



An
Bord
Pleanála

Inspector's Report

ABP-311393-21

Development	Retention sought for external elevational changes. Retention also for retaining the existing original elevations of residential unit 6 and retail unit 6.
Location	Bayside Shopping Centre, Bayside Square, Sutton, Dublin 13
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F20A/0662
Applicant(s)	Bayside Centre Management and Urban Pulse.
Type of Application	Retention
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Anthony Handley
Observer(s)	None.
Date of Site Inspection	07 th of January 2022.

Inspector

Karen Hamilton

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1.0 Site Location and Description

- 1.1. The subject site includes 4 no retail units (with residential above), located within the centre of the Bayside shopping complex, Sutton, Dublin 13. The proposed retention works relate to Units 3, 4 & 5, whilst it is proposed to disregard any previous alterations proposed for Unit 6 (as previously permitted under Reg Ref 15A/0436).
- 1.2. Units 3 and 4 contain a pharmacy on the ground floor which has direct access onto the public plaza associated with the Bayside shopping complex. Unit 5 has a dry cleaner on the ground floor also with access onto the public plaza. Unit 6, which has been excluded from the application contains a Funeral director's business on the ground floor. All of the units have residential (duplex) above on the first and second floors.
- 1.3. There is a range of commercial uses in the remaining Bayside shopping complex, with Aldi in the larger anchor stores and a range of retail uses in the smaller units. Parking associated with the complex is located to the east of the site.

2.0 Proposed Development

- 2.1. The proposed development relates to the retention of external elevational changes to a previously permitted elevation (Reg Ref F15A/0436) pertaining to the original residential units and retail units within the centre.
- 2.2. Retention permission is also sought for the retention of the original elevations for residential unit 6 and retail unit 6 (i.e., elevations which were intended for upgrade works under Reg Ref F15A/0436).

3.0 Planning Authority Decision

3.1. Decision

Decision to grant permission for the proposed development subject to 3 no conditions listed below:

C1- Plans and particulars

C2- Within 3 months of the date of the final decision, the developer shall submit for the written agreements of the Planning Authority a revised west elevation and corresponding photograph of the 3 residential units to demonstrate that the finishes are consistent.

C3- No advertising signs or structures shall be erected externally or on the outside of the premises except/ including those which are exempt development, without the prior approval of the PA or An Bord Pleanala on appeal.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the area planner reflects the decision to grant permission following a request for a submission of additional information from the applicant on the following:

1. At the time of site inspection, the planner noted the elevation changes “seeking retention” had not been complete and the planning status of these changes were requested. The applicant was also requested to clarify if the development approved under F20A/0116 had been implemented, including:
 - Glass canopy above the retail units which was not in place at the times of the site visit but demonstrated on the plans.
 - Exposed pipework on the front elevation above the retail units.
 - Unit 4- states “New shopfront fixed glazing” however a sliding access door was in use.
 - Unfinished signage.
 - Unfinished walls between shopfronts.
2. The applicant was requested to submit a photographic appraisal of the works seeking retention permission located to the rear of the residential units.

Applicants Response: The applicant confirmed that some works were not actually complete as they were delayed due to Covid restrictions. The applicant confirmed that the works have been completed and photographic evidence include (as requested).

The report of the area planner noted the information submitted and whilst it was considered the development description should include “retention and completion” the works were considered modest in nature.

In relation to the elevation changes to the residential units, it is noted that the submitted plans details those elevations as render whilst the photo illustrates cladding. The area planner recommended the inclusion of condition no 2 to ensure consistency through the implemented works and the documentation submitted.

3.2.2. Other Technical Reports

None received

3.3. Prescribed Bodies

None received.

3.4. Third Party Observations

One third party submission was received from Anthony Handley, the appellant. The issues raised are similar to those in the grounds of appeal and relate to the removal of a shed and access to a glass business etc which is considered illegal. It is contended that the applicant is the owner of Unit 6 and no letter of consent to provide to the applicant.

The report of the area planner noted no third-party submission although there appears to be correspondence between the appellant and the planning section of the County Council acknowledging the initial oversight and confirming the submission would be considered by the planner following the submission of additional information.

4.0 Planning History

There is number of planning permissions for alterations on the wider site. The relevant applications include the parent permission (F15A/0436) and the change of use of Unit 4 (F20A/0116).

Reg Ref F15A/0436

Permission granted for the redevelopment of an existing retail/commercial unit and 3 no duplex units (total demolition 2,581m²) and construction of a mixed-use development (7,573m²) ranging from 1 to 3 storeys and additional associated works including public plaza works, carparking etc. The proposed development included the retention of a small retail space (701m²) and associated storage at ground floor and 4 no duplex units on the first and second floor.

