



An
Bord
Pleanála

Inspector's Report

ABP-316475-23

Development	Change of use to coffee dock with all associated site works.
Location	Iveagh Court, Harcourt Road, Dublin 2.
Planning Authority	Dublin City Council South.
Planning Authority Reg. Ref.	3178/23.
Applicant(s)	Cedar Real Estate Fund 1.
Type of Application	Permission.
Planning Authority Decision	Grant permission, subject to conditions.
Type of Appeal	Third Party v. Grant.
Appellant(s)	Ruslan Mocharskyy.
Observer(s)	None.
Date of Site Inspection	15 th June 2023.
Inspector	Terence McLellan.

1.0 Site Location and Description

- 1.1. The appeal site refers to the single storey security hut located centrally within Iveagh Court, Harcourt Road, Dublin 2. Iveagh Court rises to six storeys in height and is bounded to the north by Harcourt Road, to the east by Harcourt Lane, to the south by Albert Place West and bounded to the west by Charlemont Street. The various blocks that make up Iveagh Court are arranged around a publicly accessible central courtyard, accessed from both Harcourt Lane and Harcourt Road. The subject security hut measures 4m² and is located within this courtyard. In land use terms, the predominant use is office/commercial, with some residential apartments at the southern end of the courtyard. The Embassies of Denmark and the Republic of Estonia are also accommodated within Iveagh Court.

2.0 Proposed Development

- 2.1. The proposed development consists of the change of use of the security hut to a coffee dock. Associated works include the provision of signage/lighting as well as minor elevational alterations in order to provide a serving hatch.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Notification of the Decision to Grant Permission for the proposed development, subject to eight generally standard conditions, was issued on 6th of April 2013. The conditions relate to waste, ventilation/extraction, visual amenity, noise levels, and drainage.

3.2. Planning Authority Reports

3.3. Planning Reports

- 3.3.1. Planning Report: The report from the Deputy Planning Officer was issued on the 3rd of March 2023 and forms the basis of the Councils assessment and decision.

3.3.2. Other Technical Reports

- 3.3.3. Drainage Division (01.03.2023): No objection, subject to conditions regarding drainage works.
- 3.3.4. Environmental Health (01.03.2023): No objection, subject to conditions regarding extraction and ventilation.
- 3.3.5. Transportation Planning (30.03.2023): No objection, subject to conditions to secure recovery of costs incurred for any repairs to the public road and services as a result of the proposed development.

3.4. **Prescribed Bodies**

- 3.4.1. The planning application was referred to Irish Water, the National Transport Authority and Transport Infrastructure Ireland. One observation was received from Transport Infrastructure Ireland, requesting that a S.49 Levy be attached if permission is granted.

3.5. **Third Party Observations**

- 3.5.1. A third party observation was received to the planning application from Ruslan Mocharskyy of The Art of Coffee, Unit 1 Alto Vetro, Grand Canal Dock, Dublin 2 (the appellant). The main issues raised in that submission are as follows:
- The proposed use is a takeaway, which is not a permitted use in Zone 6, therefore the proposal represents a material contravention of the development plan.
 - There are several cafes and restaurants in the area. The proposed use would not be complementary to the existing retail/commercial services in the area, nor would it provide for greater activity in Iveagh Court.
 - The development would not increase employment opportunities.
 - The existing security hut does not have planning permission and as such is unauthorised.
 - There is no footpath or room to create one, so customers would need to queue on the road which would not be safe.
 - This is not an appropriate location for a retail offer.

4.0 Planning History

- 4.1. There is no planning history specific to the subject security hut or of specific relevance to the appeal.

5.0 Policy Context

5.1. Dublin City Development Plan 2022- 2028

- 5.1.1. The Dublin City Development Plan 2022 – 2028 (CDP), in Section 14.7.6, categorises the site as zone ‘Z6 – Employment /Enterprise’ which has the stated objective ‘to provide for the creation and protection of enterprise and facilitate opportunities for employment creation’. A range of other uses, including local support businesses, are open for consideration in these areas whilst a café/tearoom is considered to be a permissible use.
- 5.1.2. Chapter 6: City and Enterprise is of relevance, specifically CEE8 – The City Centre, which states that it is policy to support the development of a vibrant mix of office, retail, tourism related and cultural activities in the city centre.
- 5.1.3. The following sections of Chapter 15: Development Standards, are applicable:
- Section 15.14.7.2 – Restaurants/Cafes.
 - Section 15.14.7.4 – Noise, odour, ventilation for Restaurant/Café/Take-Away.
 - Section 15.17.5 – Shopfront and Façade Design.
- 5.1.4. Appendix 15 of Volume 2 contains the relevant land use definitions.

