



Board Direction

Ref: PL28.245776

The submissions on this file and the Inspector's report were considered at a Board meeting held on March 30th 2016.

The Board decided, by a vote of two to one, to grant permission in accordance with the following reasons, considerations and conditions.

Reasons and Considerations

Having regard to the pattern of development in the area and the planning history of the site, and having regard to the nature and extent of the proposed development, as modified at further information stage, it is considered that the proposed development, subject to compliance with the conditions set out below, would not seriously injure the residential amenities of the area, would not adversely impact on the architectural heritage of the area, would be acceptable in terms of traffic safety and convenience and would not represent an unacceptable risk of flooding. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's recommendation to refuse permission, the Board had regard to the pattern of development in the vicinity of the site, including adjoining commercial uses, and also to the planning history of the subject site, including its former use as a petrol filling station, and considered that, in this particular context, the development could be allowed under the zoning provisions of the current Development Plan for the area.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as modified by the further plans and particulars submitted to the planning

authority on the 28th day of September 2015, 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.

Reason: In the interest of clarity.

2. (a) The applicant shall employ a professionally qualified and registered architect, with conservation experience, to prepare a schedule of works and specifications for the conservation, repair and refurbishment of the retained house at No. 1 Tivoli Gardens. Such works and specifications shall be submitted to, and shall be agreed in writing with, the planning authority prior to the commencement of any development authorised by this permission.

(b) The works for the conservation, repair and refurbishment of the retained house at No. 1 Tivoli Gardens, as agreed with the planning authority pursuant to condition 2 (a) above, shall be carried out as part of the overall development works for the development of the proposed restaurant/takeaway/drive-thru facility, and shall be completed, to the written satisfaction of the planning authority, prior to the first use of the proposed restaurant/takeaway/drive-thru development.

- 3 (a) The proposed signage, located on the front and side elevations of the proposed building above first floor level, shall be omitted. Signage of a similar type, but no more than 600mm high, and no more than 3 metres long, shall be provided on the front and side elevations above ground floor level and below the first floor windows. Details of the exact type and design of this signage (which shall not exceed these stated dimensions), together with the proposed 6 metre high totem signage proposed, shall be agreed in writing with the planning authority before development commences.

(b) 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, other than the signage specified in condition 3(a) of this permission, shall be

displayed or erected on the buildings or within the curtilage of the site, unless authorised by a further grant of planning permission.

Reason: To protect the visual amenities of the area, and to allow the planning authority to assess any further signage or other elements through the statutory planning process.

4. The opening hours of the proposed restaurant with hot food take-away and drive-thru facility shall be between 0800 hours and 2200 hours from Monday to Sunday

Reason: In the interest of residential amenity and to avoid nuisance outside these hours.

5. (a) The proposed entrance/exit, including the width of the entrance/exit shall be designed in accordance with the Design Manual for urban Roads and Streets (DMURS). Exact details shall be submitted to, and agreed in writing with the planning authority prior to commencement of development. These details shall include the provision, at the expense of the developer, of lane-division bollards along the public road centreline for the full length of the subject site.

(b) – (f) As PA Condition 6(b) to 6(f). [*Insert the words “planning authority” in lieu of “Roads Design Division of Cork City Council” and “Transportation Division of Cork City Council”*]

Reason: In the interest of traffic and pedestrian safety.

6. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health and to ensure a proper standard of development.

7. (a) During the operational phase of the proposed development, the noise level arising from the development, as measured at the nearest dwelling shall not exceed:-

(i) An L_{AeqT} value of 55 dB(A) during the period 0800 to 2200 hours from Monday to Saturday inclusive. [The T value shall be one hour.]

- (ii) An L_{AeqT} value of 45 dB(A) at any other time. [The T value shall be 15 minutes]. The noise at such time shall not contain a tonal component.

At no time shall the noise generated on site result in an increase in noise level of more than 10 dB(A) above background levels at the boundary of the site.

- (b) All sound measurement shall be carried out in accordance with ISO Recommendation R 1996 “Assessment of Noise with respect of Community Response” as amended by ISO Recommendations R 1996 1, or 2 “Description and Measurement of Environmental Noise” as applicable.

Reason: To protect the residential amenities of property in the vicinity of the site.

- 8. 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 scheme shall include the provision of litter bins and refuse storage facilities.

Reason: In the interest of visual amenity.

- 9. Prior to commencement of development the developer shall submit, and obtain the written agreement of the planning authority to, a plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials, and for the on-going operation of these facilities.

Reason: To provide for appropriate management of waste and, in particular, recyclable materials, in the interest of protecting the environment.

- 11. Prior to commencement of development, a Construction Management Plan shall be submitted to, and agreed in writing with, the planning authority. This plan shall provide details of intended construction practice for the development, including hours of working, noise

management measures and off-site disposal of construction/demolition waste.

Reason: In the interest of amenities and public safety.

12. 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 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.

Reason: 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.

13. S. 49 Financial Contribution (as per standard wording) in respect of the Cork Suburban Rail Project (see PA condition 12).

Note 1: In imposing condition 2, the Board considered that it was essential that No. 1 Tivoli Gardens should be refurbished, as proposed by the applicant on 28th September 2015 in his response to the Planning authority's request for further information, as part of the overall development, and that this work should be carried out in a timely fashion. Accordingly, the Board considered it appropriate to require that this refurbishment work be completed prior to the first use of the proposed restaurant/takeaway/drive-thru development.

Note 2: In imposing condition 3 (a), the Board considered that the proposed signage, located above first floor level on two elevations of the building, would be excessively obtrusive, by reason of its scale and high level location, particularly in the light of its proximity to Tivoli Gardens, and in the light of the permitted advertising on the proposed totem signage. The Board considered that the relocation of this signage to the lower level, and its

reduction in scale, would be required. Furthermore, the Board was of opinion that any further proliferation of advertising on the premises would not be appropriate, and that any such further advertising should, under condition 3(b), be assessed by the planning authority solely through the statutory planning application process, which provides for third party involvement.

Note 3. In imposing condition 6 (a), the Board considered that the most appropriate method of ensuring that right-turn manoeuvres would not occur on the public road was the provision of lane-division bollards along the centre line of the road, and noted that such a measure was referred to by the applicant in his response to the appeal. Accordingly, it was considered appropriate that these bollards would be provided, subject to agreement with the planning authority, at the developer's expense.

[Please issue a copy of this Direction with the Board Order.]

Board Member: _____ Date: 31st March 2016
Philip Jones