



An
Bord
Pleanála

Inspector's Report

ABP-313788-22

Development	Change of use of retail shop to a coffee and delicatessen shop and upgrading of internal layout and associated alterations.
Location	7, Shanliss Road, Santry, Dublin 9, D09 KP73
Planning Authority	Dublin City Council North
Planning Authority Reg. Ref.	3568/22
Applicant(s)	Nicola Cowley.
Type of Application	Permission.
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant(s)	Grey Hewson and David Ferguson.
Observer(s)	None.
Date of Site Inspection	04.03.2023
Inspector	Fiona Fair

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1.0 Site Location and Description

- 1.1. The site is located on Shanliss Road, within a row of two storey neighbourhood shops, all in commercial use at ground floor level. The first floor area is in residential use with a number of apartments above the ground floor shops. The parade of shops has a mix of uses, with a hairdressers, laundry, door & window shop and a crèche present. The subject premises was in use as 'Meat 'N' Plaice' (fish, meat and vegetable retail unit) it appears currently vacant.
- 1.2. The site is within a neighbourhood centre located within a larger mature residential area. The site is bounded to the rear /east by the side garden area of no. 31 Shanowen Road. There is a laneway which runs along the back of these dwellings on Shanowen Road. To the north a commercial unit bounds the site (laundrette) with no. 9 Shanliss Road beyond.

2.0 Proposed Development

- 2.1. Planning permission for the change of use of an existing retail shop to a new coffee and delicatessen shop consisting of upgrading of existing shop unit with new shop front, relocation of entrance to right side of front elevation internal toilets and upgrading of internal layout and associated alterations

3.0 Planning Authority Decision

3.1. Decision

Grant planning permission subject to 17 number conditions, of note:

Condition 2. This planning permission specifically excludes the sale of hot food for consumption off the premises.

Reason: To protect the amenities of adjoining and adjacent established residential development.

Condition 3. Refuse storage facilities shall be provided in a rodent proofed enclosure within the curtilage of the site and no refuse at any time shall be deposited

on the public pavement except prior to collection. Reason: To ensure that the provision of refuse storage is to the satisfaction of the City Council.

Condition 4. Before the change of use hereby permitted commences, a scheme shall be submitted to, and agreed in writing with the Planning Authority, for the effective control of fumes and odours from the premises. The scheme shall be implemented before the use as a café and deli commences and thereafter permanently maintained. The following matters should be addressed in any such proposal: No emissions, including odours, from the activities carried out at the site shall result in an impairment of, or an interference with amenities or the environment beyond the site boundary or any other legitimate uses of the environment beyond the site boundary. A suitably qualified and experienced person should undertake the design and installation of the ventilation system. A suitable filtration system must be installed to neutralise odours (if applicable) prior to their discharge. The fan used to propel the extract shall be installed and be of sufficient power to ensure high exit velocity of the fumes during all weather conditions. The ventilation system should be designed to incorporate a stack erected to a minimum height of 1 metre above the eaves of the premises or adjoining premises and be so sited to ensure the emissions will cause no nuisance.

Reason: In the interests of the amenities of both the immediate neighbours and general surroundings.

Condition 5. Noise from plant/extraction systems: Noise levels should not be so loud, so continuous, so repeated, of such duration or pitch or occurring at such times as to give reasonable cause for annoyance to a person in any premises in the neighbourhood or to a person lawfully using any public place. The noise levels from the site, during the operational phase, measured as an LAeq (5min at night, 15 min in day) when all proposed plant is operating, shall not exceed the LA90 by 5dB(A) or more.

Reason: To protect the residential amenities of residents in adjacent premises.

Condition 6. There shall be no speakers located externally or in such a way that music played on the premises is audible outside the premises. Reason: To protect the residential amenities of residents in adjacent premises

Condition 8. The coffee and delicatessen shop shall only operate (open to the public) between 08.00 and 17:00 hours Monday to Sunday. The specified hours of operation shall be strictly adhered; any alterations to same shall be subject to the prior written consent of the Planning Authority. Reason: To protect the residential amenities of the area.

Condition 9. Entrance doors to the coffee and delicatessen shop unit hereby permitted shall not be outward opening.

Reason: To prevent obstruction of the public footpath.

Condition 10. Prior to the commencement of any alterations to the front elevation, details of the materials, colours and textures of all external finishes and signage to the shopfront, shall be submitted to and agreed in writing by the Planning Authority. Reason: In the interests the visual amenities of the area.

Condition 11. Notwithstanding the provisions of the Planning & Development Regulations 2001(As Amended), no advertisement signs (including any signs installed to be visible through the windows); advertisement structures, banners, canopies, flags, or other projecting element shall be displayed or erected on the building or within the curtilage, or attached to the glazing without the prior grant of planning permission. Reason: In the interests of visual amenity.

