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**Planning and Development Acts 2000 to 2019**

**Planning Authority: Dublin City Council**

**Planning Register Reference Number: 3076/19**

**Appeal** by Burlington Real Estate Limited care of John Spain Associates, Planning and Development Consultants of 39 Fitzwilliam Place, Dublin against the decision made on the 12<sup>th</sup> day of September, 2019 by Dublin City Council to grant subject to conditions a permission to Fallon and Byrne Limited care of Plus Architecture of Chancery Lane, Dublin in accordance with plans and particulars lodged with the said Council:

**Proposed Development:** Ground floor extension of 158 square metres to the existing shop, with associated changes to access and delivery area to the rear; a 92 square metre extension of the existing restaurant at first floor opening on to a roof terrace of 127 square metres with associated new fire escape stair to rear; a new 19 square metre prep kitchen and a roof terrace of 79 square metres at second floor level and minor revisions to ancillary services, storage and circulation areas at Fallon and Byrne, 11-17, Exchequer Street, Dublin.

## **Decision**

**GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.**

## **Matters Considered**

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

## **Reasons and Considerations**

Having regard to the Z5 zoning objective pertaining to the site which seeks to consolidate and facilitate the development of the central area and to identify, reinforce, strengthen and protect its civic design character and dignity, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health and would generally be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further information submitted to the planning authority on the 16<sup>th</sup> day of August 2019, 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. The proposed roof terrace shall be for dining purposes only and shall be closed between the hours of midnight and 0800 hours daily and no external amplification of music shall be permitted onto the terrace area.

**Reason:** In the interest of orderly development and neighbourhood amenity.

3. No advertisement or advertisement structure, shall be erected or displayed on the building in such a manner as to be visible from outside the building, unless authorised by a further grant of planning permission.

**Reason:** In the interest of visual amenity.

4. Site development and building works shall be carried out only between the hours of 0700 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the amenities of property in the vicinity.

5. Site development works and construction works shall be carried out in such a manner so as to ensure that the adjoining streets are kept clear of debris, soil and other material and if the need arises for cleaning works to be carried out on the adjoining public roads, such cleaning works shall be carried out at the developer's expense.

**Reason:** To ensure adjoining roadways are kept in a clean and safe condition during construction works in the interest of orderly development.

6. Water supply and drainage arrangements, including the attenuation and 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.

7. Prior to commencement of development, the developer shall enter into water and/or wastewater connection agreement(s) with Irish Water, should such connections be required.

**Reason:** In the interest of orderly development.

8. The following requirements of planning authority's Transportation Planning Division shall be complied with:
- (a) Prior to commencement of development and the appointment of a contractor, a Construction Management Plan shall be submitted to the planning authority for written agreement. This plan shall provide details of intended construction practice for the development including traffic management, noise management measures and off-site disposal of construction and demolition waste.
  - (b) All costs incurred by the planning authority, including any repairs to the public road and other such services as a result of the development, shall be at the expense of the developer.

**Reason:** In the interest of orderly development.

9. 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 ongoing operation of these facilities shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

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

10. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:

- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and
- (b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site, and
- (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works. In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

**Reason:** In order to conserve the archaeological heritage of the area and to secure the preservation in-situ or by record and protection of any archaeological remains that may exist within the site.

11. The permanent awning system provided over the first-floor terraced area shall consist of a heavyweight material capable of attenuating sound from the outdoor terraced area. Details of the proposed materials and specification for the awning system shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To protect the amenity of surrounding properties.

12. The external planting bordering the external terrace indicated on Drawing Number 380\_PFB\_02\_02 received by the planning authority on the 23<sup>rd</sup> day of May 2019 shall be at least two metres in height, consisting of an evergreen species and shall be in place prior to the occupation of the proposed terrace. Details of the proposed planting system shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To protect the visual amenities of the area and the amenity of surrounding properties.

13. 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 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, 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.

14. The developer shall pay to the planning authority a financial contribution in respect of the Luas Cross City Line in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.



**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

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**Dave Walsh**

**Member of An Bord Pleanála  
duly authorised to authenticate  
the seal of the Board**

**Dated this            day of            2020**