



An
Bord
Pleanála

Inspector's Report ABP-313166-22

Development

Change of use of the permitted "Market Space" at ground floor level (pursuant to Condition 4(a) of planning permission 3321/17) to provide a convenience retail unit at ground floor level to include a café/deli, and part off-license.

Vary Condition 4(d) of permission 3321/17 to permit the shared use of the external courtyard space with the permitted artist studios to provide outside seating and dining space ancillary to the proposed retail convenience unit.

Location

8 Newmarket & 18 Mill Street, Dublin
8

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

3017/22

Applicant(s)

Newmarket RVAM 2 Ltd

Type of Application

Permission

Planning Authority Decision

Refusal

Type of Appeal	First Party -v- Decision
Appellant(s)	Newmarket RVAM 2 Ltd
Observer(s)	None
Date of Site Inspection	25 th August 2022
Inspector	Hugh D. Morrison

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2.0 Site Location and Description

- 2.1. The subject building is known as “The Eight Building”. It is a recently constructed four-storey building with recessed fifth and sixth storeys and a basement. This building is sited on the southern side of Newmarket towards its south-western corner. Its front elevation faces onto Newmarket, while its eastern side elevation and its rear elevation face onto Mill Lane and Mill Street, respectively. The building has a floorspace of 8449 sqm. On the ground floor, the permitted uses are a “Market Space” over 612 sqm, artists’ studios over 83.5 sqm, and a shared external courtyard between these two uses over an area of 146 sqm. These ground floor spaces remain vacant at present.
- 2.2. Newmarket and Mill Street to the south are presently the subject of major redevelopments. While Teeling Whiskey Distillery is the centre piece of the area, schemes to provide tourist, visiting worker, and student accommodation have either been provided or are being provided in a collection of multi-storey buildings of modern design.

3.0 Proposed Development

- 3.1. The proposal would entail the following elements:
- A change of use of the permitted “Market Space” at ground floor level (pursuant to Condition 4(a) of planning permission 3321/17, as subsequently amended by 3672/19 and 3747/20) to provide a convenience retail unit at ground floor level (612 sqm gross floor area) to include a café/deli, and part off-license with a dedicated floor area of 28 sqm, and
 - Vary Condition 4(d) of permission 3321/17 (as amended) to permit the shared use of the external courtyard space (146 sqm) with the permitted artist studios to provide outside seating and dining space ancillary to the proposed retail convenience unit. In addition, permission is sought for the shared use of the permitted office waste storage room at basement level.
- 3.2. All works required to facilitate the proposed change of use would comprise internal alterations and would not result in any external alterations to the permitted development.

4.0 Planning Authority Decision

4.1. Decision

Permission was refused for the following reason:

Policy CEE18 of the City Development Plan 2016 – 2022 states that it is the policy of the Council “To recognise that markets, indoor and outdoor, food and other products have major economic potential, including as key tourist attractions and supports for start-up enterprises.” The proposal, if permitted, would result in the removal of the Market area that was a fundamental element of both the scheme granted permission under DCC reg. ref. 3321/17 and the regeneration of Newmarket as envisaged by the principles and objectives of SDRA16. In this regard, it is therefore considered that the proposed change of use of the permitted “Market Space” to provide a convenience retail unit and the proposed amendment to Condition 4(d) of reg. ref. 3321/17, would be contrary to the policies and objectives of the Dublin City Development Plan 2016 – 2022 and the proper planning and sustainable development of the area.

4.2. Planning Authority Reports

4.2.1. Planning Reports

The case planner’s report summarises twenty-eight letters of objection from individual local residents, local residents’ groups, and local councillors.

4.2.2. Other Technical Reports

- TII: Section 49 levy requested if applicable.
- Dublin City Council – Drainage: No objection.

5.0 Planning History

The site:

- **3321/17:** Demolition of all existing buildings on site and the construction of a new part 4-, part 5- and part 6-storey building above basement level with a total Gross Floor Area (GFA) of 9,401.05 sq.m, to include 264.97 sq.m (GFA) of Indoor Market Hall / Retail floorspace and 1,251.07 sq.m (GFA) of office floorspace at ground floor level with a further 7,885.01 sq.m (GFA) of office

floorspace on the upper levels (first to fifth floors). An ESB sub-station and Switch Room is proposed at ground floor level at the rear of the building fronting Mill Street. Access to the basement car park is provided via a ramp off Mill Street. A total of 17 car parking spaces are proposed at basement level together with ancillary storage areas and plant are also provided at basement level. A total of 96 bicycle parking spaces and shower and changing facilities are provided at ground floor level. A north facing roof terrace is proposed at 4th floor level.

