



An
Bord
Pleanála

Inspector's Report ABP-301266-18

Development

Change of use to a licensed restaurant, from retail at ground floor of 76 Camden Street Lower, Dublin 2 and from car servicing/ car sales outlet at ground floor of 41A Pleasant's Street, Dublin 8.

Location

76, Camden Street, Dublin 2, 41A Pleasant's Street, Dublin 8

Planning Authority

Dublin City Council South

Planning Authority Reg. Ref.

4637/17

Applicants

James Ryan & Janette Hurrell

Type of Application

Permission

Planning Authority Decision

Grant Permission

Type of Appeal

Third Party

Appellant(s)

Marianne Kelly & others

Peter Cunningham

Barry Herbert & Bríd

John Sweeney & others

Date of Site Inspection

2/8/2018

Inspector

Dolores McCague

1.0 Site Location and Description

- 1.1.1. The site is located at No 76 Camden Street, Dublin 2 which extends to Pleasants Place to the rear and to Pleasants St at the north western corner. No 77 Camden Street, forms the junction with Pleasants St and to the rear running along Pleasants St in plots of diminishing depth are 44, 43 and 41 Pleasants Place, which give way at the western end to the north western corner of No 77 Camden Street.
- 1.1.2. Pleasants Place runs in a north south direction parallel to Camden Street, between Camden Street and Synge St. Along its eastern side it is occupied by rear accesses to premises on Camden Street or by business enterprises. Along its western side it is occupied by a number of recent residential developments of townhouses and apartments and at the southern end by the two / three storey historic building formerly St Kevins School, now in commercial use.
- 1.2. Camden St is part of the radial route extending south from Dame St to Rathmines. Historically an important shopping street, it has become, in recent years, a focus for night time activities.

2.0 Proposed Development

- 2.1.1. The proposed development is the change of use from retail at ground floor of 76 Camden Street Lower, Dublin 2 and a car servicing/ car sales outlet at ground floor of 41A Pleasant's Street, Dublin 8 to use as a licensed restaurant. These two premises were approved to operate at ground floor level as part of a single unit, joined by a new link building, for use as retail outlet in application Reg. Ref. 3075/16. (PL29S.247171). That application also included 75 and 75A Camden Street Lower (Protected Structures) which are not included in this application. No changes are proposed to other elements of that application. This application is confined to seeking permission for the change of use of the ground floor of Number 76 Camden Street Lower and 41A Pleasant's Street and the link building between the two buildings.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The planning authority decided to grant planning permission subject to 13 conditions, including:

2) The development shall comply with the following requirements of Dublin City Council:

- a) Before the use hereby permitted commences, a scheme shall be submitted to, and approved in writing by the Planning Authority for the effective control of fumes and odours from the premises, including a suitable filtration system to eliminate cooking odours. The scheme shall be implemented before the use commences and thereafter permanently maintained.
- b) External ventilation of the kitchen area shall be located a minimum of 25 metres from the rear boundary of the site.

Reason: In the interests of the amenities of both the immediate neighbours and general surroundings.

- 3 a) The doorway entrance to the unit on the northern elevation onto Pleasants Place shall be used for deliveries and fire escape purposes only and shall not be used for customer or staff access or egress to the restaurant.
- b) Noise levels from the proposed development shall not be so loud, so continuous, so repeated, of such duration or pitch or occurring at such times as to give reasonable cause for annoyance to a person in any premises in the neighbourhood or to a person lawfully using any public place. In particular, the rated noise levels from the proposed development shall not constitute reasonable grounds for complaint as provided for in B.S. 4142 methods for rating industrial noise affecting mixed residential and industrial areas.
- c) During the construction and demolition phases, the proposed development shall comply with British Standard 5228 'Noise Control on Construction and open sites Part 1 Code of practice for basic information and procedures for noise control.

Reason: In order to ensure a satisfactory standard of development, in the interests of residential amenity

5 The restaurant use hereby approved shall not be used as a take away or for the sale of hot food for consumption off the premises other than where such use is clearly subsidiary to the main use as a restaurant.

