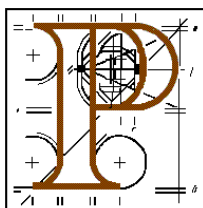


An Bord Pleanála



INSPECTOR'S REPORT

PL 29S 245808

DEVELOPMENT: Amendments and Alterations to prior grant of permission under P. A. Reg. Ref. 3646/13 to insert a new window in south elevation of No 9 Eustace Street.

LOCATION: Nos. 9 and 10 Eustace Street, Dublin 2. (Protected Structure.)

PLANNING APPLICATION

Planning Authority: Dublin City Council

P. A. Reg. Ref: 3585/15

Applicant: Terence Corish

Decision: Grant Permission.

APPEALS

First Party Appellant: Terence Corish.

Type of Appeal Third against Condition No 3.

Third Party Appellant Mike Ryan.

Type of Appeal Appeal against Grant of Permission.

Date of Inspection: 28th January and 3rd February, 2016.

Inspector Jane Dennehy.

1. SITE LOCATION AND DESCRIPTION

- 1.1 The site, of Nos. 9 and 10 Eustace Street has a stated area of 187.7 square metres faces onto the west side of Eustace Street in Temple Bar. Individual Buildings on the two plots are evident on John Rocque's Map of 1756 but are replaced with a nineteenth century building on the two plots according to the OS Map of 1847.
- 1.2 The existing nineteenth century four storey building has a stated total floor area of 700 square metres on the site and has been subject to extensive renovation and refurbishments. It has an entrance and five bays at ground floor level and three bays at upper levels. The third floor is in residential use. The ground, first and second floors are in office and retail use and the cellars or basement level is in use as a restaurant, with an entrance off meeting House Square at the rear.

No 8 Eustace Street, "The Merchant House" is to the northern side of Nos 9 and 10 and is the property of the third party appellant. There are four self-contained, luxury apartments within The Merchant House which are available for business and leisure lettings. Nos 9 and 10, the appeal site property has a north facing projection beyond and perpendicular to the rear, west elevation of No 8 by a distance of circa three metres.

The Temple Music Centre, The Irish Film Institute, The Ark Cultural Centre and a mix of hotels and other guest accommodation, restaurants, cafes, bars, late night entertainment venues and retail units are located in the area.

2. PLANNING HISTORY:

- 2.1 **P. A. Reg. Ref. 3584/15:** Permission was granted for alterations to the two prior grants of permission (see 2.2 and 2.3 below) to include construction of a balcony (6.3 square metres) at third floor level with two doors, fire lobbies doors and internal doors at ground first second and third levels and for modification for steps drainage, fire escape, a door and enabling works at ground floor level. Under Condition No 2 there is a requirement for a Conservation Architect to be appointed to oversee the works.
- 2.2 **PL 29S 243582/P. A. Reg. Ref. 3546/13:** The planning authority decision to grant permission for change of use of the third floor from commercial to residential use (two apartments) and renovation works including replacement of windows was upheld following third party appeal on 8th October, 2014. The Board's file is attached. Under Condition No 2, balcony doors from a bedroom and living room are omitted and substitution of sash windows similar to windows on the west elevation is required. The reason is, "*In the interests of clarity and in order to delimit the scope of the permitted development*".

- 2.3 **PL 29S 243467/P. A. Reg. Ref. 3619/13:** The planning authority decided to grant permission for change of use from office to daytime retail and café use at the front ground floor level and to refuse permission for change of use from office to live music / cultural night time use at the rear ground floor level. Following third party appeal the planning authority decision was upheld on 6th October, 2014.

3. **DEVELOPMENT PLAN.**

- 3.1 The operative development plan is the Dublin City Development Plan, 2011-2017 according to which the site location is subject to the zoning objective: Z5 – *“To consolidate and facilitate the development of the central area and to identify, reinforce and strengthen and protect its civic design character and dignity”*.
- 3.2 Nos. 9 and 10 Eustace Street is included on the record of protected structures. (Item 2696) and the location is within a Conservation Area.

