



An
Bord
Pleanála

Inspector's Report ABP-302794-18

Development	Change of use of the Townhall, accessed from Windmill Lane, from 'office' use to office and corporate meeting & events space
Location	The Townhall, 1 Windmill Lane, Dublin 2
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	3629/18
Applicant(s)	Hibernia REIT Holding Company Ltd.
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Shannon Guzman & others.
Observer(s)	None.
Date of Site Inspection	09 th of January 2019.
Inspector	Karen Hamilton

1.0 Site Location and Description

- 1.1. The site is located to the south of Sir John Rogerson's Quay within the Dublin Docklands area, Dublin 2. The site is bound to the north by Windmill Lane, to the south by Hanover Street East, and to the west by Creighton Street. The building is occupied by a mix and range of businesses on the upper floors and the remainder of the building is designated for residential.
- 1.2. The subject application relates to an area on the ground floor accessed from Windmill Lane, previously known as the "Townhall" which is currently used as a reception area/ foyer with a café and associated seating area occupying approximately half of the space.

2.0 Proposed Development

- 2.1. The proposed development would comprise of the following:
 - Change of use of the "Townhall" (412m²) of internal space at ground level, from 'office' use to office and corporate meeting and events space for use of the Hibernia REIT Holding Company Limited tenants and other businesses.

3.0 Planning Authority Decision

3.1. Decision

Decision to grant permission subject to 6 no conditions of which the following are of note:

C 2- Restrictions on the acceptable noise levels during entertainment.

C 3- A two year time limit on the permission unless a separate application has been granted so as the impact of proposal can be reviewed.

C 4- The hours of operation shall be restricted from 7am to 11 pm Monday to Saturday.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the area planner reflects the decision to grant permission and refers to the following:

- The management of the bookings by the applicant,
- The submission from the residents of nearby properties,
- The previous complaints received by the Environmental Health Division and the,
- Compliance with the development plan zoning.

3.2.2. Other Technical Reports

Drainage Division- No objection subject to conditions.

Environmental Health- No objection subject to conditions.

3.3. **Prescribed Bodies**

Transport Infrastructure Ireland (TII) - Recommend Section 49 levies.

3.4. **Third Party Observations**

Three submissions were received, one was signed by multiple persons, by residents in the vicinity of the site and the issues raised are similar to those issues in the grounds of appeal and also refer to the following:

- Hibernia REIT already have planning permission and are in the process of completing a pub/ restaurant on the site at the Old Dockers Pub.
- Residents are distressed that a corporate pub will be located on their doorstep.
- There are previous breaches of permission on the site.

4.0 **Planning History**

PL29S.246877 (Reg. Ref 2686/16)

Permission granted for amendments to parent permission Reg Ref 4071/09 to include the amalgamation of 2 no permitted retail units at ground floor level and

provide 1 no retail unit and minor increase in size of the unit by extending the façade to the west towards Creighton Street.

Reg. Ref 4323/15

Permission granted for minor amendments to Reg Ref 4071/09 for a change of use of part of the permitted ground floor office space to the eastern end of Windmill Lane to retail use and the subdivision to create a retail unit, and associated amendments to the Windmill Lane (south) elevation to create a shop front and insertion of windows and doors.

PL29S.245667 (Reg Ref 3055/15)

Permission granted for minor amendments to the previous permissions (Reg Ref 4071/09 & Reg Ref 2270/15) in relation to a substation, reduction in the size of a retail unit along Creighton Street and reduction in the size of the residential floor space.

Reg Ref 2270/15

Permission granted for minor amendments to the interior and exterior of the mixed use development.

PL29S.237295 (Reg Ref 4071/09)

Permission granted for the demolition of an existing warehouse building, the retention of No 19 Creighton Street and the development of a mixed use development consisting of a 4 to 6 storey office building with ground floor café, a 4-5 storey residential building with retail space at ground floor providing 15 no. units.

5.0 Policy Context

5.1. Dublin City Development Plan 2016-2022.

The site is zoned as Z5, City Centre, where is it an objective *“To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity”*

Mix of Uses in Z5

- Conference centre, public house and nightclub, are all permissible uses.

