

# An Bord Pleanála



## INSPECTOR'S REPORT

**PL 29S 246412**

**DEVELOPMENT:** Retention for kitchenette area (4.2square metres) at first floor level and Permission for a dance area (20.5 square metres at the rear of the ground floor, all associated with previously permitted wine and spirits bar at ground floor level under r P. A. Reg. Ref. 2984/14 and 3364/14

**LOCATION:** No 10 St Stephen's Green, Dublin 2.  
(Protected Structure)

### PLANNING APPLICATION

**Planning Authority:** Dublin City Council  
**P. A. Reg. Ref:** 3751/15  
**Applicant:** SLJ Ltd.,  
**Decision:** Grant Permission.

### APPEALS

**Party Appellant:** Amanda and Susannah Jackson.  
**Type of Appeal** Third Party against Grant of Permission.

**Date of Inspection:** July, 2016.

**Inspector** Jane Dennehy.

## 1. SITE LOCATION AND DESCRIPTION

No 10 St. Stephen's Green is one of a pair of three storey over basement three bay Georgian townhouses with granite steps to the main entrance at ground floor level, railings to the front and steps down to the basement level access. A wine and spirits bar is located at ground floor level and a restaurant ('Il Posto') is located in the basement. There is an outdoor seating area for Il Posto in front of the building adjacent to the area subject of the application which is in front of the entrance. The ground floor was previously in use as an art gallery with office use on the upper floors were in office use.

- 1.2 The two houses are set back behind the adjoining buildings and main front building line along Stephen's Green North between Grafton Street and Dawson Street. No 11 St Stephen's Green is to the east side and is the adjoining house in the pair of terraced Georgian Houses and St Stephen's Green Club is to the west side of the appeal site. St Stephen's Green and the Luas BX line which is under construction are opposite and are overlooked by the houses.

## 2. PLANNING HISTORY:

- 2.1 **P. A. Reg. Ref. 2984/14:** Permission was granted for change of use from retail to wine bar at ground floor and for works to the south facing (front) faced to include replacement of the windows and repointing. The application also included proposals for a range of external works and internal works.
- 2.2 **P. A. Reg. Ref. 3364/14:** Permission was granted for variation of the previously permitted development of a wine and spirits bar at ground floor level to allow for the sale of spirits and cocktails.
- 2.2 **P. A. Reg. Ref. 3546/14:** Permission was refused for change of use from retail to wine bar at ground floor, from office to wine bar at first floor, from office to storage and toilets at second floor and removal of a pitched roof at the rear to provide for a smoking area and wine garden at ground floor level. The reason for refusal related to in appropriate intensification of use and interventions to surviving historic fabric and character.

**PL 29S 245743/P. A. Reg. Ref: 3470/15:** The planning authority decision to refuse permission for outdoor seating associated with approved wine/spirits bar at ground floor under P. A. Reg. Ref. 2984/14 and 3364/14 consisting of removal furniture (4 tables and 8 chairs in an are projecting circa 3.7 metres out from the entrance steps and 2.7 metres in width and use during operation hours of the wine spirits' bar with clear access to the main entrance was overturned and permission granted following appeal.

- 2.4 There is also a prior planning history according to the application. (P.A. Reg. Refs. 4708/04, 0996/97, 1130/96 and 1165/94 refer.) The planning officer also refers to a planning history in his report. (P. A. Reg. Refs 0110/03 and 1500/98 refer.)

### 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”*. A wine bar, being licensed premises is a permissible use
- 3.2 No. 10 St. Stephen's Green is included on the record of protected structures. (Item 7768) and the location is within the Grafton Street and Environs Architectural Conservation Area for which there is also a Special Scheme of Planning Control (2013)

The location is also within a 'Conservation Area' and within a 'Zone of Archaeological Interest.'

Policies, standards and objectives relating to night clubs and licensed premises are set out in section 17.34.

St Stephen's Green is not included among the designated 'primary' and 'secondary' shopping streets.

### 4. **THE PLANNING APPLICATION.**

- 4.1 The application lodged with the planning authority indicates proposals for permission for retention of retention of a kitchenette at first floor level and a dance area with a stated floor area of 20.5 square metres at ground floor level and associated works. The application includes an architectural heritage impact assessment of the proposed works and change of use by John Cronin Associates. A request for additional information was issued on 23rd November, 2015 to the applicant and a response was received on 15<sup>th</sup> February, 2016.
- 4.2 According to the application and further information submissions the kitchen is used for preparation of pizza and hot sandwiches and a carbon filter cooker hood and induction fan was installed in the first floor window
- 4.3 The dance floor is located at the rear of the ground floor in the building. Amplified music (no live music) is provided according to the further information submission, sound insulation has been installed and a thick

wool pile carpet and sound absorbing underlay. Hours of operation for the dance floor are:

Sunday to Tuesday, 12.30 pm – 11.30 pm.

