



An  
Bord  
Pleanála

## Inspector's Report ABP304012-19

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<b>Development</b>	Change of use of Ground Floor Unit (c.42 square metres) from shop to Coffee Shop.
<b>Location</b>	4 Seafort Avenue, Dublin 4.
<b>Planning Authority</b>	Dublin City Council.
<b>Planning Authority Reg. Ref.</b>	4754/18.
<b>Applicants</b>	Sarah Jane and Denis Monaghan.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant.
<b>Type of Appeal</b>	Third Party -v- Grant.
<b>Appellant</b>	Gerry Farrell.
<b>Observers</b>	None.
<b>Date of Site Inspection</b>	28 <sup>th</sup> May, 2019.
<b>Inspector</b>	Paul Caprani.

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## 1.0 Introduction

- 1.1. ABP304012-19 relates to a third-party appeal against the decision of Dublin City Council to issue notification to grant planning permission for a change of use of the ground floor unit of No. 4 Seafort Avenue in Sandymount Village from use as a shop to use as a Coffee Shop. The grounds of appeal argue that the proposed change of use is contrary to the Z3 zoning objective governing the site and that there is an overconcentration of coffee shops in the area presently. Concerns are also raised in respect of parking, fire safety concerns and lack of details with regard to ventilation and extraction fans etc to serve the proposed use. The absence of an appropriate assessment and the proposal to discharge trade effluent to the public foul sewers are also of concern.

## 2.0 Site Location and Description

- 2.1. No. 4 Seafort Avenue is a small shop unit located on the eastern side of the road to the immediate north of Sandymount Green in Sandymount Village. The premises is currently used as a clothes/dress shop, although this use appears to be temporary judging by the absence of a shop signs and the lack of internal fit-out of the premises. It is located within a terrace of modest sized two-storey mid- 20<sup>th</sup> Century commercial units located between Sandymount Green and Seafort Villa.
- 2.2. The existing two-storey building has a road frontage of approximately 5 metres and a depth of approximately 15 metres. The front part of the building currently accommodates the retail element and the rear part of the premises at ground floor level appears to be used for storage and ancillary staff use. A separate door on the front elevation provides access to residential accommodation above. A beauty salon is located in the adjoining premises to the immediate north of the site whereas a betting shop and book shop separate the site from Ryan's Public House (The Sandymount House) on the corner of Sandymount Green. Pay and Display on-street car parking is provided around the village including the road to the front of the shop.

### **3.0 Proposed Development**

- 3.1. Planning permission is sought for a change of use from retail to use as a Coffee Shop. The seating/customer area is to be located in the front portion of the building. The kitchen and preparation area are to be located centrally and the rear of the building is to accommodate storage area. The drawings submitted indicate that it is not proposed to alter the external elevations of the building. One toilet with disabled access is provided for patrons/staff of the coffee shop.

### **4.0 Planning Authority's Decision**

#### **4.1. Decision**

- 4.1.1. Dublin City Council granted planning permission for the proposed change of use subject to 11 standard conditions.

#### **4.2. Documentation Submitted with the Planning Application**

- 4.2.1. The planning application was accompanied by a completed planning application form, planning fee, public notices and drawings. The application was also accompanied by a letter from the owner of the building permitting the applicant to submit the application.

#### **4.3. Internal Reports**

- 4.3.1. An Engineering Report from the Dublin Drainage Division stated that there was no objection subject to standard conditions.
- 4.3.2. The planner's report details the policies contained in the development plan pertaining to the site. It notes that café use is not listed as a use under the Z3 zoning objective and as such, should be determined on its merits. It is noted that café use would complement the existing suite of uses along this section of roadway and would contribute to the attractiveness of the village of Sandymount. It is also stated that the

reuse of a vacant premises would be seen as a planning gain<sup>1</sup>. The planner's report concludes that the change of use from retail to café will not have any major impact in terms of traffic parking and deliveries etc., and would therefore be in accordance with the proper planning and sustainable development of the area.

#### 4.4. **Observations**

- 4.4.1. Two observations were submitted to the planning authority, both of which objected to the proposed development. The contents of these observations have been read and noted.

### 5.0 **Planning History**

- 5.1. No history files are attached. The planner's report indicates that there is no planning history associated with the site.

### 6.0 **Grounds of Appeal**

The decision of Dublin City Council to issue notification was the subject of a third-party appeal by Gerry Farrell of 145 Upper Leeson Street, Dublin 4. The grounds of appeal are outlined below.

