



An
Bord
Pleanála

Inspector's Report ABP301275-18

Development

Alterations to existing building to incorporate change of use of ground floor use as retail to restaurant use and reallocation of ESB substation from rear of site to Lennox Street elevation.

Location

Corner of Lennox Street and Richmond Street South.

Planning Authority

Dublin City Council.

Planning Authority Reg. Ref.

4638/17.

Applicant

Canal Basin Holdings Limited.

Type of Application

Permission.

Planning Authority Decision

Refuse.

Type of Appeal

First Party -v- Refusal.

Appellant

Canal Basin Holdings Limited.

Observers

Ruth and Robert Stefanuik.

Date of Site Inspection

10th July, 2018.

Inspector

Paul Caprani.

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1.0 Introduction

ABP301275-18 relates to a first party appeal against the decision of Dublin City Council to issue notification to refuse planning permission for a change of use of part of the ground floor level from previously approved retail use to licensed facility at a four-storey overbasement mixed use development on a site which is currently under construction at the corner of Richmond Street South and Lennox Street in Dublin 8. Permission is also sought to relocate the ESB substation from the rear yard to the Lennox Street frontage and to alter the Lennox Street ground floor elevation accordingly. Dublin City Council refused planning permission on the grounds that the proposed change of use retail to restaurant would undermine the zoning objectives of the area by contributing to an overconcentration of restaurant uses and would therefore be contrary to the Z4 zoning objective. The reason for refusal also stated that the proposed changes to the Lennox Street elevation would result in nearly 30% dead frontage along this elevation which would visually detract from the character of the residential streetscape of this area. An observation was also submitted by the resident of No. 14 Lennox Street supporting the decision of the Planning Authority to refuse permission.

2.0 Site Location and Description

- 2.1. The appeal site is located at the corner of Lennox Street and Richmond Street in the south inner city. It is an irregularly shaped site and incorporates an extensive road frontage onto Richmond Street of (c.40 metres) and Lennox Street c.22 metres. A four-storey overbasement construction is currently being developed on site. Richmond Street is an important radial route leading south from the city centre serving Rathmines, Rathgar, Terenure, Templeogue and beyond. Richmond Street is characterised on the whole by two to four-storey buildings on narrow plots dating from the late 18th and early 19th century. Most of the buildings to the south of the site on Richmond Street accommodate commercial uses, being a mixture of retail, restaurant and office use with some residential development overhead. It appears that much of the upper floors along the buildings of Richmond Street are also vacant.

To the immediate north of the site the buildings fronting onto the western side of Richmond Street comprise of more formal four-storey overbasement late Georgian houses. These buildings are currently unoccupied. Directly opposite the site, on the eastern side of Richmond Street, lands are undeveloped. The eastern side of Richmond Street directly opposite the site has a rather rundown and shabby appearance with significant levels of dereliction.

- 2.2. Lennox Street which runs in a westerly direction from Richmond Street is almost exclusively residential and comprises of two-storey overbasement mid-19th century houses. These houses are designated as protected structures in the City Development Plan. A traditional fish and chip shop is located on the corner of Lennox Street and Richmond Street directly to the south of the subject site.

3.0 Proposed Development

- 3.1. Planning permission was granted under Reg. Ref. 3015/18 (as amended by Reg. Ref. 3958/17) for a mixed use development comprising of a four-storey overbasement building accommodating one retail unit at ground floor level with retail storage and a gym at basement level and office accommodation on the three levels above ground floor. The latter application also sought alterations to the external elevations.
- 3.2. Under the current proposal it is argued that there is little demand for a retail unit on the site at this location. It is therefore proposed to incorporate a high-end restaurant at ground floor level. Furthermore, as part of the original 2015 application (Reg. Ref. 3015/15) it was proposed to incorporate an ESB substation to the rear of the premises. However, the ESB are required to have their substations fronting onto a public thoroughfare so as to be accessible on a 24-hour basis. On foot of consultations with the ESB, the current application seeks permission to relocate the substation at the western side of the site adjacent to the houses at Lennox Street.
- 3.3. The south-eastern corner of the building facing onto the junction of Richmond Street and Lennox Street will incorporate the foyer/reception area for the office development overhead. The proposed restaurant use will occupy the area of the previous retail unit which has frontage onto Richmond Street only. The changes and

layout are indicated on Drawing P-111 (approved ground floor plan) and C.USE 101 (proposed ground floor plan).

4.0 **Planning Authority's Decision**

4.1. **Decision**

4.1.1. On 22nd February, 2018 Dublin City Council issued notification to refuse planning permission for the following single reason.