4. **THE PLANNING APPLICATION.**

- 4.1 The application lodged with the planning authority indicates proposals for installation of a new hardwood window (1880 mm x 2550 mm) at third floor level in the south elevation of the building for the main living room which has a stated floor area of thirty six square metres. It is to be clad in 316 bead blasted stainless steel with fully welded joints and a recessed hinged solid ventilation slot and includes maintenance free stainless steel finish and toughened triple glazing and a 750 mm deep seat. The applicant is the owner of the third floor in the building and has been granted a Lease of Easement for access through the building.
- 4.2 The Conservation Officer’s report indicates no objection subject to a condition relating to works methodology in respect of which a requirement for a compliance submission is recommended. It is also stated in the report that the proposal is a distinct modern intervention within historic fabric that does not adversely impact on other openings of the structural integrity of the historic wall.
- 4.3 An objection was received from the owner of the adjoining property, (Third Party Appellant) at No Eustace Street indicating concerns about impact on privacy and amenity.

5. **DECISION OF THE PLANNING AUTHORITY.**

- 5.1 By Order dated, 3rd November, 2015 the planning authority decided to grant permission subject to conditions.

- 5.2 Condition No 2 includes some specific requirements relating to conservation methodology for opening up, cleaning, repair and making good, surviving fabric and under condition No 2 a works methodology some amendments.
- 5.3 Condition No 3, the appealed condition contains a requirement that the glazing be fixed.

6 THE FIRST PARTY APPEAL.

- 6.1 An appeal against Condition No 3 was received from Donal Hickey Architects on behalf of the applicant on 30th November, 2015. Condition No 3 is reproduced below:

“The glazing to the floor to ceiling window hereby approved shall be fixed and incorporate no openable panes/parts.

Reason: *For clarity and to protect the amenities of adjoining properties.”*

- 6.2 According to the appeal:

- There is no limitation to sightlines for window is at 90 degrees to the adjoining building. It would be necessary for a person to stand right against the glass to gain sight of the interiors of the stairs or bathroom at No 8 Eustace Street. The glass at an acute angle is reflective and this is an advantage when windows are perpendicular to each other.
- A recessed opening slot to the right of clear fixed glazed panel is proposed. It is restricted to 100 mm opening width and includes a trickle-ventilation unit.
- Any noise emanating from the window would compete with the background noise of the Eustace Street area and the city. It is improbable that guests at No 8 Eustace Street using the bathroom or staircase would be affected.
- The conservation officer is in support of the proposed window which is well designed, does not adversely affect the protected structure and improves the quality and amenity of the living space.
- The condition denies residents of No 9 and 10 the convenience and amenity of passively controlled ventilation.
- The proposed development does not cause nuisance to the occupants of No 8 Eustace Street.

7. THE THIRD PARTY APPEAL

7.1 An appeal against the decision to grant permission was received from Michael Boyle, Architect on behalf of Mike Ryan the owner operator of a guesthouse at No 8 Eustace Street on 25th November, 2015.

7.2 According to the appeal:

- Mr Ryan operates a five star guesthouse for business and leisure visitors and privacy and solitude and well-appointed rooms extending through the entire depth of the building at each floor are very important. To ameliorate the street noise a secondary line of glazing has been installed inside the windows facing onto Eustace Street and therefore only the rear elevation windows are openable to provide ventilation.
- The proposed window could be a source of noise nuisance and invasion of the privacy of guests staying at the Appellant's property.
- It is the appellant's preference that the window not be permitted. At a minimum, the window should be modified to exclude any glazing, vent or other openings in the side/flank wall that could provide a conduit for noise to the detriment of guests at the appellant's property. There is ample scope for ventilation at windows in the rear elevation of Nos. 9 and 10 to be available for the rooms in the applicant's property. The requested modification would not unduly impact on or compromise the applicant's interests and would lessen the impact on the appellant's property.

8.0 RESPONSE TO THE THIRD APPEAL BY THE APPLICANT.

8.1 A submission was received from Donal Hickey on his own behalf of the applicant on 23rd December 2015.

. The contents are outlined in summary form below.

