

An  
Bord  
Pleanála

## Inspector's Report ABP318299-23

### Development

Permission is sought for the material change of use from previously approved retail use to leisure use (dance studio) with associated facilities and the provision of new external signage consisting of 1 no. illuminated sign.

### Location

Unit 1, Marine Walk, Marine Road, Dun Laoghaire, County Dublin, A96Y2H9 (within the curtilage of the Royal Marine hotel – a protected structure).

### Planning Authority

Dun Laoghaire-Rathdown County council.

### Planning Authority Reg. Ref.

D23A/0522.

### Applicant(s)

Drop Studio Limited.

### Type of Application

Permission.

### Planning Authority Decision

Grant permission with conditions.

### Type of Appeal

Third Party



<b>Appellant(s)</b>	Arend Jonkers & Patricia Jonkers-Driessen.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	14/12/23.
<b>Inspector</b>	Anthony Abbott King.



## **1.0 Site Location and Description**

- 1.1. The site comprises a vacant retail unit on the ground floor of a 4/5 storey mixed-use apartment / commercial development completed in 2017 at Unit 1, Marine Walk, Dun Laoghaire;
- 1.2. Marine Walk is the access from Marine Road to the precincts of the Royal Marine Hotel – a protected structure. The junction of Marine Road and Marine Walk is defined by a vehicular and pedestrian entrance gate;
- 1.3. Unit 1 is the first retail unit on Marine Walk inside the entrance gate; the corner unit on Marine Road accommodating an 'Easons' store articulates the built corner onto Marine Walk;
- 1.4. Unit 2 adjoining Unit 1 is vacant and the other 2 units accessed from Marine Walk accommodate F45 Gym and a café to the south at the end of Marine Walk enjoying prospect onto Marine Park;
- 1.5. Marine Walk is the access road to both the Royal Marine Hotel and Marine Park and other uses including the library located with the precinct. The access road on Marine Walk is defined by a pedestrian foot path on both sides of the carriageway. The carriageway has double yellow lines on both sides of the road in the location of the development.
- 1.6. Site area is given as 452sqm.

## **2.0 Proposed Development**

- 2.1. The material change of use from previously approved retail use to leisure use (dance studio) with associated facilities and the provision of new external signage consisting of 1 no. illuminated sign.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Grant permission subject to condition.



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

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

The CEO of Dun Laoghaire-Rathdown County Council reflects the recommendation of the planning assessment.

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

Environmental Health object to the proposal on the grounds that the cumulative impact of noise / vibration due to operation of the proposed dance studio in conjunction with existing fitness studio / gym is likely to cause significant nuisance for residents of Marine Walk.

### **4.0 Planning History**

The following planning history is relevant:

Under Register Ref: D13A/0355 (PL06D.243209) planning permission was granted for the construction of a 4/5 storey over basement level mixed use building comprising: 26 number apartments located at first to fourth floor levels with first floor landscaped roof garden, 4 number retail units (1,667.8 sqm), 76 basement car parking spaces and associated works.

Condition 12 of the permission stipulated that the proposed retail / commercial units shall be used solely for retail purposes, and that any other use should require a separate planning permission, in the interests of clarity and in order to control the nature, layout and scale of the development in the interest of protecting the vitality and viability of the town centre.

### **5.0 Policy and Context**

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

The Dun Laoghaire-Rathdown County Development Plan 2022-2028 is the local planning policy document. The following policy objectives are relevant:

- Chapter 13 (Land Use zoning objectives), Table 13.1.1 (Development Plan Zoning Objectives) and Zoning Map 3: (Dun Laoghaire) is relevant.



The area zoning objective is “MTC”: *To protect, provide for and or improve major town centre facilities.*

Leisure facility is a permitted in principle.

- Signage

Section 12.6.8.2 is relevant and *inter alia* states:

*The Advertising signs, where permitted, should be simple in design and sympathetic to the surroundings and features of the building on which they will be displayed. The number of signs located on a property should be limited, to avoid visual clutter, and no sign should be unduly obtrusive or out-of-scale with the building façade.*

## **5.2. EIA Screening**

- 5.3. The proposed development is a change of use application for an existing authorised retail unit and, as such, EIA would not apply.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

The appellant is the resident of Apartment no. 7 Marine Walk located above the subject commercial ground floor frontage. The appeal statement is accompanied by a number of appendices (Appendix 1-9). The grounds of appeal are summarised below:

- The decision letter of the planning authority is cursory. It lacks comprehensive reasoning for granting permission. For example the statement within the Environmental Impact Assessment Screening promotes questioning the scope of the assessment itself including in the matter of noise disturbance. It remains unclear on what grounds it concludes a lack of significant impact;
- The planning authority decision making is inconsistent when anticipating noise levels. The Planners Report explicitly mentions that the studio intends to



install two speakers, with sound outputs of 80 decibels (dB) and 100 (dB) respectively such sound levels are not only disruptive but also pose serious health concerns. The guidelines from the Irish Health Service, Appendix 8, states that exposure to levels of 80 decibels (dB) necessitate hearing protection and no individual should endure exposure of 87 (dB) even with hearing protection. The appellant's apartment and terrace / roof garden are located above the dance studio and will be subjected to continuous noise disturbance and health risks, which the applicant falsely claims as 'domestic range' noise levels;

- The Environmental Health Officer letter clearly indicates that combined noise levels from the proposed dance studio and the existing fitness studio would cause substantial disruptions for Marine Walk residents. It is therefore perplexing how the applicant received a planning permission approval and questions the thoroughness and veracity of the Environmental Impact Assessment Screening;
- The planning authority failed to address the safety and parking concerns mentioned in our original objection. The statement in the planners report in the matter of Marine Walk and parking / access is false. The anticipated increase in traffic will further endanger pedestrians, especially schoolchildren;
- The residents of the at Marine Walk are feeling vulnerable and anxious given that a recent incidence when security was breached has left them apprehensive. The proposed dance studio increased foot fall could inadvertently introduce / become a magnet for individuals with malicious intent. There are pressing questions about the adequacy of current security measures and it is crucial to address these concerns thoroughly before proceeding;
- Advertisement for commercial units promotes appropriate use clearly outlining their suitability for businesses such as furniture, interior design and electrical goods characterised by low noise levels. These businesses are aligned with the planning authority vision for the protection of amenities providing a balance between commercial activity and residential tranquillity. The dance studio departs from this vision principally by reason of the inherent noise



associated with the use. The planning authority's restriction in operational hours acknowledges the potential disruption to Marine Walk residents;

- There are several commercial locations in proximity to the development site that would be more suitable. Appendix 4 contains photographs of vacant nearby commercial premises. These sites strategically located on high streets, designed to accommodate more active businesses, would mitigate noise disturbance and would not inconvenience residents;
- The Board is asked to re-evaluate the planning decision of the planning authority in favour of maintaining the tranquillity and safety of the living environment on Marine Walk taking into consideration the concerns of the residents.

## **6.2. Applicant Response**

The applicant response submitted by O'Keeffe Architects on behalf of the applicant is invalid.

## **6.3. Planning Authority Response**

The planning authority refer the Board to the previous planner's report.

It is considered that the grounds of appeal do not raise any new matter which, in the opinion of the planning authority, would justify a change of attitude to the proposed development.

## **6.4. Observations**

None recorded

## **7.0 Assessment**

- 7.1. The points made in the appeal are assessed below. It is noted there are no new substantive matters for consideration.
- 7.2. The proposed development relates to the change of use of a vacant ground floor commercial unit on Marine Walk, Dun Laoghaire, to use as a dance studio. The



vacant unit has an authorised retail use. The unit comprising a floor area of 452 sqm. The applicant claims that the use of Unit 1 will complement the mix of town-centre uses envisaged in the original vision for the site and is in conformity with the major town centre zoning. The appellant claims that the dance studio is incompatible with the residential apartments above and that there are more appropriate vacant commercial premises in Dun Laoghaire to accommodate the dance centre nearby. The main planning considerations relevant to the appeal case are:

- The principle of the change of use from retail to leisure use;
- Potential noise disturbance impacting on the apartments located above the ground floor commercial unit;
- Parking and safety issues
- Security concerns
- Town centre vacancy and alternative appropriate high street locations;
- Signage
- Opening hours

*The principle of the change of use from retail to leisure use*

- 7.3. The zoning objective is "MTC": *To protect, provide for and-or improve major town centre facilities*. Leisure facility is a 'permitted in principle use' under the major town centre zoning objective. A permitted in principle use, which is designated under each of the development plan zoning objectives, are generally acceptable uses subject to compliance with the relevant policies, standards and requirements set out in the overall plan. I considered that the proposed development for a change of use from retail to leisure use as dance studio is permissible in principle.

The applicant proposes restricted operation hours comprising Monday-Friday 06.00am – 11.00pm and Saturday to Sunday 08.00am-09.00pm. The proposed hours of operation are assessed below.