Reason: In order to safeguard the residential amenities of the locality.

8 The roller shutter and its casing shall be recessed behind the glazing and shall be factory finished in a single colour to match the colour scheme of the building prior to their erection. The roller shutters shall be of the open lattice type, and shall not be painted on site or left unpainted or used for any form of advertising.

Reason: In the interests of visual amenity

14 The terms and conditions of the permission for the original development, which was issued under Reg. ref. 3075/16 shall be fully complied with, except where modified by this permission.

Reason: To provide for an acceptable standard of development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- Main shopfront and entrance from Camden St with a bar area for seating approximately 25 people, restaurant to the rear with seating for approximately 82 people.
- Restaurant is open for consideration under the Z1 zoning. 'An open for consideration use is one which may be permitted where the planning authority is satisfied that the proposed development would be compatible with the overall policies and objectives for the zone, would not have undesirable effects on the

permitted uses, and would otherwise be consistent with the proper planning and sustainable development of the area.'

- Condition no 5 of the previous permission on the site under reg. ref. 3075/16 is noted which requires that the units at nos 75 and 76 Camden St shall not be used as restaurants in order to support the vitality and viability of this part of Camden Street Lower, having regard to the zoning objective and other policies set out in the current Development Plan for the area.
- A map of retail shops in the immediate area has been submitted by the applicant which indicates that 63% of the commercial units in the area are in retail use with 21% in restaurant use and 6% are public houses. It is noted that the map covers the area south of the subject site only, along Camden St, and when the commercial units north of the subject site are also taken into account, it is noted that although there is a lot of restaurants in the area, there remains a large number of shops and jewellers, in addition to banks, daytime cafes and offices.
- It is also noted that the application pertains to no 76 Camden St and 41A Pleasants St and retail uses are permitted at the adjoining nos. 75 and 75A Camden St under reg. ref. 3075/16 granted planning permission. It is considered that the proposed restaurant use would not have a negative impact on the vitality and viability of this shopping area where a large number of retail uses remain and are permitted in the immediate vicinity.
- Section 16.29 of the Development Plan states in regard to restaurant use: In 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.
- The main concern of the planning authority is the impact on neighbouring residential amenities, in particular to the rear and side of the site. A number of dwellings and a terrace are located opposite the subject site at Pleasants Place and

No 41 Pleasants St adjoins the subject site to the north, which was recently granted planning permission for renovation and extension as a three bedroom dwelling, including rooflights and a first floor terrace level. It is recommended that a number of conditions are attached to protect existing residential amenities.

3.2.2. Other Technical Reports

- Roads & Traffic Division –
 - Located in Area 1 on the Map J of the City Development Plan. No parking is required in Area 1.
 - Servicing is proposed to take place off Pleasants St via an existing roller shutter which serves the car servicing /car sales unit. There is a loading bay on Pleasants St opposite the site. No objection.
 - Conditions.
- Engineering Department – Drainage Division
 - Conditions.

3.3. Third Party Observations

3.3.1. Third party observations on the file have been read and noted.

4.0 Planning History

PL 29S.247171 PA Reg Ref 3075/16 for the demolition of the rear single storey extensions to numbers 75 and 76 Camden Street Lower (circa 38.4 square metres gross floor area); the provision of a new single storey link (circa 73.5 square metres net floor area) comprising shop use (to accommodate use Class 1 of Schedule 2, Part 4 of the Planning and Development Regulations 2001-2015) connecting the ground floor levels of numbers 75 and 76 Camden Street Lower to the ground floor level of number 41A Pleasants Street; the change of use of the ground floor level of number 41A Pleasants Street from a former service garage/car sales to shop (to accommodate use Class 1 of Schedule 2, Part 4 of the Planning and Development

Regulations 2001-2015) (circa 359.3 square metres net floor area) and the continued use of the existing shops at ground floor levels of numbers 75 and 76 Camden Street Lower. These works will result in the provision of one shop unit (from two existing shop units and former service garage/car sales) measuring circa 523 square metres net floor area. There are no changes proposed to the size of the existing shop unit (circa 20.8 square metres net floor area) at ground floor level of number 75A Camden Street Lower. A new circulation space (lobby) (circa six square metres net floor area) connecting the new link to number 75A Camden Street Lower and the first and second floor levels of numbers 75 and 76 Camden Street Lower is also proposed. First party appeal against decision to refuse, granted by The Board. Subject to conditions which include:

Condition no 2 - amendments to the development.

