



An
Bord
Pleanála

Inspector's Report R307287-20

Development	Change of use of existing residential area to commercial use, provision of a new stairwell to accommodate meeting rooms and office space.
Location	Hole in the Wall Pub 345 – 347 Blackhorse Avenue, Dublin 7.
Planning Authority	Dublin City Council.
Planning Authority Reg. Ref.	4459/19.
Applicant	Martin McCaffrey.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party -v- Refusal.
Appellant	Martin McCaffrey.
Observers	None.
Date of Site Inspection	7 th September, 2020.
Inspector	Paul Caprani.

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1.0 Introduction

ABP307287-20 relates to a first party appeal against the decision of Dublin City Council to refuse planning permission for a change of use of existing residential use to commercial use, provision of a new stairwell at first floor level over an existing pub to use as meeting rooms and office space. Dublin City Council refused planning permission for two reasons relating to non-compatibility with zoning and that the proposal would result in a permanent loss of two residential units within a designated rent pressure zone which would set an undesirable precedent for the loss of residential units. The site is located at the Hole in the Wall Pub on Blackhorse Avenue, which runs along the northside of the Phoenix Park.

2.0 Site Location and Description

- 2.1. The Hole in the Wall Pub is located off the Navan Road in the suburban area of Ashtown approximately 6 kilometres north-west of Dublin City Centre. The building is a long, ostensibly two-storey structure with a three-storey element in the middle. It comprises of an amalgamation of a number of former buildings fronting northwards onto Blackhorse Avenue. It comprises of a pub and a restaurant at ground floor level with residential and storage accommodation above.
- 2.2. St. Vincent's Cottages, a row of terraced single-storey dwellings is located directly opposite the site. The site backs onto the Phoenix Park. A pedestrian entrance from Blackhorse Avenue into the Park is located adjacent to the south-eastern gable of the building.
- 2.3. The planning application relates to the south-eastern portion of the building closest to the pedestrian entrance into Phoenix Park. At first floor level this section of the building accommodates residential use with a kitchen/lounge area as well as two bedrooms and storage areas at first floor level. A circulation corridor and an internal veranda facing southwards towards the Phoenix Park run along the front and rear elevation at first floor level.

3.0 Proposed Development

3.1. Planning permission is sought for a change of use from the residential element to use as informal work spaces and meeting rooms together with a small reception area and waiting room at the south-eastern end of the building. The proposal also seeks alterations to the existing internal partitions at first floor level. The rooms to be provided comprise a mixture of freestanding work booths together with integrated storage, small meeting rooms (c.20 square metres in size) and more formal office desk layouts together with toilet facilities. The internal veranda area and the existing corridor to the front of the building at first floor level are to be retained. The gross floor area of commercial space to be provided at first floor level amounts to 255 square metres.

4.0 Planning Authority's Decision

Dublin City Council issued notification to refuse planning permission for two reasons which are set out in full below.

- 1. The subject site is located in an area with the zoning objective Z1 "sustainable residential neighbourhoods" with the land use objective to "protect, provide and improve residential amenities" under the City Development Plan 2016 – 2022. The proposed use as serviced offices is not permitted in principle or open for consideration under the Z1 zoning objective. The proposed development would contravene materially a development objective indicated in the development plan for the zoning of the land and would, therefore, be contrary to the proper planning and sustainable development of the area.*
- 2. The proposed development, by itself and by the precedent for which a grant of planning permission would set, would be contrary to the stated provisions of the core strategy in the City Development Plan 2016 – 2022, which recognises residential units as a scarce resource which need to be managed in a sustainable manner so that the housing needs of the city are met. The proposed development, resulting in the permanent loss of two residential units within an area designated as a red pressure zone, would also be contrary to the core principles of the Dublin Housing Strategy 2016 – 2022 which requires that the planning and building of housing and residential space in the city*

contribute to sustainable and balanced development. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