Condition 15. The developer shall comply with the requirements set out in the Codes of Practice from the Drainage Division, the Transportation Planning Division and the Noise & Air Pollution Section.

Reason: To ensure a satisfactory standard of development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

It is considered that, subject to condition, the change of use to a café and delicatessen shop, signage, and the proposed new alterations to the front of this unit, subject to compliance with conditions, will have no undue negative impacts on the neighbouring properties, or visual amenity of the immediate area, and as such is considered consistent with the zoning objective on site and the policies as set out in the Dublin City Development Plan.

3.2.2. Other Technical Reports

Drainage Division: report received – no objection subject to conditions.

Transport Planning Division: No report received.

EHO: report received – no objection subject to conditions.

3.3. Prescribed Bodies

Transport Infrastructure Ireland (TII) – report received – TII has no observation to make.

IW (Irish Water) – no report received

3.4. Third Party Observations

One submission was submitted which notes there is no objection in principle but a number of issues are raised, they are summarised as follows;

- Unclear how access to the rear is maintained
- Ownership of the gated laneway is shared with properties 9 -31 Shanowen Road, only – no access.
- No details of air conditioning unit if one is proposed.
- Unclear what services are to be placed at the rear.
- No objection to use, but further details are required.

4.0 Planning History

Reg, Ref. 4056/15 – Planning permission was refused for a change of use from existing 70.5m² retail use to 70.5m² restaurant use.

The refusal reason was as follows;

It has not been adequately demonstrated that the proposed change of use from retail to restaurant use, by reason of its location at ground floor level beneath an existing residential use and adjoining the rear gardens of existing houses at Shanowen Road, would not detract from the existing residential amenities of the area by reason of the potential for noise, fumes and smells from the proposed restaurant.

Consequently, the proposed development would seriously injure the amenities and depreciate the value of property in the vicinity. The proposed development would therefore be contrary to the provisions of Section 17.30 of the Dublin City Development Plan 2011 – 2017 and contrary to the proper planning and sustainable development of the area.

Reg. Ref. 2266/92: Planning permission was granted subject to conditions to retain the meat shop and partly covered yard.

Enforcement: PA report states: 'None found'.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The subject planning application was assessed by the PA under the Dublin City Development Plan 2016-2022, while the City Development Plan has changed and the statutory Plan is now the Dublin City Development Plan 2022 – 2028, the zoning attributed to the subject appeal site has not changed.
- 5.1.2. The subject site is zoned Z3 Neighbourhood Centre - with the zoning objective 'To provide for and improve neighbourhood facilities' in the Dublin City Development Plan 2022 - 2028.

'Café/tearoom', 'delicatessen', 'restaurant', 'shop (local) shop (neighbourhood)' are all 'Permissible Uses' in this zone.

- 5.1.3. I consider the following policies and sections of the new Dublin City Development plan to be of relevance to the subject application:

14.7.3 Neighbourhood Centres – Zone Z3

Land-Use Zoning Objective Z3: 'To provide for and improve neighbourhood facilities'.

'Neighbourhood Centres provide local facilities such as convenience shops, hairdressers, post offices etc. within a residential neighbourhood and range from the traditional parade of shops to larger neighbourhood centres. They may be anchored by a supermarket-type development, typically of between 1,000 sq. m. and 2,500 sq.

m. of net retail floorspace. They can form a focal point for a neighbourhood and provide a range of services to the local population. Neighbourhood centres provide an essential and sustainable amenity for residential areas and it is important that they should be maintained and strengthened, where appropriate. Neighbourhood centres may include an element of housing, particularly at higher densities, and above ground floor level'.

15.14.7.2 Restaurants/Cafes

'The positive contribution of café and restaurant uses and the clusters of such uses to the vitality of the city is recognised. In considering applications for restaurants, the following will be taken into consideration:

- The effect of noise, general disturbance, hours of operation and fumes on the amenities of nearby residents.
- Traffic considerations.
- Waste storage facilities.
- Hours of operation.
- The number/frequency of restaurants and other retail services in the area.
- The contribution to the vitality and viability of the area.

...Permanent structures should be included in all plans and elevations submitted with the application. Details of ventilation and heating of the area will also be required'.

15.14.7.4 Noise, Odour, Ventilation for Restaurant / Café / Take – Away Café, restaurant and take away uses should be designed having regard to the appropriate noise and ventilation guidelines. All ventilation proposals should avoid direct extracts at street level, where possible. Where extract odour and ventilation is required on main street frontages, careful design solutions should be provided to extract does not interfere with pedestrians and road users in terms of noise and odour. Similarly, noise associated with the use of a café / restaurant / take away should be minimised as to ensure no overspill to street level occurs. Café and restaurant proposals should include an engineering statement to address, noise, ventilation and odour as part of any planning applications.

