



An
Bord
Pleanála

Inspector's Report ABP – 306760-20.

Development	Permission for Removal of Restriction of hours of operation, under Condition No 2 of the grant of permission under P. A. Reg. Ref. /PL 249126.
Location	No 16 Harcourt Street and mews to rear facing Montague Lane and No 19 Harcourt Street, Dublin 2.
Planning Authority	Dublin City Council
P. A. Reg. Ref.	4678/18
Applicant	Gambetta Ltd.
Type of Application	Permission.
Decision	Refuse Permission
Type of Appeal	First Party X Refusal
Appellant	Gambetta Ltd.
Observer(s)	Transportation Infrastructure Ireland.
Date of Inspection	June 2020
Inspector	Jane Dennehy.

1.0 Site Location and Description

- 1.1. The site which has a stated area of 680 square metres and on which the three buildings subject of the permitted development are located is at the corner of Harcourt Street and Montague Street. At the rear and parallel to Harcourt Street is Montague Lane which a service lane. No 16 Harcourt Street is a four storey over basement building with a stated floor area of 895 square metres. There is a rear access off Montague Lane, and an unoccupied single storey mews with a stated floor area of 83 square metres at the rear. The main building is in office use on the upper floors and the basement and ground floor levels are unoccupied. No 19 Montague Street is a two-storey building in commercial use which has a stated floor area of 93 square metres, and it has frontage onto both Montague Street and Montague Lane.

2.0 Proposed Development

- 2.1. The application lodged with the planning authority is a proposal for permission for removal of Condition No 2 of the grant of permission under P. A. Reg. Ref. /PL 249126 according to which the hours of operation of the permitted bar/restaurant use are confined to 0800 s and 2300 hrs only and 'nightclub' use is not permitted.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to refuse permission on grounds that the removal of the restriction would allow for use as a nightclub and late night restaurant / café use, an overconcentration of such land use in the area which would be contrary to section 16.32 of the CDP. (See details under Section 5 below.)

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning officer in his report considered that there has been no material change to the relevant CDP policies and objectives and that the proposed omission of the

restrictions would materially change the prior grant of permission.(See details under Section 4 below.) He also indicates concerns about cumulative impact of noise pollution and circulation in the area owing to the concentration of existing late night venues on the street and he also considers that the cumulative impact would not be compatible with the Georgian Conservation Area in which the site is located.

3.3. **Prescribed Bodies**

Transportation Infrastructure Ireland in its submission indicates recommendations for requirements which relate to the location of the LUAS along Harcourt Street and it is also stated that the location is within the area of the Section 49 Supplementary Development Contribution Scheme.

3.4. **Third Party Observations**

A third-party observation lodged with the planning authority indicates concerns as to potential over concentration of night-time entertainment venues at the location and possible noise and nuisance.

4.0 **Planning History**

P. A. Reg. Ref. 3150/17 / PL 249126: The current application is a proposal for permission for removal of Condition No 2 attached to the grant of permission, further to first party appeal against the planning authority decision to refuse permission for an extension to Restaurant, additional use as a bar/café, demolition of extension to the rear and change of use of warehouse and pizzeria to use as a restaurant and bar together with all ancillary works.

P. A. Reg. Ref. 4678/1/ 303948: Further to a first party appeal the planning authority decision to refuse permission for extensions to the existing uses at No 16 Harcourt Street, reconfiguration of the existing building, entrance an courtyard area and, demolition of the mews at the rear of No 16 Harcourt Street and at Nos 16-18 Montague Street and to provide for licensed bar, restaurant, café and hostel development was upheld. The reason related to adverse impact on the setting of the

protected structures and established built form and historic character of the area due to excessive scale, mass, height and bulk

P. A. Reg. Ref. 4427/16: Permission was refused for:

- the demolition of a modern rear extension at basement level and ground floor level to the rear of the main building and the construction of various works to accommodate the extension to the existing use as a licensed restaurant at basement level and additional use as a café/bar together with alterations to the mews building to the rear to accommodate a bar at ground floor, restaurant café/bar and seating area at first and second floor level within the mews along with modifications to the existing courtyard area including the incorporation of external terraces and new additional external stairs.
- Works at No. 17 Harcourt Street to include the creation of two new openings at basement level within the main building for the purpose of circulation and reconnection of existing properties.
- Modifications were also sought to the mews building to the rear of No. 17 Harcourt Street together with a change of use from storage to licensed premises at ground floor and first floor level.
- Change of use from pizzeria to licensed restaurant and bar at No. 19 Montague Street.

In brief, the three reasons for refusal of permission are that of:

(1) overconcentration of licensed premises in the area as well as an unacceptable impact on amenities of the area through disturbance which would be contrary to Section 16.32 of the CDP.

(2) Irreversible interventions at Nos. 16 and 17 Harcourt Street would result in a significant loss of legibility and would affect the character of both buildings.

(3) the additional second floor to the mews to the rear of Nos. 16 and 17 Harcourt Street would have a detrimental visual impact on the historic character and fabric of the protected mews buildings.

