



An  
Bord  
Pleanála

## Inspector's Report ABP-305720-19

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<b>Development</b>	Change of use from public house and club to gym use (Class 11(e) without pool)
<b>Location</b>	Units 59, 60 & 61 Northside S.C Clonshaugh Road, Coolock, Dublin 5
<b>Planning Authority</b>	Dublin City Council North
<b>Planning Authority Reg. Ref.</b>	3644/19
<b>Applicant(s)</b>	Drive Investment Fund PLC
<b>Type of Application</b>	Appeal
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Fortem Capital Ltd
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	7 December 2019
<b>Inspector</b>	Una Crosse

## 1.0 Site Location and Description

1.1. The appeal site comprises an existing 2-storey building located within the Northside Shopping Centre which was previously operated as Liz Delaney's Public House and Club which ceased operation in 2015 with the structure vacant since then. Part of the building is occupied by Paddy Powers and is not part of the development site. The building is located to the northwest of the shopping centre lands adjoined to the south by a fast food outlet and to the east by the shopping centre. The Clonshaugh Road is located to the west of the building with an access from same to the south west and northwest of the building. The building is surrounded by car parking. There are educational facilities to the north of the shopping centre lands. The Oscar Traynor Road is to the south and the Barryscourt Road to the east.

## 2.0 Proposed Development

- 2.1. The proposal seeks to change the use of the existing 2-storey plus basement structure from a public house to use as a gym with a total development area of 1,940 sq.m. The existing structure, the use of which it is proposed to change, comprises a basement area of 135 sq.m, a ground floor area of 1,130 sq.m and a first floor area of 611 sq.m.
- 2.2. It is proposed to provide a small area of new floor space, 48 sq.m at ground floor and 16 sq.m at first floor a total of 64 sq.m.
- 2.3. It is proposed to undertake minor elevational changes to include the addition of an entrance and the relocation of the fire escape door with rebranding proposed by way of new signage and the provision of new bicycle stands.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. Permission was granted by the Planning Authority subject to 11 conditions which related to:

- Development contribution

- Clock tower signage to be omitted;
- Revised detailed drawings relating to signage;
- Hours of operation – 06:00-22:00.
- Cycle parking design and provision

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The assessment in Planning Report from Dublin City Council is summarised as follows:

- Proposed use permitted in principle.
- Unit vacant since 2015 and given mixed use nature of the shopping centre, current vacancy of the units and previous use as a public house considered proposal will provide a facility to the locality and a use that adds to the vitality and viability of the shopping centre.
- 3 logo signs are proposed on side of the clocktower but no details provided regarding illumination of the signage and further details regarding proposed signage required including height of lettering/logo, materials and illumination which could be conditioned.
- Concerns regarding the logo signage on the clock tower which it is considered would add visual clutter in the area and should be omitted.
- Given existing parking allocation for previous use and wider availability of car parking in the shopping centre considered parking provision is acceptable.
- Concerns outlined by the Transportation Planning Section regarding the location and design of the cycle stands with condition recommended.
- Overall given nature and scale of proposal, established pattern of development in the area, zoning provisions in current plan proposal would be in accordance with proper planning and sustainable development of the area.

### 3.2.2. Other Technical Reports

- Drainage Division – no objection subject to conditions.

- Road Planning Division – Parking proposed considered acceptable. Concern regarding cycle parking provision and design with condition proposed.

### 3.3. **Prescribed Bodies**

No reports received.

### 3.4. **Third Party Observations**

- 3.4.1. As per grounds of appeal outlined below.

## 4.0 **Planning History**

- 4.1. Applications/Permissions on the subject structure within last 10 years.

**Ref. 4083/09** – Retention permission granted for advertising signage and video screen on south facing elevation.

- 4.2. **Ref. 5950/07** – Redevelopment of Northside Shopping Centre in 2 phases.

## 5.0 **Policy Context**

### 5.1. **Development Plan**

- 5.1.1. Site is zoned objective Z4 which seeks to '*provide for and improve the mixed-services facilities*'. Cultural/Recreational buildings and uses are permissible in principle in this zone. Cultural/Recreational building and use are defined in Appendix 21 of the current development plan and comprise a building or part thereof used for purpose including gymnasium. The site is within Key District Centre 2.

- 5.1.2. The following policies/objectives are referenced within the appeal/other documents:

Policy SC10 - To develop and support the hierarchy of the suburban centres, ranging from the top tier key district centres, to district centres/urban villages and neighbourhood centres, in order to support the sustainable consolidation of the city and provide for the essential economic and community support for local neighbourhoods, including post offices and banks, where feasible, and to promote and enhance the distinctive character and sense of place of these areas.