Condition no 5 - The retail units hereby permitted shall be used solely as shops, as set out in Class 1 of Part 4 of Schedule 2 to the Planning and Development Regulations 2001, as amended, and shall not be used for the sale of hot food, or hot beverages, for consumption off the premises. The units shall not be used as restaurants.

Reason: In order to support the vitality and viability of this part of Camden Street Lower, having regard to the zoning objective and other policies set out in the current Development Plan for the area.

P. A. Reg. Ref. 3442/15: Permission was refused for change of use from hairdressing at 75B Camden Street Lower, including retail at 75A Camden Street Lower and from light industrial at 41A Pleasant Street to retail and ancillary services at ground floor with new stairs access to upper floors, removal of internal walls at 85A and 75B and single storey infill extension to the rear of 75 and 76 Camden Street Lower connecting ground floor at 41 A Pleasant's Street. Lowering of ground floor at No 76 Camden Street. Use at upper floors and at ground floor retail use to be unchanged. The reason for refusal relates to inappropriate interventions, loss of historic fabric, severances and inappropriate interconnection with a warehouse which are inappropriate for protected structures, out of character with the historic streetscape, grain and fabric and in material contravention of Section 17.10.1 and Policy objectives FC26, 7 and 30 of the Dublin City Development Plan 2011-2017.

PL 29S.242937 P. A. Reg. Ref. 3543/13: Permission refused by the Board on foot of a decision to refuse (need to safeguard the vitality and viability of the shopping areas in the city, and negative impact on residential community), for change of use from retail to café/delicatessen inclusive of works to involve alteration of back elevation, insertion of new external doors and signage at No 76 Camden St Lower. The Board's reason for refusal of permission related to the over concentration of existing restaurant and takeaway facilities and contravention of the objective under section 17.26 of the 2011-2017 to maintain an appropriate mix of uses and night-time amenities in a particular area, prevent excessive concentration of takeaway use to ensure appropriateness to scale and pattern of development in the area zoned for residential use.

To south -

PI 29S.241815, PA Reg Ref 2029/13 (refers to 72/73 Camden Street, Dublin 2 backing onto Pleasants Place), alterations, extensions, and change of use to licenced café bar and restaurant. First party appeal against decision to refuse, granted by the Board.

To north –

PL29S.238909, PA reg. no. 2271/11, No 77 Camden St, appeal against the PA's decision to grant permission for change of use (ground floor and basement) from retail shop to restaurant and associated works, granted by the Board.

PI 29S.237130 PA reg. no. 2682/10, No 77 Camden St, appeal against the PA's decision to refuse permission for change of use from retail shop use to pizza restaurant and hot food takeaway use on ground floor, refused by the Board, based on the need to maintain an appropriate mix of uses and night-time amenities in a particular area, would contribute to an overconcentration of restaurant/takeaway premises in the area and injury to residential amenities.

5.0 Policy Context

5.1. Development Plan

5.2. The Dublin City Development Plan 2016-2022 is the operative plan. Relevant provisions include:

The site is zoned Z1: to protect, provide and improve residential amenities. The front part of the site is within the Camden St Conservation Area.

Sustainable Residential Neighbourhoods Uses not listed under the 'permissible' or 'open for consideration' categories will be deemed not to be permissible uses in principle in zones Z1, Z2, Z8, Z9, Z11 and Z15; to protect, provide and improve residential amenities. The vision for residential development in the city is one where a wide range of accommodation is available within sustainable communities where residents are within easy reach of services, open space and facilities such as shops, education, leisure, community facilities and amenities, on foot and by public transport and where adequate public transport provides good access to employment, the city centre and the key district centres.

