



An  
Bord  
Pleanála

## Inspector's Report 305294-19

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<b>Development</b>	Change of use from warehouse/storage to licensed restaurant; modifications to front façade and provision of 1 bedroom and en-suite to studio apartment at first floor level
<b>Location</b>	46 Arran Street East, Dublin 7
<b>Planning Authority</b>	Dublin City Council
<b>Planning Authority Reg. Ref.</b>	2761/19
<b>Applicant(s)</b>	Restaurants Investments Ltd
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant permission subject to conditions
<b>Type of Appeal</b>	Third Party v. Decision
<b>Appellant(s)</b>	Mr. Pat Coyne
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	24 <sup>th</sup> October 2019
<b>Inspector</b>	Louise Treacy

## **1.0 Site Location and Description**

- 1.1. The subject site has a stated area of 124.3 m<sup>2</sup> and is located at No. 46 Arran Street East, Dublin 7. The site accommodates a two-storey, mid-terrace property which is in warehouse/storage use at the ground floor level, with residential use above.
- 1.2. The adjoining property to the north at No. 45 Arran Street East is in commercial use at the ground floor level, with residential use on the first and second floors. The adjoining property to the south at No. 47 Arran Street East is in commercial use at the ground and first floor levels. The Dublin Fruit and Vegetable Market adjoins the western (rear) site boundary. Arran Street East extends along the eastern (front) site boundary and is characterised by commercial activity associated with local traders.

## **2.0 Proposed Development**

- 2.1. The proposed development comprises a change of use from warehouse/storage to licensed restaurant at ground floor level, modifications to the front façade onto Arran Street East including new restaurant signage and a new window at first floor level, and the addition of 1 no. bedroom and en-suite to the first-floor studio apartment.
- 2.2. The application cover letter indicates that the proposed restaurant would also function as a chef training facility.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. Dublin City Council issued Notification of the Decision to Grant Permission subject to 8 no. conditions on 2<sup>nd</sup> August 2019. The planning conditions are generally standard in nature.

### **3.2. Planning Authority Reports**

#### **Planning Reports**

- 3.2.1. The Planning Officer's Report of 7<sup>th</sup> June 2019 recommended that Further Information be requested in relation to 2 no. items, including: (i) details of any

planning permission for the existing studio unit and the availability of light to the unit with respect to the existing high level windows along a shared boundary, and (ii) the absence of internal walls between the existing bedroom and the living/kitchen/dining room.

- 3.2.2. A Response to the Request for Further Information was submitted by the Applicant on 9th July 2019 which noted that the building has been recorded in residential use since the 1911 census and that the high-level windows on the boundary with No. 45 Arran Street East are established. The Applicant also confirmed that the retention of the studio sleeping area was unintended, and that a 1-bedroom apartment is proposed in place of the existing studio accommodation.
- 3.2.3. The Planning Officer's Further Information Report of 1st August 2019 considered that the Applicant had adequately addressed the Planning Authority's concerns and recommended that planning permission be granted.

### 3.3. **Other Technical Reports**

- 3.3.1. Engineering Department – Drainage Division (dated 14<sup>th</sup> May 2019 and 16<sup>th</sup> July 2019). No objection to the proposed development, subject to 4 no. standard conditions.

### 3.4. **Prescribed Bodies**

**Transport Infrastructure Ireland:** A condition requiring the payment of a S. 49 Contribution Scheme Levy is recommended (if applicable).

**National Transport Authority:** No submission received.

**Irish Water:** No submission received.

### 3.5. **Third Party Observations**

- 3.5.1. Mr. Pat Coyne (the Appellant) made 2 no. observations on the planning application. The issues raised are similar to those raised in the grounds of appeal (see section 6.1 below).

## 4.0 Planning History

4.1. There is no recent planning history for this site.

Other Relevant Planning History:

4.2. PA Reg. Ref. 3864/18; ABP Ref. 303474-19: Planning permission granted for a change of use from warehouse to live art studios, gallery and performance space with associated and ancillary accommodation at No. 21-25 Arran Street East and 10 & 12 Mary's Abbey, Dublin 7. This site is opposite the current application site. The appeal in this case was against a S. 48 condition only.