- The conservation report included with the application addresses the issues in the appeal and the line of sight from the proposed window. The appellant may have been unaware of the conservation report as it was not included in the list of documents on the City Council's (public) listings.
- The appellant's business is well adapted to the surrounding urban environment. The applicant seeks to enhance and

improve the previously permitted residence at No 9 and No 10 which along with No 8 is entitled to the privileges and standards appropriate to the location.

9. FURTHER SUBMISSION OF THE THIRD PARTY APPELLANT

- 9.1 A further submission was received from the appellant in response to the first party appeal on 7th January, 2015. The contents can be outlined as follows.

The level of detail provided in the application about which the appellant had previously not been fully aware is acknowledged.

The concerns expressed in the appeal are reiterated, attention being drawn in particular to the residential use on the top floor and likely evening and night time occupancy with potential impact on the appellant's property.

While it would be preferred that the proposed window be omitted, it is requested, if permitted that vents and openings be excluded because they provide a conduit of noise. The "acoustic status quo" at No 8 could be therefore be maintained if vents and openings are omitted.

10. RESPONSE TO THE APPEAL BY THE PLANNING AUTHORITY.

- 10.1 There is no submission from the planning authority on file.

11. EVALUATION

- 11.1 The issue to be considered, having regard to the first and third party appeals is that of impact of the proposed window on the amenities of the residential accommodation in the adjoining building.

- 11.2 On first impressions, the appeal grounds might appear to be extreme but on inspection it is evident that this is clearly not the case. It would be reasonable to assume that there are similar permitted uses as apartments for letting purposes at the applicant's property at third floor level in Nos 9 and 10 and at all levels within the appellant's property where there are four self-contained units. The proposed window for the northern elevation is perpendicular to and in very close proximity to the rear elevation windows in the appellant's property. The requirement in the condition for omission of vents and openings to the glazing in the proposed window is considered to be fully warranted due to the close proximity to the windows at No 8. The proposed window is to a large living room. It is reasonable that effective amelioration of noise in the form of voice, music etc. be in place. However, omission of the window in entirety would be unwarranted as overlooking would not occur due to

the perpendicular relationship between the rear elevation of No 8 and the projecting north elevation of No 9/10.

11.3 Owing to the range and nature of land uses there is significant noise and disturbance in Temple Bar, including Eustace Street at night time as a result of which it can be impractical in residential accommodation for the front elevation windows to be open. As explained in the third party appeal, it is generally only practical to open the rear elevation windows. However the living room accommodation in the appeal site property has the benefit of rear facing elevation windows in addition to the proposed window. It appears that the room is not solely dependent on the proposed window for ventilation although such provision may be desirable from the applicant's perspective.

11.4 In view of the foregoing it is considered that omission of the proposed window in entirety is unwarranted whereas omission of any elements that would allow for the escape of noise is warranted. The planning authority decision to grant permission and to attach condition No 3 is therefore supported.

11.5 **Appropriate Assessment.**

Having regard to the nature and scale of the proposed development no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on European sites.

12. **CONCLUSION AND RECOMMENDATION**

12.1 In view of the foregoing, it is recommended that the planning authority decision to grant permission including the attachment of condition No 3 be upheld. A draft order is set out overleaf.

DECISION

Grant Permission on the basis of the reasons and considerations below:

REASONS AND CONSIDERATIONS.

1. Having regard to the location within the Temple Bar District in which there is a mix of land uses including night time entertainment and leisure activities, it is considered that subject to compliance with the conditions set out below, the proposed development would not adversely affect the amenities of the adjoining property and would be in accordance with the proper planning and 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 except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The glazing shall be fitted. No vents or openings shall be provided.

Reason: To protect the amenities of apartment units at the adjoining property.

3. The works shall be subject to the prior written agreement of the planning authority and shall be carried out in accordance with such requirements. The works include works to previously concealed historic masonry which should be preserved in situ, repair, cleaning and making good of existing masonry for which exemplars should be provided and works to the surviving façade.

Reason: In the interest of protection preservation of historic fabric and good conservation practice

**Jane Dennehy,
Senior Planning Inspector.
4th February, 2016.**