- There is currently an overconcentration of coffee shops in the area and the proposal will exacerbate this trend.
- The overconcentration of coffee shops in the area would be contrary to the primary Z3 land-use zoning objective to provide for and improve neighbourhood facilities. It is also pointed out that the coffee shop is not a permitted use under the Z3 zoning objective.
- The proposal would exacerbate parking problems in the area. The grounds of appeal also argue that further details are required in relation to:
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<sup>1</sup> The Board will note that it appears, at the time of the local authority site inspection, the ground floor of the building was not in retail use and this supports the contention that the currently use as a clothes shop may be temporary.

- i. Customer toilet provision including the requirement for a separate toilet for staff.
- ii. The need to provide separate staff storage areas.
- iii. No details in relation to ventilation or extraction systems are provided and it is suggested that this could have a significant impact on the character of the Sandymount Architectural Conservation Area in which the site is located.
- iv. The proposal does not show any grease traps to prevent a discharge of trade effluent to sewers.

Finally it is argued that no appropriate assessment screening was submitted with the application.

## 7.0 Appeal Responses

7.1. No response was received from Dublin City Council.

7.2. A response was received on behalf of the applicant by Cathal O'Neill Architects. The response is summarised below.

- It is stated that the appellant is an owner of a coffee shop in Sandymount. It is suggested that this is the main motivation for the appeal. It is noted that he himself is a provider of a service which he argues is a service that constitutes an unacceptable overconcentration of that service in the village. Furthermore, the appellant has not submitted any evidence to suggest that there is an overconcentration of these services within the Sandymount area.
- It is stated that the shop has been disused for many years and its reuse should be welcomed in the village centre. The building is zoned for commercial uses and has historically accommodated commercial use.
- The Z3 zoning provision makes no reference to café use whatsoever under the land use zoning objective, and as such it should be adjudicated on its merits. It is argued that the development plan in general is very supportive of such uses as a location such as this.

- With regard to parking it is acknowledged that there is a high demand for parking in the area however, there are a large number of disabled parking spaces in the vicinity of the site.
- Issues in relation to toilets, storage, ventilation and extraction equipment and fire safety concerns are all taken into consideration when the Planning Authority assessed the application. The Planning Authority have deemed all these issues to be acceptable. It is further suggested that these are matters for the Building Control Officer and the Environmental Health Officer and are not a matter to be dealt with under the planning system. Any issues with regard to the above can adequately be dealt with by way of condition.

## 8.0 Observations

No observations were received in respect of the application.

## 9.0 Development Plan Provision

9.1. The site is governed by the policies and provisions contained in the Dublin City Development Plan 2016 – 2022. The subject site is governed by the zoning objective Z3 which seeks to “*provide for and improve neighbourhood facilities*”.

9.2. The subject site is also located in the Sandymount Village Architectural Conservation Area and also within a designated Conservation Area.

9.3. It is noted that café use is not specifically listed as a land use in the various zoning objectives listed in Chapter 14 of the Development Plan. I do note however that restaurant use is a use that is open for consideration, an internet café and take-away facility are uses that are open for consideration under the land use zoning objective. Section 16.29 of the Development Plan provides guidance in the assessment of cafes and restaurants. It states the following:

“In considering applications for restaurants, 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 the proposal relates to a Category 1 or Category 2 shopping streets as defined in the city centre retail core, principle shopping streets in Chapter 7 and Appendix 3 of the Development Plan).
- The need to safeguard the vitality and viability of shopping areas in the city and to maintain a suitable mix of retail uses.

9.4. In relation to Z3 neighbourhood centres, the plan states that these areas provide local facilities such as small convenience shops, hairdressers, hardware etc. within a residential neighbourhood and range from the traditional parade of shops to neighbourhood centres. They can form a focal point for a neighbourhood and provide a limited range of services to the local population within 5 minutes walking distance. Neighbourhood centres provide an essential and sustainable amenity for residential areas and it is important that they should be maintained and strengthened where necessary.

## 10.0 EIA Screening Determination

Proposed change of use is not a class of development for which EIA is required.

## 11.0 Planning Assessment

I have read the entire contents of the file, visited the site and its surroundings and have particular regard to the issues raised in the grounds of appeal. I consider the following issues to be pertinent in determining the current application and appeal before the Board.

- Overconcentration of Café and Restaurant Uses in the Sandymount Area
- Compliance with Z3 Zoning Objective
- Parking Considerations
- Toilet and Storage Provision



- Extraction and Ventilation Requirements
- Fire Safety Issues
- Drainage Issues
- AA Requirement

### 11.1. **Overconcentration of Café and Restaurant Uses in the Sandymount Area**

11.1.1. I have visited the subject site and its surroundings and I note that Sandymount Village does accommodate a significant number of restaurants and eateries. However, I do not consider that there is an overconcentration of cafés within the village centre. I note that there is a coffee shop on the Sandymount Road c.60 metres from the subject site and a café/deli shop approximately 40 metres to the north on the opposite side of the road to the subject site. I acknowledge that there are an array of restaurants and a number of pubs within Sandymount Village that offer café amenities. However, these units cannot be characterised as coffee shops in themselves. Furthermore, the proposal in question is modest in size with a relatively small seating area for patrons estimated to be in the region of 12 to 15 square metres. The size and scale of the proposal therefore will not have a profound or fundamental effect on the amount of space within the village given over to café uses.