1. *The proposed change of use from retail to restaurant, given the wholesale nature of the use, would represent a retrograde step from the original approved retail use, undermine the zoning objective of the area by contributing to an overconcentration of restaurant uses and would reduce the diversity of uses required for sustainable communities in these areas. The proposal therefore would be contrary to the Z4 zoning objective of the area which aims to "provide for improved mixed service facilities". In addition, the proposed changes to the Lennox Street elevation, resulting in nearly 30% of dead frontage along this elevation would visually detract from the new building and be out of character with the residential streetscape of this conservation area. The proposal therefore would set an undesirable precedent for similar developments and would be contrary to the proper planning and sustainable development of the area.*

4.2. **Documentation Submitted with the Application**

4.2.1. The application was accompanied by copies of the public notices, associated drawings and planning fee and a town planning statement by Manahan Planners (not on file) and a design report from Mahoney Architecture (not on file).

4.3. **Observations**

4.3.1. A number of letters of objection were submitted arguing that the proposal would have an unacceptable impact on the protected structures on Lennox Street in terms of visual impact, parking arrangements and late-night noise.

4.4. External Reports

- 4.4.1. A submission from Transport Infrastructure Ireland notes that the proposed development falls under an area set out in the Section 49 Levy Scheme Luas Cross City (St. Stephen's Green to Broombridge line). If the above application is successful and not exempt, it is requested that a Section 49 Luas Cross City Development Scheme Levy be applied in this instance.

4.5. Internal Reports

- 4.5.1. A report from the Roads and Traffic Planning Division states that there is no objection to the proposed development subject to standard conditions.
- 4.5.2. A report from the Engineering Department Drainage Division states that there is no objection to the proposed development subject to standard conditions.
- 4.5.3. The **Planners Report** sets out details of the proposal and the planning history as it relates to the site. It notes the observations on file including the various third-party objections. The assessment goes on to highlight the relevant provisions of the development plan before assessing the proposal. It is noted that limited information on the restaurant has been submitted with no detail of the type of restaurant proposed, opening hours, deliveries etc. It notes that there are a number of restaurants already operating in the immediate area and there are serious concerns in relation to the overproliferation of this particular use. It is noted that the subject site is located within a transitional area and the Planning Authority is mindful of avoiding developments which would be detrimental to the amenities of the more environmentally sensitive zones. It is argued that a change of use from retail to restaurant in this context represents a retrograde step from the originally approved use at ground floor level and undermines the zoning objective of the area by contributing to an overconcentration of restaurant uses. The overall size of the new licensed restaurant is likely to attract a large number of customers who have potentially significant noise/nuisance impacts on sensitive receptors.
- 4.5.4. With regard to the relocation of the ESB substation, it is stated that no justification for such a relocation has been submitted apart from "ESB requirements". The drawings indicate an aluminium screen to the front door and switchroom is to extend over 6

metres along this frontage. This is not considered acceptable. For the above reasons it is recommended that planning permission be refused for the development.

5.0 Planning History

5.1. Partial details of the planning history are contained on file. An application for planning permission sought a variation to an existing planning permission granted under Reg. Ref. 3015/15 which sought amendments to the parent permission granted to include:

- Redesigned external elevations to the upper floors to include more appropriate retail frontage at ground floor level.
- Moving the cycle parking from basement to the rear yard and to provide a revised layout to previously approved 8 car parking spaces.
- Rationalisation of the internal spaces including access and circulation space resulting in an increase in the overall floor area from 3,739 square metres to 3,815 square metres.

In its decision dated 23rd November, 2017 Dublin City Council granted planning permission subject to 12 conditions.

5.2. Also contained on file is a single page report containing pre-application consultation on what appears to be the original application for the site for four-storey office building with retail at ground floor level and basement parking. This pre-application consultation is stamped 6th November, 2014.

6.0 Grounds of Appeal

6.1. The decision of Dublin City Council to issue notification to refuse planning permission was appealed by Manahan Planners, Town Planning Consultants. The grounds of appeal set out the site context together with the proposed development, planning history, and planning policy relating to the site. It is argued that the proposed development is fully consistent with the zoning objectives as they relate to the site. It is also argued that the proposed development complies with Dublin City Council's policies in relation to restaurants and that the proposal would make a positive contribution to the area.