Permission was granted on 5th January 2018, subject to conditions, including the following one:

- 4. a) The use of the entire area indicated as "Market space" on revised plans received on 20/10/17 shall be used for the purposes of an indoor market only. No change of use shall be permitted in the absence of a prior grant of planning permission for same.*
- b) A detailed operational management plan shall be submitted for the Market space hereby permitted, prior to opening of this use on site.*
- c) The artists studio shall be used for this purpose only. No change of use shall be permitted in the absence of a prior grant of planning permission for same.*
- d) The shared courtyard space shall be shared for use of the indoor market and artists studio, details of which shall be included in the operational management plan submitted.*

Reason: In the interests of proper planning and sustainable development of the area.

This Condition reflects the outcome of a further information exercise in which the Planning Authority requested, on the basis of Policy CEE18 of the CDP and Section 7.8 of the LAP, that the area of the proposed retail/indoor market be increased to in excess of 600 sqm to provide sufficient space for "a viable indoor market". The applicant responded by specifying an area of 615 sqm. The Planning Authority also requested, on the basis of Policies CHC28 & 31 of the CDP, the provision of artistic workspaces. The applicant responded by specifying 58 sqm of artists' studios. The two uses would be served by an accompanying 160 sqm shared courtyard.

- **3672/19:** External and internal amendments to 3321/17: Following a further information exercise, permission granted. This exercise required the reinstatement of the market space and the full retention of floorspace identified for artists' studios. These uses were considered to be "fundamental elements" of the permitted development.
- **3747/20:** Altered layout of the artists' studios as permitted under 3321/17 and subsequently amended under 3672/19: Retention permission granted.

The context of the site:

- **2283/17:** Part 8 application for a public realm improvement plan for Newmarket and its environs: Approved on 3rd July 2017.

Adjoining site to the west:

- **TA29S.312268:** 134 no. Build to Rent apartments and associated site works: Decision pending.

6.0 Policy and Context

6.1. Development Plan

Under the Dublin City Development Plan 2016 – 2022 (CDP), the site is shown as lying within an area that is zoned Z10, wherein the objective is "To consolidate and facilitate the development of inner city and inner suburban sites for mixed-uses, with residential the predominant use in suburban locations and office/retail/residential the predominant uses in inner city areas." The site is also shown as lying within a Conservation Area and Strategic Development and Regeneration Area (SDRA) 16 for The Liberties, including Newmarket and Digital Hub.

In Chapter 6 of the CDP, the city economy and enterprise are addressed. Under Policy CEE18(v), the Planning Authority undertakes "To recognise that markets, indoor and outdoor, food and other products, have major economic potential, including as key tourist attractions and supports for start-up enterprises."

In Chapter 7 of the CDP, retailing is addressed. Under the heading of "Achievements", the following commentary is provided: "Emergent specialised retail and city market outlets, e.g., Cow's Lane, Francis Street and Newmarket, have

consolidated...proof that good quality produce retailed in a quality-built environment is an attractive proposition for consumers.”

Under Section 15.1.19 of the CDP, the overall guiding principles/objectives of The Liberties Local Area Plan 2009 (LAP) are set out. While this LAP expired in May 2020, under Section 13.17 of the draft Dublin City Development Plan 2022 – 2028, the SDRA 15 – Liberties and Newmarket Square “seeks to incorporate relevant elements of the LAP, as appropriate, that have yet to be realised.” This Section includes the following references to Newmarket Square:

To support the use of Newmarket Square for market trading and other beneficial public uses including as appropriate, works to enhance universal access, the pedestrian environment and public realm.

To carry out the public realm works at Newmarket...

...development should deliver active and animated frontages along the building edges, in particular, at the Cork St. and Newmarket Square interfaces. In this regard, development should respond to the emerging public realm improvements at Newmarket Square and surrounds.

Community and cultural uses at Newmarket Square should be protected into the future.

6.2. Natural Heritage Designations

Portions of Dublin Bay are the subject of European designations.

6.3. EIA Screening

The proposal is for a change of use only. Such development is not a project for the purpose of EIA.