Reg Ref F16A/0433

Permission granted for a change of use of part of first floor level of the permitted redeveloped Bayside Shopping Centre (previously permitted under Reg. Ref. F15A/0436) from gym and office use to ancillary staff facilities for the permitted ground floor licensed retail convenience and other minor alterations to the main newly built shopping centre.

Reg Ref F16A/0565

Permission granted for the reconfiguration of the car park associated with the redevelopment of the Bayside Shopping Centre.

Reg Ref F18A/0425

Permission granted for the construction of an additional floor to the permitted Bayside Shopping Centre to provide 7 no. apartments on a proposed third floor level.

Reg Ref F19A/0255

Permission granted for the retention of a single storey retail buildings (original intended for demolition under previous permissions) and permission for the amalgamation of this retail unit with two existing retail units into one large retail unit.

Reg Ref F19A/0628

Permission granted for the amendments to the previous permitted works along the single storey retail building on the site, omission of the green roof and replacement with stone ballast, omission of the glass canopies, revisions to materials etc.

Reg Ref F20A/0116

Permission granted for a change of use of Unit 4 from doctors' surgery to retail and the amalgamation of Units 3 & 4 into one retail unit, elevational changes and internal modifications.

This permission related in part to the same site as the proposed development now submitted being Units 3 & 4.

Reg Ref F20A/0244

Permission granted for a change of permission of Unit 13A from retail to café/restaurant use within the existing single storey retail building, internal modifications and associated works.

5.0 Policy Context

5.1. Fingal County Development Plan 2017-2023

The site is located on lands zoned as Local Centre, LC, where it is an objective *"Protect, provide for and/or improve local centre facilities"*.

Appendix 6: Map based local objectives

Local Objective 111

Ensure development integrates with the existing residential character and scale of the area and that the surface car parking is maintained with appropriate landscaping south of the church.

Noise

The subject site is located with Noise Zone D associated with Dublin Airport.

5.2. Natural Heritage Designations

No designations apply to the subject site.

5.3. EIA Screening

Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, 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

The grounds of appeal are submitted by an agent on behalf of Anthony Handley, who owns Unit 6, a funeral undertaker's business on the ground floor and a duplex residential unit at first and second floor above this business. The grounds of appeal are summarised below:

Procedure

- Fingal County Council mislead the appellant's submission and no record or condition was included in the planner's reports.
- Following additional correspondence, the appellant was advised that additional submission could be submitted on the additional information.
- The original submission and the submission on the additional information have both been included.
- It appears no consideration was given to the original submission.

Background & Ownership

- There is a long planning history on the site, this is the 8th in a series of applications.
- As noted, the applicant was Unit 6. The original permission allowed the demolition of Units 1, 2 & 7.
- The applicant's unit is included in the red line although the applicant has no consent or control over the unit and the application should be made invalid.
- The applicant has not complied with the checklist in Article 22,2,b (Checklist for lodgement of Planning Applications) as the land ownership is not in blue and no wayleaves are included in yellow.

- Point No. 10 application states the owner and does not include the name and address of the appellant or include any letter giving his consent.

Proposed development

- The proposed development seeks to secure permission for works NOT being carried out to the appellants property.
- The owner should have consented to this application.
- The red line on the site layout plan does not include Unit 6, although the application is part of the scope.
- The application states that consent is being withheld by the owner of Unit 6, although for clarity the owner never provided permission in the first instance.
- There has been damage to the applicant's property associated with the construction works and concerns have been submitted to the Building Control Section of Fingal County Council and the HSA.

Comments on Planning Officers Reports & Additional Information Submitted

- The planning officer has failed to reference the location of the appellant's site or any issue in relation to the Unit 6 in separate ownership.
- The storage units, originally at the rear of the retail units, were included on the original drawings in F15A/0436.
- The drawings which accompanied subsequent applications shows a different layout to the drawings.
- It is unclear how the additional information submitted can clearly illustrate that Unit 6 has been excluded for the purpose of the application although the site layout map has not included Unit 6.
- The planning report notes that the ownership is a civil issue and only where the applicant does not have sufficient legal interest in the land, should permission be refused on this basis.

6.2. Applicant Response

The applicant's agent submitted a response to the grounds of appeal, as summarised below:

- A background to the site location, planning history, merits of the proposed development and the planning context have been summarised.

