



An
Bord
Pleanála

Inspector's Report ABP-308345-20.

Development	Permission for change of use from shop to betting office.
Location	20/21 Wexford St., Dublin 2.
Planning Authority	Dublin City Council.
Planning Authority Reg. Ref.	3065/20.
Applicant(s)	Capital Estates Management Ltd.
Type of Application	Permission.
Planning Authority Decision	Refuse permission.
Type of Appeal	First Party
Appellant(s)	Capital Estates Management Ltd.
Observer(s)	None.
Date of Site Inspection	02/12/2020.
Inspector	A. Considine.

1.0 Site Location and Description

- 1.1. The subject site is located on the corner of Wexford Street and Montague Street in the south Dublin inner city centre. Grafton Street lies approximately 250m to the north east of the site and the site lies approximately 1.5km to the south of Dublin's main CBD.
- 1.2. The prominent corner building, the subject of this appeal, comprises a 3-storey building with red brick finish on the upper floors. The ground floor, in its most recent use, comprised a retail clothes shop. The uses in the ground floors of adjacent buildings include restaurants, public houses, barbers, retail, a funeral home, and casino located on Montague Street. The retail unit the subject of this change of use application is currently unoccupied.

2.0 Proposed Development

- 2.1. Permission is sought, a change of use from shop to betting office at ground floor and basement level (181sqm total), including the reconfiguration of the internal layout comprising new customer lobby, manager's office, counter areas, staff room, ancillary storage, and new shopfront advertising signage. The proposed development will also include all associated ancillary site development works, all at 20/21 Wexford Street, Dublin 2.
- 2.2. The application included a number of supporting documents including as follows;
 - Plans, particulars and completed planning application form
 - Planning Report.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse planning permission for the proposed development for the following reason:

Given the number of betting offices currently in close proximity to the application site, the proposed change of use would be contrary to section

16.27 “Betting Offices” of the Dublin City Development Plan and would not accord with the Z5 zoning objective of the site. The proposed change of use from retail to betting office, located on a prominent corner site, would, by reason of its shopfront screens, result in the loss of essential street vitality associated with standard retail uses. The proposed change of use would therefore materially contravene the zoning objective for this site, would be inconsistent with the policies and objectives of the 2016 Dublin City Development Plan and would thus be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning report considered the proposed development in the context of the details submitted with the application and the City Development Plan policies and objectives. The planning report notes that the applicant has indicated that there is an interrelationship between this application and the proposed development at 9 Camden Place and 16 Camden Street Lower (approximately 110m from the subject site) under Reg. Ref. 3058/20 for a change of use from betting office to restaurant. It is noted that the applicant is proposing to re-locate the Ladbrokes betting office from 9 Camden Place and 16 Camden Street Lower to the application site at 20/21 Wexford Street.

The report notes that the scale of the betting office on Camden Street is 104m² while the current proposed unit has a floor area of 181m². While the number of betting offices on the street remains the same, there would be an intensity of use. Concerns are raised in terms of the number of betting shops in close proximity on the street, as well as the loss of the retail unit. The report also notes that there is little detail in relation to the proposed signage provided. The report concludes that proposed development site occupies a prominent location on the corner of Wexford Street and Montague Street and that the proposed use and proposed shopfront screens would detract from the streetscape and would not provide the vitality associated with standard retail uses. The Planning Officer recommends that permission be refused.

This Planning Report formed the basis of the Planning Authority's decision to refuse planning permission.

3.2.2. Other Technical Reports

Engineering Department: No objection subject to compliance with conditions.

3.2.3. Prescribed Bodies

Transport Infrastructure Ireland: As the site lies within the area for an adopted Section 49 Supplementary Development Contribution Scheme – Luas Cross City (St. Stephen's Green to Broombridge Line) under S.49 Planning and Development Act 2000, as amended, and if the application is not exempt, a condition relating to S.49 Contribution Scheme Levy should be included.

3.2.4. Third Party Submissions

There is one third party submission in relation to the proposed development. The submission advises that there is already a proliferation of betting / gaming establishments in the area. The subject site is on the corner of Montague Street and there are already two gaming premises on this short street alone.

