



An
Bord
Pleanála

Inspector's Report ABP-303565-19

Development	Change of use from shop to bakery with ancillary cafe.
Location	3, George's Quay, Dublin 2
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	3430/18
Applicant(s)	Maximus Sos Ltd.
Type of Application	Retention and Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Liffey View Owners Management Co.
Observer(s)	None
Date of Site Inspection	18/04/2019
Inspector	Gillian Kane

1.0 Site Location and Description

- 1.1. The subject site is a single storey commercial unit on the ground floor of a five-storey building with residential use on the upper floors. The unit is currently laid out as a donut shop with a display counter, seating area to the front (street side) and bakery operation to the rear.
- 1.2. The wider area is characteristic of this inner-city location: commercial uses on ground level and residential and / or office use at upper levels. To the east of the site is the Tara Street dart station and Butt Bridge.

2.0 Proposed Development

- 2.1. On the 4th July 2018 planning permission was sought to retain a change of use from shop to bakery (63sq.m.) and café (42sq.m.), 1 no. illuminated panel sign (3.1sq.m.), and 1 no. projecting sign (0.3sq.m.).
- 2.2. The application was accompanied by a Planning Statement, Noise Impact Assessment and a Kitchen Odour Plan.

3.0 Planning Authority Decision

3.1. Planning Authority Reports

- 3.1.1. **Engineering Dept:** No objection subject to conditions.
- 3.1.2. **Planning Report:** Use of the front of the unit as a cafe is welcomed in an inner-city location close to a public transport hub. Impact on adjoining residential properties should be addressed. Further information recommended.

3.2. Prescribed Bodies

- **TII:** Condition recommended in the event of a grant of permission, as site is within the Section 49 Levy Scheme for Light Rail.

3.3. Third Party Observations

- 3.3.1. A single objection to the proposed development was submitted by the Liffey View Management Company. The issues raised are the same as those raised in the third-party appeal, as discussed in section 6 below.

3.4. Request for Further Information

3.4.1. On the 30th August 2018 the applicant was requested to address the following:

- 1 impact of proposed bakery on nearby residential amenity particularly air / odour and noise pollution. Applicant has not provided clarity regarding proposed mitigation
- 2 Applicant requested to reconsider the introduction of projecting signage, which is considered to add visual clutter.

3.5. Response to FI Request

3.5.1. On the 27th November the applicant responded to the FI request with a Planning Letter, Odour Abatement System Report, Review of CDM Noise Mitigation Proposal and Mechanical Fan Noise & Vibration Isolation Report.

3.5.2. Regarding the proposed projecting signage, the applicant states that it is appropriate in the subject location and has been designed in accordance with the DCC Shopfront Design Guide.

3.6. Reports on File following submission of FI

3.6.1. **Planning Report:** Applicants proposals to deal with odour and noise are acceptable. Projecting signage is considered to have a detrimental visual impact and should be omitted by way of condition. Recommendation to grant.

3.7. Planning Authority Decision

3.7.1. On the 2nd of January 2019 the Planning Authority issued a notification of their intention to GRANT retention permission and permission subject to 9 no. conditions. Condition no. 2 states that the life of the permission is limited to two years from the date of the grant and condition no. 3 omits the proposed projecting signage.

4.0 Relevant Planning History

4.1.1. Planning Authority reg. ref **1266/94**: Planning permission granted for 2 no. commercial units at ground level and 40 no. apartments on the upper level.

5.0 Policy and Context

5.1. Dublin City Development Plan 2016-2022

- 5.1.1. Under the 2016 plan, the subject site is zoned **Z5 City Centre**, which has the stated objective 'to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity'.
- 5.1.2. **Section 14.8.5** of the development plan states that the primary purpose of this use zone is to sustain life within the centre of the city through intensive mixed-use development. Permissible uses within the mixed use Z5 zone include Hotel, Office, Restaurant, Public House and Shop (Major Comparison), Shop (district), Shop (neighbourhood).
- 5.1.3. **Development management standards** for Z5 zones include an indicative plot ratio of 2.5-3.0 and indicative site coverage of 90%.
- 5.1.4. Policy **CHC4** and **section 11.1.5.6** refer to Conservation Areas.

5.2. Natural Heritage Designations

- 5.2.1. The subject site is approximately 2km from the South Dublin Bay and Tolka River Estuary SPA (site code 004024) and approximately 3km from the South Dublin Bay SAC (00210).

5.3. EIA Screening

- 5.3.1. Having regard to nature of the development comprising the retention of a small scale commercial development in an urban area, it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. An agent for Liffey View Owners Management Company has submitted an appeal against the decision of the Planning Authority to grant permission. The grounds of the appeal can be summarised as follows:

- It is submitted that the Planning Authority has significant concerns, as evidenced by the two-year permission.
- The applicant has operated without permission for two years and has failed to address the significant impact from odours, fumes and noise. It is submitted that odours, fumes and noise cannot be mitigated against.
- The subject bakery intensifies the small scale hot-food counter of the previous Spar shop. The bakery operates from 2am to 7pm.
- The bakery element of the unit is 60%, with retail / café occupying 40%.
- An extraction unit draws cooking odours through a silencer and into the apartment car park. The extraction ducts encroach into the appellants car park. The applicant has not undertaken any analysis of the odours in the car park or the apartment block. The proposed development must be deemed to be contrary to the residential amenity of the apartments.
- The proposed development of a bakery fails to meet the required standards expected of a development below residential apartments. Odours are present in the apartments. Internal windows cannot be opened due to odours emanating from ventilation grilles in the ceiling of the car park. This is an unacceptable impact on residential amenity. The applicants need for fresh doughnuts is irrelevant to the proper planning and sustainable development of the area.
- The applicant's response to the FI request did not conclusively demonstrate that odour and noise could be suppressed. The level of noise in the apartment above the commercial unit currently exceeds the night-time level of 30dB LA_{eqT} by nearly 50%. The hours of operation of the bakery occur when residential amenity is at its most sensitive.
- Condition no. 9 cannot be complied with as the application is for retention and the appellant will not consent to the works.