Response to 3rd party submission

- The appellant is trying to frustrate the planning application/appeal process.
- The issues raised are a civil matter.
- The applicant has sufficient legal interest to submit the application.
- The appellant did not object to the redevelopment of shopping centre and the proposal is now only for minor amendments.
- During the original application process verbal consent was obtained from the appellant for works on site.
- The original permission, upgrade of elevations, etc. was based on the agreed permissions.
- Consultation of other legal aspects, e.g., replacement of 2 no. car parking spaces was commencement.
- The applicant tried to engage with the appellant.
- There has been no change to the land title of the appellant.
- The proposal now represents the absence of any agreed for upgrade works to the appellant's property.
- It is unclear why the appellant is objecting to the proposal, given they do not want any works to be done.
- The Planner's Report has referenced the issue of title as a civil issue.
- The applicant's lawyers confirm freehold interest in the entire development known as Bayside Shopping Centre (folio and land registry submitted).

Conclusion

- The proposed works relating to Units 3, 4 & 5 can be considered minor.
- The proposed development is in accordance with the National and Local Policy
- There was at no stage any attempt of the applicant to challenge the validity of the appellant.

6.3. Planning Authority Response

A response has been received from the PA which is summarised below:

- The issues regarding the red line are noted, however a grant permission is subject to Section 34 (13) of the Act.
- The developer must be certain under civil law that he/she has all rights in the land to execute the grant of permission.
- The footprint of the shopping centre as approved under previous grants of permission remains unaffected by F20A/0662.
- The development was assessed having regard to the policies of the development plan and the zoning on the site.
- Having regard to the third-party submission, the PA are of the opinion that the proposed development, seeking permission does not unduly detract from adjoining visual and residential amenity.

6.4. Observations

None received

7.0 Assessment

7.1. The main issues of the appeal can be dealt with under the following headings:

- Procedure Issues and Validation
- Impact on the Visual Amenity
- Appropriate Assessment.

Procedure Issues and Validation

Introduction

- 7.2. The proposed development includes the retention of alterations to the external elevations of Units 3, 4 & 5 of the Bayside Shopping Complex, as previously permitted under parent permission Reg Ref F15A/0436. These units comprise of ground floor commercial/ retail with residential duplex units above on the first and second floor. Elevation changes include new door location, signage for the ground floor units with canopy and change of external materials for both the commercial and residential. In addition to Units 3, 4 & 5 the parent permission also included works to Unit 6. The proposed development notes the removal of Unit 6 from the overall redevelopment of Bayside Shopping Complex.
- 7.3. The grounds of appeal are submitted by the owner of Unit 6 who question, in the most part, the validity of the planning application. In the first instance, they note that the site layout plan does not include Unit 6 although the remaining plans and particulars reference Unit 6. In the second instance, they note that as the owners of Unit No 6, no consent has been given by themselves for the inclusion of Units 6 in the proposed development. Concern has been raised in relation to the absence of any agreement between the applicant and the appellant for the submission of the application.
- 7.4. The applicant's response to the ground of appeal notes these issues, states that an attempt was made to resolve these verbally and concludes that the submitted application is a response to the removal of Unit No. 6 from the overall redevelopment. The PA also note the grounds of appeal concerns, although believe these legal issues are a civil matter and the applicant had sufficient legal interest to make an application.

Plans and Particulars

- 7.5. The development description for the proposed development relates to the retention of alterations to the Bayside Shopping Complex which has been previously permitted. Retention is also required to remove Unit 6 from the overall proposal with the original elevations remaining.
- 7.6. The submitted site layout plan includes Units 3, 4 & 5 within the red line boundary, whilst the remaining plans and particulars include these units and Unit 6. As noted above, the grounds of appeal consider the application should have been considered invalid as Unit 6 was not included in the site layout plan.
- 7.7. The Board will note the PA validated and accepted the planning application and did not raise any concern with the submitted documentation. This aside, I have assessed the submitted documentation in its entirety. In this regard, I note the development description and submitted plans are clear in the intent for the proposed development and the documentation highlights that Unit 6 is being eliminated from any proposed alterations. In relation to the absence of Unit 6 from the site layout, I note the proposal does not include any works to that Unit 6 and therefore I consider it reasonable that Unit 6 would be excluded from the site layout plan.
- 7.8. Overall, I consider the plans and particulars submitted clearly indicate the works proposed, in particular the removal of Unit 6 from any works previously proposed under parent permission Reg Ref F15A/0436. It is my opinion that the submitted plans and particulars are not misleading to any third party.

Ownership and Consent

- 7.9. The grounds of appeal do not consider Unit 6 should have been in any of the plans and particulars as the appellant, the owner, had not provided consent to the applicant. The appellant notes the requirements of the PA checklist as reference to the planning regulations.
- 7.10. Article 22 (1) (d) of the Planning and Development Regulations 2001, (as amended) requires that the content of planning applications shall generally “*state the legal interest of the applicant in the land or structure and, if the applicant is not the owner, states the name and address of the owner*”. Q10 of the planning application notes the applicants’ legal interest as the owner of the site.