- 6.2. The grounds of appeal go on to set out details of the assessment set out in the local authority planner's report. It is argued that contrary to what is stated in the planning assessment, there are no restaurants of similar size or of a similar high-grade to that proposed in the vicinity of the site. It is argued that the very size of this unit allows for a different product to be introduced into the area. What is proposed in this instance is a sit-down high-quality restaurant similar to "Angelinas" in Percy Place and "Sophies" in Harcourt Street.
- 6.3. Notwithstanding the points made in the planner's officer's report, it is stated that the relocation of the ESB substation is essential. The applicant has addressed this issue by providing a redesign of the elevation of the ESB substation fronting onto Lennox Street in order to address the concerns of the Planning Authority. The applicant is committed to providing a high-quality elevation on both frontages onto Richmond Street and Lennox Street.
- 6.4. It is argued that a high-quality restaurant such as that proposed will not give rise to noise. To this end a report was submitted from an acoustic consultant which suggests that the predicted noise, including the air handling unit and extractor fans will not give rise to significant noise or odour issues. Also attached are signed letters from a number of residents that live in proximity or above similar type restaurants operated by the applicants (specific reference is made to Angelina's restaurant at Percy Place), which state that the restaurant in question does not give rise to any amenity issues for residents living in the area.
- 6.5. The appellants have also carried out a land use survey along Richmond Street in the vicinity of the site (details of which are contained within the grounds of appeal). The land use survey, it is argued clarifies the mixed use nature of the area which indicates that there is a mix of retail, restaurant, vacant and derelict sites in the vicinity. It is argued that the number of food outlets is limited and is largely restricted to take-aways and cafes. It is argued that this part of the city has missed out on investment and renewal in recent decades and a high-quality restaurant at ground floor level is a key part of this process. While it is appreciated that the Planning Authority has concerns about the proliferation of restaurant uses replacing retail uses, this concern primarily relates to Category 1 and 2 designated shopping streets around the city centre. This designation is not applicable to the site in question as it is not located within a Category 1 or Category 2 shopping street.

6.6. With regard to the ESB substation, it is stated that the applicant has no choice but to remove the substation from its originally proposed position. An email from the ESB confirming this, is contained within the grounds of appeal. Revised drawings are submitted with the grounds of appeal which reduces the blank frontage arising from the ESB substation onto Lennox Street. The Lennox Street frontage has been reconfigured to allow for a new entrance serving the gym at basement level, the substation frontage has been reduced from over 6 metres to 3.5 metres and it is proposed to incorporate a higher quality finish compared to the standard issue substation doors. Details of the revision are contained in the appeal submission.

7.0 Appeal Responses

It appears that Dublin City Council have not submitted a response to the grounds of appeal.

8.0 Observations

8.1. An observation was submitted by Ruth and Robert Stefanuik. It is argued that the proposed change of use to a licensed restaurant adjacent to a protected structure is wholly inappropriate and would set a serious precedent for other sites in the area of Richmond Street South which are ripe for development. The observer does not want to see Lennox Street turned into a side street of an area similar to Temple Bar. The proposal does not meet Dublin City Council's objective to manage change in a sensitive and creative manner. Lennox Street has already been adversely affected by the level of construction works which are occurring along the street. A residential parking permit system in place and the amount of commercial development being proposed in the area is exacerbating demand for parking in the area. The development does not provide sufficient on-site parking to accommodate the needs of a restaurant. The take-away restaurants in the vicinity including the Aprile Take-Away restaurant directly opposite the site to the south generates a large amount of service and delivery vehicles. Deliveries to the proposed restaurant would impact on traffic flow. Traffic generated by the proposed development would undermine the works undertaken by Dublin City Council in respect of traffic calming measures in the area.

- 8.2. There is no need for any more restaurants in the area. There are already a number of hotels and it is understood that there is an application to develop a Wetherspoons Pub in the area. The proposal is not sensitive to Lennox Street and its environs.
- 8.3. The noise emanating from a licensed restaurant would impact negatively on the lives and peace of the residents. If a development of this nature is approved on Lennox Street, the residential area/protected structures would be overwhelmed by the new city-scape.
- 8.4. It is noted that there are a large number of derelict sites in the vicinity and the City Council need to ensure that a consistent approach is taken to planning decisions to avoid an ad-hoc change within the city which would result in an unacceptable change in character.

9.0 Development Plan Provision

- 9.1. The subject site is governed by the zoning objective Z4 “to provide for and improve mixed serviced facilities”.
- 9.2. Section 16.29 of the development plan specifically relates to restaurants. The plan notes the positive contribution of cafes and restaurant uses and the clusters of such uses to the vitality of the city. In considering applications for restaurants, the City Council will take 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 and frequency of restaurants and other retail services in the area (where our proposal relates to Category 1 or 2 shopping street) as defined in the city centre retail core (principle shopping streets in Chapter 7 and Appendix 3).