4.1. Planning Authority's Assessment

- 4.1.1. A report from the Engineering Department Drainage Division stated that there was no objection to the development subject to the developer complying with the Greater Dublin Regional Code of Practice for Drainage Works.
- 4.1.2. A report from the Transportation Planning Division states that given the relatively small scale nature of the proposed change of use the division has no objection to the proposed development subject to three standard conditions.
- 4.1.3. The initial planner's report recommended further information in relation to the following:
- The applicant is requested to clarify the nature of the office and meeting room use and clarify whether it is a standalone enterprise or ancillary to the pub/restaurant use.
 - The applicant is requested to justify the loss of two apartment units in light of Section 5.5.8 and Policy QH24 of the Dublin City Development Plan.
- 4.1.4. Further information was submitted on 3rd February, 2020 on behalf of the applicant.
- 4.1.5. It is stated that the proposed office use is separate to the bar/restaurant, very much servicing as an amenity space for the surrounding community as flexible workspace similar to a "we work" offering.
- 4.1.6. The upper floor of the public is currently vacant and has been for some time. This area of the first floor was previously granted planning permission as a restaurant under Reg. Ref. 4219/17. The applicant now seeks to change that usage due to local demand for such a facility. The previous residential use was only ever for a single dwelling for a single member of the family. There is no longer such a need.
- 4.1.7. A further planner's report was prepared on 18th March, 2020. In relation to the proposed office use, the planner's report notes that the proposed use is a serviced office available to rent as opposed to a back office ancillary to the existing building.

As such it is not a permitted use under the Z1 zoning objective as per 14.4 of the development plan.

- 4.1.8. The permission granted under Reg. Ref. 4319/17 for a restaurant was not implemented and the permitted and established use of the first floor is residential. Notwithstanding the housing situation of the applicant, the relevant policies of the development plan, as well as the core strategy, all of which are intended to safeguard the extant housing stock as a valuable resource. On this basis it has not been demonstrated that the loss of residential use is justified.

5.0 Planning History

- 5.1. No appeal files are attached.
- 5.2. Details of extensive planning history associated with the site is set out on pages 2, 3, 4 and 5 of the planner's report. The report notes that there is enforcement history associated with the site. The more recent applications which are of relevance are briefly summarised below.
- 5.3. Under Reg. Ref. 2364/16 retention of planning permission was granted for changes to the front façade of the building and this decision was upheld by An Bord Pleanála on appeal under (PL29N.247091).
- 5.4. Under Reg. Ref. 4219/17 planning permission was granted for a proposed change of use from existing residential to first floor restaurant/café use with associated layout changes.
- 5.5. Under Reg. Ref. WEB1061/17 planning permission was granted for an extension of the first floor residential space above the existing floor area in order to infill the building line with a new pedestrian entrance at ground floor level.
- 5.6. Under Reg. Ref. 4685/18 permission was granted for the proposed refurbishment of the existing shopfront to allow an improved accessibility entrance together with other modifications.
- 5.7. Under Reg. Ref. 2069/19 permission was granted for the placement of a modified shipping container 6 metres by 2.5 metres alongside the existing seating area to be used as a facility for serving coffee and snacks during the early morning period.

5.8. Under Reg. Ref. 3736/19 retention of planning permission was refused for the operation of an existing diesel power generator within an existing garage on site. Permission was refused on the basis that the proposal would have significant detrimental effects on surrounding residential amenity and would conflict with the zoning objectives and a number of policy statements contained in the development plan.

6.0 Grounds of Appeal

6.1. The grounds of appeal state that planning permission has already been granted under Reg. Ref. 4219/17 for a change of use of existing residential to restaurant/café use with associated layout changes. Based on the above, it is argued that the current application is effectively a simple change of use of a pre-existing permission which is not residential. Thus, it is argued there is a strong precedent in existence in the area of the building for a non-residential use.

6.2. Dublin City Council assume that the upper floor of the Hole in the Wall consisted of two residential units. However, this is not the case. There is only one residential unit which is currently unoccupied at first floor level.

6.3. It is stated that pubs are a struggling trade at present which is now being further polarised by the advent of Covid-19. The applicant is now considering alternative uses for spaces that will drive footfall and support the local employment and enterprise in the area.