Wednesdays, 12.30 to 12.00 am,

Thursdays, 12.30 to 1.30 am and,

Fridays and Saturdays, 12.30 pm to 2.00 am.

- 4.4 The report of the Environmental Health Officer refers to noise monitoring taken in from the basement which took place on 5<sup>th</sup> February, 2016 between 23.50 and 0.10 hrs. No music was audible in the basement. A condition with control of hours to 12 pm to 2.00 am and retention of volume at ambient levels prior to midnight and measurement of ambient levels at adjoining properties is recommended.
- 4.5 The Conservation Officer's report indicates objection to installation of a fan in the window, the building being a protected structure and about possible interventions in the fabric to mitigate noise impact. The report also contains comments on post interventions to the fabric, the planning history and the architectural heritage significance of the building.
- 4.6 Objections were received from two parties, (Landlords for No 11 Stephen's Green and the Appellant Party, (Il Posto Restaurant.) Concerns expressed are about noise from the building and from patrons congregating outside the premises. The submission of the appellant includes observation on the planning background and context and objection to the sale of food through use of the proposed kitchen.
- 4.7 The planning officer, based on the observations and recommendations of the Environmental Health Officer and, the zoning objective which allows for the proposed use in principle considered it appropriate to allow for a grant of permission for a three year period.

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

- 5.1 By Order dated, 11<sup>th</sup> March, 2016 the planning authority decided to grant permission subject conditions of a standard nature with regard to the construction stage and specific requirements by condition listed below.

Restriction of the duration of the grant of permission to a three year period only. (Condition No 2)

Compliance submission for details of control of fumes and odours for the kitchen. (Condition No 3)

Use of dancefloor limited to midnight to 0200 hrs only.

Retention of noise levels at ambient levels (which are to be determined by assessment) prior to midnight, A max 3dB (A) increase compared to the representative LAeq (5 minutes level) measured at the same position when no noise is created from the development. A max LEQ level over five minutes in the 64 Hz o 125 Hz octave bands at adjoin property when music is played with no increased relative to the representative measurement at the same position. A noise limiter is to be installed. No use of speakers in or direction of sound into external areas from speakers. (Condition No 5)

## **6 THE APPEAL.**

6.1 An appeal was received from 'Ceardon' on behalf of the appellants who are proprietors of "Il Posto" a restaurant operated from the basement and forecourt area of No 10 St. Stephen's Green.

6.2 According to the appeal:

- There is extensive planning history and escalation of unauthorised development for the applicant's premises which has had continued and sustained impact on the appellant's premises.
- With regard to the proposed kitchen, the application submissions of the applicant are not sufficient and there is no assurance that the applicant would comply with conditions. Food sale at the premises (prepared in the kitchen) is inappropriate as the size and scale of the kitchen is not suitable for commercial kitchen use.
- The visit by the Environmental Health Inspector to measure noise in February was on an occasion when very few patrons were on the applicant's premises so it was quiet with music was played at a low level. Music continues to e played at excessive levels prior to midnight at great disturbance to the Il Posto clientele.
- Any noise control measures proposed by the applicant are purely theoretical and untested. As no noise control scheme or details of measure to prevent noise nuisance, there is no indication of the intentions of the applicant with regard to noise control. There is no agreement on noise monitoring, no testing to determine noise levels.
- There is no distinction between the bar and area used for dancing and there is hardwood flooring. Dancing does take place over the restaurant dining area. A carpet laid over the hardwood floor makes no difference.
- Loud music is played before midnight despite commitment to confine the dancing use to the hours after midnight.

- The appellants consider it inappropriate for the planning authority to decide to grant permission despite the enforcement history report of the conservation officer and the single visit on an evening when few clientele were on the premises. The decision should be reconsidered.

- With regard to the conditions attached to the decision:

Condition 2: (restriction of duration of grant of permission to three years). The appellants' expectations are not positive. If permission is not refused, it is requested that the duration be restricted to one year.

Condition 3: these requirements should have been addressed at the application stage and not by compliance given the conservation officer's remarks.

Condition 4: The appellants object outright to the use of the space as a dance floor as dancing takes place at all times and there is no distinction between the front and rear of the ground floor.

Condition 5: The detailed nature of the requirements is acknowledged but the appellant has no confidence that the applicants will comply with the condition. The applicant should have been pro-active and made proposals and agreements with the appellant as to how the requirements would be implemented.