The Board will note that the subject site appears to be located outside the designated city centre retail core and therefore is not located within a Category 1 or 2 Principle Shopping Street.

- The need to safeguard the vitality and viability of shopping areas in the city and to maintain a suitable mix of retail uses.

10.0 Planning Assessment

I have read the entire contents of the file, visited the site and its surrounding and have had particular regard to the Planning Authority's decision, the arguments set out in the first party appeal and the arguments set out in the observations submitted. I consider the critical issues to determine the current application and appeal before the Board are as follows:

- The Suitability of the Proposed Change of Use from Retail to Restaurant Use.
- The Impact on Amenity in terms of Parking, Noise and Odour.
- The Relocation of the ESB Substation.
- Supplementary Development Contribution Issues for Luas Line

10.1. The Suitability of the Proposed Change of Use from Retail to Restaurant Use

10.1.1. It appears that one of the main reasons for the Planning Authority to refuse planning permission for the proposed change of use was predicated on concerns that the proposal would exacerbate and accentuate the proliferation of restaurant/café/take-away uses along this section of Richmond Street. Richmond Street South, while being a major radial route in and out of the city, is characterised by a poor and weak public realm with high levels of vacancy and high levels of dereliction. While I appreciate the Planning Authority's concerns that a further concentration of café/take-away uses would do little to add to the character of the area, I am also cognisant of the appellant's contention that what is proposed in this instance is a high-quality, high-end restaurant use which should be considered in a different light to that associated with a café/take-away facility which could contribute to a further diminution of the public realm and character of the area.

10.1.2. The use of a premises as a restaurant is a permissible use under the Z4 land use zoning objective. The size of the ground floor in the case of the current application is generous and over 500 square metres. The size of the restaurant in my view is not conducive to a take-away/café facility and is more akin to a larger scale high end restaurant which in my view would contribute to improving the character of the area.

10.1.3. While concerns are expressed that the proposed development could adversely impact on the setting and ambience associated with the protected structures on Lennox Street, it should be borne in mind that the subject site is zoned for a commercial use such as that proposed. I reiterate that the restaurant use is permitted in principle. It would be inappropriate in my view to not permit a commercial use such as a restaurant use on the subject site on the grounds that it is proximate to the residential area accommodating protected structures.

10.1.4. While retail use may be considered a more compatible use in terms of protecting adjoining residential amenities, I consider what is proposed in this instance, a sit-down restaurant facility, will enhance the character of the area rather than further diminish it, as suggested in the planner's report and the observations submitted. For these reasons I consider that the Board should consider the principle of restaurant use to be acceptable on the subject site.

10.2. **The Impact on Amenity in terms of Parking, Noise and Odour.**

10.2.1. Concerns are expressed, particularly in the observation submitted, that the proposed development would have an unacceptable impact on amenity. Concerns were expressed in relation to parking overspill into residential areas, potential noise due to activity, particularly late-night activity associated with development. Each of these issues are dealt with in turn below.

10.2.2. In terms of parking provision, in Parking Area 2 where the site is located, retail use requires one space per 275 square metres GFA. In terms of restaurant, cafes and take-aways, one space is required per 150 square metres of seating area. I estimate the seating area in the case of the proposed restaurant (see drawing C.Use 101) amounts to approximately 390 square metres. This would require between two and three car parking spaces in accordance with the development plan requirements. The total floor area of the retail unit was c.550 square metres. This would require two car parking spaces in accordance with Table 16.1 of the Development Plan. The proposed change of use therefore may require the provision of one additional car parking space in order to comply with the strict requirements set out in the development plan in respect of car parking provision. Thus, the restaurant use would result in the requirement of an additional one car parking space over and above that associated with the retail use. The impact in terms of car parking spaces, and

potential car parking overspill is therefore minimal and not material in terms of the overall potential impact. It would be inappropriate in my view, to refuse planning permission on these grounds.

10.2.3. Furthermore, I do not consider as suggested in the observation that the proposed change of use from retail to restaurant would result in significantly higher levels of car parking demand. In fact, a licensed restaurant use is more likely to attract patrons using public transport, taxi's and walking than a retail use on the subject site. I also consider that the proposed restaurant use is likely to result in a similar amount of servicing and delivery vehicles with that associated with a retail use. The subject site is zoned for commercial development and commercial development in itself inevitably gives rise to levels of service and delivery vehicles.