4.0 Planning History

4.1. No relevant planning history pertaining to the subject site.

4.2. The Board will note the reference by the applicant to **PA ref 3058/20** which seeks permission for a change of use from Betting Office to Licensed Restaurant at ground floor level (104sqm total), including the reconfiguration of internal layout and provision of customer seating, ancillary staff areas, serving station, accessible toilets, kitchen, storage areas, a new ventilation and duct system and ancillary site works at 9 Camden Place & 16 Camden Street Lower, Dublin 2.

4.3. It is implied that a grant of permission in the above application will result in the relocation of an existing betting shop to the current subject site. Therefore, a grant of permission in this application will see the relocation of a betting shop rather than the creation of a new one. Dublin City Council, on the 14th of September 2020 sought further information in relation to **PA ref 3058/20** with regard to the following:

- Visual impact
- Clarification on physical connection between the proposed restaurant and hostel
- Details of waste storage area
- Noise impact assessment and odour risk assessment

No response to this FI request was indicated as having been received on the Dublin City Council website on the date of this report.

- 4.4. **ABP ref PL29S.243665 (PA ref: 2286/14):** Permission granted, following an appeal to ABP, to retain the change of use from residential to guest house / hostel at 6,7and 9 Camden Place, 16 Camden Street, 2-4 Camden Villas, Dublin 2.

5.0 Policy and Context

5.1. Development Plan

- 5.1.1. The Dublin City Development Plan 2016 – 2022, is the relevant policy document relating to the subject site. The site is located in the Wexford Street area of the city centre and is affected by the zoning objective Zone Z5: City Centre, where it is the stated objective 'To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity'.

- 5.1.2. Section 16.27 of the Plan deals with Betting Offices and states as follows:

It is an objective of Dublin City Council to prevent a concentration of betting offices in the city, thereby ensuring the number of units in a city street, district or neighbourhood centre is not disproportionate to the overall number of community facilities and shop units. The provision of betting offices will be controlled having regard to the following, where appropriate:

- The need to safeguard the vitality and viability of shopping areas in the city and to maintain a suitable mix of retail uses
- The number/frequency of such facilities in the area

- The existing proliferation of similar retail service outlets in the area, such as internet cafés, call centres, take-aways, amusement arcades and car rentals
- The effect on the amenities of the area by reason of noise, hours of operation and litter.

5.1.3. The site is located within a Conservation Area and the following policies are considered relevant:

- Policy CHC1: to seek the preservation of the built heritage of the city that makes a positive contribution to the character, appearance and quality of local streetscapes and the sustainable development of the city.
- Policy CHC4: To protect the special interest and character of all Dublin's Conservation Areas. Development within or affecting a conservation area must contribute positively to its character and distinctiveness and take opportunities to protect and enhance the character and appearance of the area and its setting, wherefore possible.

5.2. Natural Heritage Designations

The site is not located within any designated site. The closest Natura 2000 site is the South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024), & North Dublin Bay pNH (Site Code 000206), which are located approximately 3.5km to the east and north east of the site. The South Dublin Bay SAC (Site Code: 000210) (& pNHA Site Code 000210) is located approximately 3.5km to the east of the site.

The Grand Canal pNHA (Site Code: 002104) lies approximately 800m to the south of the site.

5.3. EIA Screening

Having regard to nature and scale of the development, together with the nature of the proposed works, 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

This is a first-party appeal against the decision of the Planning Authority to refuse planning permission for the proposed development. The issues raised are summarised as follows:

- The development forms a part of two-part approach by the applicants to achieve 2 changes of use at 2 separate locations, both of which are reliant on each other being granted permission for the overall planning outcome sought to work.
- The second inter-related planning application is Reg Ref 3058/20 which seeks a change of use from betting office to restaurant. This site lies approximately 110m to the south of the current appeal site and further information was sought in relation to that application.
- The applicant sought to tie the two proposals together under a single application in order to establish that it could not result in an additional betting office on Camden Street / Wexford Street. This application was deemed invalid due to the distance between the two sites.
- There is a strong and unambiguous relationship between the two proposals and it is submitted that if one planning application is refused permission, the applicant will not be in a position to implement the other due to commercial and leasing reasons.
- It is submitted that there is legal entitlement for the Board to insert an appropriate condition that would ensure that there can be no additional betting office use on the street on foot of this planning application.
- No conservation concerns have been expressed by DCC.

In response to the reason for refusal the following is submitted:

- The principle of the development is in accordance with the provisions of the Development Plan and a betting office is a permissible use.
- The provisions of Section 16.27 have been fully met.