Policy RD15 - To require a high quality of design and finish for new and replacement shopfronts, signage and advertising. Dublin City Council will actively promote the principles of good shopfront design as set out in Dublin City Council's Shopfront Design Guidelines (see also 16.24.2)

Policy RD17 - To promote active uses at street level on the principal shopping streets in the city centre retail core and in Z4 district centres and having regard to the criteria for category 1 and category 2 streets and special planning control areas.

Policy RD19 - To promote the retail provision in the key district centres, district centres and neighbourhood centres, including the revitalisation of existing established centres (Appendix 3 Retail Strategy).

## **5.2. Natural Heritage Designations**

5.2.1. None of Relevance

## **5.3. Environmental Impact Assessment - Preliminary Examination**

5.3.1. Having regard to the nature and scale of the proposed development which provides for the change of use of an existing structure and minimal additional floorspace, 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. The grounds of appeal are summarised as follows:

- Northside SC is a key district centre in the City Plan supported by policies SC10 & RD19.
- Not considered use as a gym provides an essential use to the KDA of the shopping centre and considered amalgamation of 3 units to accommodate the gym would prevent provision of more essential services in the area.

- Proposed loss of 3 retail units would be a contravention of policy RD19.
- Northside SC identified in retail strategy as KDC in need of revitalisation with priority to develop a unique shopping destination complemented by other uses within an attractive public domain with proposal not informed by retail strategy with loss of 3 retail units preventing the introduction of additional retailers in the area with the gym use not complementing the existing retail destination.
- Use as a gym inappropriate use at ground floor level given retail nature of shopping centre and does not contribute positively to the area as required by Policy RD17 which aims to encourage active uses at street level with proposed use not active.
- Peak hours for proposed use in the evening which will result in the gym compromising the vitality of existing services and facilities within the centre.
- Approximately 17 gyms within 2km radius of the site with an additional facility resulting in an oversupply of gyms within the area.

## 6.2. Planning Authority Response

6.2.1. None received.

## 6.3. First Party Response to the Appeal

6.3.1. The first party response to the appeal can be summarised as follows:

- Draw Board's attention to fact that appellant, Fortem Capital Ltd (t/a Fit 4 Less Gyms) operate a chain of commercial gyms (Fit 4 Less Gyms) and have 2 recent planning applications within the DCC area on similarly zoned properties where they promote identical reasons/justification in support of proposals which they use to support rejection of proposed development.
- Applications outlined include a proposal for a gym made on Z4 lands at Butterly Business Park by appellant (Ref. 2772/18) with planning report attached to response (Appendix).

- Request that Board consider whether the appeal is an abuse of appeal and planning process, being anti-competitive and its consequence being the prevention of sustainable and appropriate development.
- Reference to DCC Planners report where use is a permitted use in the Z4 zone, gym part of definition of cultural/recreational building/use with the proposed use permitted in principle and does not contravene the zoning or policy SC10.
- Existing 3 units are not retail units but have been used previously as a public house and nightclub which are a different use class to retail with no loss of retail units proposed and no contravention of policy RD19 proposed or occurring.
- Proposed change of use is a significant positive gain for the local neighbourhood and will enhance the character of the area adding a healthy and positive service.
- Changes and positive additions to the shopping centre is exactly what zoning and polices seek to encourage and support.
- Previous permission for the shopping centre (Ref. 5950/07) included a gym facility (2,553 sq.m).
- As noted by Planner, unit has been vacant since 2015 and given mixed use nature of shopping centre, current vacancy and previous use as pub considered proposal will provide a facility to the locality and a use that adds to the vitality and viability of the shopping centre.
- Appellant, who operates a chain of gyms, understand the opening hours are intended to complement people's daily lives and peak times are irrelevant with proposal a vital part of daily life minimising travel and combining work, social and home lives with proposal enhancing the shopping centre.
- Planners view that proposal not an inappropriate ground floor use given previous use.
- Appellant does not disclose that they are a gym operator in the locality operating a gym at Unit 10B Butterly Business Park granted permission on Z4 lands.
- Should not be the case that a competitor operator seeks to control development and restrict provision of additional services.