5.0 Policy Context

5.1. Development Plan

The operative development plan is the Dublin City Development Plan, 2016-2022 according to which the site area facing onto Harcourt Street and Montague Street comes within an area subject to the zoning objective: Z8 'Georgian Conservation Areas': to protect the existing architectural and civic design character, and to allow only for limited expansion consistent with the conservation objective. The area within the site facing onto Montague Lane and Montague Street is subject to the zoning objective Z4: To provide for and improve mixed services facilities.

No 16 Harcourt Street and the Mews structure to its rear are included on the record of protected structures. Policy CHC1 provide for preservation of built heritage that positively contributes to the character and character of the streetscape. Policy QH 25 provides for encouragement of reintroduction of residential use in the historic city areas.

According to Section 16.32 it should be demonstrated that proposals for new uses such as casino, private members clubs extensions to existing uses or variation in opening hours of a public house are not detrimental to residential amenities, environmental qualities or, the established character and functions of the area

6.0 The Appeal

6.1. Grounds of Appeal

An appeal was received from CDP Architecture on 27th February, 2020 attached to which are several appendices comprising copies of documentation lodged with the planning authority in connection with application and the prior application lodged under P. A. Reg. Ref. 3150/17 along with the report on decision on the appeal lodged with An Bord Pleanala in respect of the grant of permission (PL 249126) and copies of two newspaper articles. The appeal grounds are outlined in brief below:

- The applicant has sought to increase commercial intensity of use of an under-utilised site with sensitive designed scheme which retains historic integrity but provides for modern day occupation and is sustainable.

- The applicant requires greater flexibility in the operation of his premises and the restriction on hours of business imposed by Condition No 2 of the grant of permission is unreasonable, uncompetitive and inconsistent as there is no similar restriction on hours of operation at No 17 Harcourt Street (P.A. Reg. Ref. 4321/15 refers.)
- The figures for the floor area provided in the report of the inspector on the appeal under PL 249126 are misleading. He refers to the floor area of the entire development in stating that the development proposed is a fourfold increase and not a limited expansion whereas in that the floor area of the licensed premises alone is 589.7 square metres.
- The development is not typical of the other existing business operations in the area in that it is not a nightclub use but is a café/bar/informal dining venue. It is envisaged that Nos 19 Montague Street and the mews building to the rear of No 16 Harcourt Street would operate from early in the morning as a café bar and in the evening as an early evening food and drinks business. The basement within No 16 Harcourt Street is envisaged as a pre club food and drinks venue as an alternative to a night club venue.
- The removal of Condition No 2 would allow the applicant to operate in accordance with the hours provided for in a seven-day Publican's License: ie. Monday to Thursday: 10:30 am to 11.30 pm., Friday and Saturday: 10.30 am to 12.30 am and Sundays, 12.30 pm to 11 pm. In addition, an opening time of 7.00 am would enable the applicant to avail of the morning breakfast trade. This a reasonable timeframe extension to the hours of 0800 am – 2300 pm permitted under the Condition. All criteria with regard to licensed premises have been addressed.
- As there are no sensitive noise receptors, as stated by the inspector who reviewed the acoustic assessment report, in his report on the appeal under PL 249126 the attachment of the condition, for reasons of residential amenity is not justified. There is no change in ambient noise levels in the area and a neutral impact on noise and disturbance resulting in no impact on residential amenities. Several mitigation measures are provided such as acoustic barriers and control of outdoor music levels, speakers being directed to the

internal space and fans, with a noise rating below NR 35 to be installed on anti-vibration mounts joined to ductwork.

- With regard to residential amenity and environmental quality, no concerns have arisen with regard to litter control by the environmental health officer or odours, an assessment report having been provided with the prior application.
- Consideration should be given to the existing site context and the detracting from the public realm and streetscape lessening vitality in the area. Architectural and conservation works to be undertaken provide for improvements enhancing the protected structure and upgrading consolidating the group of buildings and visual amenities and environmental quality street frontage and vitality whereas the buildings are derelict and deteriorating. The applicant will comply with the conditions recommended by the conservation officer Drainage Division, Transportation Infrastructure Ireland and the Waste Management Division on the prior application.
- The restriction on hours of operation limits the ability of the applicant to provide for a sustainable business venture.
- The design strategies and the entrance and exit points are arranged to avoid unacceptable disturbance, safety and passive surveillance and a high level of monitoring and communication between staff and patrons will be promoted
- The development is in line with the policy objectives for Nightclubs and Licensed premises under Section 16.32 of the CDP in which such uses are encouraged in helping to create a vibrant city for residents and visitors and to attract people to cutting edge industries in the city. The development is not a “super-pub”, which would be discouraged according to section 16.32 of the CDP. The use of the term in reports on the application is dubious. There are limited spaces and seating areas for patrons that are dedicated for customers availing of the food offering. and spaces. The licensed premises element was not a concern according to the inspector’s report on the prior proposal. He indicated concern about the scale, mass and bulk

6.2. **Planning Authority Response**

There is no submission from the planning authority on file.