7.0 The Appeal

7.1. Grounds of Appeal

The applicant begins by describing the site and its planning history. It then proceeds to respond to the Planning Authority’s reason for refusal by citing the following grounds of appeal:

(i) Compliance with planning policies and objectives and the “loss” of an indoor market:

- Under the Z10 zoning of the site, the proposed use is permissible in principle.
- While the Planning Authority cites Policy CEE18, it refers to the “major economic potential” of markets and yet the scale of the proposed use would neither have a material economic impact nor act as a catalyst for an outdoor market in Newmarket.
- Attention is drawn to policies in the CDP, which promote the provision of good quality convenience shopping, particularly in the inner city.
- Attention is also drawn to the further information request under 3321/17, which was based on the need to accord with objectives in the LAP, including, under Section 7.8, the specific objective to “Deliver high quality large floor plate retail space including an indoor market” in Newmarket. As this LAP has now expired, a material change in planning circumstances has occurred, and so the proposal would now be acceptable under the CDP.
- 3321/17 was one of three applications made concurrently by the previous owner of the site. Within this context, the floorspace now in question formed only a small portion of the overall floorspace. Its viability was not fully understood at that time.
- The contention that the proposal would result in the loss of an indoor market from Newmarket is critiqued as follows:
 - There is no indoor market in Newmarket at present.
 - The previous building on the site accommodated “The Green Door” flea market on a temporary basis at a nominal rent from 2014 on. This market operated on Thursday and Friday afternoons and on Saturdays. It relocated in 2019 to Unit A1, Bluebell Business Centre, Old Naas Road, Dublin 12.
 - The Dublin Flea market also used this building once a month on a Sunday over a 10-year period up until 2019.

(ii) Viability of the market space:

- The applicant's estate agents advise that the scale, configuration, and floor-to-ceiling height of the space in question would be unsuitable for food hall/market providers, who typically look for 2000 – 3000 sqm spaces to facilitate a minimum of 15 individual vendors.
- By contrast, the Iveagh Market, c. 500m to the north of the site, would potentially meet the aforementioned operating requirements.

(iii) The need for additional convenience retailing in Newmarket:

- The case planner questions the need for another convenience shop, given that there are 4 such shops already within 500m of the site and another one with an area of 700 sqm proposed for the SHD scheme (TA29S.312268) on the adjoining site to the west. While the applicant notes that 3 of these shops would afford a comparable but smaller range of goods to that envisaged for the proposal, they could not be described as “doorstep” convenience shops. Furthermore, the quantum of development in the area is such that the population will grow considerably and so the need for this proposal, even in the presence of one “next door”, exists.

(iv) Regulating the proposed use and retail format:

- Given the absence of demand for a food hall/market provider and the high demand for a convenience shop, the applicant has sourced an operator who has a track record in running a market style food hall, i.e., Centra, e.g., its shop at Miller's Glen in Swords (F11A/0473).
- Attention is drawn to the unusually detailed floorspace layout plan submitted under the current application. If the Board are concerned to regulate the layout thus depicted, then the following condition could be attached to any grant:

The development shall be carried out in accordance with the plans, particulars and specifications lodged with the application. The format and layout of the retail unit as indicated on the Ground Floor Layout Plan (drawing no. P18-178D-RAU-01-ZZ-DR-A-PL2-31005) shall not be materially altered without a prior grant of permission. For the avoidance of doubt, this permission shall not be construed as approving any development shown on the plans, particulars and

specifications, the nature and extent of which has not been adequately stated in the statutory public notices.

Reason: To comply with permission regulations and to ensure an appropriate form of convenience retailing is provided and maintained.

The applicant's estate agent has reported on its 3-year search for a food hall/market provider. Despite having approached international and local operators, no interest has been forthcoming and so the concern is expressed that, should the current application be refused by the Board, the floorspace in question is likely to remain vacant.

7.2. Planning Authority Response

None

7.3. Observations

None

7.4. Further Responses

None

8.0 Assessment

8.1. I have reviewed the proposal in the light of the Dublin City Development Plan 2016 – 2022 (CDP), the planning history of the site, the submissions of the parties, and my own site visit. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Planning history and planning policy,
- (ii) Land use considerations, and
- (iii) Appropriate Assessment.

(i) Planning history and planning policy

8.2. The parent permission for the redevelopment of the site was granted to 3321/17. The case planner's report recorded that, prior to redevelopment, there was a warehouse/light industrial building on the site, which was the venue for a weekend food market and an occasional flea-market. The applicant has elaborated on these market uses as follows:

- "The Green Door" farmer's market ran on a temporary basis at a nominal rent from 2014 – 2019. This market operated on Thursday and Friday afternoons and on Saturdays.
- The Dublin Flea market ran once a month on a Sunday over a 10-year period up until 2019.

