



An
Bord
Pleanála

Inspector's Report ABP-318623-23

Development	Change of use of existing café to hotel use. Permission also sought for connection to all other necessary site services.		
Location	Hampton by Hilton, 25 Chancery Street Smithfield Dublin 7.		
Planning Authority Ref.	Dublin City Council WEB1623/23		
Applicant(s)	Winemount Limited.		
Type of Application	Permission.	PA Decision	Grant subject to 8 no. conditions
Type of Appeal	Third Party	Appellant	Cllr Declan Meenagh
Observer(s)	TII		
Date of Site Inspection	Inspector		
21 st February 2024	Philip Green		

Context

1. Site Location/ and Description. Application relates to the existing café in the south eastern ground and mezzanine/first floor level corner of the existing modern Hamptons by Hilton Hotel at the corner of Chancery Street and St Michans Place (and Greek Street). The Red Line LUAS runs in front and immediately to the south of the hotel which has its main entrance on to Chancery Street. The Four Courts and Four Courts LUAS stop lie approx 100 metres south west and west of the site.

On the opposite side of St Michans Place is a public house and small parade of what appeared to be vacant commercial/shop premises at ground floor level with accommodation above. There are also residential areas in the immediate vicinity including to the south, south east, north and north west.

2. Description of development. Proposes change of use of café to 2 no. meetings rooms at ground floor and 4 en suite bedrooms at first floor level ancillary to main hotel use of overall site. Drawings indicate that no external alterations are proposed to facilitate this change of use.

3. Planning History.

- **PL29N. 248961 (DCC Reg Ref 2560/17);** Permission granted subject to conditions by ABP (Third Party appeals) for demolition of existing six storey building and construction of eight storey 249 bedroom hotel.
- The Board should also note the further planning history cited in the Planners report which includes references to advertisements relating to the cafe and and an issued Street Furniture Licence.

4. Local Planning Policy

- Site located within a Z5 City Centre zoned area in the **Dublin City Development Plan 2022 – 2028** whose Objective is to ‘consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity’.
- The primary purpose of this use zone is stated to be ‘to sustain life within the centre of the city through intensive mixed-use development (see also Chapters 6, 7, and 15 for policies, objectives and standards). The strategy is to provide a dynamic mix of uses which interact with each other, help create a sense of community, and which sustain the vitality of the inner city both by day and night..... Ideally, a mix of uses should occur both vertically through the floors of buildings as well as horizontally along the street frontage. A general mix of uses, e.g. retail, commercial, residential, will be desirable throughout the area and active, vibrant ground floor uses promoted. On Category 1 retail streets, retail should be the predominant ground floor use – see Appendix 2: Retail Strategy In the interests of promoting a mixed-use city, it may not be

appropriate to allow mono office use on Z5 zoned lands, particularly on large scale development sites, or to allow an overconcentration of hotel uses in a particular area. Therefore, where significant city centre sites are being redeveloped, an element of residential and other uses as appropriate should be provided to complement the predominant office use in the interests of encouraging sustainable, mixed-use development’.

- Hotels (and conference centres) are considered a permissible use in such zoned areas, a permissible use being one which is generally acceptable in principle but which is subject to normal planning considerations, including the policies and objectives outlined in the plan.
- Policy CCUV30 Cafés / Restaurants states that it is policy to promote and facilitate the provision of cafés / restaurants in the city and support their role in making the city more attractive for residents, workers, and visitors and in creating employment.
- Policy CCUVO11 Victorian Fruit and Vegetable Market states that it is policy to promote and facilitate the ongoing implementation of the City Markets Project, centred around the Victorian Fruit and Vegetable Market on Mary’s Lane, an important aspect in city centre regeneration. See also SDRA 13, Chapter 13.
- The site lies within the Strategic Development Regeneration Area (SDRA) 13 Markets Area and Environs as identified in Chapter 13 of the Development Plan Figure 13.13. This SDRA provides a framework to ensure a coherent and structured approach to the future development of the area by providing guidance for specific sites that can act as catalysts to drive sustainable regeneration. It is stated that ‘The markets area, with the Victorian Fruit and Vegetable Markets building as the centrepiece, is rich in history, encompassing long established market and trading streets. The area, bounded by North King Street to the north, Capel Street to the east, Church Street to the west and Inns and Ormond Quays to the south, interlinks the historic Smithfield area with the core retail area to the east. The area’s rich history and medieval origins is reflected in both the variety of current uses (which include residential, civic, commercial, religious and retail) and also in its historic street pattern and built fabric’. A Guiding Principle in respect of the Areas Urban Structure is stated to be ‘to facilitate the wholesale regeneration of the public realm and pedestrian

environment as identified in the Guiding Principles Map, and encourage development that contributes to the activation and upgrade of these spaces' and in regard to Open Spaces to 'create an interlinked hierarchy of public open spaces and routes including civic spaces and parks, throughout the Markets area that are attractive, multi-functional, safe, welcoming and accessible to local residents, workers and visitors'.

5. Natural Heritage Designations

- None relevant to case.

