



An
Bord
Pleanála

Inspector's Report ABP 303496-19

Development	Provision of food market, including placing of tents, vans, moveable structures, associated seating, provision of power, lighting and associated signage works.
Location	Central Park, Leopardstown, Dublin 18.
Planning Authority	Dun Laoghaire Rathdown County Council.
Planning Authority Reg. Ref.	D18A/0781.
Applicants	Central Park GP Co. Prop. Co. Limited.
Type of Application	Permission.
Planning Authority Decision	Grant subject to conditions.
Type of Appeal	First Party V. Condition. Third Party v. Decision.
Appellants	First Party: Central Park GP Co. Prop. Co. Limited.

Third Party:

1. Joint appeal by Freshi, Munchies, Art of Coffee & Centra.
2. KW Investment Fund ICAV.

Observers

None.

Date of Site Inspection

29th April 2019.

Inspector

Dáire McDevitt.

1.0 Site Location and Description

- 1.1.** The relevant area, with a stated area of c.0.03hectares is located within the Central Park Mixed use development. The site at present is a central plaza which includes landscaping and art work. Central park comprises of a mixture of residential, offices, commercial and leisure in a number of 8 storey blocks. The most relevant blocks to the current application are block I (completed but not occupied) and Block H which fronts onto the civic space which is the subject of the current appeal.
- 1.2.** There are a number of vacant ground floor units in nearby blocks, in addition to a restaurant, a café, coffee shop and convenience shop amongst other issues. There are residential and office uses at the upper floor levels. Basement and surface carparking is also provided for Central Park. Information provided on file states that overall scheme has a population of c. 7000 persons.

2.0 Proposed Development

Permission is sought for a food market that would operate March to October between the hours of 1200 and 1500 for 3 days a week.

The market would include 5 stalls (tents, vans or moveable structure) and temporary outdoor seating area to the northeast of the site. The stalls would be sited between Block I and to the front of Block H on the existing plaza.

Stalls would be c.2m x 4m with the overall market area occupying c. 0.03 hectares.

No permanent fixtures or enclosures are proposed.

3.0 Planning Authority Decision

3.1. Decision

Grant permission subject to 4 conditions. Condition No. 3 is of particular relevance as it is the subject of a first party appeal.

Condition No. 3

No music or other amplified sounds shall be audible outside the structure or on site.

Reason: *In the interest of amenities*

3.2. Planning Authority Reports

3.2.1. Planning Reports (3rd October 2018 & 14th December 2018)

These formed the basis of the Planning Authority's decision.

Issues of note raised related to legal interest in the lands and waste management. These were the subject of a further information request that was addressed to the satisfaction of the area planner and a recommendation to grant issued.

3.2.2. Other Technical Reports

The area planner in their report refers to comments from the Transportation Department (27th September 2018) which noted no objection subject to conditions. There is no report on file.

Drainage Planning (3rd September 2018). No objection.

Air Pollution & Noise Control Unit (7th September 2018, countersigned 10th September 2018). No objection subject to conditions.

Environmental Health Officer (7th September 2018). No objection subject to conditions.

Waste Section (3rd December 2018). The Operational Waste Management Plan is acceptable.

3.3 Submissions

The Planning Authority recorded 7 submissions. These included both appellants' parties. The issues raised broadly reflect the grounds of appeal and shall be dealt with in more detail in the relevant section of this report.

4.0 Planning History

The original application for Central Park was **P.A Ref. No. D98A/0886**. There have been numerous applications since there.

Planning Enforcement ENF 20118 refers to a 2018 case regarding the operation of a food market between Block I & H operating 3 days a week.

5.0 Policy and Context

5.1 Dun Laoghaire Rathdown County Development Plan 2016-2022.

The site is zoned under land use objective **OE** *to provide for office and enterprise development*. (this land use zoning objective only applies to the SUFP area).

Under this land use zoning objective:

- **Outdoor food markets** are not referred to under ‘permitted in principle’ or ‘open for consideration’ under this zoning objective as set out in **table 8.3.18**.
- **‘Tea Room/Café’** are **permitted in principle**.
- **‘Restaurant’, ‘Rural Industry-Cottage’** and **‘small scale convenience stores’** are **open for consideration**.