5.2. Natural Heritage Designations

None relevant to the application.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are submitted by a number of residents in the vicinity of the site and the issues raised are summarised below:

- The existing building is located in an area which is predominantly residential.
- Any permitted change of use will be in breach of the Environmental Protection Act 1992 and the Environmental Protection Agency Act (Noise) Regulations 1994.
- The zoning is Z5, and not zoned for the proposed development.
- The building is not licenced and not sound proofed for events consisting of music and to date two illegal activities have been held.
- The applicant has non-compliance issues with short term letting for residential units granted in Reg Ref 4071/09 and issues with vents in Reg Ref 3629/16.
- Deliveries to the site are being undertaken outside the specified times in Condition No 8 Reg Ref 2686/16.
- The existing development already causes significant disturbance from the noise on the site from both construction and operation.
- The restriction on the use of the site from 7am to 11pm does not take into consideration the time spent setting up and removing the function facilities including catering etc.
- The pre application discussion indicates that the decision to grant was already undertaken by the council.

Additional information submitted with the grounds of appeal.

- The submission was accompanied by three enforcement notices from the council in relation to an out-of-hours drop box, the use of apartments for short term letting and the removal of a stainless steel vent extract air duct.
- Correspondence between the residents and the council on issues radiating from the use of the site and compliance with permission is included.
- An extract from government web page, 2018, in relation to a function within the proposed building is included.

6.2. Applicant Response

An agent on behalf of the applicant has submitted a response to the grounds of appeal and the issues raised are summarised below under specific headings:

Background

- A description of the proposed development and planning permission on the site is included.

Development Plan Zoning and Use

- The proposed development does not include any physical works and complies with the Z5 zoning on the site for mixed use development.
- No additional fire certification is required.

Previous cases

- The previous complaints and enforcement activity is noted and each of these issues are being dealt with by the Local Authority.
- The enforcement matters raised are separate to the activity undertaken in the Townhall.
- The two previous functions undertaken related to the opening of the building and a new tenant and where not a matter for planning.
- There is a dedicated Enforcement Officer operating with the Docklands Area which the applicant fully co-operates with.

Noise

- The primary concern raised by the appellant is noise.

- The applicant is fully aware of the location of the residents and it is anticipated that the proposed development will be associated with events such as seminars and co-operate events during the day.
- The applicant will have discretion for all bookings and the business or company will collaborate with staff to ensure the operation is restricted between 7am and 11pm.
- The applicant is fully committed to complying with the condition no 2 relating to the restriction of noise levels.
- The applicant has sought the advice of a professional acoustic noise consultant to analyses the typical noise levels.
- The restriction on the 2 year (condition no 3) is acceptable.

Events

- The applicant intends to contact residents and provide clarity around their issues raised including the nature of events raised.
- In relation to the location of the site in the city centre, the proposal would not cause any additional traffic generation or negative impact on the adjoining residential amenity.

Pre-application Enquiry

- The local authority advised on the proposal in regard to the development plan policies and the Z5 zoning.

Temporary Permission

- It is accepted that the 2 year period will allow for the monitoring of the proposed use and the impact on the adjoining residential amenity.
- The temporary status of the permission does not contradict the zoning on the site, as stated by the third party.
- The imposition of a temporary permission is acceptable under the provisions of Section 41 of the Development Act “*not less than 2 years*”.

6.3. **Planning Authority Response**

None received.

6.4. **Observations**

None received.

6.5. **Further Responses**

A further response on the applicant's submission was received from the appellant and the issues raised are summarised below:

- The submission was extremely repetitive.
- The applicant did not address the issue of alcohol consumption at the events.
- It appears through the submission, the applicant is speaking on behalf of Dublin City Council.
- The use of the Townhall for events should have had permission prior to any events.
- The appellant's are aware of the conditions included in all previous permissions.
- Attention is drawn to the planner's report, page 7 section 6.5 which states that "The proposed event space use is not strictly provided for under the list of permissible uses listed under Z5".
- The applicant states that the event space will be for private hire by external tenants and not the wider community which contradicts the application.
- The applicant is not a specialist to determine when a fire certificate is needed and not qualified to state what is in the best interest for Creighton Street.
- The applicant acknowledged previous unauthorised works and there is concern in relation to any development on the site, having regard to previous experience. There is a history of non-compliance.
- The proposal will remain a noise nuisance.