In both new and established residential areas, there will be a range of uses that have the potential to foster the development of new residential communities. These are uses that benefit from a close relationship with the immediate community and have high standards of amenity, such as convenience shopping, crèches, schools, nursing homes, open space, recreation and amenity uses.

Permissible Uses - Buildings for the health, safety and welfare of the public, childcare facility, community facility, cultural/ recreational building and uses, education, embassy residential, enterprise centre, halting site, homebased economic activity, medical and related consultants, open space, park-and-ride facility, place of public worship, public service installation, residential, shop (local), training centre.

Open for Consideration Uses - Bed and breakfast, betting office, car park, civic and amenity/recycling centre, garden centre, golf course and clubhouse, hostel, hotel, industry (light), live/ work units, media-associated uses, petrol station, pigeon lofts, public house, restaurant, veterinary surgery.

These are uses that benefit from a close relationship with the immediate community and have high standards of amenity, such as convenience shopping, crèches, schools, nursing homes, open space, recreation and amenity uses.

Dublin City Council, through the planning system, can minimise the adverse impacts of noise pollution by controlling developments which are noise intensive away from more sensitive areas such as residential areas. Furthermore, where it is considered that a proposed development is likely to create disturbance due to noise, a condition can be imposed by the planning authority on any planning permission limiting the hours of operation and level of noise generation.

Zoning Objective SIO26: To protect residents of mixed-use developments from noise emanating from other uses such as shops, offices, nightclubs, late night busking, public houses and other night time uses through the planning system.

In 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.

Camden Street is designated a radial market street for which it is the intention to consider, in so far as priorities and resources permit, the preparation of a local environmental improvement plan.

5.3. Natural Heritage Designations

- 5.3.1. South Dublin Bay and River Tolka Estuary SPA site code 004024 and South Dublin Bay SAC site code 000210 are the nearest Natura Sites, located some 3.3 km distance from the site.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.2. Four third party appeals against the decision to grant permission have been received.
- 6.2.1. A third party appeal from Peter Cunningham and others Longwood Avenue, includes:
- The proposed development is contrary to the aims and objectives set out in Section 17.30 of the Dublin City Development Plan 2011-2017.
 - There is an oversupply of restaurants in this area and consequently the viability and vitality of Camden street shopping area will be threatened. It will lead to closure of other such uses.
 - Since their objection to a pizza restaurant and hot food take-away in 2010 the planning authority has continued to restrict such uses in the area.
 - The subject buildings have a long combined retail and office use within the architectural conservation area. Such a use should be maintained to safeguard the viability and vitality of the area, particularly during day time.
 - There should be a limit on opening hours as applied to other cafes and restaurants in Camden St.
 - Restaurants of a high quality as mentioned in the application should not open later than midnight.
 - Late night opening hours are often accompanied by anti-social behaviour, nuisance to local residents and an increase in street trouble. This is a problem in the Camden Street area as is well known. There is no knowing what kind of operation

might move into the building in the future as particular restaurants often have a short life.

- 5 previous decisions which limit opening hours are listed, and copies of decisions provided.

6.2.2. A third party appeal from John Sweeney and others 189 South Circular Road, includes:

- The back door of No 76 Camden St is to Pleasant Place. Kitchen doors usually get deliveries late at night, have staff smoking at the back, and are very noisy. Neighbours are worried at late night opening most of them are students at DIT college and office staff.
- Late night opening hours are often accompanied by anti-social behaviour, nuisance to local residents and an increase in street trouble. This is a problem in the Camden Street area as is well known. High quality restaurants should not open later than midnight. There is no knowing what kind of operation might move into the building in the future as particular restaurants often have a short life.
- 5 previous decisions which limit opening hours are listed