- The proposed development will not detract from the streetscape, nor diminish the vibrancy and vitality of the street or surrounding vicinity.
- A revised shopfront and elevational treatment is submitted with the appeal.
- The proposed development will provide a use in a currently vacant shop unit.
- The existing betting shop (linked application) will be replaced with a restaurant.
- With regard to the issue of intensification raised in the PA report, it is submitted that the basement area will not be open to members of the public and will be used solely for storage, staff breakroom / facilities etc.
- The existing betting shop has a floor area of 104m² while the ground floor of the subject site has a floor area of 110m². It is estimated that the public area / customer betting space will be 70m², and not the 181m² as was taken to be the case by DCC.
- The proposed development will include single service betting terminals, 'digital newspaper tables' and a sofa sit-down area, all of which are part of the new betting office format. There is no discernible increase in betting area envisaged.
- 2 other betting offices are located at 37 Wexford Street and 45A Camden Street Lower. The PAs concern with the number of betting shops in close proximity is immaterial as the subject proposal seeks to relocate an existing betting office which is on the same stretch of street.
- Comparisons made between a casino and a betting office are not accurate as they are different uses and have different purposes. Betting offices are dealt with under different assessment criteria in the DCDP to casinos, which have different opening hours, require membership etc.
- Pursuant to Section 34(4)(h) of the Planning and Development Act 2000, as amended, An Bord Pleanála is entitled to include a condition determining the sequence and timing in which works should be carried out. Suggested wording for a condition to this effect is included in the appeal documents.

- As an alternative, the applicant is willing to enter into a Section 47 sterilisation agreement to achieve the same objective and to ensure that no intensification occurs.

It is requested that permission be granted. The appeal includes a number of appendices.

6.2. **Planning Authority Response**

None.

6.3. **Observations**

None.

7.0 **Assessment**

Having undertaken a site visit and having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site, the nature and scale of the proposed development, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. Linked Applications
2. Principle of the development and potential impact on the Conservation Area.
3. Development Contribution Scheme
4. Appropriate Assessment

7.1. **Linked Applications**

- 7.1.1. The Board will note the submission in the first party appeal that the subject appeal is linked to a further current application which relates to the change of use of the existing Ladbrokes betting office located at 9 & 16 Camden Street Lower to a restaurant. The purpose of the application to change the use of the retail unit to a betting shop is to facilitate the relocation of this existing betting office, located

approximately 110m to the south of the subject appeal site. I also note that the applicant has advised that should one of the applications fail, neither will be implemented.

7.1.2. The Board should note that the two sites are located in areas which have a different zoning objective. The subject appeal site is located within an area which is zoned Z5: City Centre where it is 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. The linked application site, at no. 9 and 16 Camden Street Lower where the current Ladbrokes betting office is located, is within an area zoned Z4: District Centres where it is the objective to provide for and improve mixed-services facilities. Both zoning objectives identify 'betting offices' as permissible uses.

7.1.3. I would also note the very clear indication by the applicant, who operates a Ladbrokes betting office approximately 110m to the south of the site, that if permission is granted, the existing betting office will be relocated to the subject site. There will be no additional betting office located within this street due to a grant of planning permission in this instance.

7.2. Principle of the development and potential impact on the Conservation Area

7.2.1. The subject site is located within an area of Dublin City which is affected by the zoning objective Zone Z5: City Centre. It is the stated objective of this zoning 'to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity'. I note that the building the subject of this appeal is not a protected structure and is located on a corner site.

7.2.2. The Board will note that the reason for refusal relates to non-compliance with the CDP suggesting that a grant of permission would materially contravene the zoning objective afforded to the site. In addition, the reason for refusal indicates that the development would result in the loss of essential street vitality due to the shopfront screens which would be contrary to the policies and development standards of the Dublin City Development Plan 2016-2022.

7.2.3. In terms of the Conservation Area, the following policies are relevant in this regard:

- Policy CHC1: seeks the preservation of the built heritage of the city that makes a positive contribution to the character, appearance and quality of local streetscapes and the sustainable development of the city and
- Policy CHC4: seeks to protect the special interest and character of all Dublin's Conservation Areas. Development within or affecting a conservation area must contribute positively to its character and distinctiveness and take opportunities to protect and enhance the character and appearance of the area and its setting, wherefore possible.

