



An
Bord
Pleanála

Inspector's Report

ABP-304399-19

Development	Retention of the change of use from office to a boxing club and the construction of a new emergency with external stairs to rear.
Location	Greenside House, 45-47 Cuffe Street, Dublin 2.
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	3701/18
Applicant(s)	Karl Bennett
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First Party
Appellant(s)	Karl Bennett
Observer(s)	Taylor & Buchalter Solicitors

Date of Site Inspection

26th July 2019

Inspector

Colin McBride

1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 0.0605sqm, is located on the southern side of Cuffe Street and a short distance to the west of St. Stephens Green. The appeal site is occupied by a five-storey office block. There is an existing community use at ground and first floor level (Whitefriar-Aungier Area Community Council), an office use at second floor level (Taylor & Buchalter Solicitors). Underdog Boxing (applicant/appellant) operate at third and fourth floor level.

2.0 Proposed Development

- 2.1. Permission is sought for retention of the change of use of the 3rd and 4th floor from office to a boxing club/small group classes and the construction of a new emergency external stairs to the rear elevation with access to each floor and the necessary ancillary works.

3.0 Planning Authority Decision

3.1. Decision

Permission granted subject to 8 conditions. Of note are the following conditions...

Condition no. 4

The hours of operation of the boxing club/small group classes shall be as follows:

Monday-Friday:

6:30am-8:00am on the 3rd and 4th floor.

12:30-1:15pm on the 4th floor.

5:30am-9:00pm on the 3rd and 4th floor.

Saturday:

9:30am-12:00pm classes on the 3rd and 4th floor.

The third floor is not in use from 8am to 5:45pm.

Classes, weights or the use of equipment shall not be used outside of these times.

Reason: In the interest of clarity and orderly development.

Condition no. 5

This Planning Permission is granted for a limited period of 3 years from the date of this grant at which date the Permission shall cease and the use hereby approved shall cease unless a further Permission has been granted before expiry of that date.

Reason: In the interests of the proper planning and development of the area, and so that the effect of the development may be reviewed having regard to the circumstances then prevailing.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planning report (02/10/19): Further information required including details of the hours of operation of the boxing club/classes as well as the number of attendees, details of sound insulation to mitigate noise and vibration and details of the material and colour of the fire escape.

Planning report (09/11/18): Clarification of further information including details of sound insulation proposed to mitigate noise and vibrations.

Planning report (09/04/19): The proposal was considered consistent with land use zoning. It was considered that retention should be granted however there should be limitations on the hours of operation of the boxing club/classes. A grant of permission was recommended subject to the conditions outlined above.

3.2.2. Other Technical Reports

Drainage Division (11/09/18): No objection.

3.3. Prescribed Bodies

3.3.1 TII (10/09/18): A Section 49 development contribution (Luas) should be applied in the event of a grant of permission.

3.4. Third Party Observations

3.4.1 Two submission were received from...

Taylor & Buchalter Solicitors.

Whitefriar-Aungier Area Community Council.

The issues raised are...

- Use of the third and fourth floor outside agreed hours, impact of heavy weights on the floor including structural damage, disturbance of the office use at second floor level and community use on ground and first floor, the operating hours of the development should be restricted.
- Issues concerning the design and viability of the proposed fire escape, the removal of fire escape installed at expense to the occupiers of the ground and first floor and the need for compensation in such case.

4.0 Planning History

4.1 3468/12: Permission granted to Whitefriar-Aungier Area Community Council for material alteration and material change of use of the ground floor and first floors from offices to a social, educational and recreational centre catering for Community Education, Tai-Chi, Yoga Meditation and Aikido.

5.0 Policy Context

5.1. Development Plan

The relevant Development Plan is the Dublin City Development Plan 2016-2022. The site is zoned Z5 with a 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.

5.2. Natural Heritage Designations

None in the vicinity.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 A first party appeal has been lodged by Eamon O'Boyle & Associates on behalf of Karl Bennett. The grounds of appeal are as follows...

- The appeal concerns the application of condition no.s 4 and 5.
- It is noted in the grant of permission for change of use of ground and first floor under ref no. 3468/12, which includes a community, social and recreational use (including martial arts classes) did not include a restriction on operating hours. Applying such restrictions would be contrary to policy CEE(ii) of the Development Plan.
- Limiting the duration of the permission would not be in the interest of the proper planning and sustainable development of the area and is unnecessary. The proposed use is compatible with the land use zoning objective and no restrictions on the duration of permission was placed on ref no. 3468/12 (ground and first floor level).
- The appellant notes that the City Council has granted permission for gyms and keep fit centres in other buildings containing office use with specific restriction on operating hours or the duration of permission. The appellant gives four examples of such permissions.

6.2. Planning Authority Response

6.2.1 No response.

6.3. Observations

6.3.1 An observation has been submitted by Taylor & Buchalter Solicitors.

- The ground and first floor use is a community use and not primarily a martial arts gyms.
- It is noted that the imposition of restrictions on operating hours allows for other occupiers of the building to conduct their business during business hours (9:00am to 1:00pm and 2:00 pm to 5:30pm) without noise impact or structural damage.