5.2. Natural Heritage Designations

- 5.2.1. The proposed development is not located within or immediately adjacent to any European site. The nearest European sites are the South Dublin Bay and River Tolka Estuary SPA (Site Code 004024) and the South Dublin Bay SAC (Site Code 000210).

5.3. EIA Screening

- 5.3.1. Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity, 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

- 6.1.1. A third-party appeal against the decision of Dublin City Council to Grant Planning Permission for the proposed development has been lodged by Ruslan Mocharskyy, The Art of Coffee Ltd., Unit 1 Alto Vetro, Grand Canal Dock, Dublin 2. The grounds of appeal can be summarised as follows:

- The proposed use is a take-away which is not permitted under the zoning objectives for the site. As such there would be a material contravention of the Development Plan.
- The proposed use would not be complementary to the existing retail provision and would not provide increased employment opportunities.
- Customers would have to queue on the road and there would not be a safe and proper access to the site.
- The existing security hut does not appear to have planning permission.
- No information has been provided on opening hours or how waste will be dealt with.
- There are already several takeaways, cafes and restaurants in the immediate area who rely on coffee sales for their viability.

6.2. Applicant Response

- 6.2.1. The applicant's response can be summarised as follows:

- The proposed development would be considered a local support business, subsidiary to the surrounding office development.
- The proposed use would not be providing the sale of hot food for consumption off the premises and as such would not be considered a takeaway.
- The land use most closely aligned to the proposal is ‘café/tearoom’ and this is a permissible use under the zoning objective. As such, there has been no material contravention of the development plan.
- Dublin City Council’s transportation department raised no objection to the proposed development on traffic or pedestrian safety grounds.
- The security hut is shown on plans dating back to 2008 and as such has been in existence for at least 15 years.
- Dublin City Council have not attached a condition limiting the hours of operation however a condition relating to waste storage and collection has been proposed.
- The appeal is an attempt to limit the amount of competition in the area.
- The area is undergoing significant change with many large-scale office developments permitted. The proposed coffee dock will help meet the needs of increased numbers of workers and residents.

6.3. Planning Authority Response

6.3.1. None received.

6.4. Observations

6.4.1. None received.

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, and inspected the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Zoning and Land Use
- Traffic and Pedestrian Safety
- Planning Status of Security Hut
- Opening Hours and Waste
- Viability and Vitality
- Appropriate Assessment

7.2. Zoning and Land Use

- 7.2.1. The site is zoned 'Z6 – Employment /Enterprise' in the CDP. Section 14.7.6 of the CDP states that development in Zone 6 should 'provide for the creation and protection of enterprise and facilitate opportunities for employment creation'. A range of other uses, including local support businesses, are open for consideration in these areas. Importantly, section 14.7.6 sets out a range of permissible uses on Zone 6 land. The permissible uses include, among other uses, a café/tearoom. A takeaway is not listed either as a permissible use or as a use that is open for consideration within this zone.
- 7.2.2. The principal issue raised by the appellant, is that the proposed use would constitute a takeaway, which would not be complementary to the existing retail uses in the area, is not permitted in Zone 6, and would represent a material contravention of the development plan. A further issue has been raised that the proposed coffee dock would not increase employment opportunities.
- 7.2.3. Appendix 15 of the CDP sets out a range of land use definitions. A takeaway is defined as, 'a premises used for the sale of hot food for consumption off the premises.'. A café/tearoom is defined in the CDP as the 'use of a building (including a kiosk), or part thereof, as a café serving tea/coffee and light refreshments. It is not a full restaurant facility.'
- 7.2.4. The proposed use is for a coffee dock (which would be consistent with a kiosk) that would sell hot drinks and ancillary snacks for consumption off the premises. I am of the view that the proposed use does not constitute a takeaway and instead would clearly meet the definition of a café/tearoom, which specifically mentions kiosks and refers to the sale of tea/coffee and light refreshments. In terms of employment

opportunities, I consider that the proposal would be an employment generating enterprise, albeit the change of use would have a neutral impact on employment. I am satisfied that the proposed use is one that is considered permissible in Zone 6 and that there would be no material contravention of the development plan. The development is therefore acceptable in land use and zoning terms.