10.2.4. With regard to noise and odour, it should be borne in mind that office use as opposed to residential use, is proposed to be developed over ground floor level. With the incorporation of appropriate air handling and air extract facilities at the top of the building, the proposal will result in minimal levels of noise and odour for surrounding residential areas. The applicant points out in the grounds of appeal that the restaurant operating on site will not constitute a fast-food facility and as such the odour associated with fast-food/take-away facilities will be much less.

10.2.5. With regard to noise generated by late night congregation of people outside the premises, I would again refer to the fact that what is proposed in this instance is a high-end seated restaurant use, as opposed to a take-away/fast-food premises, and as such the proposal in my opinion will not exacerbate or give rise to late-night anti-social behaviour or excessive noise as suggested in the observations submitted. The Board might consider it appropriate to restrict the hours of operation in order to safeguard amenities of adjoining residents particularly late at night (see condition no. 2 below). The Board will also note that the entrance to the restaurant is not located on Lennox Street but is located on Richmond Street South an area which is zoned for commercial development.

10.3. **The Relocation of the ESB Substation**

10.3.1. According to the grounds, of appeal it is imperative in order to comply with ESB protocols and requirements, that the ESB substation be located on a public thoroughfare as opposed to a location which requires access through privately

owned land. It would seem reasonable in my view that a public utility which requires maintenance and servicing could and should be accessed from public lands as opposed to requiring access over private lands. While the Planning Authority express concerns that the ESB substation would give rise to significant and blank frontage along Lennox Street, I note the revised drawings submitted by the applicant which indicates that the ESB substation is to be relocated further away from the houses to the west on Lennox Street and will incorporate more active frontage with the extension of glazing on the ground elevation. These alterations are in my view acceptable and will result in the reduction of blank frontage along the Lennox Street elevation (see drawing P11111D – Appeal). Any issues with regard to the provision of blank frontage must be balanced against the requirements of the ESB for service a very important public utility. It should also be kept in mind the entire site constituted blank frontage onto both Lennox Street and Richmond Street south until quite recently.

10.4. **Supplementary Development Contribution**

A submission was made by Transport Infrastructure Ireland on the original application stating that the subject site is located within a catchment area for the Section 49 Supplementary Contribution Scheme for the Luas Cross City line (St. Stephen's Green to Broombridge line). I have consulted the said scheme and the subject site is located within the catchment area of the scheme. However, I note under Section 11 of the Scheme that the following categories of development will be exempted from the requirement to pay a development contribution scheme.

- *Permissions for a change of use from one commercial/retail use to another are exempt.*

This exemption would apply in this instance, and as such I do not consider that the Section 49 Supplementary Scheme is applicable.

11.0 **Appropriate Assessment**

Having regard to the nature and scale of the proposed development and nature of the receiving environment, together with the proximity 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 a European site.

12.0 Conclusions and Recommendation

Arising from my assessment above I consider the proposed relocation of the ESB substation to Lennox Street together with the proposed change of use from retail to restaurant use on the subject site to be acceptable and I therefore recommend that the decision of the Planning Authority be overturned and that planning permission be granted for the proposed alterations sought.

13.0 Reasons and Considerations

It is considered that the change of use from retail to restaurant use together with the relocation of the ESB substation from the rear yard to the Lennox Street frontage subject to conditions below, would not seriously injure the residential amenities of the area, would be fully in accordance with the Z4 land use objectives relating to the site, would not be prejudicial to public health and would generally be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

14.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application to the planning authority as amended by the drawings received by An Bord Pleanála on 22nd day of March 2018, 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 the 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 proposed restaurant shall not operate outside the hours of 8 a.m. to 10 p.m.

Reason: In order to safeguard the amenities of adjoining residential dwellings.

3. Details of all external shopfronts and signage shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interest of visual amenity.

4. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

5. Details of the proposed external finishes of the ESB substation on Lennox Street shall be agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interest of visual amenity.

6. Site development and building works shall be carried out only between the hours of 7 a.m. to 6 p.m. Monday to Friday inclusive, between 8 a.m. and 2 p.m. on Saturdays and not at all on Sundays or Bank Holidays. Deviations 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 and property in the vicinity.

7. The site development and construction works shall be carried out in such a manner to ensure that the adjoining streets are kept clear of debris, soil and other material and if the need arises for cleaning works to be carried out on the adjoining public road, the said cleaning works shall be carried out at the developer's expense.

Reason: To ensure that the adjoining roadways are kept in a clean and safe condition during the construction works and in the interest of order development.

Paul Caprani,
Senior Planning Inspector.

08th August, 2018.