6.2.3. A third party appeal from Barry Herbert & Bríd White, the Courtyard Pleasants Street, includes:

- The site is located in an area designated Z1 under the DCC plan 2016-2022. The general objectives for primarily residential areas are to provide a measure of protection from unsuitable new development or certain 'bad neighbour' developments. The type of development proposed can be classed as a bad neighbour due to noise pollution, public rowdiness and environmental concerns. The application does not serve local area needs Z1, but serves the larger catchment area of Dublin.
- The local area of Camden St and its environment is of historical importance and consists of a number of Dutch Billies that are under conservation orders, including No. 77, the adjacent property. The development as proposed pays no regard to conservation objectives. They note DCC refusal to permit development at the adjacent building No. 77 Camden St 3318/14. The conservation officer recommends a refusal in this instance due to the likely

adverse impact of the proposed works on the architectural significance of the site and to the unique historic streetscape and prominent corner comprising Camden St ACE and the adjacent Pleasant Street. They are of the view that the proposed development will have the same detrimental effect.

- They carried out a survey in the immediate location on the 19th March 2018 200m to either side of the site: Wexford St and Lower Camden St. There is currently an overabundance of restaurants in the area: 30 restaurants, 7 bars, 6 bar / restaurants, 1 retail restaurant, and 1 hotel. In addition there are 3 restaurants directly opposite the side entrance on Pleasants St.
- In their experience, due to this excess, a number of restaurants trade as bars after 9pm. They strong recommend a late night site visit, preferably on a weekend to satisfy re the impact of this lax regard to the use rulings on the neighbourhood.
- They note that the licensing issue/use of premises issue is not currently being addressed by DCC, in contravention of the planning permissions granted to such restaurants. They expect that this flexible view of the planning permission granted will also happen here.
- Their community has a quiet environment clause in their association rules. The proposed development is 5.5m from their home and cannot as a restaurant/bar possibly adhere to this requirement. The development has not allowed for a smoking shelter, this will result in more on-street smoking and associated noise. It is their experience that manager proprietor will claim that they have no control over this.
- The development will have a significant adverse effect on their enjoyment of their property due to excessive noise`, and have a significant negative impact on the value of their property.
- The applicant in their submission has not demonstrated how this development proposes to benefit the local area as stipulated in Z1 planning.
- They note that the applicant already has 3 premises in the area: Wow Burger on Wexford St, (3977/10 - noting that the sale of hot food for consumption off the premises was refused permission but is a significant part of the business);

the Dutch Billy (2060/17 under development) in Aungier St; and The Dean on Harcourt St (3633/11); and a leisure and hospitality company running nearly 30 hotels, bars, restaurants and nightclubs.

- They include requested additional restrictions in the event that the Board decides to grant permission.

6.2.4. A third party appeal from Marianne Kelly and others, 6 Pleasants Place, includes:

- They believe a restaurant of this size is not an addition to the area.
- It will seat 250 guests. Although intended to serve food it will also provide a club atmosphere and intends to apply for a late license. There will be a focus on DJs playing music and oval cocktail bars. Camden St is already full with similar establishments. The line between restaurants, pubs and clubs has become blurred and a stricter planning process should be in place to distinguish a developer's intention.
- It is intended to use an open courtyard within the development as a smoking area. Noise will be continuous and loud and heard from inside the third parties houses.
- The fabric of the building is not sound proofed for such a venue.
- Re point 3a in the notice granting permission, if the doorway on Pleasants Pl is used for deliveries (and fire escape) they would express concern that delivery trucks could easily block the lane, which is one way and so could easily be blocked for residents.
- They refer to decision documents for Ref 2029/13 re 72/73 Camden St (PL29S.241815) and the concerns and restrictions placed on that business and query why the same or more restrictions have not been placed on the subject application especially given the increased residential occupation of Pleasants Place since that planning permission was granted. The third parties have had to go to the occupiers of 72/73 to remind them of their obligations and were able to rely on the terms of the planning permission, but still have on occasion significant noise from the premises. They submit a copy of the conditions which apply; and refer the Board in particular to conditions 2, 3, 4, 5, 6, 11 and 17.

- Conditions 2, 3, 4, 5, 6, 11 would help to address some of the concerns. Re 17, on more than one occasion the lane has been blocked by deliveries and they have witnessed working outside the hours of 7am-6pm.

