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**Planning and Development Acts 2000 to 2020**

**Planning Authority: Fingal County Council**

**Planning Register Reference Number: F20A/0347**

**Appeal** by Deirdre Rochford care of Evan Duggan Associates Limited of 121 Baggot Street Lower, Dublin and by DAA of Head Office, Dublin Airport, County Dublin against the decision made on the 2<sup>nd</sup> day of December, 2020 by Fingal County Council to grant subject to conditions a permission to Marcus Sung care of CDP Architecture of 4 The Mall, Main Street, Lucan, County Dublin in accordance with plans and particulars lodged with the said Council:

**Proposed Development:** The demolition of the existing two-storey restaurant and the construction of a new restaurant and six number residential units consisting of five number two-bedroom apartments and one number two-bedroom duplex apartment; and associated eight number surface car parking spaces. All with associated landscaping, boundary treatments, bin storage, cycle parking, signage and site development works, all at Silks Restaurant, The Mall, Malahide, County Dublin.

## **Decision**

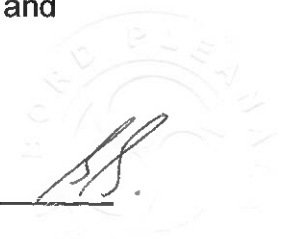
**GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.**

## **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**

The proposed mixed-use development located in the centre of Malahide and subject to compliance with the conditions set out below, would provide for additional mixed-use development of a suitable scale and design to achieve a reasonable density of development on this centrally located site, would be appropriate to the general scale of the area, would not conflict with the character of the Architectural Conservation Area or be visually incongruous in the streetscape, would not injure the residential amenities of adjoining properties or of future residents, would enhance the visual amenities of the area, would comply with the objectives of the Fingal Development Plan 2017 - 2023 and 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 plans and particulars submitted on the 6<sup>th</sup> day of November, 2020 and by the further plans and particulars received by An Bord Pleanála on the 1<sup>st</sup> day of February, 2021 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. Windows and doors shall be of timber or metal and details of all materials and finishes shall otherwise be as per drawings submitted with the application unless agreed in writing by the planning authority.

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

3. Landscaping shall be implemented during the first planting season following the completion of construction in accordance with the landscape plan submitted to the planning authority on the 6<sup>th</sup> day of November, 2020.

**Reason:** In the interest of proper planning and sustainable development.

4. All bathroom/en-suite windows shall be fitted and permanently maintained with obscure glass. The use of film is not acceptable.

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

5. Prior to commencement of development, an amended site layout plan indicating that one number parking space is dedicated and reserved for each of the six number apartment units and that two number parking spaces are dedicated and reserved for use by staff of the restaurant unit shall be submitted to, and agreed in writing with, the planning authority.

**Reason:** In the interest of clarity.

6. Details of the 'access control to provide open area for residents only', as shown at the eastern side of the building to prevent restaurant patrons from accessing the garden and to ensure that it is available for use by residents of the apartments only, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

7. The existing and predicted noise environment of the site shall be assessed with consideration for future airport growth and appropriate noise mitigation measures shall be implemented, as required by the Fingal Development Plan 2017 – 2023. Details in this regard shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

8. Prior to the occupation of any part of the development, details of a management scheme providing adequate measures for the future maintenance of open spaces, roads, parking and communal areas shall be submitted to, and agreed in writing with, the planning authority.

**Reason:** To ensure the adequate future maintenance of this development in the interest of residential amenity.

9. The hours of operation of the proposed restaurant shall be from 0900 to 2400 Monday to Sunday including public holidays, unless otherwise agreed in writing with the planning authority.

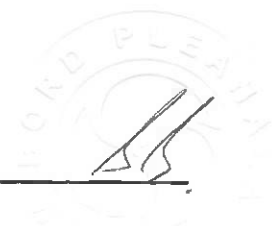
**Reason:** In the interest of residential amenity.

