



An
Bord
Pleanála

Inspector's Report

ABP-306036-19

Development

Change of use of part of the existing retail unit within the existing development to use as a licensed cinema. Development includes 2 auditoriums with ancillary bar / dining area, internal amendments, signage, and ancillary works. Existing development was permitted under Reg. Ref.: 2338/15 and ABP Ref.: PL29S.244917 and Reg. Ref.: 3356/17.

Location

13-17, Dawson Street, Dublin 2.

Planning Authority

Dublin City Council South

Planning Authority Reg. Ref.

3681/19

Applicant(s)

Green REIT (Dawson Street) DAC

Type of Application

Permission

Planning Authority Decision

Grant

Type of Appeal

Third Party

Appellant(s)

DET Limited

Observer(s)

Transport Infrastructure Ireland

Date of Site Inspection

14th February 2020

Inspector

Irené McCormack

1.0 Site Location and Description

- 1.1. The subject site is located on Dawson Street in Dublin City Centre. The site forms the north-western section of an urban city centre block bounded by Dawson Street to the west, Dawson Lane to the north and east and Molesworth Street to the south.
- 1.2. The subject site is located at the junction of Dawson Street and Dawson Lane. The surrounding area accommodates a mix of office, commercial and institutional uses associated with the city centre. The Dawson Street Luas Stop is located to the immediate north of the site.
- 1.3. The site is part of a larger a 0.185-hectare site (1,850 sqm) and work has recently completed construction on a mixed use six storey office/retail commercial building on the site.
- 1.4. The subject site is identified as a Category 2 shopping street in the Dublin City Development Plan 2016 – 2022.

2.0 Proposed Development

The development will comprise:

- the change of use of the lower ground floor level, and part of the ground floor level (to provide entrance / access arrangements) of the retail unit within the existing development on site, for use as a licensed cinema occupying an area of 474 sqm.
 - The licensed cinema will accommodate two auditoriums and will include an ancillary bar / dining area. The development includes internal amendments, tenant signage, and all associated and ancillary development works.
- 2.1.1. The existing development on site was permitted under DCC Reg. Ref.: 2338/15 and An Bord Pleanála Reg. Ref.: PL29S.244917, while the extent of the subject retail unit was permitted under Reg. DCC Reg. Ref.: 3356/17.
 - 2.1.2. The proposal relates primarily to internal works to provide for a basement level two screen cinema and associated cafe/bar. The only external change is on the Dawson Street elevation where a new access door and associated signage are proposed.
 - 2.1.3. In response to a request for further information issued by Dublin City Council an Acoustic Assessment Report was submitted.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The planning authority granted permission subject to 12 conditions. The following conditions area of note:

Condition no. 2. stipulated:

The following requirements of the Air Quality Noise and Monitoring Unit shall be complied with:

- a) The construction of the development shall be managed in accordance with a Construction Management Plan prepared on behalf of the developer and contractor. This plan shall be developed with reference to the Code of Practice for Construction and Demolition produced by the Air Quality Monitoring and Noise Control Unit of Dublin City Council. This plan and all associated documentation should be submitted for written approval prior to the commencement of any works on the site.
- b) The hours of operation during the demolition and construction phase shall be restricted to 7.00am to 6pm, Monday to Friday, and 8.00am to 2.00pm on Saturdays. Permission to work outside of these hours must be subject to the approval of Dublin City Council.
- c) The noise control measures outlined in the Acoustic Consultant's report written by RBA Acoustics and received by the Planning Department on 10/10/2019 must be implemented in full.
- d) Noise and vibration from the development must be inaudible and imperceptible at the nearest sensitive premises.

Reason: In order to safeguard the amenities of adjoining residential occupiers.

Condition no. 3 stipulated:

3. The following requirements of Transport Infrastructure Ireland (TII) shall be complied with:

- a) Prior to commencement of any works the developer shall submit to be approved in writing by TII the servicing access arrangements for the development including during construction.

b) Deliveries including during construction phase shall be made to limit interference with LUAS operations.

c) The applicant should ensure there is no adverse impact on Luas operation and safety. The development shall comply with the 'Code of engineering practice for works on, near, or adjacent the Luas light rail system'

Reason: To ensure no adverse impact on Luas operation and safety.