- There are no assurances that acoustics testing will be undertaken, sound insulation installed, volume levels controlled music will be ambient and further unauthorised development will not take place.

## **7. RESPONSE TO THE APPEAL BY THE PLANNING AUTHORITY.**

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

## **8. RESPONSE TO THE APPEAL BY THE APPLICANT.**

- 8.1 A submission was received from CDP Architecture on behalf of the applicant on 9<sup>th</sup> May, 2016 which includes extracts from the planning officer reports with comments in which it is requested that permission be granted for the proposed development. An outline summary of the observations follows:

- The kitchen is comparable to a domestic kitchen – there is no competition with the restaurant and it not in competition with the appellant's business. 'Il Posto' has a substantial ventilation duct

along the rear roof and rear gable so the issue of installing a fan in the window of a protected structure is trivial.

- The applicant agreed to address some of the concerns prior to lodgement of the appeal. The front of the premises only is above the restaurant (Dance floor is in the rear annex)
- Amelioration of noise impact at the dance floor is provided for at considerable expense by build-up of the floor with rockwood flexi wire mesh between floor joints which is fire resistant and by carpet underlay, carpet and timber underlay carpet with sound absorption and sound impact insulation. Specifications are attached
- The dance floor is limited to a space of twenty square metres in the rear annex and is to be used between 12.00 pm and 0200 am. This is very limited. There is little or no impact on Il Posto coming up to its closing time.
- Enforcement issues and the concerns of the conservation officer have been addressed in the planning applications.
- The conditions are effective but it is unreasonable to limit the period to one year given the capital input by the applicant. The applicant and the appellant's businesses are not in direct competition. The appellant should make matters difficult for the applicant.
- The requirements of the conditions protect the appellant by requirement of compliance submissions for fume and odour control. The area for dancing is clearly distinguished and there is clarity regarding sound insulation and operation of noise control
- The application and conditions attached to the decision to grant permission which will be complied with by the applicant clearly demonstrates that he proposed development is acceptable.
- The location is in a mixed vibrant commercial area in the centre of the city beside the LUAS interlink. There is a mix of land-uses each with a level of noise and there are traffic and pedestrian movements.
- It is requested that the decision be upheld.

## 9. EVALUATION

- 9.1 The issue central to the determination of the decision is that of Impact on amenity of adjoining properties including the appellant party's property operated in the basement and the public realm taking the zoning and related objectives into account. These matters are discussed below along with some additional remarks on building conservation related matters.

- 9.2 The Z5 zoning objective for the site location outside the primary and secondary retail streets, support the nature of use of the proposed development.
- 9.3 At the time of inspection which was confined to a walk-through visual inspection only, the dance floor displayed some evidence of wear and tear but this was not extensive. The carpeting throughout the remainder of the ground floor was in good condition and appeared to be a hard wearing and clearly with effective sound insulation capacity, notwithstanding any additional insulation measures indicated in the application submission for the flooring and underlay. Speakers were mounted in walls in the bar and seating area to the front and adjacent to the dancefloor in the rear annex.
- 9.4 Notwithstanding the undertaking, as shown in the application to confine and contain the dance floor use within the annex area, it is apparent that noise generation by way of music from the speakers potentially penetrates the entire ground floor area and to a lesser extent the upper floors and therefore control of noise levels external to the applicant's premises is necessary. . (The ground floor is open plan and speakers are in the bar and in the dance floor space.)
- 9.5 Given the zoning objective for the area which provides for the proposed use including the dancefloor use and for restaurant and cocktail bar use in principle it is reasonable that the proposed use, subject to the compliance with conditions requirements of the generally similar nature to the requirements in the conditions attached to the planning authority decision be upheld.
- 9.6 It is not accepted that such use, in accordance with the conditions could adversely affect the capacity of the restaurant business located at basement level in the front section of the building, which accessed by a separate independent entrance. It is also noted that there are residential uses in adjoining properties. If the sound from the speakers does not penetrate the external areas and the dancefloor use is confined to the hours at the end of business of the restaurant, the operation of the two businesses should be compatible. However it is acknowledged that satisfactory implementation of the proposed development is heavily reliant on strict adherence to the requirements of the conditions. It there are occurrence of non-compliance there is heavy dependence on effective enforcement. It is also of note that consistency and compliance with other codes for noise and odour control are also required.
- 9.7 With regard to the proposed kitchenette it was noted during the course of the inspection that there is an additional kitchen to the front of the building at second floor level which although considerable in size is not fitted out as a professional commercial kitchen. The use of the kitchenette, for the preparation of food for the benefit of patrons of the



cocktail bar dance floor area, is best regarded as part of the development and as commercial although ancillary to the commercial use of the premises. As such it would be subject to compliance with the minimum standard requirements for kitchen/food preparation areas associated with restaurant and /or bar use, irrespective of the nature and extent of such use relative, however minor to the main use. From a planning perspective there is no objection to this element of the development in that it is not accepted that the use of this space, in connection with the cocktail bar and dance floor use affects the restaurant use of the appellant party in the basement.