Section 8.3.5 notes that uses which are not indicated as ‘permitted in principle’ or ‘open for consideration’ **will not be permitted**.

Section 8.3.7 refers to other uses not specifically mentioned in the use tables and that these will be considered on a **case-by-case basis** in relation to the general policies of the Plan and the zoning objectives for the area in question.

Section 8.3.9 Sandyford Urban Framework Plan (SUFP)

Within the Sandyford Business District there are uses that do not conform to the Zoning Objectives of the area. The Council will support the expansion and/or improvement of existing non conforming uses that are not considered likely to impact negatively on the development potential of adjoining sites in accordance with the policies and objectives as set out in the SUFP.

Section 8.3.12. Definition of Use Classes:

There is no definition for ‘**outdoor food market**’.

Appendix 15 Sandyford Urban Framework Plan

Section 3.5 Design Principles & Character Areas.

The site is located within **Zone 3: Office Based Employment.**

Section 3.5.2 Zone 3: Office Based Employment

Site 13 Central Park

- Facilitate the completion of Central Park in accordance with the Sandyford Urban Framework Plan.
- Provide a development of suitable scale and quality, which would terminate the vista of the existing pedestrian street.
- Provide a suitably sized public open space.
- Provide a pedestrian/cycle route to South County Business Park and the Legionaries of Christ lands.

Policy SUFP 4 Public Realm. *It is Council policy to promote a high standard of public realm within Sandyford Business District.*

Public Realm is defined as all external spaces that are publicly accessible, including streets, parking areas, footpaths, squares and parks.

5.2 Natural Heritage Designations

The site is not located within a designated Site and there are none in the immediate vicinity.

5.3 EIA Screening

Having regard to the nature and scale of the proposed development comprising an outdoor food market in a serviced urban area there is no real likelihood of significant effects on the environment arising from the proposed development.

The need for environment impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeals

A **first party appeal** against a condition and **two third party appeals** against the planning authority's decision have been received.

6.1 First Party Appeal

This is an appeal under section 139 of the Planning and Development Act 2000 (as amended) against condition No.3 which reads:

No music or amplified sounds shall be audible outside of the structure or the site.

Reason: In the interest of amenities.

6.1.2 Grounds of Appeal

The grounds of appeal are summarised as follows:

- Entertainment and music is considered an integral part of the success of the food market in this area, as illustrated by the success of an intermittent market held between February and August 2018. Where music, street performance and entertainment contributed to the use of the spaces and to the social and interactive aspect of the market.
- Entertainment and music is provided in a temporary outdoor seating area and not within any structure as required under condition no.3.
- The restricted times of the market ensure that the noise generated by the market is within acceptable limits and will not cause an impact on amenities.
- The area planner acknowledged in their report that 'the use will be for a limited time and is unlikely to result in increased levels of noise that would cause harm to the surrounding residential amenity.'

- The site is owned and managed by the applicant, and request that condition no.3 be omitted as it would be too restrictive in the success operation of the food market and in creating a sense of place and amenity at Central Park.
- If the Board consider it necessary to impose a condition restricting noise levels, the applicants request that the use of a standard condition restricting noise levels to a maximum of 55dB(A) would be more suitable.
- Request that if the Board considers assessing the application de novo that the applicants be informed of this.

6.2 Third Party Appeal

Two Third Party appeals have been lodged:

1. A joint appeal by the following parties:
 - a) Freshii of LG 5 Vantage, Central Park, Leopardstown.
 - b) Munchies of Unit 2, Building 2 Vantage East, Central Park, Leopardstown.
 - c) Art of Coffee, Unit FG 02 Central Park, Leopardstown.
 - d) Centra of Block P, Central Park, Leopardstown
2. KW Investment Fund ICAV, 1st Floor, 33 Sir Rogerson's Quay, D2.

There is a degree of reiteration and overlap in the grounds of appeal lodged by both parties, I therefore propose to summarise the issues by topic.

I note that the second appellant requested that the application be assessed de novo by the Board.

6.2.2 Grounds of Appeal

6.2.2.1 Principle of development

- The commercial units between Block F, L & K have significant frontage onto the plaza where the market is proposed. The introduction of the food market over 3 no. days a week on a permanent basis will impact negatively on the viability and marketability of these units. The loss of

footfall to the existing commercial units resulting from the markets operation during 2018 has already had a negative impact on the financial viability of the existing businesses.

