



An  
Bord  
Pleanála

## Inspector's Report ABP315607-23

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<b>Development</b>	Change of use from existing ground floor retail/office to 2 no. take aways with new signage, alterations to elevations and dry storage to rear.
<b>Location</b>	8 and 9 Dorset Street, Dublin 1.
<b>Planning Authority</b>	Dublin City Council.
<b>Planning Authority Reg. Ref.</b>	5101/22.
<b>Applicant</b>	Cuisle Properties Ltd.
<b>Type of Application</b>	Planning application.
<b>Planning Authority Decision</b>	Refusal of permission.
<b>Type of Appeal</b>	First Party
<b>Appellant</b>	Cuisle Properties Ltd.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	10 <sup>th</sup> May 2023.
<b>Inspector</b>	Derek Daly.

## 1.0 Site Location and Description

1.1. The proposed site is located on the southern side of Dorset Street in close proximity to the junction of Dorset Street and Eccles Street and Hardwicke Place. The site comprises two mid terrace three storied over basement property units. The area has a large mix of commercial units with a take away located immediately to the north, and restaurants and licenced premises and variety of retail units. On the opposite side of Dorset Street is the Mater Private Hospital. At the rear of the properties with access to Hardwicke Place is a parking area.

## 2.0 Proposed Development

2.1. The proposed development is for a change of use from existing ground floor retail/office to 2 no. takeaways, new signage, a dry store extension to the rear of the unit 2 premises and associated works including connection to services. The proposal as submitted relates solely to the ground floor and not to any of the other floors of the properties.

The proposal in effect will see the existing property which is a single commercial unit revert to two separate units. A separate access is provided for the upper floors and basement areas. The total floor area of the change of use is stated as 70.93m<sup>2</sup> with additional floor area for the dry store stated as 6m<sup>2</sup>.

## 3.0 Planning Authority Decision

### 3.1. Decision

The decision of the planning authority was to refuse the development. Two reasons were states. The first reason refers to the site's Z4 zoning, to the proliferation of similar takeaway uses in the area and would result in an excessive concentration if such uses and detract from the vibrancy and vitality of the area, would be contrary to section 16.25 of the Dublin City Development Plan 2016-2022 and set an undesirable precedent for similar such developments.

The second reason for refusal refers to the impacts arising from the change of use not adequately addressed to deter the potential use the upper floors of both buildings

and would be contrary to Policy CEE 16 (iv) of the plan encouraging the rehabilitation and use of vacant and underutilised buildings including their upper floors.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The planning report dated the 12<sup>th</sup> December 2022 refers to policy provisions and criteria for the evaluation of takeaways. Concern is expressed in relation to the extent and frequency of similar facilities in the area and that this would detract from the vitality and viability of the area by failing to maintain an appropriate mix of uses and a radius of one kilometre is referred to in this regard. Reference is also made to proximity to schools. It is considered that there is an overabundance of takeaways in both the immediate and surrounding area. Concern is also stated in relation to potential sterilisation of the other floors of the properties arising from the proposed change of use.

#### **3.2.2. Other Technical Reports**

No objections from other departments.

### **4.0 Planning History**

P.A. Ref. 1922/96

Permission granted for a change of use of the ground floor to a chemist shop and change of use of the upper floors to office use.

The grounds of appeal references a grant of planning permission at 29 Dorset Street.

### **5.0 Policy and Context**

#### **5.1. Development Plan**

- 5.1.1. The current statutory development is the Dublin City Development Plan 2022-2028. The application when determined by the Planning Authority was the Dublin City Development Plan 2016-2022.

The site is located within the Z4 zoning Key Urban Villages and Urban Villages with the objective to provide for and improve mixed services facilities. This zoning primarily refers to suburban locations but is also indicated along aerial routes outside of the inner core of the city and the southern section of Lower Dorset Street is included in the Z4 zoning. There are other zonings in the area reflecting the diverse nature of the area. General principles with regard to development within these areas should be in accordance with these principles in addition to complying with the land-use zoning, promoting an increased density of mixed-use development including residential development with diversity in unit types and tenures capable of establishing long-term integrated communities and promoting the creation of a vibrant retail and commercial core with animated streetscapes. A diversity of uses should be promoted to maintain vitality throughout the day and evening. Take away is a permissible use within the Z4 zoning.