## 5.0 Policy and Context

### 5.1. Development Plan

- 5.1.1. Zoning: The site is subject to land use zoning 'Z5' (City Centre) which has the objective "to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity". 'Restaurant' and 'residential' uses are permissible under this zoning objective.
- 5.1.2. Policy: The policy regarding restaurant uses is set out in Section 16.29 of the Development Plan, which in the context of this application, includes the consideration of the effect of noise, general disturbance, hours of operation and fumes on the amenities of nearby residents; traffic considerations; and, waste storage facilities.
- 5.1.3. The policy regarding signs on shopfronts and other business premises is set out in Section 16.24.3 of the Development Plan, which generally requires proposals to have regard to the Retail Design Manual, 2012 and Dublin City Council's Shopfront Design Guide, 2001.
- 5.1.4. Development Standards: The standards for residential accommodation as set out in Section 16.10 of the Plan are now superseded by the *Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities* (March 2018) which require of a minimum overall apartment floor area of 45 m<sup>2</sup> for 1-bedroom units.

5.1.5. The Development Plan acknowledges that minimum internal standards may not always be achievable, including in relation to 'living over the shop' projects. In such cases, standards may be relaxed subject to the provision of good quality accommodation.

## 5.2. **Natural Heritage Designations**

5.2.1. None.

## 5.3. **EIA Screening**

5.3.1. Having regard to the nature and scale of the proposed development, comprising a change of use of an existing commercial premises and internal reconfigurations to residential accommodation 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 Appeal**

### 6.1. **Grounds of Appeal**

6.1.1. 1 no. Third Party appeal has been received, the grounds of which can be summarised as follows:

- The provision of a restaurant in this location would conflict with the established use of the fruit and vegetable market and would create a hazard for patrons due to the condition of the adjoining footpaths;
- The use of the restaurant on a 24-hour basis was not described on the site notice and should not be permitted. If permission is granted, it should be on a temporary basis to enable the impact of the development on the residential amenities of the area to be reviewed.

## 6.2. Applicant Response

6.2.1. A First Party Response to this appeal has been received from Mahoney Architecture on behalf of the Applicant which can be summarised as follows:

- Many larger-scale fruit and vegetable providers have relocated to out-of-town locations;
- The historic markets are undergoing refurbishment works, with a large section being converted to food outlets;
- Arran Street East is characterised by a mix of uses, including fruit and vegetable suppliers, cafés, art uses, commercial offices and apartments on upper floors, which creates activity throughout the day;
- The proposed restaurant use would bring activity to the street during the afternoon and evening and would complement other existing activities;
- The proposed chef training activity may need to operate outside normal restaurant hours to facilitate trainee chefs who are already working in the industry and therefore, the facility may remain open 24-hours a day.

## 6.3. Planning Authority Response

6.3.1. None received.

## 6.4. Observations

6.4.1. None received.

## 7.0 Assessment

7.1. I am satisfied that the issues raised in the appeal are the main issues for consideration in this case, including:

- Principle of the Proposed Use;
- Residential Amenity;
- Hours of Operation of Proposed Restaurant Use;

- Façade Improvements;
- Appropriate Assessment.

Each of these issues is addressed in turn below.

## **7.2. Principle of the Proposed Use**

- 7.2.1. This application seeks permission for a change of use from warehouse/storage use to restaurant use at ground floor level and the provision of 1 bedroom and en-suite accommodation to the existing studio at first floor level.
- 7.2.2. The site is subject to land use zoning objective 'Z5' (City Centre), the primary purpose of which is to sustain life within the centre, through intensive mixed-use development. Both 'restaurant' and 'residential' uses are permissible under this zoning objective.
- 7.2.3. The site is located within an area which is characterised by a wide variety of uses, including warehousing and other activities associated with the neighbouring fruit and vegetable market, cafés, residential, retail and other commercial uses. I note that planning permission has also recently been granted for art studios, a gallery, performance space and associated/ancillary accommodation on a site which includes No. 21-25 Arran Street East directly opposite the subject site.
- 7.2.4. The site itself is already established as mixed-use in character, as is the neighbouring property to the north at No. 45 Arran Street East, which has warehouse/commercial use at ground floor level, with evidence of two floors of residential accommodation above.
- 7.2.5. Based on the site's Z5 land use zoning objective, the existing mixed-use character of the site and the pattern of development in the immediate vicinity, I am satisfied that the development is acceptable in principle at this location.