7.3. Traffic and Pedestrian Safety

- 7.3.1. The appellant argues that customers would have to queue on the road as there is no footpath, and that this would compromise the safety of customers. During my site inspection I noted that the vehicular access is controlled, that it operates on a shared surface and that no vehicles drove through the site for the duration of the inspection. I further noted that there is a large expanse of public footpath immediately adjacent to the proposed serving hatch for the coffee dock that continues around the side of the dock, under the existing canopy. This would allow ample room for customers to queue and be served without standing on the roadway. I am satisfied that there would be no adverse impact on either traffic or pedestrian safety.

7.4. Planning Status of Security hut

- 7.4.1. A concern has been raised by the appellant that the existing security hut does not have planning consent. The matter of enforcement falls under the jurisdiction of the planning authority. Dublin City Council considered this matter in their planning report and found a record of the security hut on the site location plan for an application dating back to 2016. Additionally, there is a record of the security hut on a plan dating back to 2008. It is therefore clear that on the balance of probability, the security hut has been in existence on site for a period of at least 15 years.

7.5. Opening Hours and Waste

- 7.5.1. The issue of opening hours and waste has been raised by the appellant on the basis that no information has been provided on these matters. Both of these matters can be suitably addressed by way of appropriately worded planning conditions. The planning authority have imposed a condition regarding waste storage and collection and this should be reimposed should the Board grant permission. On the matter of opening hours, I note that the planning authority have not applied any condition regarding hours of use. Given the presence of residential accommodation within the southern end of the courtyard, I consider it appropriate to control the hours of the coffee dock and the

relevant condition should be applied if the Board are minded to grant permission. I do not consider conditions relating to ventilation and extraction to be necessary given the nature of the proposed use as primarily serving coffee.

7.6. Viability and Vitality

- 7.6.1. The appellant states that there are a number of cafes and restaurants in the immediate area that rely on coffee sales for their viability and that the proposed use would not create vitality in the area. These issues are considered under section 15.14.7.2 – Restaurants/Cafes of the CDP. Whilst there are several cafes and restaurants in the locality, this is a busy inner-city location with significant numbers of residents, workers and visitors. I am satisfied that there would not be an over proliferation of restaurants/cafes in the area and that the use of the site as a coffee dock would provide more vitality than the current vacant unit, or the previous security use. I consider that the proposal is therefore in accordance with Section 15.14.7.2 of the CDP.

7.7. Appropriate Assessment

- 7.7.1. Having regard to the nature of the development, its location in a serviced urban area, 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 planning permission should be granted, subject to conditions, for the reasons and considerations as set out below.

9.0 Reasons and Considerations

- 9.1. Having regard to the provisions of the Dublin City Development Plan 2022-2028, the nature and scale of the proposed use as well as the location and context, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the commercial, residential, pedestrian or traffic amenities of the area or 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.	<p>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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Notwithstanding the provisions of the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, no advertisement signs (including any signs installed to be visible through the windows), advertisement structures, banners, canopies, flags, or other projecting elements shall be displayed or erected on the buildings or within the curtilage of the site, unless shown on the drawings hereby approved or otherwise authorised by a further grant of planning permission.</p> <p>Reason: To protect the visual amenities of the area.</p>
3.	<p>The hours of operation shall be between 07:00 hours and 20:00 hours Monday to Friday and between 08:00 hours and 18:00 hours on Saturday, Sunday and public holidays.</p> <p>Reason: In the interest of the residential amenities of property in the vicinity.</p>
4.	<p>A scheme for the storage and collection of waste, in addition to details of litter control within the vicinity of the premises, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p>

	Reason: In the interests of the amenities of the area and to provide for a satisfactory standard of development.
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I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Terence McLellan
Senior Planning Inspector

11 July 2023