



An
Bord
Pleanála

Inspector's Report PI06F.247015

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| Development | Change of use of first floor from office to restaurant (102 sq.m) and 2 storey extension to rear (151 sq.m). |
| Location | 32-36 Main Street, Malahide, Co. Dublin |
| Planning Authority | Fingal County Council |
| Planning Authority Reg. Ref. | F15A/0608 |
| Applicant(s) | Architects Workshop Ltd. |
| Type of Application | Permission |
| Planning Authority Decision | Grant |
| Type of Appeal | Third Party |
| Appellant(s) | Anthony Hynes |
| Observer(s) | Thomas Hynes |
| Date of Site Inspection | 4 November 2016 |
| Inspector | Una Crosse |

1.0 Site Location and Description

- 1.1. The site comprises the first floor and rear yard of No's 32 to 36 Main Street Malahide. The existing street facing units located on the south side of Main Street are two-storey in height and accommodate a number of different commercial uses at ground floor. The first floor currently accommodates an existing restaurant and a vacant office space. There is an access to the rear yard under the most westerly building of the block which is currently used for parking with a number of fire accesses from the existing first floor.
- 1.2. The site is adjoined to the south by the side gable of No. 1 The Priory and its rear garden which is part of a small terrace of residential units accessed to the west of the site. There is a window in the gable of the property at first floor level which addresses the appeal site. The western boundary is adjoined by a single storey garage structure located within the site complex to the west and a party boundary wall. This single storey garage operates as a beauty salon and medical surgery. There is a window on the eastern elevation of the garage which addresses the rear yard of the appeal site. To the east the site is adjoined by a number of buildings including a street facing commercial property and two-storey building to the rear.

2.0 Proposed Development

- 2.1. The proposal provides for the change of use of part of the first floor from office to restaurant use (102 sq.). The remainder of the first floor of the existing building is already in restaurant use.
- 2.2. A new two-storey extension to the restaurant to the rear of the existing building within the rear yard with an area of 151 sq.m. The ground floor area is proposed to comprise 39 sq.m. accommodating the access to the first floor and bin storage and comprising an undercroft for bicycles. The first floor with an area of 112 sq.m provides for the restaurant area which comprises an extension of the existing and proposed restaurant in the existing building.
- 2.3. The proposal also provides for the remodelling of the existing restaurant to include the proposed new floor area to provide a new seating area, private dining room and extended kitchen.

- 2.4. New signage is proposed by way of 2 externally illuminated box signs on the first floor elevation of the existing building.
- 2.5. In response to further information the internal layout was amended to locate the reception area close to the access from the stairs from the Main Street entrance. Details in terms of signage, the security gate, finishes, colours, separation from protected structures, roof details, waste management and foul, surface water drainage and water supply were submitted.

3.0 Planning Authority Decision

3.1. Decision

The PA granted permission for the proposal subject to 14 conditions which include:

C2 – colour palette for external façade;

C3 – design and material of proposed security gate;

C4 – signage requirements;

C5 – hours of operation (0900-2400)

C8 – no amplified music;

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The first report considers that the primary issues arising include compliance with development plan objectives, design and character, adjoining amenity, conservation, environmental issues and transportation. Concerns were expressed about the design and illumination of the signage. It is also considered that the access onto the Main Street should be incorporated into the design as the main entrance. The windows on the proposed rear elevation of the extension are considered acceptable as they are high level with the stone wall to be retained along the rear boundary considered to provide sufficient screening. Reference is made to the window of the doctor's surgery being screened internally and the existing trees partly shading the building from the east. It is stated that the proposal will not increase available views of the window into the

surgery as views are already available from the rear yard. Overlooking from the proposed balcony of the front of the commercial premises is considered acceptable. The impact on the adjoining protected structures is considered a concern. Issues regarding the integration of the first floor into the façade are also addressed. Reference is made to the absence of parking and appropriateness of same given the sites location in the town centre. Further information was considered necessary.

- The further information requested required: revised signage to the first floor street frontage; external finishes; main entrance onto main street; details of new gate; images and drawings to demonstrate separation between proposal and protected structures in Killeen Terrace; roof plan; waste management; details of drainage; surface water drainage details; water supply drawing; foul drainage layout.
- In response to the further information the report notes the revised signage is acceptable, the proposal to use one colour across the façade is not considered appropriate with the colour not within the colour scheme for the public realm. A condition is considered necessary to agree the colour scheme. The first floor plan has been revised to provide the reception area adjacent to the access from the main street making this the primary access. The design details provided in respect of the security gate are not considered acceptable with a condition considered necessary. The conservation report is considered satisfactory with sufficient separation distance available. The roof plan is considered acceptable. Bin storage is considered acceptable. The response to items relating to servicing of the proposal are considered acceptable. A response is also provided to the objection from the appellant which raises the same issues with the response similar to that outlined in the first paragraph in this section. The overshadowing likely to arise on adjoining properties is outlined with no detrimental impacts anticipated. The waste management measures are considered acceptable.

3.2.2. Other Technical Reports

Conservation Officer – further information requested in a verbal report. It is noted in the Planning Officer’s report that a verbal response was received in response to FI stating that there was no objection.

Transportation – no objection.

Water Services Section – further information requested on foul and surface water drainage proposals. In response to FI there was no objection.