Chapter 15 relates to Development Standards. Section 15.17.5 refers to Shopfront and Façade Design and sets out requirements for same. Section 15.14.7.3 refers specifically to Fast Food/Takeaways it is indicated that in order to maintain an appropriate mix of uses and protect night-time amenities in a particular area and to promote a healthier and more active lifestyle, it is the objective of Dublin City Council to prevent an excessive concentration of take-aways and to ensure that the intensity of any proposed take-away is in keeping with both the scale of the building and the pattern of development in the area. The development plan outlines requirements in relation to considering take away outlets. Section 15.14.7.4 refers to Noise, Odour, Ventilation for Restaurant / Café / Take – Away Café and that restaurants and take away uses should be designed having regard to the appropriate noise and ventilation guidelines. Similarly, noise associated with the use of a café / restaurant / take away should be minimised as to ensure no overspill to street level occurs.

## 5.2. Natural Heritage Designations

None relevant

### 5.3. EIA Screening

The proposed development does not fall within the scope of any of the Classes of development for the purposes of EIA.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. The appellant's grounds of appeal can be summarised as follows:

- The proposal relates to the ground floor with stores in the basement and residential accommodation on first and second floors and the conversion from vacant office space to residential accommodation is considered Exempted Development.
- The applicant proposes to develop the upper floors to residential use under the "bring back homes" initiative.
- Take aways are permissible within the zoning.
- Reference is made to a permission on 29 Dorset Street for an ancillary take away.
- Dorset Street Lower is a busy arterial route containing commercial and residential development and is a busy street.
- There is a range of food premises sit down and take away but the choice is limited and there is a need for well managed take away food outlets.
- It is proposed to sub divide the yard for bin storage.
- The premises has been vacant for a number of years and the proposal will enhance the streetscape and revitalisation of an unoccupied property.
- Any concerns in relation to extraction flues can be addressed.
- There are no schools immediate to the site and there are take away outlets closer to schools than the appeal site.

## 6.2. **Planning Authority Response**

The Planning Authority in a response indicate if permission is granted conditions for a Section 48 contribution and a Section 49 Luas X City development contribution be included.

## 7.0 **Assessment**

7.1. The main issues in this appeal are largely those raised in the grounds of appeal. Appropriate Assessment also needs to be considered. I am satisfied that no other substantive issues arise.

The issues are addressed under the following headings:

- Principle of the development.
- Appropriate Assessment

### 7.2. **Principle of the development**

7.2.1. The principle of the development is the primary consideration in relation to this appeal and the stated reason for refusal of the proposed development.

7.2.2. The site is located within the Z4 zoning and a takeaway is a permissible use. Notwithstanding this the development plan in particular in section 15.14.7.3 outlines requirements in relation to considering take away outlets in the context of preventing an excessive concentration of take-aways and to ensure that the intensity of any proposed take-away is in keeping with both the scale of the building and the pattern of development in the area.

7.2.3. I note that reference is made in the grounds of appeal to a permission on 29 Dorset Street for an ancillary take away (P.A. Ref. No 4387/22) which is not directly comparable as it primarily permission for restaurant use with ancillary takeaway.

7.2.4. In relation to the first reason for refusal. As assessed against the criteria as set out in section 15.14.7.3, I note the following:

- *The effect of noise, general disturbance, hours of operation, litter and fumes on the amenities of nearby residents.* The subject site is located on a major

arterial / radial route with a diverse of uses. There is residential development in the area but not immediate or proximate to the site.

- *The need to safeguard the vitality and viability of shopping areas in the city and to maintain a suitable mix of retail uses.* As noted, there is a diverse range of uses in the area and a diverse range of commercial use which serve food for consumption on and off the premises including a take away adjoining, a sit down restaurant in close proximity and licences premises which serve food and convenience food shops which sell food for consumption of the premises. There is no predominant concentration of a particular type of outlet.
- *Traffic impacts and considerations including set down areas and servicing bays.* The subject is on a busy street and traffic issues do not arise.
- *The number/frequency of such facilities in the area within 1km of school sites. Any new outlets will not be permitted within 250m of a school site.* There is no school within 250 m of the site.
- *That the operators come to a satisfactory arrangement with Dublin City Council in relation to litter control and that appropriate cleansing/anti-litter measurements be agreed with Dublin City Council prior to the granting of planning permission.* This is matter that can be addressed by condition.
- *The need to integrate the design of ventilation systems into the design of the building.* This is matter that can be addressed by condition.
- *That all take-aways provide and maintain a suitable waste bin outside their premises during hours of business.* The applicant has indicated this can be provided in the rear yard.
- *The context and character of the street where the aim is to maintain and improve the vitality of the shopping experience by encouraging a range of convenience and/or comparison retail shops.* Dorset Street as already indicated has a diverse range of uses retail, commercial and a large hospital in the immediate area.