6.4. The provision of a flexible desk and working café space will increase the longevity of the pub and restaurant beside it. It is noted that with the Covid-19 outbreak there is a relevant precedent where pubs are introducing new uses such as cafes, pizza ovens and hot desking etc. all of which seek to “reimagine” the public house.

6.5. The Board are requested to take into account the fact that the applicant already has permission for a non-residential use upstairs. The proposal will serve as a flexible workspace for the local community.

7.0 Appeal Responses

7.1. Dublin City Council have not submitted a response to the grounds of appeal.

8.0 Development Plan Provision

- 8.1. The site is governed by the policies and provisions contained in the Dublin City Development Plan 2016 – 2022. The site is governed by the zoning objective Z1 which seeks to protect, provide and improve residential amenities. Office use or meeting rooms are not listed as a category which is either a permissible use or a use open for consideration under the Z1 zoning objective.
- 8.2. Policy QH24 seeks to resist the loss of residential use on the upper floors and actively support proposals that retain or bring upper floors above ground floor premises into residential use in order to revitalise the social and physical fabric of the city through measures such as the living city initiative, and to allow scope for the residential development standards to be relaxed for the refurbishment projects subject to the provision of good quality accommodation as outlined in development standards. To proactively promote and market delivering city initiative in Dublin City in order to attract an encourage investment in the city's valuable building fabric within the designated living city initiative.
- 8.3. The site is also located in a designated Conservation Area associated with the wider Phoenix Park. Blackhorse Avenue is also earmarked for road improvement works.

9.0 EIAR Screening Assessment

The proposed change of use is not a class of development for which an EIAR is required.

10.0 Environmental Designations

- 10.1. The subject site is not located within or adjacent to a Natura 2000 site.

11.0 Planning Assessment

I have read the entire contents of the file, have visited the subject site and its surroundings, and have had regard the planning authority's two reasons for refusal and the grounds of appeal rebutting these reasons. I have also had particular regard to the Z1 zoning provisions set out in the development plan. I consider that the Board

in assessing the current application and appeal can restrict its deliberations to the two reasons referred to in the planning authority's decision namely:

- The Contravention of the Zoning Objective
- The Removal of the Residential Unit from the Housing Stock

11.1. **Contravention of the Zoning Objective**

11.1.1. The first reason of the planning authority's refusal states that the proposed use as a serviced office is not permitted in principle or open for consideration under the Z1 zoning objective. As such it is argued that the proposed development would contravene materially a development plan objective as indicated in the development plan and therefore would be contrary to the proper planning and sustainable development of the area. I have consulted the said development plan and have had particular regard to the permissible uses and uses which are open for consideration under the Z1 zoning objective. I would agree with the conclusions reached in the Dublin City Council Planning Report that office use is not a use which is either permitted in principle or a use which is open for consideration under the Z1 zoning objective. Section 14.4 of the development plan which specifically relates to permissible and non-permissible uses states 'that uses not listed under permissible or open for consideration categories will not be deemed to be permissible uses in a number of zones' and this includes the Z1 zoning objective. The Planning Authority therefore in my view are correct in coming to the conclusion that the proposal would materially contravene the land use zoning objective pertaining to the site.

11.1.2. The applicant in the grounds of appeal argues that the principle of permitting a use other than residential has already been established with the grant of a restaurant/café use under Reg. Ref. 4219/17.

11.1.3. While a grant of planning permission for a commercial use was permitted under the above application. The critical point to note is that restaurant use is a use which is open for consideration under the land use zoning objective pertaining to the site. Thus, a restaurant use may be permitted where the Planning Authority is satisfied that the proposed development would be compatible with the overall policies and objectives and would not have an undesirable effect on the permitted use. The provision of a restaurant/café would in my view be a use which would be compatible with the existing bar use on site. However, an office use in this instance is not a

permissible use nor is it a use open for consideration. In that regard the proposed use would materially contravene the land use zoning objective.