## **7.3. Residential Amenity**

- 7.3.1. This application seeks to reconfigure the internal layout of the existing studio accommodation at first floor level, which currently comprises an open plan area of c. 58 m<sup>2</sup>. There is an existing void above the entrance to the warehouse/storage space at ground floor level, which results in the studio unit being set back within the property at first floor level, with no direct windows onto Arran Street East. The only other existing windows to the residential accommodation comprise 2 no. high level

windows with a stated cill height of 2 metres. These are located within the building's northern façade fronting onto the adjoining property at No. 45 Arran Street East.

- 7.3.2. This application seeks to reinstate the floor area to the existing void space and reconfigure the layout of the studio accommodation to provide a 1-bedroom apartment of 75.6 m<sup>2</sup>, which is significantly in excess of the overall unit area requirements of the *Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities* (March 2018).
- 7.3.3. A double bedroom of 14.7 m<sup>2</sup> with en-suite accommodation of 3.1 m<sup>2</sup> is proposed fronting onto Arran Street East, which will benefit from a direct source of light from a reinstated window opening within the first-floor façade.
- 7.3.4. An open plan living/kitchen/dining area and a further w.c./shower room are proposed within the central and rear portions of the apartment unit. These spaces will be illuminated by way of the existing high-level windows within the northern façade of the building. The applicant has expressed a willingness to provide an additional rooflight to this space, and in my opinion, this would be a beneficial intervention in this instance. The existing studio accommodation does not have any existing private amenity space and it is not proposed to provide any such space on foot of this application. This is considered reasonable given the significant improvements which are proposed to the internal layout of the established residential accommodation.

#### **7.4. Hours of Operation of Proposed Restaurant Use**

- 7.4.1. While the proposed land-use mix is considered appropriate on the subject site, it is further considered that the potential impact of the proposed restaurant use on the residential amenity of the accommodation at first floor level needs careful consideration. The applicant has confirmed that the proposed restaurant will also serve as a chef training facility and that training activities may need to take place outside normal restaurant hours to facilitate chefs already working in the catering industry. As such, there is a possibility that the facility may need to remain open on a 24-hour basis. However, it is considered that the full-time operation of the proposed restaurant has the potential to have a detrimental impact on the residential amenity of the apartment unit above. The matter has been raised as an issue of concern by the appellant with respect to potential negative impacts on the residential amenities of the wider area.



- 7.4.2. Having examined the matter at hand, it is considered that the application of a condition which restricts the hours of operation of the restaurant use would be appropriate in the interests of safeguarding the residential amenity of the residential use at first floor level. In reviewing the planning history for the neighbouring site at No. 21-25 Arran Street East, I note that a condition was attached to the recently permitted art/gallery/performance space (DCC Reg. Ref. 3864/18) restricting the hours of operation of that building to 8am – 12am Sunday to Thursday and 8am – 2am Friday to Saturday in order to safeguard the amenities of the surrounding area.
- 7.4.3. Given the nature of the uses which are proposed in this instance, and the need to facilitate restaurant training outside normal working hours as identified by the applicant, it is considered reasonable that the application of a condition which restricts the operation of the ground floor use to 6am – 12am Monday to Sunday would be appropriate. While the appellant has suggested that permission should be granted on a temporary basis in order to assess the impact of the development on the residential amenities of the area, I am satisfied that a temporary permission is not warranted in this instance given the city centre location of the site and the established mixed-use character of the immediate and wider area. This matter can be addressed by way of condition.
- 7.4.4. I note that details of the manner in which fumes and odours from the proposed restaurant use will be controlled have not been provided with the application. In order to ensure no undue impacts will arise with respect to the residential amenity of the apartment unit at first floor level, it is recommended that these details should be agreed with the planning authority prior to the commencement of development. This matter can be addressed by way of condition.

