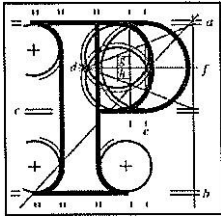


Bord

Pleanála



An

Inspector's

Report

ABP317688-23

Development

Observer(s)

Date of Site Inspection

Location

The retention of the existing 1 No. fire escape door and 2 No. roller shutter doors. All doors are situated on the rear west elevation along Victoria Lane.

Planning Authority

Kennedy's Public House, 132 & 134
Lower Drumcondra Road,
Drumcondra, Dublin 9, D09A4P8.

Planning Authority Reg.

Ref. Applicant(s)

Dublin City Council

Type of Application

5020/22

Planning Authority
Decision

Martin Tynan.

Retention Permission.

Type of Appeal

Grant permission with conditions.

Appellant(s)

First Party

06/1 1/2023.

Martin Tynan.

None.

Inspector

Anthony Abbott King.

1.0 Site Location and Description

- 1.1 . The applicant site on the west side of Drumcondra Road Lower comprises a commercial premises at nos. 132 -134 Lower Drumcondra Road that accommodates a public house at ground floor level and residential accommodation above. The premises extends to the rear with access onto Victoria Lane.
- 1.2. Victoria Lane is an access / service lane accessed via Botanic Avenue, which ends in a cul-de-sac. Kennedy's public house is located at the extremity of the cul-de-sac. Victoria Lane also gives rear access to properties on Hollybank Road and Botanic Avenue. Victoria Lane is taken in charge and is a public road.
- 1.3. Site area given as approximately 655 sqm.

2.0 Proposed Development

- 2.1. The retention of 1 no. fire escape door and 2 no. roller shutter doors. All doors are located to the rear of the premises a public house, Kennedy's, at nos. 132, 134 Lower Drumcondra Road.

3.0 Planning Authority Decision

3.1. Decision

Grant permission inter alia subject to Condition 2. Condition 2 states:

The fire escape door shall be used as a fire escape door and emergency exit only, and the roller shutter doors shall be used for deliveries and servicing only, and shall not be used for patron access.

Reason: To clarify the extent of the permission as advertised, and to reduce or prevent the intrusion of noise from the pub to nearby residential premises, in the interest of residential amenity.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The decision of the CEO of Dublin City Council reflected the recommendation of the planning case officer.

3.2.2. Other Technical Reports

There is no objection to the development subject to an additional information request.

4.0 Planning History

There is a complex planning history on this site regarding the rear of the premises and the access to Victoria Lane. The relevant planning history is summarised below:

- Under Register Ref: 3852/23 planning permission was refused for two reasons for the retention of a temporary (3 years) storage container (21 .96 sqm.) at Victoria Lane to facilitate general storage space at Kennedy's public house.
- Under Register Ref: 4321/22 permission was refused for the retention of an existing Ino. fire escape door and 1 no. roller shutter door as it would facilitate unauthorised development (the construction of a bar counter serving to the rear laneway).
- Under Register Re: 5371/22 (ABP Reg. Ref: 315986-23) planning permission was granted for the enclosure of an outdoor smoking area (32 sqm.) linking the main bar and the back bar including the provision of a pitched roof.
- Under Register Ref: 3142/20 (ABP Reg. Ref: 310877-21) retention permission granted for a single-storey back bar.

5.0 Policy and Context

5.1 . Development Plan

The zoning objective is Z4 (Map E) — 'Key Urban Villages -'Urban Villages': To provide for and improve mixed-services facilities.

Public house use is a permissible use.

Section 15.14.12 (Night Clubs/Licenced Premises/Casinos/ Private Member Clubs)

is relevant and inter alia states:

Dublin City Council will encourage entertainment/cultura//music uses which help create an exciting city for residents and tourists alike.

There is a need to strike an appropriate balance between the role of these entertainment uses in the economy of the city and the following:

- To maintain high-quality retail functions on the primary city centre streets and ensure a balanced mix of uses.
- To protect the amenities of residents from an over-concentration of late night
- Noise emanating from and at the boundaries of these establishments are issues which will need to be addressed in planning applications for such establishments. Noise insulation and reduction measures, especially relating to any mechanical ventilation or air-conditioning, will be required to be submitted with any such planning application.
- To minimise the impact and street presence of casinos / members clubs. Therefore, there will be a general presumption against inappropriate advertising for casinos / gambling/ members clubs.

5.2. EIA Screening

5.3. The proposed development is not within a class where EIA applies.

6.0 The Appeal

6.1. Grounds of Appeal

The appeal relates solely to Condition 2 of the planning permission. The grounds of appeal are summarised below.

- The proposed development is situated within the established Kennedy's

Public House premises. Dublin City council are not entitled by way of condition to interfere in the established access to the premises;

- The wording of condition 2 is inoperable, is counter to Development Management Guidelines 2007 and advice set out in the OPR Practice Note PN03 Planning Conditions;
- The planning condition in effect seeks to give the Dublin City Council Planning Enforcement a 'monitoring' oversight on the subject premises, which is counter to advice set out in OPR Practice Note;
- The appellant requests the Board to re-word the condition in order that the use of the fire exist door is less restrictive and provides suggested re-wording of the condition;
- The appellant requests the Board for clarity in the matter of the correct appeal fee. (It is noted that a memorandum dated 18/08/23 on file clarifies this matter).