10. No deliveries shall be taken at, or dispatched from, the restaurant between the hours of 2300 and 0700.

**Reason:** To protect the amenities of the area.

11. No music or to other amplified sound shall be broadcast externally. Noise emanating from the premises shall be such as not to cause nuisance to the occupants of adjacent properties and users of the public road.

**Reason:** To protect the amenities of the area.



12. The following requirements shall be complied with in full:

- (i) The development hereby permitted shall not cause a noise nuisance to nearby noise sensitive locations and shall not exceed the background level by 10 dB(A) or more or exceed NG4 limits whichever is lesser. Daytime (0700 to 1900 hours) – 55dB Evening (1900 to 2300 hours) – 50dB Night-time (2300 to 0700 hours) – 45dB - measured from the nearest noise sensitive locations(s).
- (ii) Clearly audible and impulsive tones at noise sensitive locations during evening and night shall be avoided irrespective of the noise level.
- (iii) The development hereby permitted shall be so operated that there will be no emissions of malodours, gas, dust, fumes or other deleterious materials and no noise vibration on site as would give reasonable cause for annoyance to any person in any residence, adjoining unit or public place in the vicinity.

**Reason:** To protect the amenities of the area.

13. No additional advertising signs or structures shall be erected or displayed externally or on the front façade of the premises except those which are exempted development, unless authorised by a further grant of planning permission.

**Reason:** In the interest of the proper planning and sustainable development of the area.

14. Windows shall be clear and devoid of window graphics and shall comprise clear glazing, except where otherwise required by condition or agreed in writing with the planning authority prior to commencement of development.

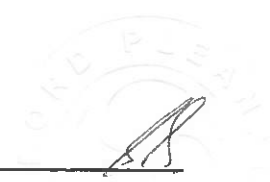
**Reason:** In the interest of the proper planning and sustainable development of the area.

15. Proposals for an acceptable naming and apartment numbering scheme shall be submitted to, and agreed in writing with, the planning authority prior to commencement of any works on site.

**Reason:** In the interest of the proper planning and sustainable development of the area.

16. Site development and building works shall be carried out only between the hours of 0700 and 1900 from Mondays to Fridays inclusive, between 0800 and 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.



17. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including, noise management measures and off-site disposal of construction/demolition waste.

**Reason:** In the interests of public safety and amenity.

18. Prior to commencement of development, the developer shall enter into water and/or wastewater connection agreement(s) with Irish Water.

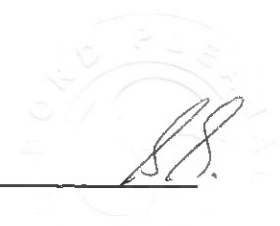
**Reason:** In the interest of public health.

19. 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.

20. All public services to the proposed development, including electrical, telephone cables and associated equipment shall be located underground throughout the entire site.

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





21. A minimum of four car parking spaces shall be provided with electric vehicle charging points/stations, and ducting shall be provided for all remaining car parking spaces facilitating the installation of electric vehicle charging points/stations at a later date. Where proposals relating to the installation of electric vehicle ducting and charging points/stations have not been submitted with the application, in accordance with the above noted requirements, such proposals shall be submitted to, and agreed in writing with, the planning authority prior to the occupation of the development.


**Reason:** To provide for and/or future proof the development such as would facilitate the use of electric vehicles.

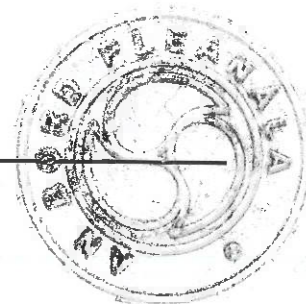
22. The developer shall pay to the planning authority a financial contribution in respect of the shortfall of 225 square metres of public open space in the area of the planning authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development 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.

23. 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.

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



Dated this *8<sup>th</sup>* day of *July* 2021.