11.1.2. While the development plan warns against the proliferation or overconcentration of restaurant and café uses, such concerns are mainly directed towards Category 1 and 2 retail shopping streets in the city centre. The development plan also acknowledges the positive contribution of cafe and restaurant uses and a cluster of such uses adds to the vitality of the city. This would equally apply to the urban villages around the city such as Sandymount.

### 11.2. **Compliance with Z3 Zoning Objective**

11.2.1. The local authority's planner's report is correct in stating that café use is not a specified use under the Z3 land use zoning objective. That is to say that café use is not specifically listed as a use which is either permissible use or a use which is open to consideration as set out in the development plan. Section 14.4 of the development plan states that where uses are not specifically listed, these uses will be deemed to be either not permissible, or in the case of other uses, will be dealt with in

accordance with the overall policies and objectives and contained in the Plan. I would consider the café use, in the case of a designated neighbourhood centre to be a use not referred to, as opposed to being a non-permissible use. A land use zoning objective seeks to provide for and improve neighbourhood facilities and seek uses such as small convenient shops. Furthermore, the land use zoning objective seeks uses which provide a focal point for a neighbourhood and uses which provide an essential and sustainable amenity for residential areas. The Z3 zoning objective specifically seeks that such uses should be “maintained and strengthened where necessary”. A café use would in my view assist in providing a focal point within a village centre/neighbourhood centre and would provide an essential and sustainable amenity for surrounding residential areas. The principle of the use is therefore deemed to be acceptable in my view.

### **11.3. Parking Considerations**

- 11.3.1. It is acknowledged that parking demand in and around Sandymount Village is high and parking spaces are at a premium. Notwithstanding this, on-street car parking (pay and display) are provided along the streets within the village and the surrounding streets in close proximity to the village. The provision of a modest sized café at the subject site is unlikely to attract significant levels of parking demand in its own right, and therefore is unlikely to exacerbate parking and traffic issues in Sandymount Village.
- 11.3.2. It is probable that use of the café will be undertaken in conjunction with visits to other premises in the wider vicinity be it trips to the pharmacy, supermarket, estate agent or other such retail/service industry uses provided within the village.
- 11.3.3. It would be unreasonable in my view to refuse planning permission for any commercial development within the village centre of Sandymount on the basis that it is likely to generate additional car parking demand. The subject site and its surroundings are zoned to facilitate such commercial uses.

### **11.4. Toilet and Storage Provision**

- 11.4.1. The grounds of appeal suggest that there is inadequate storage space and toilet provision to serve the development and that separate toilet facilities should be provided for staff. What is proposed in this instance is a modest sized café/coffee shop which will accommodate modest levels of patronage at any given time. It is not

in my view necessary to provide multiple toilets or indeed separate designated toilets to serve staff and patrons. The applicant has provided a large disabled access toilet on the premises and I consider this to be sufficient to cater for the needs of all persons on the premises. The applicant will be required to comply with Part G of the Building Regulations relating to hygiene. Compliance with the Buildings Regulations is a separate matter and is outside the planning code.

11.4.2. The plans submitted indicate that adequate storage space is provided to serve a small coffee shop.

### **11.5. Extraction and Ventilation Requirements**

11.5.1. Condition No. 3 of the Planning Authority's notification to grant planning permission requires that prior to the commencement of use on site, a scheme should be submitted to and approved in writing with the Planning Authority for the effective control of fumes and odours from the premises. The scheme should be implemented before the use commences.

11.5.2. The planning application in this instance relates to a change of use from a shop to a coffee shop and not a take-away facility. As such, it is not anticipated that odour and fumes generated on site would be significant. Notwithstanding this, the applicant is required to agree all details in relation to same with the Planning Authority prior to the operation of use. This in my view is an appropriate and acceptable condition and should be incorporated in any Board decision should the Board be minded to uphold the decision of the Planning Authority. With regard to the suggestion that any proposed air extraction system or ducting could impact on the Sandymount Village Architectural Conservation Area, I note that the building in question is of little architectural merit and that any extraction duct will be located at roof level and therefore will not have a significant or material impact on the setting and character of the Architectural Conservation Area.