6.3. Applicant Response

6.3.1. Managhan Planners Town Planning Consultants have responded on behalf of the first party to the grounds of appeal. The response includes:

- Works to the protected structures (3075/16) are currently being carried out.
- Permission is now sought for change of use of the ground floor of No 76 and the industrial building to the rear from retail to a high quality restaurant. The restaurant will be for the PressUp group and will be of similar quality to Angelina's in Percy Place, Dublin 4 (photos provided).
- Grounds of appeal refers to anti-social behaviour in the area, between the hours of 2am and 5 am, when people participating in late night entertainment gravitate to the area. The proposed use is a sit down restaurant. There would be no take-away. Opening hours will be permitted by the licensing court: 12pm until 12.30am Sunday to Thursday and 12pm until 1.30 am on Friday and Saturday. These hours allow for bookings all day and tables finishing off food and drinks and leaving at staggered times. It will be operated by PressUp who run a number of other high quality restaurants in different parts of the city, none of which give rise to anti-social behaviour.
- They provide letters from people who live over Angelina's stating that they have no difficulty living close to the well run premises. They intend to operate their headquarters from upper floor offices. It would not be in their interests to allow a restaurant below to operate other than in a completely well-managed manner.
- Re lack of smoking area – smokers would smoke outdoors on Camden St. There is no intention to create a smoking area at the rear adjoining people's homes.
- Re poor insulation – it is intended to add insulation to the walls and roof of the industrial building and acoustic glazing to the windows to the side and

boarding over windows to the rear. Kitchens and services are to the rear to form a buffer. Noise will not escape to the rear. A report from an acoustic specialist is attached to the response.

- Servicing was addressed in the application. They have requested their suppliers to deliver on Wednesdays to which 80% have already agreed. Bins are collected for waste and recycling three times a week. The servicing requirements will be no greater than that of the large retail use already approved.
- A letter from Key Waste is attached to the response.
- There are inaccuracies in the grounds, such as the seating for 250 persons: 100 is proposed. Potential impact is exaggerated.
- The proposed development will contribute to upgrading the area.
- They supplied a survey of ground floor uses which showed a predominance of retail outlets. The objectors have supplied a survey which, given the high turnover of premises, shows a slightly different result. It does however show retail as the highest proportion of uses.
- A letter from Searson Associates, Consulting Engineers, offers the opinion that the development will not contribute to justifiable concerns.
- Letters from two residents of Percy Place state their satisfaction in living in proximity to Angelina's.
- A letter from Key Waste states that the Press Up group has a highly effective waste management policy and that there are no noise problems from their venues in relation to waste management. Waste will be kept inside a sound proofed room and collected three times a week between 8.00am and 6.00pm.

Further submission:

- The previous use as car repair and car sales outlet was a hive of activity all day and into the evenings. A car repair premises is usually regarded as a bad neighbour. This led to parking of cars for sale on the adjoining roads, (photo provided).

- Permission was granted for retail with servicing from this location. It is now increasingly the practice for retail outlets, especially this size, to conduct most of the servicing at light, particularly in the early hours of the morning. This would have led to considerable dis-amenity for neighbours.
- The first party has already set out stringent methods by which they will manage activity to the rear of the premises. The third parties will be much better protected if this application is approved and implemented compared to the previous and approved uses.

6.4. Planning Authority Response

6.4.1. The planning authority has not responded to the grounds of appeal.

7.0 Assessment

7.1. The issues which arise in relation to this appeal are: appropriate assessment, principle of the development, vitality of Camden St and concentration of similar uses, residential amenity and other issues and the following assessment is dealt with under those headings.

7.2. Appropriate Assessment

7.2.1. Having regard to the nature and scale of the proposed development and nature of the receiving environment 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 a European site.

7.3. Principle of the Development

7.3.1. The area is zoned Z1 to protect, provide and improve residential amenities. The front part of the site is within the Camden St Conservation Area. Any issues regarding alteration of the front building have been dealt with under an existing permission.