While the former market has relocated to Unit A1, Bluebell Business Centre, Old Naas Road, Dublin 12, the latter market does not appear to have found a new venue from which to operate.

- 8.3. The parent permission was granted following a further information exercise, during which the size of the proposed market space on the ground floor of the proposed building was increased, artists' studios were added, and both these uses were to be served by a shared courtyard. The provision of this space, these studios, and this courtyard were then made the subject of Condition 4, which was attached to the parent permission, and which insisted upon these uses, unless planning permission for other uses was obtained. A subsequent application, 3672/19, sought, amongst other things, to replace the market space with a retail space and to reduce the floorspace of the artists' studios. These proposals were reversed under further information, as the Planning Authority considered that the market space and the artists' studios were "fundamental elements" of the original permitted development.
- 8.4. Application 3672/19 was granted on 7th January 2020 and the current application, which essentially seeks the replacement of the market space with a retail space, was lodged on 7th January 2022, i.e., 2 years have elapsed, including within it the atypical period of the Covid-19 pandemic. The current application has been refused.
- 8.5. The Planning Authority has consistently sought to ensure that the redevelopment of the site should entail the continuation of a market use. Its insistence upon the

inclusion of this use has been justified by several policies and objectives in the CDP and The Liberties Local Area Plan 2009 (LAP), which was extended, but expired in 2020. These are set out below.

8.6. Under the further information stage for 3321/17, Policy CEE18 of the CDP and Section 7.8 of the LAP were cited and, under the Planning Authority's refusal of the current application, Policy CEE18 and the principles and objectives of SDRA16 were cited.

- Policy CEE18 states, under Item (v), "To recognise that markets, indoor and outdoor, food and other products, have major economic potential, including as key tourist attractions and supports for start-up enterprises."
- Section 7.8 begins with a summary statement as to what is envisaged for Newmarket:

This historic square is to be redeveloped as a new urban destination accommodating markets, events, performances and outdoor seating for café's and restaurants. The organic food market will occupy new premises facing the square along with shops, artisans' workshops, bars, café's, restaurants, galleries, a micro-brewery and community arts and leisure facilities. Apartments and offices on the upper floors provide 24-hour passive surveillance of the space. In addition, a landmark hotel building on Cork Street signifies the importance of Newmarket as a civic destination.

It then proceeds to set out objectives including the following ones:

Deliver a high quality multi-functional market square and city-wide destination at Newmarket edged with active frontage.

Deliver high quality large floor plate retail space including an indoor market.

For a minimum of 5 years, encourage developers to offer ground floor commercial and enterprise space at below market rent to ensure occupation.

Particularly in less prominent areas such as side lanes off the main open space.

- The principles and objectives of SDRA 16 appear to be the 12 overall principles/objectives of the LAP, which are referred to in relation to Z10 lands that lie outside the LAP's boundary, i.e., the area of Mill Street to the south of the site.

The above policies and objectives recognise, at a general level, the economic value of markets as visitor attractions and supports for start-up businesses and, at a specific level, the importance of continuing the tradition of markets in Newmarket.

8.7. The appellant has drawn attention to the expiration of the LAP, which it considers to be a material change in planning circumstances with the implication being that the previous objective of having an indoor market no longer applies. In the absence of the LAP, Policy CEE18(v) remains. Whether this higher-level Policy is still relevant to Newmarket thus becomes the presenting question. In looking to answer this question, the draft Dublin City Development Plan 2022 – 2028 (dCDP) is instructive. Under Section 13.17 of the dCDP, the SDRA 15 – Liberties and Newmarket Square “seeks to incorporate relevant elements of the LAP, as appropriate, that have yet to be realised.” This Section includes the following references to Newmarket Square:

- *To support the use of Newmarket Square for market trading and other beneficial public uses including as appropriate, works to enhance universal access, the pedestrian environment and public realm.*
- *To carry out the public realm works at Newmarket...*
- *...development should deliver active and animated frontages along the building edges, in particular, at the Cork St. and Newmarket Square interfaces. In this regard, development should respond to the emerging public realm improvements at Newmarket Square and surrounds.*
- *Community and cultural uses at Newmarket Square should be protected into the future.*

These references reflect the Part 8 approval, 2283/17, for public realm improvements and envisaged synergies between such improvements and ground floor uses. They also reflect the value placed upon the continuation of community and cultural uses in Newmarket. Public commentary on the current proposal indicates that the previous experience of indoor markets on the site is viewed as being of communal and cultural benefit and it is this benefit that local residents are eager to experience again.