- There has been no engagement with the appellant in previous to any unauthorised events.
- A restriction of two years leaves the appellants to feel like an experiment and the residents are conscious that the owners may change at any time

7.0 **Assessment**

7.1. The issues of the appeal can be dealt with under the following headings:

- Principle of Development
- Impact on Residential Amenity
- Other

Principle of Development

7.2. The proposed development includes the change of use of the ground floor of an existing commercial building from office to a co-operate meeting and events space. The ground floor area is currently used as part reception area, part café associated with an office development permitted originally under PL29S.237295 (Reg Ref 4071/09) and subject to other minor amendments. The café is currently open for access to the general public and there were no conditions on any previous permissions restricted the use to the commercial use on the site.

7.3. The site is zoned for Z5, city centre development, in the current Development Plan where it is an objective to sustain life within the centre of the city through intensive mixed-use development. Whilst “co-operate meeting and events space” is not specifically detailed in Section 14.8.5 of the development plan, permissible uses including conference centre, public house and nightclub are permitted which I consider are uses with similar activities to the proposed development.

7.4. Therefore, having regard to the planning history and the city centre zoning on the site, subject to complying with other planning requirements as addressed in the following sections, the principle of the proposal is acceptable.

Impact on Residential Amenity

7.5. The subject site is located to the east of Creighton Street, where there is a row of two storey terrace dwellings along the opposite side of the road. The entrance into

the subject site is along Windmill Lane and is c. 30m from the nearest dwelling. The grounds of appeal are submitted from a number of residents of properties within the vicinity of the site who refer to previous unauthorised evening entertainment on the site, the negative impact from this unauthorised activity and the potential negative impact from the proposed similar activity on the amenity of the existing residents.

- 7.6. The grounds of appeal is accompanied by press notices relating to previous events held on the subject site for similar type of development and other correspondence with the Council relating to unauthorised works on the site. I note the enforcement notices which relate to a drop box, use of residential apartments for short-term letting and an air duct and I do not consider these are relevant to the assessment of the proposed development and are a matter for the Council. In relation to the previous events held on the site, the main source of concern relates to the noise generated from the proposed activity, which I have addressed below.
- 7.7. Hours of operation: The proposed development relates to the change of use of the ground floor from “office” to office and corporate meeting and events space for use by Hibernia REIT Holding Company Limited tenants and other businesses between the hours of 7am and 11pm. The grounds of appeal state that the hours of operation do not take into consideration the setting up and removing by associated services for e.g. catering which can continue after the 11pm time restriction. A response from the applicant states that the corporate events will mostly take place in the morning and during the day as seminars.
- 7.8. Planning permission was recently granted (PL29S.246877, Reg Ref 2686/16) for amalgamation of permitted retail units and other minor amendments. Condition No 8 restricted the hours of operation of the retail units between the hours of 07.00 and 22.00 on Mondays to Fridays (inclusive) and between the hours of 09.00 and 21.00 on Saturdays and Sundays with deliveries not being made before 07.00 on weekdays and 09.00 at the weekend or after 16.00 daily, in order to safeguard the residential amenities of the area. The report of the Inspector noted the location of the retail use relative to the adjoining dwellings.
- 7.9. As stated above the site is zoned for city centre use where it is an objective to provide a vibrant mix of uses. Whilst I note the use is compatible with the zoning and alternative uses of the ground floor will provide sustainable use of the building, it is of

note the use of 412m² of space will accommodate an increase in the numbers of visiting members of the public which, having regard to the entrance of the site at the west of Windmill Lane, will most likely enter and exit along Creighton Street. Whilst I have no objection to the use of the site for corporate events, having regard to the location of the site adjoining an existing residential area, I consider the usual restrictions for evening activities adjoining residential properties would be similar to the condition included on the retail use for PL29S.246877, Reg Ref 2686/16, detailed above and I consider it reasonable to include a similar condition on any grant of permission.