*Potential noise disturbance impacting on the apartments located above the ground floor commercial unit*

The appellant cites noise disturbance as a significant concern given the location of their apartment, terrace and roof garden above the proposed dance studio. It is



claimed that the dance studio departs from the planning authority vision for a balance of commercial activity and residential tranquillity at Marine Walk principally by reason of the inherent noise associated with the dance studio use. It is further claimed that the planning authority's restriction in operation hours acknowledges the potential disruption to Marine Walk residents.

Furthermore, the Environmental Health officer of the planning authority states in internal reporting that the cumulative impact of noise / vibration due to operation of the proposed dance studio in conjunction with existing fitness studio / gym is likely to cause significant nuisance for residents of Marine Walk. The concerns of the appellant and the Environmental Health Officer of the planning authority are noted.

The applicant is cognisant of the fact there are residential units above the proposed dance studio and commits in the letter of application to prevent any potential noise or nuisance to their residential neighbours. The applicant provides that noise mitigation measures will include:

- The zoning of the internal layout to provide dance studio activity accommodation under the shared roof garden and terraces of the apartments at the back of the deep floor plate of the commercial unit;
- The reception area will be located to the front of the unit immediately under the apartments;
- The proposed fit out will include all necessary sound proofing in full accordance with best building practice and in conformity with the building regulations;
- The dance studio use is a training and wellness like use and as such amplification requirements are commensurate with such uses;
- The studio will use a number of small speakers further reducing sound volume to create an immersive and communicative experience for the patrons;
- The small studio will employ the 'Smart Home Bluetooth Speaker' system 4 x 80. The system has a maximum output volume of 80 (dB) and the larger studio will employ the 'Subzero Hicast' S844.1 PA system, which has a maximum output volume of 100 (dB).



The planning case officer acknowledges the nature of the use and recognises that the proposal could have an adverse impact on residents. However, on the basis of the detailed information submitted by the applicant, it is considered that the proposed development would not result in undue impacts on residential amenity due to noise mitigation measures including sound proofing and the low levels of volume proposed. I would concur with the planning case officer. The appellant claims that the guidelines from the Irish Health Service, Appendix 8, state that exposure to levels of 80 decibels (dB) necessitate hearing protection and no individual should endure exposure of 87 (dB) even with hearing protection. I note these concerns.

However, in the matter of noise mitigation and the protection of residential amenities, I also note that the proposed dance studio layout would locate Studio A (72 sqm.) and studio B (157 sqm.) directly under the external terraces and roof garden directly above, which would position the exercise active spaces under the external footprint of the residential units and the reception and male / female changing areas under the internal residential footprint. It is considered that the proposed development is acceptable in principle given the following noise mitigation measures including:

- the internal layout;
- the incorporation of sound proofing;
- the inherent sound insulation provided by the existing built fabric of this purpose built mixed-use building, designed to have an active commercial ground floor with residential accommodation above; and
- the commitment of the applicant to minimise disturbance to the existing residents.

#### *Parking and safety issues*

- 7.4. The appellant claims that the planners report failed to address the safety and parking concerns mentioned in the original objection to the planning authority. It is claimed that an anticipated increase in traffic will further endanger pedestrians, especially schoolchildren. There is a public footpath on either side of Marine Walk with double yellow lines defining the carriageway. Notwithstanding increased traffic volumes, the design of Marine Walk is such that there is no traffic safety issue for pedestrians, which was confirmed by my site visit. It is noted that there is a public car park



adjacent at the Pavilion car park that would be accessible to clients of the dance studio. Furthermore, Marine Walk is highly accessible by public transport.

#### *Security concerns*

- 7.5. The appellant cites a recent incident at Marine Walk that breached community security and the potential that the proposed dance studio would introduce inadvertently individuals with malicious intentions. It is claimed that there are pressing questions about the adequacy of current security measures at Marine Walk and that it is crucial that these concerns are addressed thoroughly before proceeding. I note on the day of my site visit that there is a separate dedicated entrance to apartments 6-26, including apartment no. 7, located to the side of commercial Unit 1 and between Unit 1 and Unit 2 elevating to the south-east toward Marine Park. It is considered that no significant additional security risk would arise given that there is direct access to the dance studio from the street and that no proposed shared access with the apartments at Marine Walk is proposed.

#### *Town centre vacancy and alternative appropriate high street locations*

- 7.6. The appellant provides examples of vacant commercial units in Dun Laoghaire town centre including strategically located premises on the high street, which would mitigate the impact of noise and disturbance. The appellant claims that the cited locations are more suitable locations for the proposed dance studio. Appendix 4 attached to the appeal statement includes a photographic record of nearby vacant premises. It is considered that notwithstanding the desirability of finding a new use for vacant commercial premises in the town centre, the planning authority and the Board must consider the development proposal and application site submitted by the applicant.

