



An
Bord
Pleanála

Inspector's Report ABP-302531-18

Development

RETENTION & PERMISSION: Part change of use from retail to food production kitchen, upgraded shop front with signage. Retain admin/office area. New timber & glass shopfront. Retention of translucent polycarbonate roof in driveway with associated yard work which is connected to Suir Rd with rolling shutter doors.

Location

47, Suir Road, Dublin 8

Planning Authority

Dublin City Council South

Planning Authority Reg. Ref.

4363/17

Applicant(s)

Bo & Wei Ltd.

Type of Application

Permission.

Planning Authority Decision

Split Decision

Type of Appeal

Third Party

Appellant(s)

James O Connor.

Date of Site Inspection

12th November 2018.

Inspector

Bríd Maxwell

1.0 Site Location and Description

1.1 The appeal relates to a site at 47 Suir Road, Dublin 8. The site has a stated area of 258m² and is occupied by a commercial unit, one of a small number of small scale retail / commercial units, bordered by residential dwellings within a predominantly residential area. The site is irregular in shape incorporating the single storey building no 47 fronting on to Suir Road and extending with a second storey to the rear and elongating (at single storey level) to the rear of adjoining units 45-51 Suir Road. The site also wraps around no 45 Suir Road incorporating a gated driveway access to Suir Road. Adjoining to the south is The Paddocks a private gated residential development, those immediately adjacent to the appeal site comprise two storey terraced properties backing onto Suir Road.

2.0 Proposed Development

2.1. The proposal as set out in public notices involves permission for part change of use from retail to food production kitchen to the rear including minor internal alterations, a proposed upgraded shopfront, new fascia signage, first floor front window alterations. Permission is also sought to retain translucent polycarbonate roof with associated yard work in laneway / driveway.

2.2. In response to the request for additional information, the first party outlined the detailed breakdown of the proposed areas of the building. The front of the unit retail area of 27.3m² is intended for the sale of Asian food products including sauces, noodles and sushi. These products will be prepared on site in the kitchen area to the rear (68.7m²). The applicant operates a number of Asian Restaurants in Dublin under the brand *Musashi Noodle and Sushi Bar*. It is intended that the kitchen on the Suir Road property will prepare food for use in the various restaurants. A storage area of 33.9m² is proposed between the kitchen and retail space. The driveway to the side of the property is proposed for use to facilitate off street parking for goods in and distribution. The cold room to the rear of the property of 21m² with staff facilities and locker room to the rear and at first floor level.

2.3. It is intended that operation of the unit food production and retail shop will be between 10am and 10pm, 7 days a week. Bin storage area is accommodated in the yard / drive area with translucent polycarbonate roof.

3.0 Planning Authority Decision

3.1. Decision

By order dated 16th August Dublin City Council issued notification of a split decision which was to **grant** permission for retail unit with ancillary storage area to the rear, staff toilet / locker area and storage room measuring 6.5msq., first floor admin office use, replacement shopfront to accommodate new traditional timber and glass shopfront and signage, translucent polycarbonate roof in laneway / driveway with associated yard work and rolling shutter doors,

and to **refuse** permission for part change of se from retail to food production kitchen to the rear including minor internal alteration and 2 cold storage rooms measuring 13.1sq.m and 6.5sq.m respectively.

The permission was subject to a number of conditions including

Condition 2 Signage to be agreed.

Condition 4. Revised plans documenting the areas permitted by the decision to be submitted for written consent within 8 weeks.

Condition 5. Opening hours shall not extend beyond 9am to 7pm.

The refusal for the Part change of use from retail to food production kitchen to the rear including minor internal alterations and 2 cold storage rooms was for the following reason:

“Having regard to the nature and extent of the proposed development, located on lands zoned to protect and enhance residential amenities of the area, it is considered that development of a commercial food preparation kitchen and associated works would be contrary to the preservation of these residential amenities and would therefore be contrary to the provisions of the City Development Plan 2016-2022 and to the proper planning and sustainable development of the area.”

3.2. Planning Authority Reports

3.2.1. Planning Reports

Initial Planner's report notes the scale of the proposed production area and seeks rationale for a food production area of this size. Details of hours of operation of retail unit and food preparation area. Precise details of ventilation / waste.

Second Planner's report considered the scale of food production area to be inappropriate in a residential area. Provision of a retail unit with ancillary storage is considered acceptable. Food preparation as proposed would adversely impact the residential amenities of the area.

3.2.2. Other Technical Reports

Engineering Department Drainage Division indicated no objection subject to compliance with Greater Dublin Regional Code of Practice for Drainage Works Version 6.0.

3.3. Prescribed Bodies

N/A

3.4. Third Party Observations

A number of third party submissions on behalf of local residents object to the development citing concerns regarding traffic and parking issues, litter, noise, anti-social behaviour and disturbance. Use considered inappropriate in a residential area. Storage tank and roller shutters out of proportion and inappropriate. Nature of business unclear.

