) the proposed alteration to the shopfront, fascia and signage.

7.2. **Retention of the change of use**

7.3. It is acknowledged that the former, authorised use from which change of use is proposed, is not higher order comparison retail use. This use is encouraged which is provided for on Category 1 Shopping Streets, (which include Grafton Street) within the Retail Strategy, adopted as part of the CDP by reason of the location within the SSPC for the area within the Grafton Street and Environs ACA. Nevertheless, it is considered that, relative to the former use, the argument that the proposed change of use is an improvement and an enhancement, by reason of being a higher order health food offer is understandable. The proposed use is not a food outlet for the sale of hot food for consumption off the premises involving cooking and frying. It is a take-away food outlet that does not give rise to concerns about adverse impact on the amenities of the surrounding built environment over odours and storage and disposal of cooking products such as oils. The fresh salad vegetables and meats are delivered regularly and staff taking orders and, assembling meals in disposable packaging to be served to customers the majority of which would not sit-in. Teas and coffee is also served.

7.4. It is considered that the proposed is suited to Category 2 shopping streets in which cafes, including those which have facilities for sale of food for consumption off the premises, restaurants and bars are concentrated and which complement and support the viability of the higher order comparison retail offers provided for on Category 1 shopping streets such as Grafton Street having regard to the Retail Strategy within the CDP. An increasing proportion of uses such as food outlets, and

lower order retail on Category 1 Shopping Streets would undermine the achievement of strategic statutory policies and objectives of the planning authority to enhance and sustain the viability of Category 1 Shopping Streets in encouraging and facilitation the concentration and clustering of the higher order retail on these streets.

7.5. The point made in the appeal as to the existing Gelato business at the adjoining premises is noted. However, it is not established in the appeal that the planning circumstances relating to this development are similar to the proposed development, namely as to any requirement for consent to change of use, or comparable circumstances that support any claim as to relevant precedent.

7.6. It is considered that the case made on the basis of challenges to higher order comparison retailing from 'E.Commerce', the existing occupancy of the thirteen ground floor premises at the lower end of Grafton Street and, the constraints of the size and configuration of the internal space is not sufficiently persuasive to justify the proposed retention of the change of use. It is not accepted that there is little scope for premises along the lower end of Grafton Street to attract and retail higher order retail occupancy although it is agreed that the floor plate size and configuration in these premises are not suited to the large higher order fashion retailers. However, they may be suitable for smaller retail fashion operations such as specialist or boutique style businesses. To this end, it is of note that relatively recently some retail businesses which target the tourism market have taken over premises and as such a cluster of such retail use has emerged.

7.7. **Shopfront, fascia and signage.**

7.8. The remarks of the planning office about the size and proportions of the fascia are supported. The shopfront height is estimated, from examination of the lodged plans to be 4.2 metres of which, 1.6 metres is taken up by the fascia above the entrance and glazing and is excessive in proportion to the height of the shopfront and the height of the ground floor façade of the building. Correspondingly, the proposed mounted lettering is too small in proportion to the fascia. In this regard it is of note that according to section 16.24.3 of the CDP lettering should be in proportion to the depth of the fascia board. There is no objection to the colours and materials selected for the shopfront, fascia and signage. The shopfront would be acceptable subject to a reduced proportion of the shopfront being taken up by the fascia board

in which the lettering is in closer proportion to the fascia board. The size of the overhead fascia board to the side of the shopfront at the entrance to the business premises operated on the upper floors is acknowledged but it does not justify the proposal for the fascia board for the proposed development.

7.9. Appropriate Assessment.

- 7.9.1. Having regard to the scale and nature of the proposed development and to the serviced central business district location, no Appropriate Assessment issues arise. The proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

In view of the foregoing it is recommended that permission for retention and permission for the proposed development be refused based on the reasons and considerations set out below.

9.0 Reasons and Considerations

The proposed development of an outlet for the sale of food for consumption on and off the premises undermines the achievement policy objectives provided for the Grafton Street and Environs Architectural Conservation Area in the Retail Strategy incorporated in the Dublin City Development Plan, 2016-2022 which is to protect and provide for the primary retail function for Category 1 'Shopping Streets' as the principal shopping streets with emphasis on higher order comparison retail use. The proposed shopfront would seriously injure the visual amenities and established architectural character of the streetscape in that the fascia is oversized in proportion to the shopfront in entirety and in proportion to the ground floor façade. As a result, the proposed development would be contrary to the proper planning and sustainable development of the area.

Jane Dennehy
Senior Planning Inspector
10th July, 2018.