## 7.5. **Façade Improvements**

- 7.5.1. The proposed development includes façade improvements to the building at ground floor level fronting onto Arran Street East, including a new steel frame shopfront to the restaurant unit and a new entrance door to the apartment unit, with a terrazzo finish to the surrounds. Raised stainless steel signage is proposed above the shopfront at ground floor level.

- 7.5.2. At first floor level, it is proposed to reopen one of the existing blocked-up window openings to serve the apartment unit, with a new painted render finish to the façade. Further bespoke signage is proposed on the first-floor façade for later agreement.
- 7.5.3. On balance, it is considered that the works which are proposed to the façade at ground and first floor levels will serve to enhance and improve the external appearance of the building.
- 7.5.4. In conclusion, I am satisfied that the proposed development would be in accordance with the site's land use zoning objective and the relevant policies and development management standards of the Dublin City Development Plan 2016-2022. As such, the proposed development would be consistent with the proper planning and sustainable development of the area.

## 7.6. **Appropriate Assessment**

- 7.6.1. Given that the development is proposed to be connected to the public water supply and drainage networks, and having regard to the nature and scale of the proposed development and its location relative to Natura 2000 sites, 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 or projects, on a European site.

## 8.0 **Recommendation**

- 8.1. It is recommended that permission be granted subject conditions.

## 9.0 **Reasons and Considerations**

- 9.1. Having regard to the site's location on serviced urban land, the policies of the *Dublin City Development Plan 2016-2022* to promote mixed-use development within the city centre, the nature and scale of the proposed development and the pattern of existing and permitted development in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area or of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on 9<sup>th</sup> July 2019, except as may otherwise be required in order to comply with the following conditions.</p> <p>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 the commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>The proposed development shall be amended to include a roof light above the proposed living/kitchen/dining space of the apartment unit at first floor level. Revised first floor and roof plan drawings showing compliance with this requirement shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p><b>Reason:</b> In the interests of residential amenity.</p>
3.	<p>Notwithstanding the provisions of the Planning and Development Regulations, 2001, or any statutory provision amending or replacing them, no advertising signs (including signs installed to be visible through the windows), advertisement structures, banners, canopies, flags, or other projecting elements shall be displayed or erected on the building, unless authorised by a further grant of planning permission.</p> <p><b>Reason:</b> To protect the visual amenities of the area.</p>
4.	<p>The hours of operation of the restaurant use at ground floor level shall be restricted to 0600 – 0000 Monday to Sunday.</p> <p><b>Reason:</b> In order to safeguard the residential amenities of property in the vicinity.</p>
5.	<p>A scheme for the effective control of odour and fumes from the restaurant use at ground floor level, shall be submitted to, and agreed in writing with,</p>

	<p>the planning authority prior to the commencement of development. The scheme shall be implemented before the use commences and thereafter permanently maintained.</p> <p><b>Reason:</b> To ensure a satisfactory standard of development.</p>
6.	<p>The sound from any loudspeaker announcements, music or other material projected in or from the ground floor premises shall be controlled so as to ensure the sound is not audible in adjoining premises or at two metres from the frontage.</p> <p><b>Reason:</b> In the interest of environmental amenity.</p>
7.	<p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p><b>Reason:</b> In the interest of public health.</p>
8.	<p>Prior to the commencement of development, the developer shall enter into water and/or waste water connection agreement(s) with Irish Water.</p> <p><b>Reason:</b> In the interest of public health.</p>
9.	<p>Site development and building works shall be carried out only between the hours of 0700 to 1800 Mondays to Fridays inclusive, 0800 to 1400 on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p><b>Reason:</b> In order to safeguard the residential amenities of property in the vicinity.</p>

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Louise Treacy  
 Planning Inspector  
 1<sup>st</sup> November 2019