



An
Bord
Pleanála

Inspector's Report ABP 311599-21

Development	Change of use of 1 st floor level from restaurant to 4 apartments and new commercial unit at ground floor level.
Location	23-25 Sundrive Road, Kimmage, Dublin 12
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	2783-21
Applicants	Alex Brett, Michael Whelan & Tony Kidd
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	3 rd Party v. Grant
Appellant	Nicholas McAuliffe
Observer(s)	None
Date of Site Inspection	10/02/22
Inspector	Pauline Fitzpatrick

1.0 Site Location and Description

The site comprises of a 4 storey building with basement car park and store located on the north-east side of Sundrive Road close to the junction with Kimmage Road Lower and opposite the Sundrive Road shopping centre. Mount Argus Square apartments are located to the rear (east) of the site. Houses on Sundrive Park back onto the site to the north.

The building comprises of an off licence and bookmakers at ground floor level, restaurant at 1st floor level (vacant), offices at 2nd floor level and an apartment at 3rd floor level.

2.0 Proposed Development

The application was lodged with the planning authority on the 18/05/21 with further plans and details submitted 18/08/21 following a request for further information dated 13/07/21.

As amended the proposal entails:

- Change of Use of the 1st floor restaurant to 4 no. apartments in the following arrangement
 - 2 no. 2 bed 4 person
 - 2 no. 2 bed 3 person
- 2 no. extensions (6.7 sq.m.) to the rear to provide for angled windows to apartments
- Alterations to the front elevation providing for 2 no. recessed balconies
- 2 no. terraces on the existing single storey flat roof with 1.6 metre high timber screen
- Demolition of internal staircase and elevator and provision of additional commercial unit on the ground floor.
- 8 no. bicycle spaces at terrace level and 2 no. spaces under the escape stairs.

The applicant does not own or have access to existing basement car park. No car parking to be provided.

3.0 Planning Authority Decision

3.1. Decision

Grant permission for the above described development subject to 13 conditions including:

Condition 4: Development to be revised as follows:

- (a) 8 no. bicycle parking spaces and bin store to be provided at basement level.
Internal access to the basement level for the 4 no. apartments to be provided.
Electric bike charging facilities to be provided.
- (b) Privacy screens to roof terraces to be setback at least 3 metres from the rear boundary with No.2 Sundrive Park and to be at least 1.8 metres in height.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The 1st Planner's report dated 12/07/21 considers the development to be acceptable in principle. The proposed apartment mix and shortfall in private open space is considered acceptable on the basis of the scheme being a refurbishment scheme as allowed for in the Guidelines for Design Standards for New Apartments. Further information required on potential overlooking of adjoining properties from the proposed roof terraces and car and bicycle parking.

The 2nd Planner's report dated 14/09/21 following further information recommends that the screen to the 1st floor terraces be increased to 1.8 metres and setback at least 3 metres from the rear boundary of No. 2 Sundrive Park. Bicycle parking to be relocated to basement level. A grant of permission subject to conditions recommended.

3.2.2. Other Technical Reports

Engineering Department – Drainage Division has no objection subject to a condition.

1st report from Transportation Planning Division dated 05/07/21 considers that the proposal could result in overspill parking on Sundrive Park and the access laneway. It is preferred that existing on site parking be reallocated to the proposed use. Bicycle parking required. The 2nd report dated 10/09/21 following further information considers no car parking provision to be acceptable in this instance. Substandard access arrangements to both cycle parking and bin storage is proposed. Cycle parking should be relocated to basement level

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

Objections to the proposal received by the planning authority are on file for the Board's information. The issues raised relate to legal interest and impact on amenities of adjoining property

4.0 Planning History

The planning history on the site is set out in the City Council's Planner's report on file the latest dating back to 2009.

5.0 Policy Context

5.1. Development Plan

Dublin City Development Plan 2016

The site is within an area zoned Z4, the objective for which is to protect and improve mixed services facilities.

Development management requirements are set out in Chapter 16.

Section 16.10.1 set out the residential quality standards for apartments

5.2. Natural Heritage Designations

None in the vicinity.