- The proposed market use is not consistent with the land use zoning and planning policy objectives of the Development Plan and Sandyford Urban Framework.
- Does not comply with Land Use Objective **OE** *to provide for office and enterprise development*.
- Contrary to **RET8** which set out that ‘it is Council’s policy to designate sites as Casual Trading Areas in suitable locations where deemed appropriate. Central Park is not a designated Casual Trading Area.
- **Sandyford Urban Framework Plan** does not contain specific reference to markets/food markets.
 - **Section 1.5.1 – rationale underpinning the SUFP:** to encourage a diverse range of uses including employment based uses, **retail and retail services**, civic , cultural, leisure, health, educational and other services appropriate in scale commensurate with the role of Sandyford Business District as a **‘place’ to work and live**.
 - **Section 2.3.2.1 Retail within the Mixed Use Core Areas:** Retail and retail services should be used to **enliven street frontages**, particularly on main pedestrian corridors leading to Luas stops, and in particular along Ballymoss road.
 - The second named appellant is of the view that the proposed market undermines the objectives of the SUFP, which encourages a diverse range of uses.
- Reference to the Retail planning Guidelines 2012 which sets out that local markets can “complements and augment the existing retail and non-retail uses” (section 2.26).

6.2.2.2 Impact on adjoining uses and amenities

- The outdoor market creates on-going impacts on amenity for the general plaza area in terms of nuisance (noise, odour and waste).
- No noise impact assessment has been submitted with the application.
- Odour generated from the stalls due to food preparation.
- An Operational Waste Management Plan was submitted with the application and while considered acceptable by the Council's Waste Enforcement Section, the second named appellant is concerned that the regular spillage of food and drinks in the public space would lead to concentration of such spillages and resultant staining and would not be acceptable.
- There are no toilet facilities provided for customer or staff. This would most likely result in increased usage of facilities in existing units causing a nuisance to operators and customers of these units.
- Unacceptable economic impact. The existing traders only have 5 days to operate, a food market operating for 3 of these would further undermine existing traders as there is no passing trade. A market once a week would be more viable for all concerned.
- The retail units around the plaza were designed to ensure that the plaza is lively and generates movements to prevent 'dead' ground floor uses. The current proposal would undermine this concept and the rationale behind the Central Park Scheme with its central plaza.
- The vibrancy of the streetscape is impacted as it becomes increasingly difficult to let the existing vacant units, and there is a risk of further units becoming vacant as the outdoor market impacts on their viability.

6.2.2.3 Other

- **History of non-compliance with Planning**
 - Planning enforcement history associated with the site.
 - Reference to DCC precedent, PA Reg. Ref. WEB:1021/17, Percy Place, D2 where a food market was refused in the

grounds of adverse effect upon residential amenities and general amenities of the public area and public safety.

- **Public Health and Safety**

- Crowd control.
- Pedestrian safety.
- No assessment has been provided of pedestrian movements as part of the application or how potential conflicts would be managed.

6.3 Applicant Response

This is mainly in the form of a rebuttal of both third party appeals. The appellants have raised issues that have been addressed to the satisfaction of the planning authority in terms of impact on existing uses, residential amenities, waste management, land ownership etc. The issue of noise and the condition attached by the planning is considered too restrictive and is the subject of a first party appeal.

The applicants are of the view that the proposed development to be fully in accordance with the relevant planning policy context and the proper planning and sustainable development of the area.

6.4 Planning Authority Response

The Board is referred to the previous Planner's Report. It is considered that the grounds of appeal do not raise any new matter which, in the opinion of the Planning Authority, would justify a change of attitude to the proposed development.

6.3 Observations

None.

7.0 Assessment

7.0.1 A first party appeal against a condition and two third party appeal against the planning authority's decision have been received. The first party appeal relates

to condition no. 3 which seeks to address noise and the impact on adjoining residential amenities/uses. I propose to deal with this under Section 7.3 of this report.

7.0.2 Two third party appeals have been received against the planning authority's decision to grant permission. The main issues in this appeal are those raised in the grounds of appeal. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Principle of development.
- Impact on adjoining properties.
- Condition No.3.
- Appropriate Assessment.