The subject Unit 1 Marine Walk has been vacant since the completion of the development in 2017. The floor area of the unit is 452 sqm. I note on the day of my site visit that Marine Road is an established retail location with significant footfall on the south-east side of the street. However, Marine Walk has very limited footfall. Marine Walk is the access to the Royal Marine Hotel and is differentiated from Marine Road by the access gate to the Royal Marine Hotel. It is a marginal retail location gaging the significant footfall on Marine Road and the limited footfall on Marine Walk, the vacancy of existing ground floor units on Marine Walk including



Unit 1 and, the commercial mix of the other occupied ground floor units on Marine Walk comprising a fitness studio and café. I consider that the vacant commercial unit on Marine walk is an appropriate location for the dance studio.

#### *Signage*

- 7.7. The applicant proposes an external flat LED illuminated sign (1.45m wide by 1.1m high) to be wall mounted adjacent to the entrance to Unit 1 Marine Walk, comprising a white Acrylic panel within a black aluminium casing supporting letters in relief (dept 100mm) spelling 'DROP' in black aluminium. it is considered that the sign is acceptable in principle at the proposed location and in its detail design.

#### *Hours of Operation*

- 7.8. The applicant proposes restricted operation hours comprising Monday-Friday 06.00am – 11.00pm and Saturday to Sunday 08.00am-09.00pm. The planning case officer considered the hours of operation excessive. I would concur with the planning case officer that the hours of operation should be restricted to 8.00-21.00hrs Monday to Sunday inclusive. This can be dealt with by way of condition.
- 7.9. In conclusion, it is considered that the proposed change of use from retail to leisure to facilitate a dance studio, subject to compliance with conditions, is acceptable by reason of the internal arrangement of the dance studio, locating the active exercise areas under the external footprint of the residential units and the reception and male / female accommodation under the apartment footprint, the sound proofing of the premises in accordance with best practice, the availability of public transport options proximate to Marine Walk and the proximity of a public car park adjacent at the Pavilion car park, and would not have an adverse impact on the residential amenities of the residents of Marine Walk, would not impact on the setting of the protected structure at the Royal Marine Hotel, would provide for the activation of a vacant commercial ground floor unit with a leisure use that would complement the town centre use mix and, as such, would be consistent with the proper planning and sustainable development of the area

#### **7.10. Appropriate Assessment Screening**

The proposed development comprises a change of use of an existing ground floor commercial unit within an established urban area.



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. I recommend a grant of permission subject to condition having regard to the reasons and considerations below.

## 9.0 Reasons and Considerations

Having regard to the grounds of appeal, the town centre zoning objective, which seeks to protect, provide for and / or improve major town centre facilities and, the policy framework provided by the Dun Laoghaire Rathdown County Development Plan 2022-2028, it is considered that the proposed development, subject to compliance with conditions, is acceptable by reason of the internal arrangement of the dance studio, locating the active exercise areas under the external footprint of the residential units and the reception and male / female accommodation under the apartment footprint, the sound proofing of the premises in accordance with best practice, the availability of public transport options proximate to Marine Walk and the proximity of a public car park adjacent at the Pavilion car park, and would not have an adverse impact on the residential amenities of the residents of Marine Walk, would not have an impact on the setting of the protected structure at the Royal Marine Hotel, would provide for the activation of a vacant commercial ground floor unit with a leisure use that would complement the town centre use mix and, as such, would be consistent with the proper planning and sustainable development of the area.

## 10.0 Conditions

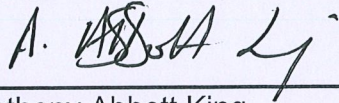
1.	The development shall be carried out and completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning
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	<p>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 developer shall enter into water and wastewater connection agreements with Irish Water.</p> <p><b>Reason:</b> In the interest of public health.</p>
3.	<p>The 'Dance Studio' herein permitted shall limit operations to between the hours of 08.00hrs to 21.00hrs Monday to Sunday inclusive.</p> <p><b>Reason:</b> In the interest of orderly development.</p>
4.	<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. The contribution shall be paid prior to the 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 the Board 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 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>



"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".

A handwritten signature in black ink, appearing to read 'A. Abbott King', written over a horizontal line.

Anthony Abbott King  
Planning Inspector

21 December 2023