Condition no. 7 stipulated:

The developer shall comply with the requirements set out in the Codes of Practice from the Noise and Air Pollution Section.

Reason: To ensure a satisfactory standard of development

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. The report of the Planning Officer reflects the decision of the planning authority. The Planning Officer notes the planning history and the zoning objectives for the area. It is considered that there is already a mixture of retail and non-retail uses in the area. Noting relevant policy objectives, the assessment states that an alternative use such as a cinema could be considered at basement level given the dominant retail use would continue at ground floor level. A cinema use would be consistent with the conservation policies and the proper planning and development of the area given a cinema use is permissible within the Z5 zoning objective. It is noted that the Senior Environmental Health Officer reviewed the submitted acoustic report and considered that the applicant had satisfactorily demonstrated how they would mitigate against background noise from the cinema.

3.2.3. Other Technical Reports

Environmental Health Officer - In his final report dated 10th October 2019 the EHO raised no objection subject to conditions.

Engineering Department – Drainage Division (Report dated 25th October 2019) – No objection subject to compliance with conditions attached to planning permission DCC Ref. 2338/15 relating to surface water management.

City Archaeologist – (Report dated 4th September 2019) – No objection subject to conditions and compliance with condition no. 9 of planning permission DCC Ref. 2338/15.

Note: In relation to the above the planning officer's report states '*given this application does not involve any ground works it is not considered necessary to attach the condition again*'.

3.3. **Prescribed Bodies**

Transport Infrastructure Ireland – In their report dated 3rd September 2019 the TII set out a detailed condition relating to the development noting that the site falls within the area covered by the Supplementary Development Contribution Scheme (Section 49, Planning & Development Act, 2000 as amended). Luas Cross City (St. Stephen's Green to Broombridge Line). The works should not have an adverse impact of Luas operation and safety.

3.4. **Third Party Observations**

The planning officer notes the following submissions/observations were made in relation to the development. A brief summary of the issues raised are set out below:

- Concern about the impact on the vibrancy of the street during the daytime
- Loss of retail along Dawson Street in the context of the objective to promote Dawson Street as a secondary retail street
- No evidence of efforts to let the retail unit in its entirety
- Concern alterations at ground floor level would affect potential to let the retail unit
- Concern the ground floor retail could also be the subject of a change of use application and that it should be confirmed this is leased as retail first
- The development would be contrary to policy 7.6.1. which sets out the primary consideration is the promotion of retail use

- The development would be contrary to RD23 which promotes larger units which are hard to secure.
- The viability of the smaller retail unit needs to be substantiated.
- Further information should be sought in respect of noise issues and fire safety.
- Concern about intensification of basement level and the capacity should be reduced.
- There should be restrictions on opening and closing times.
- The development is contrary to proper planning and development.

4.0 Planning History

DCC Reg. Ref. 4457/17 – Permission granted for shop front details, including signage and associated lighting, at the ground floor level of the building on the subject site (currently under construction) as permitted under Reg. Ref. : 2338/15 and ABP Ref. PL29S244917.

DCC Reg. Ref. 3356/17 – Permission granted for the change of use of part of the ground floor and lower ground floor retail unit in the permitted development at Nos. 13-17 Dawson Street (permitted under Reg Ref 2338/15 and An Bord Pleanala Reg Ref PL29S.244917) currently under construction, for use as a licensed restaurant / cafe unit occupying an area of 869sqm over two levels.

DCC Reg. Ref. 4263/16 – Permission granted for the erection of a solar photovoltaic ('PV') system at roof level of the building permitted under Reg. Ref.: 2338/15 and ABP Ref. PL29S.244917, which is currently under construction.

DCC Reg. Ref. 2338/15 / ABP PL29S.244917 –Permission granted for the demolition of five storey office and retail/commercial building and, construction of a new six storey office building with retail and café use on the ground and lower ground floor.

5.0 Policy Context

5.1. Dublin City Development Plan 2016 – 2022

The subject site is governed by the zoning objective Z5 which seeks to “consolidate and facilitate the development of the central area, to identify, reinforce, strengthen and protect its civic design character and dignity”. In terms of permissible uses cultural, office, open space, restaurant, retail, artistic and recreational buildings and uses are permissible uses under this zoning objective.

Dawson Street is located within the St. Stephens Green Architectural Conservation Area. The site is not identified within the Architectural Conservation Area.