6.0 The Appeal

6.1. Grounds of Appeal

The submission by O'Neill Town Planning on behalf of the 3rd Party appellant can be summarised as follows:

- The application should have been invalidated as the applicant did not appear to have the necessary legal interest in all of the lands to make the application.
- The extent of the planning application site is dotted red on the plans submitted by way of further information. The stairs are solely for egress (fire escape). No permission has been given for the use of the stairs for ingress. Thus, access to the apartments is compromised due to the inability of the applicants to provide proper access. The appellant's consent to use the stairs for access purposes has not been sought.

6.2. Applicant Response

The submission by JSA Architects Ireland on behalf on the applicants, which is accompanied by supporting plans and details, can be summarised as follows:

- The appellant is a joint owner of the property.
- The stairs in question which forms part of the common areas are subject to a legal agreement. They are owned by the management company in which the applicants have a significant interest. Therefore, the applicants has sufficient legal interest in the lands to make the planning application.
- The accompanying site layout drawings show the red line around the entire of the site which encompasses the area where the stairs are located and includes the common areas of the management company.

- The red line on the floor plans indicate the specific areas where there is a change to the existing plans. There is no change proposed to the existing stairs.
- The stairs was used by the previous restaurant for deliveries, refuse removal, staff access and other uses and was not solely used as a means of fire escape.
- The assertion that the stairs is the ingress for the apartments to the rear is not correct. The principal access for the 4 no. apartments is from the main road. The potential for access by the stairs results from the bike storage following the further information request.
- The applicant is willing to provide bicycle storage in the part of the basement owned by the applicant and remove same from the balcony space. Drawing showing the provision provided in support. Access to same will be via the access to the basement adjacent to the entrance door to the apartments.

Note: Solicitor's letter stated to accompany the submission not provided.

6.3. **Planning Authority Response**

None.

6.4. **Observations**

None.

7.0 **Assessment**

I consider that the substantive issue arising in the case pertains to whether the applicants have sufficient legal interest to make the application. It is contended that the necessary consent to use of the stairs to the rear has not been secured from the appellant.

I consider that the applicant has provided adequate evidence that it has sufficient legal interest to make the application. The Board has no remit in the assessment or

adjudication of issues pertaining to ownership. This is a matter best pursued through the appropriate legal channels.

Therefore, as the grounds of appeal relate solely to matters regarding legal interest and do not address the development for which permission has been sought I recommend that the appeal be dismissed under section 138 (1)(b)(i) of the Planning and Development Act, 2000, as amended.

Should the Board not concur I note the following:

- The proposed development for change of use of previous 1st floor restaurant use to 4 no. apartments and additional commercial unit at ground floor level accords with the Z4 zoning provisions, the objective for which is to protect and improve mixed services facilities.
- The Guidelines for Sustainable Urban Housing: Design Standards for New Apartments allow for a level of flexibility in terms of application of SPPRs for schemes entailing refurbishment/conversion of existing properties. This is considered applicable in this instance. Thus the apartment mix of 2 no. 2 bed 4 person and 2 no. 2 bed 3 person units is acceptable. No communal open space is provided.
- No car parking is proposed. In view of the site location proximate to public transport and the nature and extent of the development this is considered acceptable.
- The amenities of adjoining property are to be protected by the provision of a screen around the 1st floor terraces to the rear. By way of condition 4 attached to the planning authority's decision the screening is to be setback a minimum of 3 metres from the boundary with No.2 Sundrive Park and shall be at least 1.8 metres in height
- The apartments are to be accessed via the entrance from Sundrive Road
- By way of condition 4 attached to the planning authority's decision bicycle parking is required to be provided at basement level and not at 1st floor level accessed by the rear stairs. Plans showing compliance with this requirement accompany the applicant's appeal response.

- By way of condition 4 attached to the planning authority's decision a bin store is required to be provided at basement level.

In conclusion I consider that the proposed development is acceptable and would be in accordance with the proper planning and sustainable development of the area.

Appropriate Assessment

Having regard to the nature and scale of the proposed development and distance from the nearest designated 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

I recommend that the appeal be dismissed under subsection (1) (b) of section 138 of the Planning and Development Act, 2000, based on the reasons and considerations set out below.

9.0 Reasons and Considerations

The grounds of appeal relate solely to matters regarding legal interest in the property and do not address the development for which permission has been sought. The resolution of these matters does not come within the remit of the Board. The Board is, therefore, satisfied that in the particular circumstances, the appeal should not be further considered by it having regard to the nature of the appeal.

Pauline Fitzpatrick
Senior Planning Inspector

February, 2022