Development, Decision and Grounds of Appeal

6. PA Decision. The Planners report makes reference to the planning history on site, observers submission objecting to development, internal report received (Transportation – no objections) and submission of TII. Policy zoning provisions of Development Plan including Z5 zoning objective, location within a Strategic Development and Regeneration Area 13 are referred to.

In regard to **Appropriate Assessment** screening the report concludes that having regard to the site location, the distance from any European sites, the nature and scale of the proposed development and the lack of any direct hydrological connection between the site and any European site it was considered that the proposed development in itself or in combination with any other plans or projects would not have any significant impact on the qualifying interests of any such sites and that a Stage 2 appropriate assessment would not be required.

A **request for further information** seeking clarification of the rationale for the change of use having regard to policies seeking to encourage active street level uses and the requirement for additional hotel space and suggesting limiting the change of use to the mezzanine level only was issued by DCC. Following receipt of the Applicants response to this request which included comments relating to location outside of retail core and not on a Category 1 or 2 retail street, low pedestrian footfall, lack of need for café for hotel guests given availability of

alternative facilities within the hotel, financial losses experienced by the café since opening, lack of use viability and potential synergy of proposed meeting rooms with Four Courts nearby. Following completion of a further updated report the DCC issued a Notification of Decision to Grant Permission subject to 8 no. conditions.

7. Third Party Appeal (Cllr Declan Meenagh)

- Cause damage to streetscape and zoning requirement;
- Over concentration of hotels in area;
- Section 15.4.1 of Development Plan requires report indicating all existing and proposed hotels within 1km and demonstration that proposal would not undermine principles of achieving a balanced pattern of development in area. This has not been done;
- Decision in conflict with Z5 zoning to sustain life in centre of the city through mixed use development. This is removing entirely the mixed use element and conflicts with zoning objective to create vibrant ground floor uses;
- DCC noted that café was considered separate however it is clear in published correspondence that café is run by a subsidiary that is owned by the same company as the hotel;
- Prices charged at café do not compare with others in vicinity and applicants may have more success if they charge more affordable prices.
- A different use could be applied for the premises and it is not appropriate just to wall off and extend hotel which locals already believe there are too many of;
- Decision has insufficient regard to SDRA13 to activate the space in front of the hotel which is in a prime location near two major sites of the Fruit and vegetable Market and Four Courts.and near a major transport link (LUAS stop);
- Condition 13 of the hotel permission required public access from the street to the ground floor bar/restaurant to be retained at all times they were open for business. The reason given for this was to promote active uses at street level.

8. PA Response

- No further response received.

Transport Infrastructure Ireland

- Note close proximity to LUAS line and advise that applicant should ensure no adverse impact on LUAS operations and safety and that Applicant should comply with relevant Code of Engineering Practice;
- Note proximity to overhead conductor system poles and fixings and requiring details to be submitted in regard to OCS protection and safety distances and any existing temporary or permanent fixings.

Environmental Screening

9. EIA Screening

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

10. AA Screening

Having regard to the modest nature and scale of development, location in an urban area, connection to existing services and absence of connectivity to European sites 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.

2.0 Assessment

2.1. Having inspected the site and surroundings and having regard to the submissions lodged with the application and appeal and the local policy context I consider the main issues to be considered in this case to be:

- Principle of change of use having regard to zoning provisions of the Development Plan;

- Justification for change of use proposed in circumstances pertaining to case and policies encouraging diversity of use at street level.

2.2. Principle of change of use having regard to zoning provisions of the

Development Plan: A proposed hotel use is considered a permissible use in a Z5 zoned area. Although the Appellant has cited Sections of the Development Plan requiring an assessment of the extent of hotel accommodation in the area to ensure an overconcentration does not result the Board will be aware that the premises physically forms part of an existing hotel granted on appeal under reference 29N. 248961. As part of this change of use it is proposed to install a further four bedrooms only at first floor level to the original permission described as providing some 249 bedrooms. I do not consider this would add such additional bed spaces to justify a conclusion of over concentration of hotel accommodation.

2.3. The proposed two meeting rooms at ground floor are proposed to be used in association with and ancillary to the existing hotel with a demand having been identified for such space in particular in conjunction with the proximity to the Four Courts. I consider that the principle of such ancillary facilities of limited floor area of some 105 sq.m. serving an established hotel in this location to be reasonable and a use which would not conflict with the Z5 Zoning Objective.

2.4. Notwithstanding this conclusion, I consider that the proposed development still raises issues of potential conflict with Development Plan policies seeking to ensure for vitality and vibrancy of use at street level and ensuring that developments provide (and retain) a reasonable mix of uses horizontally and vertically. Indeed this was an issue raised by the Planning Authority in seeking Further Information albeit that the Applicants Further Information response satisfied the planners concerns to the extent to which a Notification of Decision to Grant was issued. Given the significance of this issue to the merits of this case I quote the full text of the DCC Further Information request below.

‘Having regard to the location in an area with zoning objective Z5 – ‘to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity’ under the current Dublin City Development Plan (2022-28), with the preference within this zone being for active street level uses which generate footfall and contribute to the vibrancy and mix

of uses in the area, the applicant is requested to submit details of the rationale for the proposed change of use from an active café use at street level and the requirement for the additional hotel space. The applicant is requested to consider restricting this change of use of the mezzanine only.'