7.10. Noise: The grounds of appeal raised the impact of the noise generated on the residential amenity of the existing residents. A response from the applicant states that the use will be managed for private hire by the owners of the site and consider the inclusion of Condition no 2 “*no increase in noise experienced in a habitable room, garden or open space where entertainment is taking place*” reasonable. I note the condition is included following a recommendation from the Senior Environmental Health Officer who refers to previous complaints from residents on events and noted no sound attenuation information and recommended if permission was granted that it would be on a temporary basis.

7.11. I consider a condition restricting excessive noise generation on the site would suitably prevent any significant negative impact on the amenity of the residents adjoining the site. Condition No 3 restricts the use on the site for a period of two years after which the use shall cease or a new application is permitted. As stated above, it is considered the use is compatible with the land use zoning and the commercial use of the building and having regard to a condition restricting the hours of use and the acceptable noise levels I do not consider the proposed would have a significant negative impact on any residential amenity. Therefore, having regard to the recommendation to grant permission, I do not consider it reasonable to restrict the use of the site for the proposed development for any limited period of time.

Other

7.12. Archaeology: The site is located within a zone of archaeological potential, as designated in the development plan. The proposed development does not include

any physical works on the site, therefore I do not consider there will be any potential impact on the built heritage on the site.

- 7.13. Appropriate Assessment: Having regard to the nature and scale of the proposed development within a serviced area and separation distance 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 the conservation objectives of any European site.
- 7.14. Environmental Impact Assessment (EIA): The proposed development does not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations and therefore is not subject to EIA requirements.
- 7.15. Financial Contribution- The proposed development includes a change of use from office to corporate meetings and events. Section 12 of The Dublin City Development Contribution Scheme 2016-2020 includes categories of development which are exempt from the requirement to pay development contributions under the scheme and permissions for a change of use from one commercial use to another are exempt. A submission from Transport Infrastructure Ireland requested the inclusion of a Section 49 levy where the works were not exempt. I note no financial contribution was included by the planning authority and having regard to the nature of the proposed works I consider it reasonable.

8.0 Recommendation

- 8.1. I recommend that planning permission should be granted, subject to conditions, as set out below.

9.0 Reasons and Considerations

Having regard to the Z5, city centre zoning objective, the planning history on the site and the scale and nature of the proposed development and the policies of the current Dublin City Development Plan 2016-2022, it is considered that subject to compliance with the conditions below, the proposed development would not seriously injure the

residential or visual amenity of the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application 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 commencement of development and the development shall be carried out and completed out in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The noise level shall not exceed 55 dB(A) rated sound level (that is, corrected sound level for a tonal or impulsive component) at the nearest dwelling or at any point along the boundary of the site between 0800 and 2000 hours, Monday to Friday inclusive, and shall not exceed 45 dB(A) at any other time. Procedures for the purpose of determining compliance with this limit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To protect the residential amenities of property in the vicinity of the site.

3. The terms and conditions of the extant parent and amending permissions granted for the development under planning register reference numbers 4323/15, 3055/15 (An Bord Pleanála appeal reference PL29S.245667), 2770/15 and 4071/09 (An Bord Pleanála appeal reference PL29S.237295) and 2686/16 (An Bord Pleanála appeal reference PL29S.246877) shall be complied with, unless they are modified by the terms and conditions of this

permission.

Reason: In the interest of clarity

4. The hours of operation shall be between the hours of 07.00 and 22.00 on Mondays to Fridays (inclusive) and between the hours of 09.00 and 21.00 on Saturdays. Deliveries shall not be made before 07.00 on weekdays and 09.00 on Sunday or after 16.00 daily.

Reason: In order to safeguard the residential amenities of the area

Karen Hamilton
Planning Inspector

11th of January 2019