The subject site is identified as a Category 2 shopping street in the Dublin City Development Plan 2016 – 2022.

The following sections of the Development Plan, amongst others apply:

5.1.1. Chapter 2 – Vision and Core Strategy

Section 2.2.3. Settlement Strategy: “For the inner city, the plan seeks to strengthen and consolidate the robust city-centre mixed-use zoning (Z5), with active promotion of the inner city as an attractive place for urban living, working and visiting...”

5.1.2. Chapter 4 – Shape and Structure of the City

Section 4.4 - The Strategic Approach - The creation of a more compact city, where residents can live close to their places of work or study, and can easily traverse the city, thereby reducing urban sprawl and unsustainable travel patterns.

5.1.3. Chapter 7 – Retailing

Section 7.6.1: Primacy of the City Centre & Retail Core Area of the Dublin City Development Plan states :- *“In order to maintain and strengthen the retail character of the city centre retail core, which can be adversely affected by dead frontage and lower-order retail uses, the premier shopping streets in the city centre retail core are designated category 1 and category 2 streets.*

The purpose of this designation is to protect the primary retail function of these streets as the principal shopping streets in the retail core but also controls the extension of provision of non-retail uses at ground floor level, but also allows for uses complementary to the main shopping focus such as cafes, bars, restaurants and galleries.

RD13: To affirm and maintain the status of the city centre retail core as the premier shopping area in the State, affording a variety of shopping, cultural and leisure attractions and having regard to relevant objections set out in the Retail Core Framework Plan (2007).

RD14: To have regard to the architectural fabric and fine grain of traditional retail frontages, whilst providing for modern retail formats necessary for a vibrant city centre retail core.

RD15: To ensure 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 the Dublin City Council's Shopfront Design Guidelines.

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.

5.1.4. **Appendix 3 – Retail Strategy**

Paragraph 3.7 provides guidance with regard to Category 2 Streets and states that *“streets in this category already have a mix of retail and non-retail uses...”*

5.1.5. **Section 11.1.5.6 Conservation Area – Policy Application-** New development should have a positive impact on local character. In seeking exemplary design standards, the planning authority will require development in Conservation Areas to take opportunities to enhance the area where they arise. Where a building has been identified as having a negative impact on an area, a pro-active approach to improvement will be sought. Where proposals involve demolition, policy for demolition of protected structures and buildings in conservation areas should be referred to.

5.1.6. **Section 9.5.8 Noise Pollution**

5.1.7. **Section 16.24.2 Shopfronts**

5.2. **Natural Heritage Designations**

There are two designed sites within 3.1km of the site.

- South Dublin Bay SAC (site code 00210) is located 3.1km east of the site.

- South Dublin Bay and River Tolka Estuary SPA (site code 004024) is located 3.1km east of the site.

5.3. EIA Screening

Having regard to the nature and scale of the proposed development, the receiving environment, and to the nature, extent, characteristics and likely duration of potential impacts, I conclude that the proposed development is not likely to have significant effects on the environment and that the submission of an Environmental Impact Statement is not required. The need for environmental impact assessment can, therefore, be excluded at preliminary examination. An EIA - Preliminary Examination form has been completed and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- It is set out that the footpath depth is insufficient to accommodate people queuing.
- No car parking is proposed.
- It is set out that Dublin City Council did not adequately address noise issues and fire safety.
- The capacity should be reduced as the development results in the intensification of a basement use.
- It is set out that opening and closing hours associated with the licence premises should be restricted.
- It is set out that the development is contrary to proper planning and development.

6.2. Applicant Response

John Spain Associates have prepared an appeal submission on behalf of Green REIT (Dawson Street) DAC. The response sets out the following:

- The third-party appeal is invalid on the basis that the purported appellant company 'DET Limited' does not exist at the address provided by the

appellant. Dublin City Council invalidated the third-party observation and advised the appellant accordingly.