- The proposed signage clearly adds visual clutter and the Council's decision to omit this is the correct one.
- The proposed development requires a fire safety certificate.
- The appellants object to the principle of the subject development. The Board is requested to refuse permission.

6.2. **Applicant Response**

- Applicant was unaware that development was unauthorised until a warning letter was received 1.5 years after the development was opened.
- Only one complaint has been received by a resident. Silencers were put into the extraction system to reduce noise and a UV and OZONE system to reduce odours.
- Detailed odour and noise reports were submitted to the City Council. These certify the effectiveness of the proposed systems on completion.
- It is proposed to cease production of raw donuts and the bakery element of the operation by February 26th. This will eliminate odour and noise. The management company have indicated satisfaction with this proposal.
- The Board is requested to permit the use of the café.

6.3. **Appellant Response to Applicant Response**

- The response of the applicant and their cessation of the production of raw donuts is welcomed. The Board is requested to condition same.
- The Board is requested to attach a condition that requires the removal of the extraction machinery piping to the rear of the unit within 6 months of the decision of the Board to grant permission.

6.4. **Planning Authority Response**

6.4.1. None on file.

6.5. **Observations**

6.5.1. None on file.

7.0 Assessment

7.1.1. I have examined the file and the planning history, considered national and local policies and guidance, the submissions of all parties and inspected the site. I have assessed the proposed development and I am satisfied that the issues raised adequately identify the key potential impacts and I will address each in turn as follows:

- Principle of development
- Impact on Residential Amenity
- Signage

7.2. Principle of Development

7.2.1. The subject site, being located in an inner-city area along a well-trafficked route from a major transport hub, is considered an appropriate location for a commercial unit. The streetscape of Georges Quay benefits from lively day-time uses that enhance the vibrancy and vitality of the area. Residents of the area, no matter how long established, accept such neighbourhood uses when choosing to live in such an area. Notwithstanding that, however is the recognition of the importance of facilitating and protecting residential communities in inner city areas. As noted in the development plan a balance must be struck between protecting the residential amenity of the residents whilst allowing appropriate city-centre uses to operate.

7.3. Impact on Residential Amenity

7.3.1. I note the submission of the Applicant to cease the production of raw donuts and the bakery element of the operation at Georges Quay by February 26th. The applicant noted that there would be no dough preparation or frying of donuts, thereby fully eliminating the causes of odour and noise. The applicant states that this was discussed with the Management Company who agreed with the proposal. The Board will note that such agreement is acceptable to the appellant.

7.3.2. I am satisfied that the cessation of frying and dough production will eliminate noise and odour issues to such an extent that the residential amenity of the residential units on the upper floors will be fully protected. It is considered reasonable to attach such a restriction by way of condition, should the Board decide to grant permission.

7.3.3. I note the decision of the Council to restrict the life of the unit in the basement to two years only. Section 7.5 of the development management guidelines state that a temporary permission will rarely be justified where an applicant wishes to carry out development of a permanent nature that conforms with the provisions of the development plan. The guidelines state that the material considerations to which regard must be had in dealing with applications are not limited or made different by a decision to make the permission a temporary one. Thus, the reason for a temporary permission can never be that a time limit is necessary because of the adverse effect of the development on the amenities of the area. If the amenities will certainly be affected by the development they can only be safeguarded by ensuring that it does not take place. Given that the proposed development to be retained is acceptable in principle and that concerns regarding noise and odour pollution have been addressed, should the Board decide to grant permission, it is recommended that a temporary life should be not attached to the decision.

7.4. **Signage**

7.4.1. The subject unit is advertised by means of two signs on the front elevation (see drawing no. 4657-18-07-01) – a frameless panel of 2.8mx1.1 above the door and a projecting circular donut shape of 0.3sq.m. I note a similar circular logo on the adjoining coffee shop to the east. The projecting sign is considered to be small scale and in keeping with the pattern of development in the area. Georges Quay is not a retail street and as such the likelihood of a multiplicity of projecting signs is not significant. The subject signage is in keeping with the subject unit and the wider streetscape.

7.5. **Appropriate Assessment**

7.5.1. Having regard to the nature and scale of the proposed development in a built-up urban area, 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.

8.0 **Recommendation**

8.1.1. It is recommended that permission be granted subject to conditions for the reasons and considerations set out below.

9.0 Reasons and Considerations

9.1 Having regard to the zoning objective of the area, the design, layout and scale of the proposed development to be retained and the pattern of development in the area, it is considered that, subject to compliance with conditions below, the development to be retained would not seriously injure the visual amenities of the area or residential amenity of property in the vicinity. The proposed development for which permission to retain is sought would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be retained 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.

Reason: In the interest of clarity.

2. No baking, production of dough or frying of doughnuts shall occur at the subject premises, unless otherwise authorised by a prior grant of planning permission.

Reason: In the interest of clarity.

- 3 The developer shall pay to the planning authority a financial contribution in respect of Luas Cross City (St. Stephens Green to Broombridge Line) in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

Gillian Kane
Senior Planning Inspector
23rd April 2019