7.1. Principle of the Development.

7.1.1. The application relates to the permission for an outdoor food market, operating three days per week between the hours of 12:00 and 15:00. The applicant has highlighted that a food market operated from this location for 30 days in 2018 under exempted development. Permission is also sought for a temporary outdoor seating area as part of the food market.

7.1.2. The planning status of the previous use of the site as an outdoor food market has been raised by the third party appellants. Notwithstanding the status of the uses, the application before the Board must be assessed in the context of the policies and objectives for the site under the current Dun Laoghaire Rathdown County Development Plan 2016-2022.

7.1.3. Under the Dun Laoghaire-Rathdown County Development Plan 2016 – 2022, the site is located on lands zoned under land use objective OE “*to provide for office and enterprise development*”. Outdoor Food Markets are not listed as ‘permitted in principle’ or ‘open for consideration’. I have examined the land use zoning objectives in the current County Development Plan and I note that Outdoor Food Markets are not included under any of the land use zoning objectives. In the absence of any reference to the proposed use, I consider that

Section 8.3.7 of the Development Plan which refers to the consideration of other uses, not included in the land use table, on a case by case basis as set out in section 5.1 of this report should apply.

7.1.4 The third party appellants have set out in detail in the appeal that the proposed development would materially contravene the land use zoning objective attached to the site as the development is not listed as a use 'permitted in principle' or 'open for consideration' and would be contrary to the Retail Planning Guidelines as it would undermine the viability of existing uses and the ability of similar uses to occupy existing vacant units. The applicants in their response to the third party appeals rebut this, the applicants are of the view that a proposal for an outdoor food market for 8 months of the year, 3 days a week for 3 hours each day would not undermine the economic viability of existing uses, would not be contrary to the Retail Planning Guidelines and would comply with the land use objective 'OE' attached to the site.

7.1.5 I am satisfied that the proposed use (outdoor food market) while not specifically mentioned in table 8.3.18 in accordance with 8.3.7 of the County Development Plan should be assessed on a case by case basis, in particular having regard to section 8.3.9 which refers to the SUIFP area. I consider, therefore, subject to compliance with the relevant development management standards and national guidance the principle of the development is considered acceptable.

7.1.6 The application refers to temporary and mobile structures, therefore the visual impact is limited and contained within the original arrangement of buildings on site. I consider the incremental impact of the temporary structures would be minimal and does not detract from the character of the public realm at Central Park.

7.2 Impact on adjoining uses

7.2.1 The third party appellants have raised concerns that the provision of an outdoor food market would have a detrimental impact on the economic viability of the existing eateries/shop/coffee shop within Central Park. They have also

highlighted that there are a number of vacant units that have been identified for restaurant/café uses. And, therefore, to permit an outdoor food market on a permanent basis for 3 days a week for 8 months a year (i.e 102 days per year) would have a serious impact on the viability of the existing business which rely on the weekly trade (Monday to Friday) to continue operating. The appellants consider a market once a week would be more suitable and would protect the economic viability of existing businesses.

7.2.2 I have examined the grounds of appeal and I note the appellants concerns, however I consider that the impact of potential uses on existing business would be minimal as the proposal is temporary in nature, in that it would only operate for a few hours 3 days per week from March to October. This issue can be dealt with by condition in the event of a grant of permission.

7.2.3 The appellants raised concerns regarding noise, odours and litter generated by the proposed development and lack of sanitary facilities. The proposal is located within a large civic space/plaza. I am satisfied that the level of odour associated with the proposed development would be minimal given the context and setting of the market area within the Central Park scheme. Considering the context of the site relative to residential properties (apartments), it is my opinion that the proposal would not significantly exacerbate the present situation with regards to noise, odours and litter. Taking into consideration the location of the proposal within an existing civic space/plaza, I do not consider that nearby residential amenities would be adversely impacted. The nature of the proposal, an outdoor food market operating for short periods of time on a seasonal basis, would not give rise to permanent disturbances. I consider that a condition should be attached restricting the operation of the market to defined times, thus reducing the impact on adjoining businesses and residential uses in terms of setting up, operational times and dismantling impacts. The proposal would not give rise to any permanent consistent changes in ambient noise levels. The issue of opening hours can be dealt with by condition. Furthermore, odour and litter control can also be appropriately addressed by way of condition if the Board is of a mind to grant permission.