## 7.0 Assessment

### 7.1. Abuse of Process

- 7.1.1. The applicants agent contends that the appellant has failed to disclose their interest as a gym operator with an operation in the area. They request that the Board consider whether the appeal is an abuse of the appeal and planning process, being anti-competitive and its consequence being the prevention of sustainable and appropriate development. I consider that the competitive nature of the appeal is clearly apparent. I would refer the Board to Section 2.5.3 of the Retail Planning Guidelines (April 2012) which states '*the planning system should not be used to inhibit competition, preserve existing commercial interests or prevent innovation*'. In this regard I would note that the applicants have attached a report to their response to the appeal which was prepared by the appellants and submitted to support their proposal for the suitability of a gym on Z4 lands in close proximity to the proposed development. This is a matter of public record and clearly highlights that the grounds of appeal are questionable. The Board may decide in this regard to dismiss the appeal as vexatious which I consider would be appropriate. In the event that it is decided to proceed with the consideration of the appeal I have addressed the grounds of appeal, such as they are, in the following sections.

### 7.2. Contravention of Policy and Retail Strategy

- 7.2.1. The proposed use as a gym falls into the definition of cultural/recreational building/use in the City Plan and is a permitted use in the Z4 zone. Therefore there is no contravention of the zoning objective. The existing use is that of a public house and nightclub and therefore there is no loss of retail units and I do not consider it could be construed that the proposal would contravene the City Retail strategy. The unit which is physically separate from the main shopping centre has to date, when in use as a public house, operated as a complementary neighbourhood use to the main shopping centre rather than being part of the primary retail function. The proposed use as a gym would arguably provide the same complementary function. The appellants contention that the proposal contravenes policies in the Plan are unfounded and I would suggest are spurious given the report the appellants submitted, which is a matter of public record, to support a development on other lands with the same zoning objective.



### **7.3. Inappropriate Ground Floor Use**

- 7.3.1. The unit was previously operated as a public house and nightclub and as can be seen had little interaction with the streetscape it addresses. Furthermore, the unit addresses open areas of car parking, two access points and the Clonshaugh Road with a wall between the unit and the public path. Therefore there is little existing interaction with the streetscape and the current vacancy of the unit exacerbates this issue. It is considered that the proposed use would create a viable function for the unit which complements the overall facility and would create activity throughout the day.

### **7.4. Number of Gyms in Locality**

- 7.4.1. There is no policy within national or local planning policy frameworks which seek to control the location or provision of gyms. The appellant states that there are 17 within a 2km radius. This I would suggest highlights the demand for such facilities. In this regard I would again refer the Board to the statement at Section 2.5.3 of the Retail Planning Guidelines (April 2012) which states '*the planning system should not be used to inhibit competition, preserve existing commercial interests or prevent innovation*'. The concerns expressed by the appellant are therefore unfounded.

### **7.5. Other Matters**

- 7.5.1. I note the concerns expressed by DCC's Transportation Planning Division in relation to the design of the cycle shelter which are proposed as the Cardiff design with the Sheffield standard the preferred design of the City Council. I would suggest that a condition is attached which requires that this matter is agreed in writing with the Planning Authority before the facility is operational.
- 7.5.2. A number of conditions were included by the PA in respect of signage and in particular Condition 3 requires that the signage on the Clock Tower be omitted in its entirety. It is stated in the planning report that there are concerns regarding the logo signage on the clock tower which it is considered would add visual clutter in the area and should be omitted. I consider that some signage on the clock tower would create visual interest and I would consider that a condition could be attached if the board are minded to grant permission which requires further details of signage for the entire structure including the clock tower.

### **7.6. Development Contributions**

7.6.1. Section 12 of the current DCC Development Contribution Scheme (2016-2020) provides that permissions for a change of use from one commercial use to another are exempt. Any net additional floorspace will be charged at the commercial rate. The proposal provides for the change of use of the existing structure and the provision of an additional 64 sq.m of floor area with the additional floor area subject to the requirement of a development contribution.

## 7.7. **Appropriate Assessment**

7.7.1. Having regard to nature and scale of the proposal which seeks to change the use of an existing structure with a minimal addition of floorspace of 64 sq.m, 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 or projects on a European site.

## 8.0 **Recommendation**

8.1.1. I recommend that planning permission should be granted subject to the conditions outlined below.

## 9.0 **Reasons and Considerations**

9.1. Having regard to the use and design of the development proposed, it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable in terms of vitality and viability of the Northside Shopping Centre and would not detract from the character of the area. The proposed development would, therefore, 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. Prior to the operation of the proposed development, the following matters shall be agreed in writing with the planning authority:

(a) the size, design and location of the cycle stands.

(b) a strategy for advertising and signage including design, materials and illumination.

**Reason:** In the interest of visual amenity and orderly development.

3. (a) All foul sewage and soiled water shall be discharged to the public foul sewer.

(b) Only clean, uncontaminated storm water shall be discharged to the surface water drainage system.

**Reason:** In the interest of public health.

4. 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.

5. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to the 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 Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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Una Crosse  
Senior Planning Inspector

9 December 2019