6.2. Planning Authority Response

None Recorded.

7.0 Assessment

7.1 . Having reviewed the application, the appeal and conducted a site visit, I consider that the only planning matter at issue in this case is Condition number 2 (the sole subject of the appeal) and that no other planning matters need to be considered by the Board.

7.2. The substantive matter of this appeal is the efficacy of Condition 2 of the retention planning permission. The appellant advocates for the rewording of the subject condition on operational and procedural grounds claiming that the wording of condition 2 is inoperable and is not in accordance with Development Management Guidelines 2007 and the advice set out in the OPR Practice Note PN03 (Planning Conditions).

7.3. Condition 2 inter alia regulates the fire exit door permitted by the retention planning permission: The fire escape door shall be used as a fire escape door and emergency exit only.... The subject 'fire exit 4' (denoted as such on the submitted drawings) is located at the end of a corridor (an internally configured escape corridor) at the back of the premises for the purpose of the exit of customers out of the rear of the premises in emergency situations and fire drills. The appellant claims that this rear door is an established rear access to the premises and that a restriction in the use of the subject door would impact on the safe operation of the public house including the management of patrons on busy match days / gigs in Croke Park.

The appellant claims that the subject door is required for the everyday running of the premises, as the other access routes to Victoria Lane are restricted by Fire Safety regulation 'Exit 3' or in the instance of an access in the location of the kitchen cold room is a blocked opening. It is claimed that the access corridor to the subject 'fire exit 4' also serves the cold rooms (Cold Room 1 & Cold Room 2) located either side of the escape corridor (the cold room(s) have been reconfigured to facilitate the escape corridor). It is noted that the cold rooms are also accessible from Victoria Lane via the roller shutters that are also subject to restriction under condition number

2 - the roller shutter doors shall be used for deliveries and servicing only.

The appellant notes that the majority of deliveries are to the rear of the premises from Victoria Lane. The heavily trafficked nature of Drumcondra Road Lower would support this proposition. It is further noted that as deliveries occur mostly outside open hours 'fire exit 4' will not be generally used by the public.

7.4. There is a complex planning history on this site relating to access and the unauthorised use of Victoria Lane as a spill over area to the rear of the licensed premises. It is logical that the planning authority would be motivated to prohibit patrons from accessing the rear laneway in order to remove a potential conflict between the operation of the licensed premises and the residential amenities of dwellings proximate to Victoria Lane. However, a prohibition on access to the laneway by way of condition on a planning permission for the retention of a fire escape door may not be appropriate or effective.

7.5. The OPR Practice Note PN03 (Planning Conditions) is noted. The OPR observes that for conditions to be legally valid, they should satisfy six basic criteria listed in the Development Management Guidelines 2007.

7.6. The Development Management Guidelines 2007, Chapter 7 (Drafting Planning Conditions / Reasons for Refusal) recommend that the number of conditions attached to a permission should be kept to a minimum and that conditions should inter alia be necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable. I consider that Condition 2 as presently worded is not operationally enforceable or reasonable given that there is a long established access from Kennedy's Public House to Victoria Lane and that there is a requirement for access to the rear of the premises onto Victoria Lane for operational reasons other than fire escape. I do not think the subject condition as drafted is capable of being complied with in practice given the operational requirements of the licensed premises and the established access to Victoria Lane from the premises.

7.7. In conclusion, it is considered that Condition 2 is not operationally enforceable or reasonable given that the premises has an established rear access onto Victoria Lane and that the subject fire escape door may constitute the only viable access from the premises to Victoria Lane in the event of operational contingencies. It is considered that the regulation of doorway use in this instance is not supported by the guidance provided by the Development Management Guidelines 2007 and the advice set out in the OPR Practice Note PN03 (Planning Conditions). It is noted that there is a history of the use of openings(s) to the rear of the premises as an outdoor serving area onto Victoria Lane. In consequence, I consider that the roller shutter deliver service areas (access to Cold room 1 & Cold room 2) should be regulated by condition. Therefore, Condition 2 should be amended to remove the restriction on the use of the 'fire exit 4' door opening while retaining the restriction on the roller shutter openings.

7.8. Appropriate Assessment Screening

The proposed development relates to a fire escape door and services delivery openings. Having regard to the nature and scale of the proposed development it is possible to screen out the requirement for the submission of an NIS.

8.0 Recommendation

8.1. For the reasons and considerations set out below, I recommend the amendment of Condition number 2.

9.0 Reasons and Considerations

Having regard to the Z4 zoning objective (mixed service facilities), the established use of the premises as a public house and the guidance provided in the Development Management Guidelines 2007, Chapter 7 (Drafting Planning Conditions / Reasons for Refusal) and the OPR Practice Note PN03 (Planning Conditions), it is considered that the subject condition is not operationally enforceable or reasonable as presently drafted and should be amended to remove the restriction on the use of the doorway denoted as 'fire exit 4'.

10.0 Conditions

Condition 2: The roller shutter doors shall be used for deliveries and servicing only.

Reason: To clarify the extent of the permission as advertised, and to reduce or prevent the intrusion of noise from the pub to nearby residential premises, in the interest of residential amenity

"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".



Anthony Abbott King
Planning Inspector

Anthony Abbott King

24 November 2023