11.1.4. The Board will be aware of the provisions of Section 37(2)(b) in that where a Planning Authority has decided to refuse planning permission on the grounds that the proposed development materially contravenes the development plan, the Board may only grant planning permission where it considers that:

(i) *The proposed development is of strategic or national importance.* I do not consider that the Board could consider such a modest change of use at first floor level in this instance can in any way be considered of strategic or national importance.

(ii) *There are conflicting objectives in the development plan or the objectives are not clearly stated insofar as the proposed development is concerned.*

It is clear and unambiguous in my view that the zoning objectives pertaining to the site do not list office use as a permissible use or a use which is open for consideration and the development plan is clear and unambiguous in stating that “uses which are not listed as permissible or open for consideration will not be deemed to be permissible uses in principle in land zoned Z1”. Furthermore, I can find not evidence that there are any policy statements or objectives in the development plan which are conflicting with the above statement.

(iii) *Permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under Section 28, policy directives under Section 29, the statutory obligations of any local authority in the area, and any relevant policy of government, the Minister or any Minister of government.*

Again, having regard to the modest nature of the proposed development and the nature of the use proposed it is not considered that any of the above guidelines referred to in subsection 3 would be applicable in this instance.

(iv) *Permission for the proposed development should be granted having regard to the pattern of development, and permissions granted in the area since the making of the development plan.*

11.1.5. In relation to this matter I can find no evidence that there have been any similar type permissions granted in the area since the making of the development plan.

11.1.6. On this basis I do not consider that any of the criteria referred to above would be applicable in this instance and therefore in accordance with the provisions of Section 37(2)(b) the Board would be precluded from granting planning permission for the proposed change of use on the basis that the change of use is not a permissible use or a use which is open for consideration and therefore would be deemed to contravene the land use zoning objective associated with the development plan. On this basis the Board in my opinion is precluded from granting planning permission.

11.2. The Removal of the Residential Unit from Use

11.2.1. The second reason for refusal argued that the proposed development and by the precedent which a grant of planning permission would set, would result in the permanent loss of two residential units within an area designated as a rent pressure zone and would also be contrary to the core principles of the Dublin City Housing Strategy 2016 – 2022. It is clear from the applicant's response to the grounds of appeal that the proposal seeks to replace one residential unit with office space and this is apparent from the drawings submitted within the application. The existing residential unit comprises of a central spine of relatively narrow rooms located within the central footprint of the building at first floor level. The applicant has indicated that this residential unit is not currently in use. Having regard to the planning history the Board will note that the Planning Authority have already accepted the principle of the removal of the residential unit on site in order to accommodate a café and restaurant. It would appear therefore that any concerns regarding the removal of the residential element to make way for the restaurant was not so material in the case of the previous application as to warrant a refusal of planning permission.

11.2.2. The removal of one residential unit will have a negligible impact on the overall policies and objectives regarding the provision and supply of residential units within the wider city area. The removal of a single residential unit therefore would not in itself constitute reasonable grounds to refuse planning permission, particularly have regard to the fact that there is an extant permission on site which permits the removal of the residential unit.

12.0 **Appropriate Assessment**

Having regard to the nature and scale of the proposed development and nature of the receiving environment together with the proximity to the nearest 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.

13.0 **Recommendation**

Arising from my assessment above therefore I consider that the decision of the planning authority should be upheld in this instance but only for reasons relating to the proposed use as serviced offices is not permitted in principle or open for consideration under the Z1 zoning objective.

14.0 **Decision**

Refuse planning permission based on the reasons and considerations set out below.

15.0 **Reasons and Considerations**

The subject site is located in an area governed by the land use zoning objective Z1 with the land use objective “to protect, provide and improve residential amenities” under the Dublin City Development Plan 2016 – 2022. The proposed office use is neither a permissible use nor a use which is open for consideration under the Z1 land use zoning objective. Furthermore, it is considered criteria set out under the provisions of Section 37(2)(b) of the Planning and Development Act 2000 which would permit the Board to overturn the decision of the Planning Authority would not apply in this instance. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Paul Caprani,
Senior Planning Inspector.

5th October, 2020.