- 2.5. **Justification for change of use proposed:** I draw the Board's attention to the Applicants FI response dated 11th October 2023. In that response it is stated that the cafe was included in the original permission for the hotel to accord with the zoning regulations although this has come at considerable cost due to the poor operating performance of the café. It is considered by the applicants to be an unviable business due to lack of footfall, due to it not being located on a category 1 or 2 retail street and the presence of a café in the hotel itself. It is stated that the café opened in August 2022 following considerable investment and is operating at a loss with a forecast loss this time next year of 250000 euro. It is also stated that whilst the area benefits from custom due to the uses nearby these are closed in August and September in addition to other public holidays and when the café does no business at all. It is stated the proposed use will benefit from corporate meetings throughout the year and will encourage footfall from the Courthouses for private meetings, encourage links between the hotel and Courts and generate pedestrian traffic going some way to meeting the Z5 Objective providing a mix of use which interacts with each other and which helps create a sense of community. The Applicants experience of successfully operating such meetings rooms elsewhere is referred to. It is concluded that the Directors are considering alternative uses for the café and regardless of the appeal outcome the café will be forced to close leaving an empty boarded up property.
- 2.6. Under its present management the cafe would not appear to be operating in a financially viable manner. The character of the immediate area is also not one with a multiplicity of retail or other service premises that would themselves give rise to a focus for associated footfall albeit that there are significant residential, employment/courthouse, features of interest and transport links nearby. There would also appear to be vacant properties nearby on the opposite side of St Michans Place.
- 2.7. However this is a relatively new hotel and the café use would only appear to have been operating for a short period of time. It is in a location for which a strategic

development regeneration plan as part of the City Development Plan has been prepared and thus enhancements to the area could reasonably be expected to result. In my opinion It has not been satisfactorily demonstrated that either under different ownership or indeed in a different type of use that would retain some level of active public street level presence that a viable alternative appropriate use could not be secured that could serve the needs of residents, workers or visitors in the area. The application for example was not accompanied by evidence of any comprehensive independent marketing exercise demonstrating lack of interest for the premises either as a café or indeed any other appropriate use which might achieve the policy objective. As such I consider the proposal premature. I also consider that significantly the original hotel permission granted by the Board had regard to the mix of use proposed by the cafes inclusion in the scheme and even with the inclusion of this separate and stated to be independent café the Board still added Condition 13. This condition required that public access from the street shall be maintained to the ground floor bar/restaurant at all times during which it is open for business (to promote active use at street level). Thus, an active use at street level was perceived by the Board as being important in this location as part of the overall development. I do not consider that this approach and these policies are no longer applicable or relevant.

- 2.8. I accept that a synergy in use may occur between the proposed hotel meeting rooms and users in the Four Courts however I am not convinced that this is what is entirely being sought in application of the policy nor would it justify in my opinion the loss of the active public accessible use at street level having regard to the information available at the present time.
- 2.9. I have considered whether a partial grant of permission for change of use of the first floor to the hotel bedroom accommodation proposed might be appropriate. As this may however preclude options for use of the ground floor I have discounted this option.
- 2.10. I have considered all the others raised but it seems to me that they are not so material to the consideration of the merits of this case to warrant reaching a different recommendation to that set out above and below.

3.0 Recommendation

- 3.1. In conclusion I recommend that permission be refused for the proposed development for the following reasons and considerations.

4.0 Reasons & Considerations

The appeal premises is located in an area with zoning objective Z5 – ‘to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity’ under the current Dublin City Development Plan (2022-2028), with the preference within this zone being for active street level uses which generate footfall and contribute to the vibrancy and mix of uses in the area. Having regard to these policy provisions the Board is not satisfied that the proposed change of use resulting in the loss of an active, publicly accessible street level use would not detract from the vibrancy, vitality and amenities of the area. The proposed change of use would as such conflict with the policies and objectives of the Dublin City Development Plan 2022-2028 and be contrary to the proper planning and sustainable development of the area.

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.

Philip Green

Planning Inspector

23rd February 2024

Appendix 1 - Form 1
EIA Pre-Screening
[EIAR not submitted]

An Bord Pleanála Case Reference	318623-23		
Proposed Development Summary	Change of use of café to hotel use (bedrooms and meeting rooms).		
Development Address	Hampton by Hilton, 25 Chancery Street Smithfield, D7		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? <i>(that is involving construction works, demolition, or interventions in the natural surroundings)</i>		Yes	x
		No	No further action required
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes			EIA Mandatory EIAR required
No	x		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment <i>(if relevant)</i>
No		N/A	No EIAR or Preliminary

				<i>Examination required</i>
Yes	x	10(b)(iv) Infrastructure project/t Urban development		<i>Proceed to Q.4</i>

4. Has Schedule 7A information been submitted?		
No	x	<i>Preliminary Examination required</i>
Yes		<i>Screening Determination required</i>

Inspector: _____

Date:
