



An
Bord
Pleanála

Inspector's Report ABP 312407-22.

Development	Change of use from café restaurant to use as gym and ancillary works
Location	Unit 4, Ground Floor, Block L., Central Park. Dublin 18.
Planning Authority	Dun Laoghaire Rathdown County Council
P. A. Reg. Ref.	D21A/0903.
Applicant	K. W. Investment Fund ICAV
Type of Application	Permission.
Decision	Refuse Permission.
Type of Appeal	First Party X Refusal
Appellant	K. W. Investment Fund ICAV
Date of Site Inspection	11 th March, 2022
Inspector	Jane Dennehy.

Contents

1.0 Site Location and Description.....	3
2.0 Proposed Development.....	3
3.0 Planning Authority Decision	3
3.1. Decision.....	3
3.2. Planning Authority Reports.....	4
4.0 Planning History.....	4
5.0 Policy Context.....	5
5.1. Development Plan.....	5
6.0 The Appeal.....	5
6.1. Grounds of Appeal	5
6.2. Planning Authority Response	7
7.0 Assessment.....	7
8.0 Recommendation.....	9
9.0 Reasons and Considerations	10
10.0 Conditions	10

1.0 Site Location and Description

- 1.1. The application site is that of Unit 4 which has a stated floor area of 242 square metres and is a unit at ground floor level in Block L, one of several multi-storey blocks (Blocks A to P) at Central Park, a mixed-use development within an internalised pedestrianised street network located south of the Leopardstown Road, adjacent to the Central Park LUAS Green line stop and to the Clayton hotel and bus/air coach terminus. Office blocks which are in multiple tenancies and include banks, technology, pharma and corporate headquarters face onto Leopardstown Road and apartment blocks with retail, retail services and leisure uses are located behind these blocks primarily along two crossing pedestrianised streets.
- 1.2. The unit which was formerly in use as a café/restaurant in Block L is partially below the level of the pedestrian street, has a glazed frontage which is sixteen metres in length, and entrance is accessed by a ramp. The entrance for management suite for the Vantage Apartment development is adjacent the premises. It faces a central plaza in front of Block H which is opposite and is around the corner the access route to the LUAS stop. Both the subject premises at Unit 4 and another unit at the opposite corner of the LUAS access route have been in café restaurant use and were vacant at the time of inspection.

2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for change of use of the unit from its former use as café restaurant to use as a gym along with ancillary works. The stated gross floor area of the unit, the change of use of which is proposed is two hundred and forty-two square metres.

3.0 Planning Authority Decision

3.1. Decision

By order dated, 2nd December, 2021 the planning authority decided to refuse permission based on the following reason:

“The proposed development comprising the change of use from a vacant cafe/restaurant unit to use as a gym would materially contravene the

zoning objective for the area as Mixed Use Inner Core (MIC) in the 'Dún Laoghaire Rathdown County Development Plan 2016-2022' and 'Appendix 15 Sandyford Urban Framework Plan 2016-2022', which seeks 'to consolidate and complete the development of the mixed use Inner Core to enhance and reinforce sustainable development', as while a restaurant is 'permitted in principle' a gym is neither 'permitted in principle' nor 'open for consideration' under the MIC zoning objective of the site. Therefore, the proposed development is contrary to the proper planning and sustainable development of the area."

3.2. Planning Authority Reports

- 3.2.1. The report of the planning officer indicated the recommendation for refusal of permission it being noted that according to the MIC zoning objective, the proposed gym use which comes within the description, "sports facility" is not "permitted in principle" or "open for consideration." He states that the proposed use is as a commercial gym as distinct from a gym for residents' use and he concludes that the proposed development would therefore be in material contravention of the zoning objective whereas café restaurant use is open for consideration. He also notes that the application lacks details for proposals for front elevations and signage.
- 3.2.2. The Environmental Health Officer indicated no objection subject to conditions providing for noise control and arrangement for storage of waste materials.

4.0 Planning History

- 4.1. Central Park, a mixed-use development in four large blocks has an extensive planning history dating back to the original grant of permission in 1998, further to which there have been several applications for changes and alterations. P. A. Reg. Refs 98A/0886, D02A/0634, D02/1167, D04A/0987, D04AS/0994, D05A/0577, D05A/0578 and D06A/0681, D07A/1336, D08A/0486, D11A/0390 and D14A/0457 refer. There is also a recent grant of permission, for a three day a week outdoor food market at Central Park. (P. A. Reg. Ref. D18A/0781/ PL 303496 refers.)

5.0 Policy Context

5.1. Development Plan

The operative development plan is the Dun Laoghaire Rathdown County Development Plan, 2016-2022 according to which the site location comes within an area subject to the zoning objective MIC *“To consolidate and complete the development of the mixed-use Inner Core to enhance and reinforce sustainable development.”*

The Sandyford Urban Framework Plan, (SUFP) is within Chapter 8, section 8.3.9 according to which within the Sandyford business district, expansion and or improvement of nonconforming uses which are not likely to have negative impacts on development of adjoining sites and are in accordance with the policies in the SUFP objectives can be supported.

Central Park is defined, in Appendix 15 of the SUFP, in section 1.6 as an urban form with large office blocks facing Leopardstown Road and with a tight grain enclosing an internal pedestrian street enclosed by mixed use blocks (residential over retail, retail service and leisure uses) for the local community's use

A sports facility is defined as

“a building or part thereof or land used for organised and competitive activity that aims to promote physical activity and wellbeing. e.g. sports hall, gym, squash centre, tennis club, golf club, swimming pool, sport pitch, athletic track, skate park, health studio, meeting or activity rooms within clubhouses, racecourse.” (Page 239)

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. An appeal against the decision to refuse permission was lodged by the applicant's agent on 7th January, 2022 in which it is claimed that the proposed development in its nature and scale would not be in material contravention of the CDP's MIC zoning objective.
- 6.1.2. According to the appeal

- The applicant has made considerable effort to market the vacant unit for use as a café restaurant. A disadvantage to café restaurant use being that it is in Block L and setback and partially obscured from the pedestrian street thus having a poor aspect. Block K has good frontage onto the pedestrianised street, proximity to the LUAS Green line stop and has therefore been more attractive to potential occupiers. A second disadvantage is the operation of a good market in the plaza.
- There is considerable economic and environmental benefit in that the proposal would overcome the lack of viability of the unit at which it has not been possible to find a café restaurant operator to occupy it.
- TRIB3 has an agreement with the applicant to operate a gym for group and individual training with a focus on social spaces, team workouts and coaching interventions, along with a smoothie bar and a small concession store for leisurewear. It will animate the area, increase footfall and cater for over 6,000 other people employed at Central Park between early morning and late evening. The Gym at Unit 8 is not a commercial gym in that it is a residents gym confined to use by residents of Vantage apartments (as part of the tenancy arrangement) and operated by the Residents' management company. There is an incorrect reference to this gym as being operated by TRIB3 in the planning officer report.
- Having regard to the CDP provision (in section 8.3.7) whereby uses not mentioned in the use tables that can be considered on a case-by-case basis in relation to general policies in the CDP the proposed use as a gym for a mix of personal and group use is appropriate for the vacant unit. It overcomes the vacancy and is compatible with the other uses with Central Park. A bespoke commercial gym such as that proposed response to the recent changing nature of the health and fitness industry where y bespoke and personalised training and smaller classes in controlled space are now more popular and will be important within sustainable communities.
- The proposal is consistent with Section 2.6 of the National Planning Framework for securing compatible and sustainable growth, and the RSES and the SFUP (and its rationale in section 1.5.1) in reversing the vacancy and providing a viable use.

- The permitted food market is neither “permitted in principle” or “open for consideration” under the OE zoning objective in the current CDP and is a non-conforming development within the SUFP. It was determined, due to its nature and scale not to be of negative impact on residential amenity. (P.A. Reg. Ref. D18A/0781/PL 303496 refers.)
- Although not strictly in accordance with the land use zoning policy the proposal will activate the unit and the street frontage along the pedestrianised street and will add to the variety of uses at ground level within Central Park, close to the LUAS stop which is consistent with the SUFP objective to provide for a mix of uses for its local community. The size and nature of the proposed gym would not undermine or detract from other existing or future gyms development within the wider district. It will benefit residents and the working population at Central Park.

6.2. Planning Authority Response

- 6.2.1. In a letter from the planning authority dated 1st February, 2022 it is stated that the planning authority has no further comments on the proposed development.

7.0 Assessment

- 7.1. It is agreed that the proposed use would come within the definition of “sports facility” within the CDP (see para 5.1 above) and as such a gym is neither ‘permitted in principle’ or ‘open for consideration’ under the CDP’s “MIC” zoning objective for Central Park. It is also noted that the definition, “sports facility” provided in the CDP is generalised in providing for a very broad and diverse range of sports and sports related uses and facilities in scale, nature and intensity of use. A strict interpretation and application of the zoning objective would eliminate positive consideration of the current proposal whereby the planning authority decision would be upheld.
- 7.2. It was notable, at the time of inspection, on a weekday, the pedestrianised streets and area at the LUAS stop were deserted. Many of the blocks within Central Park have ground floors laid out in open plan office or staff canteen space appeared to be almost entirely unoccupied, possibly due to large number of the employee population working from home or to hybrid arrangements. To this end, at application and appeal stage the applicant has made a persuasive case as to the lack of scope for

viable continuation of the established use as a café and restaurant in that it is not possible to attract an operator and as to the disadvantages of the vacant unit in this regard relative to other similar units. A further consideration is that the proposed commercial gym to be operated by TRIB3 providing a service for small groups and personalised for individuals and envisaged for public use mainly by workers at Central Park is clearly distinct from the existing gym the use of which is confined to and covered by the tenancy contracts of the residents of the Vantage apartments under the control of its management company.

- 7.3. Notwithstanding the non-conforming nature of commercial gym use as proposed, rejection of the current proposal appears unwarranted given the circumstances and context of the location at Central Park. As such, in development management the current proposal merits flexibility with regard to the application of the zoning and or/related objectives in consideration of the effect the receiving community and built environment. The proposed use is also a new non-conforming use and not an expansion or intensification an existing use, but there are no substantive grounds on which this proposed use, in the current circumstances as discussed, could be deemed negative to and contrary to the interest of the proper planning and sustainable development of Central Park. Although consistency or otherwise with a zoning objective would be prioritised over conflicting objectives and considerations, there is a compelling case to favour careful consideration of the current proposal on the basis of planning merits in the interests of the sustainable development at Central Park
- 7.4. Furthermore, the proposed use is a commercial leisure use which arguably comes within the meaning of “leisure use” having regard to section 1.6 Appendix 15 of the SUFP, (within the CDP) whereby Central Park is urban in form with large office blocks facing Leopardstown Road and with a tight grain enclosing an internal pedestrian street enclosed by mixed use blocks (residential over retail, retail service and leisure uses) for the local community’s use.
- 7.5. In this regard, the case made as to a positive contribution relative to the current situation whereby the unit remains unoccupied is considered reasonable. However, undoubtedly café/restaurant use is optimal as a means an animation street level and ideally should not be removed to allow for a less effective use, such as the current proposal. As such, if permission is granted, it is recommended that scope for reinstatement of the café restaurant use at a future date be accommodated. This

can be provided for by way of limited duration of the grant of permission, by condition, so that there is an opportunity for a further planning review.

- 7.6. With regard to scope for positive impact on visual amenities and animation of the street frontage, it is considered that a good quality shopfront and signage would be beneficial at the location. High quality presentation using the existing glazed façade and entrance providing for with views in and out and good quality signage and lighting for the proposed use would be appropriate and acceptable. However, as pointed out in the planning officer report the application submission lacks details of the applicant's proposals in this regard. This matter could be satisfactorily addressed by agreement with the planning authority in accordance with a condition.

7.7. Environmental Impact Assessment Screening.

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.

Having regard to the nature and scale of the proposed development, no appropriate assessment issues arise, the 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. Given the foregoing, particularly the current scenario of lack of occupancy and the interests of animation, vitality, and viability, it is considered reasonable to allow for a grant of permission but to restrict the duration of the grant of permission to a limited period so as to allow for an opportunity for further planning review. A condition providing for expiry after a limited period could be included to this effect and a four-year period is recommended. It is therefore concluded that the proposed development is acceptable and that the planning authority decision to refuse

permission should be overturned based on the reasons and considerations and subject to the conditions which follow.

9.0 Reasons and Considerations

Having regard to the Dún Laoghaire Rathdown County Development Plan 2016-2022 according to which Unit No 4 which is at ground floor level within Block L at Central Park, which is *in Sandyford Business District within the area of Sandyford Urban Framework Plan* as provided for in Chapter 8 and section 8.3.9 and subject to the objective MIC *“To consolidate and complete the development of the mixed-use Inner Core to enhance and reinforce sustainable development.”* and to the limited scale and nature of the proposed change of use of the unit to a commercial gym, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of property in the vicinity or of Central Park and would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be completed and retained in accordance with the plans and particulars lodged with the application, 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. The use of the premises at Unit 4, Block L as a commercial gym shall cease on or before a period of four years from the date of this order unless a permission for continuation of use has been granted.

Reason: To provide for an opportunity for further planning review of the use.

3. Prior to the commencement of development, the applicant shall submit and agree with the planning authority full details of the signage for the commercial gym use. No advertising material shall be displayed on the shopfront and no external shutters may be erected.

Reason: In the interest of visual amenities and orderly development.

4. Water supply and drainage arrangements, including the attenuation and disposal of surface water and mitigation measures against flood risk including in the basement area, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

5. The developer shall enter into water supply and wastewater connection agreements with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

6. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the

Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Jane Dennehy

Senior Planning Inspector
12th March, 2022.