8.8. Insofar as the dCDP envisages market trading within Newmarket and insofar as such trading can reasonably be categorised as having communal and cultural benefits, the

emerging policy context is not signalling that the demise of the LAP represents a material change of planning circumstances in these respects.

- 8.9. I conclude that the planning history of the site illustrates the consistent approach of the Planning Authority in its quest to safeguard the opportunity for the resumption of a market on the site. The approach thus adopted is supported, generally, by the CDP and, it was supported, specifically, by the now expired LAP. The emerging policy context of the dCDP does not signal any change in such support.

(ii) Land use considerations

- 8.10. The applicant draws attention to the Z10 zoning objective for the site, under which retail uses are permitted in principle. It also draws attention to the need for a convenience food shop in Newmarket, as within a 500m radius of the site there are only 4 such shops, 3 of which would afford a comparable but smaller range of goods to that envisaged by the proposal. Given the rapidly increasing population of the Newmarket area in terms of residents, visitors, and workers, the need for a “doorstep” convenience food shop within this area is self-evident. The applicant acknowledges that the adjoining site to the west is the subject of a SHD scheme (TA29S.312268), which includes a similar size of convenience food shop to that which it is proposing. However, the view is expressed that there would be sufficient local demand for two such shops.
- 8.11. The applicant critiques the location of the site and the space within its new building that has been permitted for an indoor market. It reports that the feedback that its property consultant has received suggests that new city food markets tend to need 2000 – 3000 sqm of floorspace rather than the 615 sqm available. The viability of the space is thus questioned, and the possibilities afforded by any reopening of the Iveagh Market, c. 500m to the north of the site, to accommodate a new city food market are flagged as an alternative. The applicant also reports that the more frequent of the two markets that previously operated on the site has relocated to a new venue in the Bluebell Business Centre, as outlined above.
- 8.12. I acknowledge that there has been an interruption in the presence of any market at Newmarket. I acknowledge, too, the feedback that the applicant’s property consultant has received. That said, the planning history of the site anticipated such interruption, and it was not prescriptive as to the type or size of indoor market that

might resume on the site, e.g., it does not need to be a food market. The presence of artists' studios and the shared courtyard suggest that there maybe an opportunity for synergies with any indoor market that the applicant's property consultant may not have fully allowed for. Conversely, such potential synergies may be lacking under the proposed use of the subject space as a convenience food shop. Furthermore, I consider that it can fairly be asked whether such a shop would yield the communal and cultural benefits associated with an indoor market. While the applicant points to the presence of a food hall type format and a café within this shop, these features would be unlikely to yield commensurate communal and cultural benefits.

- 8.13. I conclude from the information before me that the possible opportunities for an indoor market on the site do not appear to have been fully explored. Likewise, the potential for synergies with the artists' studios do not appear to have been recognised. In these circumstances, I consider that it would be premature to overturn the quest for the resumption of an indoor market on the site and so Condition 4 attached to the parent permission should be allowed to stand.

(iii) Appropriate Assessment

- 8.14. The site is neither in nor near to a European site. The proposal is for a change of use only to part of the ground floor of an existing building. Any facilitating works would be internal to this building. No new or additional impacts from this change of use would arise that have not already been assessed under the parent permission for the building. No Appropriate Assessment issues would, therefore, ensue.
- 8.15. Having regard to the nature, scale, and location of the proposal, and proximity to the nearest European site, it is concluded that no Appropriate Assessment issues arise as the proposal would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

9.0 Recommendation

That permission be refused.

10.0 Reasons and Considerations

Having regard to Policy CEE18 of the Dublin City Development Plan 2016 – 2022 and the planning history of the site, it is considered that the applicant has failed to demonstrate that the permitted use of part of the ground floor of the building on the site as a market space is unrealisable. Specifically, the possibilities of a non-food market with possible links to the artists' studios via the shared courtyard do not appear to have been fully explored. The proposed change of use would fail to uphold Policy CEE18, which recognises the economic role of markets as “key tourist attractions and supports for start-up enterprises”, and it would materially contravene Condition 4 attached to the parent permission for the subject building which was granted to application reg. no. 3321/17. In these circumstances, it would be premature to accede to this change of use, which would be contrary to the proper planning and sustainable development of the area.

Hugh D. Morrison
Planning Inspector

31st August 2022