7.2.4 The issue of noise was addressed by condition by the Planning Authority in their grant of permission. I note that this condition is the subject of a first party appeal, therefore I propose to address this matter in section 7.3 below.

7.2.5 Concerns relating to crowd control and pedestrian safety have been raised by the appellants. The proposed development would be located in a communal plaza within the Central Park development and would predominately cater for existing residents and workers using this space. I do not envisage a significant increase in pedestrian movement from that currently experienced in the area arising from the proposal.

7.3 Condition No. 3

7.3.1 The first party appeal is against condition No. 3

No music or amplified sounds shall be audible outside of the structure or the site.

Reason: In the interest of amenities.

7.3.2 The applicant has outlined in the grounds of appeal that entertainment and music is considered an integral part of the success of the food market in this area, as illustrated by the success of an intermittent market held between February and August 2018. Where music, street performance and entertainment contributed to the use of the spaces and contributed to the social and interactive aspect of the market. The entertainment and music would be provided in a temporary outdoor seating area and not within any structure as required under condition no.3. Furthermore, the restricted times of the market would ensure that the noise generated by the market is within acceptable limits and would not cause an impact on amenities.

7.3.3. Given the context of the site (as set out in section 7.2.3 above) and the proposed operational hours of the food market, I consider that the use, an outdoor foodmarket, for limited time periods during the day is unlikely to result in increased levels of noise that would cause harm to the surrounding residential amenity.

I therefore recommend that condition 3 be amended to read as follows:

3. (a) *During the operational phase of the proposed development, the noise level arising from the development, as measured at the nearest residential unit shall not exceed:-*
- (i) *An Leq, 1h value of 55 dB(A) during the period 1200 to 1500 on the 3 days the market is operational.*
 - (ii) *An Leq, 15 min value of 45 dB(A) at any other time. The noise at such time shall not contain a tonal component.*

At no time shall the noise generated on site result in an increase in noise level of more than 10 dB(A) above background levels at the boundary of the site.

- (b) *All sound measurement shall be carried out in accordance with ISO Recommendation 1996:2007: Acoustics - Description and Measurement of Environmental Noise.*

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

8.0 Recommendation

I recommend that planning permission be granted for the following reasons and considerations and subject to the conditions set out hereunder.

9.0 Reasons and Considerations

Having regard to proposed development consisting of an outdoor food market on lands zoned under land use objective OE within the Sandyford Urban Framework Plan area in the Dún Laoghaire-Rathdown County Development Plan 2016-2022 it is considered, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of properties in the vicinity and development would 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 in accordance with the agreed particulars.

Reason: In the interest of clarity

2. The food market shall operate from March to October between the hours of 1200 and 1500, three days a week only.

Reason: In the interest of clarity and orderly development.

3. (a) During the operational phase of the proposed development, the noise level arising from the development, as measured at the nearest residential unit shall not exceed:-
 - (i) An Leq,1h value of 55 dB(A) during the period 1200 to 1500 hours on the 3 days the market is operational.
 - (ii) An Leq,15 min value of 45 dB(A) at any other time. The noise at such time shall not contain a tonal component.

At no time shall the noise generated on site result in an increase in noise level of more than 10 dB(A) above background levels at the boundary of the site.

- (b) All sound measurement shall be carried out in accordance with ISO Recommendation 1996:2007: Acoustics - Description and Measurement of Environmental Noise.

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

4. The stalls and seating area shall be removed from site outside the operating hours of the food market. No permanent fixtures or fittings shall be erected or installed prior to the separate grant of permission.

Reason: In the interest of clarity.

5. No permanent signs, symbols or flags shall be erected on the site without a prior grant of permission.

Reason: To avoid visual clutter.

6. Litter in the vicinity of the food market shall be controlled in accordance with a scheme of litter control which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the provision of temporary litter bins and refuse storage facilities.

Reason: In the interest of visual amenity.

7. A plan containing details for the management of waste/recyclable materials within the development, including the provision of facilities for the storage, separation and collection of the waste/recyclable materials including waste oil and for the ongoing operation of these facilities shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste/recyclable materials in the interest of protecting the environment

Dáire McDevitt
Planning Inspector
30th April 2019