5.1.4. The site is surrounded by a predominantly residential area with the landuse zoning Sustainable Residential Neighbourhoods – Zone Z1 with objective:

‘To protect, provide and improve residential amenities’

5.2. **Natural Heritage Designations**

Having regard to the nature and scale of the proposed development and the proximity 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 a European site.

5.3. **EIA Screening**

Having regard to the nature of the proposed development comprising of a change of use of an existing retail shop to a coffee and delicatessen shop in an established urban area, 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**

A third party appeal has been submitted by Greg Hewson and David Ferguson it is summarised as follows:

- Raised a question regarding access to the rear of the premises at PA stage.
- A skylight which is not on the drawings has been fitted by the applicant to the partially constructed new roof that covers the rear yard.
- If this roof light’s purpose is to provide access to maintain the rear of the premises then that would seem to deal with the issue, but it is not a condition in the DCC permission.

- It would be peculiar if the entire footprint of the site was covered and sealed in perpetuity.
- How can plant be installed to the rear, how can it be accessed.
- The applicant does not seek access via the lane. Access to the rear of the premises is not possible without traversing someone else's property.
- It has occurred whereby trades people used the lane for access although DCC extinguished the public right of way over the laneway in 1996.
- Request that a condition be placed on the skylight or some suitable access point at the rear be maintained within the curtilage of the site into the future.
- Do not object to the use as long as there is access to the rear of the property via the skylight.
- Concern re use and access via the lane.

6.2. Applicant Response

- The applicant does not propose to install any plant on the roof to the rear and therefore this roof will not be required to maintain any such plant.
- The roof will only be required to be accessed on rare occasions to repair and maintain the roof membrane. In the past the applicant has carried out these tasks accessing the flat roof via a first floor window from their premises, and have never accessed or required access to this roof from a third parties property, and this will continue to be the case.
- The applicant experienced a leak and at the time of repair installed a rooflight / hatch which can be used for access for future maintenance, which alleviates the concerns of the appellants regarding access to the roof.
- The roof light is not invasive or obtrusive and looks to the sky only.
- The appellant's property is not adjoining the subject appeal site.

6.3. **Planning Authority Response**

- None Received.

6.4. **Observations**

- None Received

6.5. **Further Responses**

- None Received

7.0 **Assessment**

7.1. Having inspected the site and examined the associated documentation, I consider the principle of the proposed development comprising of a change of use of an existing retail shop to a coffee and delicatessen shop in an established urban area, is acceptable, the relevant pertinent issues in this appeal are as follows:

- Potential for access to the rear of the property for maintenance and possible installation of plant to the rear.

7.2. The third party submit that they do not object to the use proposed, as long as there is access to the rear of the property, for maintenance or erection of plant, that does not involve access via the laneway.

7.3. The first party have responded to the concern raised and clearly indicate that they do not propose to install any plant on the roof to the rear and the roof will only be required to be accessed on rare occasions to repair and maintain the roof membrane. In the past the applicant has carried out these tasks accessing the flat roof via a first floor window from their premises, and have never accessed or required access to this roof from a third parties property, and this will continue to be the case.

7.4. The first party submits that they experienced a leak and at the time of repair installed a rooflight / hatch which can be used for access for future maintenance, which alleviates the concerns of the appellants regarding access to the roof.

- 7.5. The matter of access for maintenance to boundaries is a legal matter, outside of the remit of this planning appeal. I note the response of the first party that they do not propose to access the property via third party lands and that it is not proposed to place plant to the rear of the structure.
- 7.6. I note that the roof light is not indicated on the plans and drawings submitted as part of this subject application. However, the Board is not prohibited from granting permission for a development which incorporates an existing development which may or is alleged to be unauthorised. I note that the matter of enforcement / unauthorised development has not been raised in the third party appeal.
- 7.7. Whether the roof light is exempt development or not exempt development is a matter for the Planning Authority and is outside of the remit of this planning appeal. The extent of the development applied for is apparent in the description of the development and the plans and drawings submitted I do not consider that the insertion of the roof light / hatch is fundamental to the assessment of this application. In any event the third party is pleased with the insertion of the roof light for purposes of access to the roof for maintenance.
- 7.8. Overall, I see no reason to refuse permission on grounds of negative impact upon amenity of third party property, with respect to access or plant.
- 7.9. I recommend that permission should be forthcoming subject to the conditions attached by the planning authority (which I consider substantive) and that the use of the roof as a balcony be precluded by way of condition. I recommend the following condition be attached in this regard: The flat roof of the rear ground floor, 'store and food prep area', hereby approved shall be accessed for fire escape and maintenance purposes only.
- 7.10. **Appropriate Assessment**
- 7.10.1. The appeal site is not within or adjoining any Natura 2000 site. Having regard to the nature and scale of the proposed development, comprising of a change of use of an existing retail shop to a coffee and delicatessen shop , the location of the site in a serviced urban area and the 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 a European site.