7.3.2. In the Z1 zoning the 'restaurant' use is open for consideration. The permitted and open for consideration uses are stated to be uses that benefit from a close relationship with the immediate community and have high standards of amenity,

such as convenience shopping, crèches, schools, nursing homes, open space, recreation and amenity uses.

7.3.3. One of the stated grounds of appeal is that the development does not serve local needs as required by the Z1 zoning, but serves the larger catchment area of Dublin.

7.3.4. The proposed development is a large licensed restaurant extending over a floor area of some 450m², it is a development with a city wide catchment and having regard to the Z1 zoning, it is my opinion that the principle of the development is not established.

7.4. Vitality of Camden St and Concentration of Similar Uses

7.4.1. Chapter 16 of the City Development Plan which sets out Development Standards: the mix of uses etc and states that in considering applications for restaurants, 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); and the need to safeguard the vitality and viability of shopping areas in the city and to maintain a suitable mix of retail uses will all be taken into consideration:

7.4.2. Many of these issues are dealt with below, under the heading residential amenity. In relation to the vitality and viability of the Camden St shopping area it is argued in the grounds of appeal that there is an overconcentration of night time uses and an overconcentration of restaurants in this area and that this is to the detriment of the shopping area.

7.4.3. A survey of ground floor uses was submitted by third parties. Of the 109 premises in the area surveyed which extends along Camden St, from Charlotte's Way to the south to Cuffe St to the north, with the subject site at the centre, 31 (28.44%) of the premises were retail and 30 (27.52%) restaurants. There were also 7 (6.42%) bars and 7 bar/restaurants. This is not contested by the first party although it differs from the survey presented with the application, for a smaller area extending from Pleasants St to Camden Market, in which the results were 63% retail, 21% restaurant, 6% café 6% pub and 3% other.

- 7.4.4. From the planning history of development in the immediate area of the site, a move away from retail in favour of restaurant use can be seen. Change of use from retail to restaurant was permitted in September 2011 for the premises to the north, No 77, and the change has taken place. Change of use from retail to restaurant was permitted in August 2013 for the premises to the south, Nos 72/73, and the change has taken place.
- 7.4.5. The loss of retail and concentration of similar uses has been a concern in this area for some time. The permission by the Board for alterations to the subject premises (January 2017, under the current development plan) which permitted the linking of the Camden St buildings to the former service garage/car sales and its use as part of a shop, specifically excludes the use as a restaurant of take-away, Condition no 5 refers. The reason for this exclusion is, in order to support the vitality and viability of this part of Camden Street Lower, having regard to the zoning objective and other policies set out in the Development Plan for the area. Permission was previously refused by the Board for change of use from retail to café/delicatessen on part of the subject site (the part on Camden St) in May 2014. The reason related to the over concentration of existing restaurant and takeaway facilities and contravention of the objective under section 17.26 of the 2011-2017 Plan to maintain an appropriate mix of uses and night-time amenities in a particular area, prevent excessive concentration of takeaway use to ensure appropriateness to scale and pattern of development in the area zoned for residential use.
- 7.4.6. In my opinion there is an overconcentration of restaurants in this area, which detracts from the mix of uses appropriate to a shopping street such as Camden St. It is to the detriment of the vitality and viability of this area that uses which are mainly active at evening and night time should supplant daytime uses such as retailing. The proposed development would contribute to the overconcentration of restaurants in this shopping street and this is a reason to refuse permission.

7.5. Residential Amenity

- 7.5.1. The impact on residential amenity is the main concern of third parties. They are concerned that the proposed development will bring the anti social behaviour associated with night time uses on Camden St closer to their homes.