7.2.5. In relation to the second reason which relates to the use of the upper floors of the structures for residential development and that the proposed development would deter such use the appellant has indicated the intention to develop the upper floor for such use. The submitted drawings I note indicate a separate access to the upper floor and there is nothing to suggest or inhibit the future use of the upper floors for residential use.

7.2.6. I do not therefore consider that the development as proposed should be refused when all the above factors are taken into account.

### 7.3. **Appropriate Assessment**

7.3.1. Having regard to the minor nature of the proposed development and the separation distance to any European site, it is concluded that no Appropriate Assessment issues arise as 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. I recommend that permission be granted.

## 9.0 **Reasons and Considerations**

9.1.1. Having regard to the proposed development which is a permissible use within the zoning of the site as stated in the Dublin City Development Plan 2022-2028, its location on busy arterial route with a diversity and wide range of commercial use in the vicinity, it is considered that, subject to compliance with the conditions set out below, the proposed development be not be contrary to the stated provisions as stated in the Dublin City Council Development Plan 2022-2028 and would not be contrary to 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 the planning authority on the 21 <sup>st</sup> of October, 2022, except as may otherwise be required in order to comply
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	<p>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><b>Reason:</b> In the interest of clarity</p>
2.	<p>The proposed shopfront shall be in accordance with the following requirements:</p> <p>(a) Signs shall be restricted to a single fascia sign using sign writing or comprising either hand-painted lettering or individually mounted lettering,</p> <p>b) lighting shall be by means of concealed neon tubing or by rear illumination,</p> <p>(c) no awnings, canopies or projecting signs or other signs shall be erected on the premises without a prior grant of planning permission,</p> <p>(d) no adhesive material shall be affixed to the windows or the shopfront.</p> <p><b>Reason:</b> In the interest of visual amenity.</p>
3.	<p>No advertisement or advertisement structure (other than those shown on the drawings submitted with the application) shall be erected or displayed on the building (or within the curtilage of the site) in such a manner as to be visible from outside the building, unless authorised by a further grant of planning permission.</p> <p><b>Reason:</b> In the interest of visual amenity.</p>
4.	<p>The take-away facility shall not be operated between 01.00 hours and 12.00 hours on any day unless the hours of operation are extended by a grant of planning permission.</p> <p><b>Reason:</b> In the interest of the amenities of property in the vicinity.</p>
5.	<p>Litter in the vicinity of the premises shall be controlled in accordance with a scheme of litter control which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This</p>

	<p>scheme shall include the provision of litter bins and refuse storage facilities.</p> <p><b>Reason:</b> In the interest of visual amenity.</p>
6.	<p>The developer shall control odour emissions from the premises in accordance with measures [including extract duct details] which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p><b>Reason:</b> In the interest of public health and to protect the amenities of the area.</p>
7.	<p>Security shutters, if necessary, shall have their shutter box located entirely behind the fascia and no part of the shutters, their supports or fittings shall encroach on the public footpath. The said shutters shall be open mesh or see-through, shall be finished in a single colour and shall not be left unpainted or used for advertising.</p> <p><b>Reason:</b> In the interests of visual amenity</p>
8.	<p>Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p><b>Reason:</b> In the interest of public health</p>
9.	<p>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</p>

	<p>application of the terms of the Scheme.</p> <p><b>Reason:</b> 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</p>
10.	<p>The developer shall pay a financial contribution to the planning authority in respect of public infrastructure and facilities benefiting development in the area of the planning authority namely the Luas X City in accordance with the terms of the Supplementary Development Contribution Scheme made under section 49 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.</p> <p><b>Reason:</b> 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 49 of the Act be applied to the permission</p>

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Derek Daly  
Planning Inspector

31<sup>st</sup> May 2023