6.3. **Observations**

Transportation Infrastructure Ireland in its submission indicates recommendations for requirements which relate to the location of the LUAS along Harcourt Street and it is also stated that the location is within the area of the Section 49 Supplementary Development Contribution Scheme.

7.0 **Assessment**

- 7.1. The sole element of the application (and appeal) is the proposed omission of Condition No 2 attached to the grant of permission under P. A. Reg. Ref. 3150/17 (PL 249126) in which the hours of operation are restricted to 0800 am – 2330 hrs. The applicant also, in the appeal indicates that the following hours of operation would be acceptable: Monday to Thursday: 0700 hrs am to 2430 hrs Friday and Saturday and 0700 hrs to 2300 hrs Sundays.
- 7.2. The extension to the hours of operation at night-time that the applicant considers acceptable to enable him to operate a viable business entails a modest increase on the restriction imposed by the appealed condition. The proposed closing time which is the same as the hours provided for under a seven-day publican's license is a modest extension to the permitted closing time. The opening time of 0700 hrs enabling the applicant to take advantage of early morning breakfast trade is also reasonable.
- 7.3. Having regard to the total stated floor area of 589.7 square metres for the bar/café restaurant use it is agreed the scale, intensity and nature of the proposed uses are not comparable to or like that of a large nightclub. The night-time use would tend to resemble that of a cocktail / wine bar or bistro with a food offering and the daytime use being that of casual dining/café use. In this regard, the case made as to possible misinterpretation of the scale and size of the café and bar operation in the Inspector report on the prior appeal in connection with the permitted proposal is reasonable. (PL 249126 refers.). It has also been satisfactorily demonstrated, as stated by the Inspector in his report on the prior grant of permission that the design and mitigation

and management –provides for neutral impact ambient noise levels and consequently on residential amenities, although no such noise receptors are in the immediate vicinity.

- 7.4. The extension to the hours of operation at night-time that the applicant considers acceptable to enable him to operate a viable business entails a modest increase on the restriction imposed by the appealed condition. The proposed night-time closing time which is the same as the hours provided for under a seven-day publican's license is a modest extension to the permitted closing time. There are no substantive planning grounds on to the modest extension to the permitted hours of operation at night-time that the applicant considers acceptable should be rejected having regard to Section 16.32 of the CDP. The opening time of 0700 hrs enabling the applicant to take advantage of early morning breakfast trade is also reasonable.
- 7.5. In this regard, the change in the restrictions on hours of operation indicated to the acceptable to the applicant in the appeal should not give rise to concerns as of the nature and intensity of use. The impact is considered relatively immaterial and insignificant as regards potential for over concentration of night-time entertainment and public house use in the area and as regards potential detrimental impact on the residential amenities, environmental qualities and established character and functions of the area.
- 7.6. It is recommended that the condition be omitted but that a new condition providing for hours of operation proposed in the appeal be attached.
- 7.7. **Environmental Impact Assessment Screening.**
 - 7.7.1. Having regard to the nature of the proposed development and its location in a serviced urban area, removed from any sensitive locations or features, there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.
- 7.8. **Appropriate Assessment Screening.**
 - 7.8.1. Having regard to the nature of the proposed development and, to the serviced inner urban location, no Appropriate Assessment issues proposed development would not 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. In view of the foregoing, it is recommended that permission be granted for omission of Condition No 2 attached to the grant of permission under P. A. Reg. Ref. P. A. Reg. Ref. 3150/17, subject to a condition providing for the opening hours discussed above and, compliance with the prior grant of permission and the conditions attached. Draft Reasons and Considerations and Conditions follow:

9.0 Reasons and Considerations

Having regard to the location close to the city centre, to the nature of the permitted development on the site and that of existing development in the area, to the Dublin City Development Plan 2016 – 2022 according to which the site is subject to the zoning objectives: Z8: *Georgian Conservation Areas*: to protect the existing architectural and civic design character, and to allow only for limited expansion consistent with the conservation objective and Z4: To provide for and improve mixed services facilities, and, the inclusion of No 16 Harcourt Street and the mews structure to the rear on the record of as protected structures it is considered that subject to compliance with the conditions below, the proposed omission of Condition No 2 attached to the grant of permission under P. A. Reg. Ref.3150/17 would not seriously injure residential amenities, environmental qualities and established character and functions of the area and, would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be in accordance with Condition Nos 1 – 10 attached to the grant of permission under P. A. Reg. Ref..3150/17 on 10th May, 2018 except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity

2. Condition No 2 attached to the grant of permission under P. A. Reg. Ref. 3150/17 on 10th May, 2018 shall be omitted. The operational hours for the bar

and restaurant shall be confined to 0700 hrs and 23.30 hrs on Mondays to Thursdays; 07:00 hrs and 24:30 hrs on Fridays and Saturdays and, 07:00 hrs and 23:00 hrs on Sundays. Nightclub use is not permitted.

Reason: In the interest of clarity, and the amenities, environmental qualities, and the established character of the area.

Jane Dennehy
Senior Planning Inspector
8th June, 2020.