- It is noted that the current use of the 3rd and 4th floor outside of the agreed hours causes noise and disturbance as well as structural damage.
- It is noted that the applicants letter to the Council notes that the third floor is not in use from 8:00am to 5:45pm and is only use for early morning classes and evening hours. Despite such the applicant has appealed the conditions regarding operating hours.
- It is considered that the limitation on the duration of permission is reasonable as the change of use from office to gym is a significant change and it is appropriate that the Council have control over the development with a review after three years.

7.0 Assessment

7.1 At the outset, I wish to point out that following consideration of the documentation on the appeal file and the site location and context, I am satisfied consideration of the proposal on a de novo basis, (that is as if the application had been made to the Board in the first instance), is unwarranted and that it is appropriate to determine the appeal in accordance with the provisions of Section 139 of the Planning and Development Act, 2000 as amended. Having inspected the site and examined the associated documentation, the following are the relevant issues in this appeal.

Condition no. 4

Condition no. 5

7.2 Condition no. 4:

7.2.1 Condition no. 4, which is outlined above restricts the hours of operation.

club/small groups classes on each of the two floors. The condition appears to be motivated by the fact that there are issues raised concerning the impact of the proposal in relation to noise and vibration on the existing office use on the second floor. The second floor is occupied by a solicitors firm and is split into offices (single and open plan), a reception area and a conference room. The occupiers of this floor

made a submission during the application and an observation outlining concerns regarding operation of the boxing club and classes outside of certain agreed hours in terms of noise impact and use of heavy equipment causing damage to the ceiling.

7.2.2 During the application stage the City Council requested further information about the operating hours of the boxing club and small classes, details of the number of attendees and sound/vibration mitigation measures. It is notable that the operating hours provided by the applicant in response to the further information request are identical to the hours specified in condition no. 4. The proposed change of use from office to gym use is compatible with the Z5 land use zoning objective, however there does appear to be the potential for a degree of disturbance of the existing office use on the second floor by the activities proposed in the gym due to noise and vibration. I would consider the fact that the condition restricts the operating hours to the hours provided by the applicant themselves is entirely fair and would note that no restriction is placed on operation of the gym in the evening or night-time period.

7.2.3 The appellant refers to the use at ground and first floor level granted under ref no. 3468/12 and the fact that it has no restrictions and entails martial arts classes. The use at ground and second floor level is a community use and not a dedicated gym or martial art use. I would note that there is a potential for the proposed use at third and fourth floor level to cause disturbance on the third floor, which is an office use and the imposition of a restriction on operating hours, which is in keeping with the operating hours specified by the applicant/first party appellant is wholly appropriate in this case. I would recommend that condition no. 4 be retained.

7.3 Condition no. 5

7.3.1 Condition no. 5 specifies that the planning permission granted is for a period of three years unless subsequently extended by a further grant of permission. The condition appears to stem from the issues raised regarding impact on the existing office use on the second floor and would allow the review of the proposed development at a later time. The grant of permission entails the provision of a detailed condition on operating hours and specific restrictions of use on each of third and fourth floor. I would consider that the terms of this condition would be sufficient to deal with the

issues raised regard adjoining amenity and would note that the proposed use is compatible with the Z5 zoning objective.

7.3.2 The Development Management Guidelines (June 2007) note in relation to temporary permissions (section 7.5) that “in deciding whether a temporary permission, which can apply to a particular structure or use, is appropriate, three main factors should be taken into account. First, the grant of 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. Secondly, it is undesirable to impose a condition involving the removal or demolition of a structure that is clearly intended to be permanent. Lastly, it must be remembered 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. In deciding whether a temporary permission, which can apply to a particular structure or use, is appropriate, three main factors should be taken into account. First, the grant of 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. Secondly, it is undesirable to impose a condition involving the removal or demolition of a structure that is clearly intended to be permanent. Lastly, it must be remembered 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”.

7.3.3 I am satisfied that the terms of condition no. 4 are sufficient to deal with issues that were raised during the application concerning the adjoining office use. I would note that the observer/occupier of the second floor does not object to the operation of the proposed development within the agreed operating hours with condition no.

conforming to the hours specified by the applicant/first party appellant and it is notable that no third party appeal was made concerning the overall grant of permission. I would consider condition no. 5 is unnecessary and contrary to the recommendations of Section 7.5 of the Development Management Guidelines. I would recommend that condition no. 5 be removed.

8.0 Recommendation

Having regard to the nature of the conditions the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and, based on the reasons and considerations set out below, directs the said Council under subsection (1) of section 139 of the Planning and Development Act, 2000 to RETAIN Condition No 4 and REMOVE Condition no. 5, and the reasons therefor.

9.0 Reasons and Considerations

(a) Having regard to the nature of the development proposed, to the nature of the existing office use on the second floor and the fact that the terms of condition no. 4 match the operating hours provided by the applicant, the restriction of operating hours is wholly appropriate to protect the amenities of the adjoining uses within the existing building.

(b) Having regard to the nature of the proposed use and the nature of adjoining uses within the existing building and the terms of condition no. 4, the restriction in the duration of the permission is unnecessary and would be contrary to the recommendations under Section 7.5 of the Development Management Guidelines in relation to temporary permissions.

Colin McBride
Planning Inspector

30th July 2019