8.0 Recommendation

- 8.1. I recommend that the decision of the planning authority be upheld and planning permission be Granted to the proposed development.

9.0 Reasons and Considerations

Having regard to the land-use zoning of the site 'Z3': 'To provide for and improve neighbourhood facilities', the nature and scale of the proposed development, the existing pattern of development on the site and in the vicinity, it is considered, that subject to compliance with the conditions set out below, the proposed development, would not seriously injure residential amenity of property in the vicinity. The proposed development 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, 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. This planning permission specifically excludes the sale of hot food for consumption off the premises.

Reason: To protect the amenities of adjoining and adjacent established residential development.

3. The flat roof of the rear ground floor, 'store and food prep area', hereby approved shall be accessed for fire escape and maintenance purposes only.

Reason: To protect adjoining residential amenities.

4. Refuse storage facilities shall be provided in a rodent proofed enclosure within the curtilage of the site and no refuse at any time shall be deposited on the public pavement except prior to collection.

Reason: To ensure that the provision of refuse storage is to the satisfaction of the City Council.

5. Before the change of use hereby permitted commences, a scheme shall be submitted to, and agreed in writing with the Planning Authority, for the effective control of fumes and odours from the premises. The scheme shall be implemented before the use as a café and deli commences and thereafter permanently maintained. The following matters should be addressed in any such proposal:

(a) No emissions, including odours, from the activities carried out at the site shall result in an impairment of, or an interference with amenities or the environment beyond the site boundary or any other legitimate uses of the environment beyond the site boundary

(b) A suitably qualified and experienced person should undertake the design and installation of the ventilation system

(c) A suitable filtration system must be installed to neutralise odours (if applicable) prior to their discharge.

(d) The fan used to propel the extract shall be installed and be of sufficient power to ensure high exit velocity of the fumes during all weather conditions.

(e) The ventilation system should be designed to incorporate a stack erected to a minimum height of 1 metre above the eaves of the premises or adjoining premises and be so sited to ensure the emissions will cause no nuisance.

Reason: In the interests of the amenities of both the immediate neighbours and general surroundings.

6. Noise from plant/extraction systems: Noise levels should not be so loud, so continuous, so repeated, of such duration or pitch or occurring at such times as to give reasonable cause for annoyance to a person in any premises in the neighbourhood or to a person lawfully using any public place. The noise levels from the site, during the operational phase, measured as an LAeq (5min at night, 15 min in day) when all proposed plant is operating, shall not exceed the LA90 by 5dB(A) or more.

Reason: To protect the residential amenities of residents in adjacent premises.

7. There shall be no speakers located externally or in such a way that music played on the premises is audible outside the premises.

Reason: To protect the residential amenities of residents in adjacent premises

8. With regard to Deliveries the applicant shall ensure the following:

a) That all drivers delivering to the proposed development carry out the delivery process using best practice to prevent a noise nuisance. To effect this, a noise minimisation plan must be produced, subject to the approval of the Environmental Health Unit, and put in place as soon as reasonably practicable to prevent noise nuisance during early morning deliveries.

b) Deliveries to the premises may only take place between the hours of 7am and 8pm.

Reason: To protect the residential amenities of residents in adjacent premises.

9. The coffee and delicatessen shop shall only operate (open to the public) between 08.00 and 17:00 hours Monday to Sunday. The specified hours of operation shall be strictly adhered; any alterations to same shall be subject to the prior written consent of the Planning Authority.

Reason: To protect the residential amenities of the area.

10. Entrance doors to the coffee and delicatessen shop unit hereby permitted shall not be outward opening.

Reason: To prevent obstruction of the public footpath.

11. Prior to the commencement of any alterations to the front elevation, details of the materials, colours and textures of all external finishes and signage to the shopfront, shall be submitted to and agreed in writing by the Planning Authority.

Reason: In the interests of the visual amenities of the area.

12. Notwithstanding the provisions of the Planning & Development Regulations 2001(As Amended), no advertisement signs (including any signs installed to be visible through the windows); advertisement structures, banners, canopies, flags, or other projecting element shall be displayed or erected on the building or within the curtilage, or attached to the glazing without the prior grant of planning permission.

Reason: In the interests of visual amenity.

13. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of all intended construction practice for the development, including measures for protection of existing development and boundary walls, construction traffic routing and management, construction parking, materials storage, site compound, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

14. Site development and building works shall be carried only out between the hours of 0700 to 1800 Mondays to Fridays inclusive, between 0800 hours 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.

15. The developer shall comply with the requirements set out in the Codes of Practice from the Drainage Division, the Transportation Planning Division and the Noise & Air Pollution Section.

Reason: To ensure a satisfactory standard of development.

16. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

Fiona Fair
Senior Planning Inspector

02/03/2023