4.0 Planning History

4.1 No planning history on the site.

5.0 Policy Context

5.1. Development Plan

5.1.1 The Dublin City Development Plan 2011-2017 refers.

The site is zoned Z1 “To protect, provide and improve residential amenities”.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 The third party appeal is submitted by James O Connor owner and resident of 45 The Paddocks which adjoins to the south of the appeal site. The appeal includes a number of annotated photographs which seek to elucidate the issues raised.

Grounds of appeal are summarised as follows:

- Significant noise from fans and motors connected to two cold storage rooms
- Translucent polycarbonate structure built in 2017 without permission along the dividing garden wall directs odour to appellant’s dwelling and blocks light.
- Commercial industrial waste management should not be allowed in a mature residential area.
- Condition 7B Vii requires adequate ventilation of waste storage areas.
- Significant negative impact on residential amenity arising from waste storage and intensity of operation.

6.2. Applicant Response

6.2.1 The First Party did not respond to the appeal.

6.3. Planning Authority Response

6.3.1 The Planning Authority did not respond to the appeal.

7.0 Assessment

7.1. From my assessment of the file and inspection of the site, it is my view that the key issues for this appeal relate to the appropriateness of the proposed change of use, impact on residential and other amenities and the proper planning and sustainable development of the area. On the matter of planning policy, as outlined above the site is within a predominantly residential area and the zoning objective pertaining is Z1 “To protect, provide and improve residential amenities”. The established retail use is therefore a non-conforming use. The development plan provides at 14.5 that when extensions to or improvements of premises accommodating such uses are proposed, each shall be considered on their merits, and permission may be granted where the proposed development does not adversely affect the amenities of premises in the vicinity and does not prejudice the proper planning and sustainable development of the area.

7.2. There is no planning history on the appeal site and the structures on the site have clearly evolved in a somewhat haphazard fashion. Application details indicate that the former use of the premises was as a newsagent. The proposed development has a number of elements involving permission for part change of use from the established retail use to a retail use with a substantial food production facility to the rear. In terms of floor area the proposed breakdown as clarified within the response to additional information request is as follows:

Retail Area 27.3 m²

Retail Storage 33.9m²

Kitchen 58.7m²

Kitchen Storage /Cold Room 26.1 m²

Staff toilet / locker room 21.5m².

Closet 0.9m²

7.3 The proposal as set out would clearly result in a significant change and intensification of use on the site and the question arising is whether such use is appropriate in a residential area. I note the proximity of the premises to the established dwelling at no 45 The Paddocks (the residence of the appellant) and I consider that the proposed use as a commercial kitchen with significant implications in terms of ventilation, odour, noise, waste storage and other disturbance would

clearly adversely affect the established residential amenity in terms of the intensity of use proposed.

7.4 I note that the planning authority was also of this view resulting in a split decision granting permission for amendments to the retail area however refusing permission for the change of use to food production kitchen. It is my view however that the decision of the local authority results in a significant departure from the application as made in that it radically alters the nature of the development to which the application relates. The result clearly gives rise to uncertainty particularly for the third party appellant with regard to the nature of permitted use on the site. I note paragraph 7.7 of the Development Management Guidelines for Planning Authorities, issued by the Department of the Environment Heritage and Local Government, June 2007 where it is clearly stated that

“A condition that radically alters the nature of the development to which the application relates will usually be unacceptable. For example, a condition should not require the omission of a use which forms an essential part of a proposed development, or a complete re-design of a development. If there is a fundamental objection to a significant part of a development proposal, and this cannot fairly be dealt with in isolation from the rest of the proposal, the proper course is to refuse permission for the whole.”

I consider that while the amendments to the existing retail unit as permitted in the decision of the local authority are acceptable, in the context of the current application these amendments are intrinsically linked to the proposed change of use. Therefore, I conclude that a refusal is warranted in the current case.

7.4 As regards Appropriate Assessment having regard to the nature and scale of the proposed development and the nature of the receiving environment, and proximity to the nearest European site, no appropriate assessment issues arise and it is considered that 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.

7.5 On the issue of Environmental Impact Assessment screening having regard to the limited nature and scale of the development, nature of the receiving environment no likelihood of significant effects on the environment arising from the development. The need for environmental impact assessment can, therefore, be excluded.

8.0 Reasons and Considerations

Having regard to the location of the site within a predominantly residential area and to which the zoning objective Z1 “To protect, provide and improve residential amenities” applies, a zoning objective that is considered reasonable and having regard to the nature and scale of the proposed development, the potential for negative impact on the residential amenities of adjacent dwellings and the amenities of the area is significant. It is considered that the proposed development would therefore be contrary to the objectives of the plan and the zoning designation and would thus materially contravene the provisions of the plan. The proposed development would therefore, be contrary to the proper planning and sustainable development of the area.

Bríd Maxwell
Planning Inspector

4th December 2018