- It is set out that the Board should dismiss the appeal as provided under section 138 of the Planning and Development Act 2000 (as amended) as it is vexatious, frivolous and without substance.
- In relation to the Grounds of Appeal the submission sets out the following:
 - The development will not rely on the pavement on Dawson Street for queueing. Ticket sales, checking and queueing will occur within the unit itself.
 - Access and egress routes are of adequate scale and capacity.
 - The provision of car parking is not required as the site is located in the city centre in proximity to all modes of transport.
 - An Noise and Acoustics Report was submitted in response to a request for further information and the recommendation to grant permission included conditions to ensure that the development will not have any negative impact in terms of noise and acoustics.
 - It is set out that the development will be subject to a Fire Safety Certificate, which is a separate statutory process.
 - It is set out that reference to '*capacities*' is without substance and not elaborated upon. It is further stated that the location of the development at lower ground floor level is well suited for a boutique cinema use, given the absence of a requirement for natural light.
 - With respect to restricting opening hours noting the use as a licence premises, it is set out that process of seeking a liquor licence is a separate statutory process to the planning process.
 - It is set out that the proposal will represent the provision of an active use which will complement the retail and non-retail uses presents on the street and will contribute to the vibrancy of the area.

6.3. Planning Authority Response

The planning authority did not respond to the grounds of appeal.

A letter was received from Dublin City Council dated 3rd December 2019 stating that ‘no appeal should be accepted from S.O’Neill, DET Limited of Astor House, 29 Lower Georges Street, Dun Laoghaire, as the submission/observation was declared invalid after acknowledgement letter was issued’.

6.4. **Observations**

Transport Infrastructure Ireland - The submission reiterates the contents of the original submission made to the planning authority on the 3rd September 2019.

6.5. **Further Responses**

A further response was received from the appellant dated 7th January 2020. The submission sets out the follow:

- It is set out that the appellant was not aware that her original submission to Dublin City Council was invalid as she had received an original acknowledgement letter from the council.
- It is set out that on foot of correspondence received from a third party (Arthur Cox) the appellant was excluded from further correspondence relating to the planning application.
- It is set out that Dublin City Council did not afford the appellant the opportunity to respond to the contents of the letter from Arthur Cox.
- The appellant queries how all other correspondence was received by her from Dublin City Council with the exception of the letter invalidating her submission and, in this regard, the appellant queries what attempts were made to return her fee.
- It is set out that all correspondence was signed by S. O’Neill in accordance with the criteria for a valid submission and that the appellant is an actual person and notwithstanding reference made in her correspondence to “DET Limited”, the appellant states that she clearly stated her name and valid address on her submissions to Dublin City Council and the Board.
- It is set out that Dublin City Council erred in its decision to deem the appellants submission invalid and she was incorrectly excluded from the

further information stage and the decision made by Dublin City Council must be overturned by An Board Pleanala.

7.0 **Assessment**

Introduction

7.1. In relation to the validity of this planning appeal, the submissions on this file were considered at a Board meeting held on 4th February 2020. Taking account of the circumstance in this instance and the requirements of Section 127 of the Planning and Development Act 2000 (as amended), the Board decided that the appeal received from Ms. O'Neill should be treated as a valid appeal.

7.1.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Principle of Development
- Noise
- Car Parking
- Other Matters
- Appropriate Assessment

7.2. **Principle of Development**

7.2.1. This application consists of amendments to previous permissions relating to the change of use of part of the lower ground floor level, and part of the ground floor level (to provide entrance / access arrangements) of the retail unit within the existing development on site, for use as a licensed cinema to include two auditoriums with ancillary bar / dining area, internal amendments, a new entrance from Dawson Street and associated signage.

7.2.2. The site is located in the city centre on lands zoned Z5 which seeks to consolidate and facilitate the development of the central area, to identify, reinforce, strengthen and protect its civic design character and dignity. The subject site is identified as a Category 2 shopping street in the Dublin City Development Plan 2016 – 2022 and sits outside the adjacent Architectural Conservation Area.

- 7.2.3. Section 7.6.1 establishes that the premier shopping streets in the city centre retail core are designated category 1 and category 2 streets. The purpose of this designation is to protect the primary retail function of these streets as the principal shopping streets in the retail core and control the extension of provision of non-retail uses at ground floor level. The designation does allow for uses complementary to the main shopping focus such as cafes, bars, restaurants and galleries.
- 7.2.4. The proposed development relates primarily to the lower ground floor with access only being provided at street level. Appendix 3: Retail Strategy of the City Development Plan establishes that it is necessary to balance uses to ensure a vibrant city centre that offers an exciting combination of retail, leisure and cultural uses. In relation to Category 2 streets it is acknowledged that streets in this category are those that already have a mix of retail and non-retail uses and complementary non-retail uses that add to the vibrancy of the street and create a mixed use environment to provide for a more integrated shopping and leisure experience, will be considered favourably but with regard also to the primary retail function of the street. I am satisfied, that the proposed use of the lower ground floor for a cinema use will not detract from the retail primacy of the ground floor street frontage and the proposed cinema use enhance and complement the amenities of the city centre and the principle of the development is in compliance with the objectives for the site.