11.5.3. With regard to refuse storage space I would again refer to the Board to the fact that the proposed development is modest in size and scale and is not likely to generate significant levels of waste. The Board will also note from the site layout plan that there is a relatively large area to the rear of the building where storage bins can be kept.

## **11.6. Fire Safety Issues**

11.6.1. The grounds of appeal also raise concerns in relation to fire safety issues. The Board will note that the applicant is legally obliged to comply with any fire safety requirements and that fire safety is a separate legislative code outside the planning code. The applicant will be legally required to comply with any requirements as set out by the Fire Safety Officer and the requirements of Part B of the Building Regulations. For these reasons it is not a material consideration in adjudicating on the current application and appeal before the Board.

## **11.7. Drainage Issues**

- 11.7.1. The grounds of appeal argue that the report from the Drainage Department states that there should be no discharge of trade effluent to Dublin City Council's sewers. It notes that the proposed plan does not show a grease trap to prevent such discharge of trade effluent. It is suggested that this is a very important issue given that there was no appropriate assessment screening report accompanying the application.
- 11.7.2. In relation to drainage matters, Condition No. 9 of Dublin City Council's notification to grant planning permission requires that the developer shall comply with the requirements of the Code of Practice from the Drainage Division. Details of any discharge and compliance with Dublin City Council's Drainage Department in relation to same can be addressed by way of condition. In the event that the applicant wishes to discharge trade effluent to Dublin City Council it is of course open to the applicant to apply for a licence in relation to same.

## **11.8. AA Requirement**

11.8.1. With regard to the issue of Appropriate Assessment the grounds of appeal suggest that the absence of an appropriate assessment screening report means that adverse impacts on the integrity or conservation objectives of Natura 2000 sites in the vicinity cannot be ruled out. The applicant clearly points out in Question 19 of the Planning Application Form that the application does not relate to work within or close to a European site or a Natural Heritage Area. It is assumed that on this basis that the applicant decided not to submit an Appropriate Assessment Screening Report. Furthermore, I note the Planning Authority did carry out a Stage 1 Appropriate Assessment Screening and this is referred to in the planner's report. The report concluded that no appropriate assessment issues arise and it is not considered that

the proposed development would be likely to have a significant effect either individually or in combination with other plans and projects on a European site.

11.8.2. What is proposed in this instance is a change of use and therefore no construction works will take place. It is reasonable therefore to rule out any adverse impact on any Natura 2000 sites due to any discharges arising from construction. During the operational phase, the applicant will be discharging to existing sewers which are subject to municipal wastewater treatment at the Ringsend Wastewater Treatment Plant prior to any discharge. The anticipated contribution in terms of wastewater generation from the subject site will be negligible and would not impact on the capacity of Ringsend. Thus, having regard to the nature and scale of the proposed development and the 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 and projects in a European site.

## **12.0 Conclusions and Recommendation**

Arising from my assessment above I consider the proposed development to be in accordance with the proper planning and sustainable development of the area and in accordance with the zoning objectives for the area. As such I recommend that An Bord Pleanála uphold the decision of Dublin City Council and grant planning permission for the proposed change of use.

## **13.0 Reasons and Considerations**

Having regard to the Z3 zoning objective relating to the site which seeks to provide for and improve neighbourhood facilities, it is considered that the proposed change of use from retail to use as a coffee shop would, subject to compliance with the conditions set out below, not seriously injure the amenities of the area or property in the vicinity, 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, 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. Prior to the commencement of use on site as a coffee shop details for the effective control of fumes and odours emanating from the development shall be submitted to and approved in writing with the planning authority prior to commencement of development.

**Reason:** In the interest of residential amenity.

3. No external music loudspeakers shall be erected on the façade of the building.

**Reason:** In the interest of residential amenity.

4. No external security shutters shall be erected to the shopfront of the commercial premises unless authorised by a further grant of planning permission. Details of all internal shutters 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.

5. Details of the proposed hours of operation of the coffee shop shall be agreed in writing with the planning authority prior to commencement of development or in default of any agreement shall be determined by An Bord Pleanála.

**Reason:** In the interest of residential amenity.

6. Site development and building works shall be carried out only between the hours of 0700 to 1800 Mondays to Fridays and 0800 to 1400 hours on Saturdays and not at all on Sundays or public holidays. Deviation from these

times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

7. Water supply and drainage arrangements, including the attenuation and 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.

8. A plan containing details for the management of waste (and in particular recyclable materials) within the development including the provision of facilities for the storage, separation and collection of waste and in particular recyclable materials 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 and in particular recyclable materials in the interest of protecting the environment.

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Paul Caprani,  
Senior Planning Inspector.

6<sup>th</sup> June, 2019.