- 7.5.2. They are also concerned that the nature of the use will involve noise and other nuisance associated with the activities which will be carried on within the premises and to the rear of the premises, where access and servicing is proposed, at unsocial hours. They point out that the structure of the existing building at Pleasants Place / Pleasants St has poor sound retention. The absence of any condition controlling hours of opening is also of concern.
- 7.5.3. The first party states, in response, that there will be no anti social behaviour associated with the proposed use which is a sit down restaurant. The hours of opening will be governed by the license which will limit hours of opening to 12pm until 12.30am Sunday to Thursday and 12pm until 1.30 am on Friday and Saturday. These hours allow for bookings all day, tables finishing off food and drinks and patrons leaving, at staggered times.
- 7.5.4. The first party states that smokers would smoke outdoors on Camden St. and it is not the intention to create a smoking area at the rear, adjoining people's homes. In response to the concern that the existing building has poor sound insulation they point out the upgrades that are intended. In response to concerns regarding servicing arrangements, they point out that the servicing of the permitted retail unit would involve similar issues, including early deliveries and they point out inaccuracies in the grounds of appeal: that the seating is for 100 patrons not 250.
- 7.5.5. Historically Pleasants Place would have provided rear access to buildings on Camden St. In some cases a separate activity became established at Pleasants Place to the rear of the Camden St property as appears to be the case here, where a car servicing/ car sales outlet (ground floor) was established. There has already been reference to the zoning of the area Z1 to protect, provide and improve residential amenities. Pleasants Place has become a more established residential area in recent years with townhouse and apartment developments, some carried out since the mid 90's. The wider area west of Pleasants Place is also residential with the adjoining Pleasants St and Synge St being conservation areas and occupied by protected structures.
- 7.5.6. There is an existing permission, yet to be implemented, for a retail unit which extends to Pleasants Place and which would be serviced from the entrance at Pleasants St / Pleasants Place. I am in agreement with the first party that use of the

rear entrance to Pleasants Place by delivery and service vehicles would not, on the face of it, impose more noise, traffic or other impact on the surrounding area than in the case of the permitted use. However, since activities associated with the proposed use, such as clearing up after closing, marshalling storage areas, and potentially servicing the premises from the rear would be likely to take place at more unsocial hours than for the permitted retail outlet, the proposed development would be more likely to impact on residential amenities.

- 7.5.7. I accept that it is not the intention to use the area to the side or rear as a smoking area and that currently the intention is that patrons who wish to smoke will use Camden St. Camden St is a noisy thoroughfare and patrons of Devitts public house on the opposite side of Pleasants St favour Pleasants St as their outdoor drinking and smoking area.
- 7.5.8. In my opinion the concerns of nearby residents are reasonable, I consider that the proposed development would be likely to detract from the residential amenities of the area and that this is a reason to refuse permission.

7.6. Other

- 7.6.1. Third parties state that there is a blurring of the distinction between a licensed restaurant and a bar and that premises operating in contravention of permission are not being addressed by the planning authority; and they expect the same to happen here.
- 7.6.2. There is a difference in planning terms between a licensed restaurant and a public house and the Board can only adjudicate on the application as presented, which is for a licensed restaurant.
- 7.6.3. The first party emphasises that the proposed restaurant will be a high quality sit down restaurant, and testimonials are offered from people living in the vicinity of a restaurant operated by the first party, which is stated to be similar to that proposed. Those people state their satisfaction with the restaurant operation.
- 7.6.4. It is worth noting that the proposed use is use as a licensed restaurant, not a high quality restaurant, since a high quality restaurant is not a distinct class among the use classes. It is also worth noting that the permission will enure to the land, such

that the first party's track record as a restaurant operator does not over ride other considerations.

8.0 Recommendation

- 8.1.1. In the light of the foregoing assessment I recommend that planning permission be refused for the following reasons and considerations.

9.0 Reasons and Considerations

Having regard to the pattern of development in this area, including the existing number of restaurant premises in the vicinity, and to the policies and objectives set out in the Dublin City Development Plan, 2016 -2022, including those set out in section 16.29 to safeguard the vitality and viability of shopping areas in the city and to maintain a suitable mix of retail uses and having regard to the residential zoning of the site, it is considered that the proposed development would contribute to an excessive concentration of restaurant premises in the area, would be contrary to the policies set out in the Development Plan, which are considered to be reasonable, and would seriously injure the amenities of residential property in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Planning Inspector

29 August 2018

Appendices

- 1 Photographs
- 2 Extracts from the Dublin City Development Plan 2016-2022