7.3. **Noise**

- 7.3.1. Concern is expressed by the appellant that the issue of noise impact was not appropriately addressed. In response to a request for further information by the planning authority the applicant submitted an Acoustic Assessment Report prepared by RBA Consultants. The report established the maximum noise levels within the auditoria and a series of acoustic recommendations to control noise break-in and break-out from the cinema demise to acceptable levels have been provided. The agreed landlord breakout noise requirement from the cinema is that the resultant noise levels in adjacent tenants demise must be inaudible. The sound insulation measures will be implemented as part of the fit-out and will include works to the floors, walls and ceilings. The report also includes specifications details.
- 7.3.2. It is further stated that RBA have been appointed to carry out regular visual inspections during construction to ensure noise control measures are correctly

installed. RBA will conduct commissioning tests measuring the performance of the installed works and directly measure noise transfer from the auditoria to ensure no negative impact to adjacent properties.

- 7.3.3. I am satisfied that subject to the implementation of the mitigation measures set out in Acoustic Assessment Report the development will be acceptable in terms of noise impact. I note the Environmental Health Officer (report dated 10th October 2019) raised no objection subject to conditions.

7.4. **Car parking**

- 7.4.1. The appellant has expressed concern regarding the lack of car parking on site. In this regard, the Development Plan establishes that car parking provision maybe reduced or eliminated in areas that are well served by public transport. The site is a city centre site located in close proximity to all modes of transport. I am satisfied that there is no issue with car parking provision on the site.

7.5. **Other Matters**

Queueing

- 7.5.1. The appellant argues that the footpath depth is insufficient to accommodate people queuing. In response the first party set out that development will not rely on the pavement on Dawson Street for queueing. Ticket sales, checking and queueing will occur within the unit itself. I am satisfied that this is acceptable.

Fire Safety

- 7.5.2. The applicant is required to obtain a Fire Safety Certificate to operate the development. The Fire Safety Certificate will determine the maximum safe capacity of the development. This is separate and independent of the planning process.

Opening Hours

- 7.5.3. The appellant states that opening and closing hours associated with the licence premises should be restricted. The first party set out that that process of seeking a liquor licence is a separate statutory process to the planning process. The issuing and granting of Liquor Licences is covered by the Licensing Acts of 1833 to 2010 and this is separate and independent of the planning process.

7.6. Appropriate Assessment

Having regard to the nature of the development, its location in a serviced urban area, and the separation distance to any 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 or projects on a European site

8.0 Recommendation

Having considered the contents of the planning application, the decision of the planning authority, the provisions of the development plan, the grounds of appeal and the responses thereto, my inspection of the site and my assessment of the planning issues, I recommend that permission be granted for the development for the reasons and considerations set out below.

9.0 Reasons and Considerations

Having regard to the city centre location of the development, the pattern of development in the area, to the provisions of the Dublin City Development Plan 2016-2022 and to the nature, scale, layout and design of the proposed development, it is considered that the proposed development would not seriously injure the amenities of the area would not detract from the retail primacy of the area and would be acceptable in terms of traffic safety and convenience, subject to compliance with the conditions set out below. 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 lodged with the application, as amended by the further plans and particulars submitted on the 10th October 2019 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. Details of all external signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of the amenities of the area/visual amenity

3. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, serving access arrangements, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and amenity

4. The mitigation measure set out in the Acoustic Assessment Report submitted with the planning application on 10th October 2019 shall be implemented in full before the proposed development becomes operational.

Reason: In order to safeguard the amenities of adjoining properties.

5. Site development and building works shall be carried out only between the hours of 0700 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours 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.

Reason: In order to safeguard the residential amenities of property in the vicinity

Irené McCormack

Planning Inspector

18th February 2020