- 9.8 In the course of the inspection it was also noted that there is an industrial or commercial kitchen size refrigeration unit installed in the window ope at the return level within the building. It would appear that the unit is used for storage of frozen food. This installation gives rise to concerns of the question of unauthorised and authorised development of conservation related nature given the protected structure status of the building. Remarks have been made in connection with considerable amount duct, flue and extraction equipment located at the rear of the building in the submissions of the applicant and appellant.
- 9.9 In summary, the proposed development and adjoining land uses are compatible and consistent with the zoning and related objectives subject to compliance with conditions in particular in relation to the control of noise. It is considered appropriate that permission be granted for a limited period the duration of which is three years as indicated in the planning authority as opposed to one year as sought in the appeal which is considered to be an insufficient duration for the purposes of providing for an informed planning review to be conducted.
- 9.10 **Appropriate Assessment:** Having regard to the nature and scale of the proposed development and the likely emissions from it, the nature of the receiving environment and proximity to the nearest European site, 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.

## 9. CONCLUSION AND RECOMMENDATION

- 9.1 In view the foregoing, it is recommended that the planning authority decision be upheld, that permission be granted but for a period the duration of which is limited to three years by condition and that the appeal be rejected. A draft order is set out overleaf.

## DECISION

**Grant Permission for Retention on the basis of the reasons and considerations set out below:**

### REASONS AND CONSIDERATIONS.

Having regard to the Dublin City Development Plan, 2011-2017 according to which the site location of the site within an area 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”* and to the nature and extent of commercial, retail, restaurant and leisure and related land-uses in the area, it is considered that, subject to compliance with the conditions below, the proposed development would not adversely affect the amenities of the area or adjoining properties and would be consistent with the development objective for the area and would 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 lodged with An Bord Pleanála on 7<sup>th</sup> April, 2016 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 period during which the development hereby permitted may be carried out shall be three years from the date of this order.

**Reason:** In order to allow for a future planning review of the proposed development should it be intended to extend the use at such time.

3. The use of the dance floor shall not commence before 1200 hrs Mondays to Sundays inclusive unless otherwise authorised by a prior grant of planning permission.

**Reason:** In the interest of the amenities of adjoining properties.

4. Amplified music or other specific entertainment noise emissions from the premises shall not exceed the background noise level by more than 3 dB (A) at any other time, when measured at any external position adjoining an occupied dwelling in the vicinity. The background noise level shall be taken as  $L_{90}$  and the specific noise shall be measured at  $L_{Aeq,T}$ .

(a) The octave band centre frequencies of noise emissions at 63 Hz and at 125 Hz shall be the subject to the same locational and decibel exceedances criteria in relation to background noise levels as set out in (a) above. The background noise levels shall be measured at  $L_{Aeq,T}$ .

(b) The background noise levels shall be measured in the absence of the specific noise, on days and at times when the specific noise source would normally be operating; either

(a) during a temporary shutdown of the specific noise source, or

(b) during a period immediately before or after the specific noise source operates.

(c) When measuring the specific noise, the time (T) shall be any 5 minute period during which the sound emission from the premises is at its maximum level.

(d) Any measuring instrument shall be precision grade.

Detailed plans and particulars indicating sound-proofing or other measures to ensure compliance with this condition shall be submitted to, and agreed in writing with, the planning authority within two calendar months of the date of the order. An acoustical analysis shall be included with this submission to the planning authority.

**Reason:** In order to protect the amenities of property in the vicinity and of the area.

5. The following requirements shall be provided for and adhered to in the development:
  - (a) All entrance doors in the external envelope shall be tightly fitting and self-closing.
  - (b) All windows and roof lights shall be double-glazed and tightly fitting.
  - (c) Noise attenuators shall be fitted to any openings required for ventilation or air conditioning purposes.

Details of the proposed methods of compliance with the above requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To protect the [residential] amenities of property in the vicinity.

6. The developer shall control odour emissions, including extract ducting and ventilation from the premises in accordance with measures which shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

**Reason:** In the interest of public health and to protect the amenities of the area.

7. 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.

8. 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 ongoing operation of these facilities.

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

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**Jane Dennehy,  
Senior Planning Inspector.  
2<sup>nd</sup> August, 2016.**