- 7.11. The Board will note the PA response to the grounds of appeal. The PA note that a grant of permission is subject to the provisions of Section 34(13) of the Act where they must be certain under civil law that he/she has all the rights to execute permission.
- 7.12. I note Article 22 (1) (d) of the regulations requires the content of the applications to state the legal interest of the applicant. As stated above, the proposed works relate to Units 3, 4 & 5 of which there is no dispute. Unit 6 is highlighted as being removed from the original proposal (Reg Ref F15A/0436) and any future works. Whilst I note the appellant is not detailed in the application, the plans (elevations and sections) clearly illustrate the applicant has no consent to undertake any works to Unit 6.
- 7.13. Having regard to the absence of any works to Unit 6, I do not consider the carrying out of the proposed development would have any significant impact on the appellant's property and therefore I do not consider the applicants consent necessary for this proposal.

Other works to Unit 6

- 7.14. The grounds of appeal have raised concern in relation to other works undertaken during the construction works. The damage to the appellant's property has been raised as a cause of concern. The appellant referenced complaints to Fingal County Council Building Control Section and HSA. I consider these concerns are not related to the proposed development before the Board. These matters are being appropriately dealt with under separate legislative process, and I do not consider these concerns have any impact on the proposed development.

Conclusion

- 7.15. Having regard to the nature and scale of the proposed development, the absence of any physical works to Unit 6 and the information contained in the plans and particulars, I consider the documentation submitted is sufficient to undertake an informed assessment of the proposed development. I do not consider the proposed development would have any significant negative impact on the appellant's property as no works will be carried out.

Impact on the Visual Amenity

7.16. The proposed development relates to the retention of changes to the shopfronts of Units 3, 4 & 5 and elevation changes to the upper residential floors (change of finish from timber cladding to render and larger windows).

7.17. Alterations to the shopfronts include:

- Change in the window design, with full height glazing,
- Alterations to the design of the shop doors,
- Glass canopy above the shopfronts.

7.18. The PA report noted discrepancies in the submitted plans and particulars. Upon site inspection, the PA noted several works proposed for retention had not been completed. Following the submission of further information including a photographic survey of the works undertaken, the PA was satisfied with the proposal, subject to confirmation that the external materials were cladding, as per the photographs.

7.19. Overall, I note the proposed works on the site corresponded with the submitted documentation. I consider the works to the shopfront, including the glazing, signage and canopy are of a high standard and add value to the setting within the Bayside Shopping Complex. The external materials for the upper floor residential units are also of a high standard and do not represent any negative impact on the surrounding area. The Board will note that the appellant has not raised any concern in relation to the design, layout or standard of those proposed works to be retained on Units 3, 4, & 5.

Appropriate Assessment

7.20. The subject site is located within a serviced urban area and is not directly adjoining or adjacent to a designated site. The nearest European site is the North Dublin Bay SAC (000206) SAC and the North Bull Island SPA (004006) which is approximately c. 300m to the south. However, there are no relevant habitats within the site or no direct hydrological connection to this site.

7.21. Having regard to the nature and scale of the proposed development within a serviced area and separation distance 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 the conservation objectives of any European site.

8.0 Recommendation

8.1. I recommend that planning permission be granted.

9.0 Reasons and Considerations

Having regard to the nature and scale of the proposed development for the retention of external elevation changes to 3 no commercial units (Units 3, 4 & 5) and the residential properties on the first and second floors, it is considered that the nature and scale of the proposed development would be acceptable within the context of the site. The ownership and removal of Unit 6 from the overall redevelopment of the Bayside Shopping Centre is not considered to have a significant negative impact on the existing character of the area or the amenities of the shopping centre redevelopment, nor is it considered absence of the appellant's consent for the works questions the validity of the proposed development. It is considered the proposed development would be in accordance with the policies and objectives of the Fingal Development Plan 2017-2023 and the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by further plans and particulars received by An Bord Pleanala 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.</p> <p>Reason: In the interest of clarity</p>
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2.	<p>Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, or any statutory provision amending or replacing them, any change to the display panel, including any increase in the number of posters to be displayed, the scrolling mechanism or the internal/external illumination, shall be the subject of a separate application for permission to the planning authority.</p> <p>Reason: To enable the planning authority to assess the impacts of any such changes on the amenities of the area.</p>
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Karen Hamilton
Senior Planning Inspector

17th of January 2021