7.2.4. In terms of compliance with the Dublin City Development Plan, the Board will note that Section 16.27 of the Plan deals with Betting Offices and states as follows:

It is an objective of Dublin City Council to prevent a concentration of betting offices in the city, thereby ensuring the number of units in a city street, district or neighbourhood centre is not disproportionate to the overall number of community facilities and shop units. The provision of betting offices will be controlled having regard to the following, where appropriate:

- The need to safeguard the vitality and viability of shopping areas in the city and to maintain a suitable mix of retail uses
- The number/frequency of such facilities in the area
- The existing proliferation of similar retail service outlets in the area, such as internet cafés, call centres, take-aways, amusement arcades and car rentals
- The effect on the amenities of the area by reason of noise, hours of operation and litter.

7.2.5. In terms of the reason for refusal, I would not accept that the proposed development materially contravenes the zoning objective afforded to the site. The Dublin City Development Plan clearly provides that betting offices are an acceptable use on Z5 zoned lands. I would note that there is a further betting office located approximately 100m to the north west of the subject site (Paddy Power), and a second located approximately 290m to the south of the subject site (Boylesports) located at 45a Camden Street Lower. Having undertaken a site inspection, I would not consider that the existing betting offices lie within the visual context of the subject site, such that a

perceived concentration of such uses would arise which would affect the character of the Conservation Area.

- 7.2.6. In addition, I would agree with the applicant in terms of the proximity of casinos to the subject site. I would accept that this use is not equivalent to the proposed use and would note that the Dublin City Development Plan deals with casinos under a separate use for the purposes of Development Standards. I would not consider that a grant of permission would result in a concentration of such uses at this location.
- 7.2.7. In terms of the potential visual impacts associated with the development, and the common use of screens on the betting office windows, I would refer the Board to the appeal submission which presents improved proposals for the shop front and windows. The proposal will not provide for obscure glazing which would potentially impact on the vitality and vibrancy of the development in the streetscape. The amended proposals will provide for views into and out of the unit with discreet signage, to include corporate branding, proposed for the windows. A comparison of the windows to the existing betting office, to be relocated to the subject site, and the proposed signage currently proposed is also presented in the appeal documentation. I have no objections in this regard.
- 7.2.8. Overall, I am satisfied that subject to the inclusion of a condition which precludes the operating of 2 betting shops as detailed in the applicants submission, and a condition which precludes the use of the basement area for public /customer betting area, the proposed change of use as proposed is acceptable at this location.

7.3. **Development Contribution**

The Dublin City Development Contribution Scheme provides that the following development will not be required to pay development contributions under the Scheme:

- Change of use from one commercial use to another.

The subject development is not liable to pay a S48 Development Contribution.

The same exemption exists in the Luas Cross City Supplementary Development Contribution Scheme, and therefore, the development is not liable to pay a S49 Development Contribution.

7.4. Appropriate Assessment

The site is not located within any designated site. Overall, I consider it is reasonable to conclude on the basis of the information available that the proposal individually or in combination with other plans or projects, would not adversely affect the integrity of a Natura 2000 site having regard to the nature and scale of the proposed development and separation distances involved to adjoining Natura 2000 sites. It is also not considered that the 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

I recommend that planning permission be granted for the proposed development for the following stated reason and subject to the following stated conditions.

9.0 Reasons and Considerations

Having regard to the proposed location of the site within a central city area which is subject to the Dublin City Development Plan 2016-2022 zoning objective: Z5: 'to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity', it is considered that subject to the conditions set out below, the proposed development would not adversely affect the visual amenities of the streetscape within the Conservation Area, would not adversely impact on the retail vitality of the city and 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, as amended by the further plans and particulars submitted to An Bord Pleanála on the 26th day of October, 2020, 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. No development works shall commence on the site prior to the commencement of works to cease the operation of the betting office, including the removal of all signage from the windows, at 9 Camden Place & 16 Camden Street Lower, Dublin 2. The proposed betting office shall not commence operation until evidence to prove that the existing betting office has fully ceased operation has been submitted for the written agreement of the Planning Authority.

Reason: In the interests of clarity and in the interest of visual amenity.

3. Details of the proposed advertising signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity and the protection of the character of the streetscape within the Conservation Area.

4. Site development and building works shall be carried out only between the hours of 0700 to 1900 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.

A. Considine
Planning Inspector
6th December 2020