Irish Water – further information requested on water supply. In response to FI there was no objection.

Environment – further information required on waste management. In response to FI no objection.

Environmental Health – no objection subject to conditions.

3.3. Prescribed Bodies

No prescribed bodies have commented on the proposal.

3.4. Third Party Observations

In addition to the issues raised by the appellant which are outlined below in the grounds of appeal, the existing tenant of the first floor restaurant has objected to the proposal on the basis that they have a 20-year lease and that sharing of the facility is not realistic. Loss of parking is also cited.

4.0 Planning History

- 4.1. Ref. F12A/0405 – retention refused for signage at first floor;
- 4.2. Ref. F10A/0165 – permission granted for retention of change of use of part of existing ground floor shop to coffee shop;
- 4.3. Ref. F07A/1019 & PL06F.227483 – Permission refused by the Board for modifications to F05A/1729 (2-storey extension of 256 sq.m);
- 4.4. Ref. F05A/1729 – two-storey commercial extension to rear of existing commercial premises and extension to side of retail unit known as Sans Souci at ground floor;

5.0 Policy Context

5.1. Development Plan

The subject site is zoned 'TC' in the Fingal Development Plan 2011-2017 the objective of which is to 'protect and enhance the special physical and social character of town and district centres and provide and/or improve urban facilities'. The buildings known as 1-4 Killeen Terrace to the west/southwest of the appeal site are protected structures (RPS No's 398-401). The Development Plan includes an objective to provide a pedestrian/cycle path along the Main Street.

5.2. Architectural Conservation Area of Malahide Historic Core

The site is located within the boundary of the Malahide Historic Core Architectural Conservation Area where the street is referred to as the Dublin Road. It is stated at Section 8.1.6 of the Statement of Character that in respect of shop frontages that 'applications for alterations within the ACA boundaries will also be assessed in the impact of the proposed design on surrounding structures and the special character of the ACA, having regard to scale, proportions, materials and detailing'. It states in respect of extended facades that Shopfronts spanning more than one property must have regard to the scale of shopfronts typical to Malahide. The design should respond to the width of individual properties, and where these are buildings of different style or scale this should be reflected in the design. Where internal connections are made between adjoining buildings, an active function must be ensured to all the structures, to avoid dead or underused street frontages.

In terms of new signage, it states: In Malahide signage consists either of flat fascia bands or surface mounted lettering and several shops have horizontally projecting signs at first floor level. New signage on structures in the ACA should be of an appropriate design to complement or enhance the structure, and should not be overtly dominant on the streetscape. Internally illuminated and plastic fascia boxes are therefore not acceptable. Standard corporate signage which would detract from the character of the ACA should be adapted in scale, colour or material colour to be more in keeping with the area. Proposed shopfront designs should follow general design guidance for shopfronts given in Appendix C of the Fingal Development Plan 2005-2011.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are summarised as follows:

- Appeal grounds similar to those included on PL06F.227483 which was refused with decision that proposal would constitute a significant adverse change to the amenity of the property still applying;
- Proposal will overshadow appellant's medical surgery with a loss of daylight to the window on the east side of the surgery facing proposal which is a source of light and ventilation for the surgery;
- Previous permission granted under Ref.F05A/1729 failed to notice window in the medical centre stating in the report that there were no windows;
- Reference in Planners report to window being screened to prevent views and light however blind installed to control the level of light with daylight still required;
- Privacy of the medical centre also compromised by the proposal;
- Further information submitted did not address concerns raised nor were they addressed by PA;
- Visual impact assessment and historic buildings report do not address impact on doctor's surgery;
- No daylight/shadow analysis submitted;
- Smells from proposed binstore will prevent opening of the window affecting ventilation;
- Proposed first floor balcony will directly overlook the side window and entrance to the medical centre with implications on privacy of the surgery;
- Car park to rear will be significantly reduced.

6.2. Applicant Response

The applicant's response to the appeal is summarised as follows:

- Reference to previous reason for refusal on PL06F.227483 selectively chosen as relates to provision of storage facilities and service access on a much larger extension;
- Current proposal retains the service access from Main Street and provides dedicated bin storage and secure bicycle parking;
- There is no record of the former garage structure being converted into a medical surgery and note that it is currently in use as a beauty salon with no record existing of this intensification of use;
- Hard to believe permission would be granted for a window directly overlooking a neighbouring property given potential implications for appeal site;
- No adverse impact likely as light source available from three roof lights which are principle light sources with proposed building not located directly in front of the window;
- No loss of privacy as window currently opens onto publicly accessible lands with public access to the space restricted by the provision of a security gate;
- No windows on proposed development which allow views through the window and given angle there will be no views from the balcony to the north but willing to accept a condition requiring the erection of an obscure glazed screen;
- Proposal does not prevent window opening and therefore no loss of ventilation and if window opens outwards it would open onto the applicant's land without permission which is legal trespass;
- Concern of the PA at FI stage related to the impact on protected structures;

6.3. Planning Authority Response

The response of the PA to the appeal is summarised as follows:

- Concerns of appellant considered during assessment and included in Planners report;
- Proposal is acceptable on lands zoned town centre and will not detract significantly from the character of Malahide;

- Request if PA decision upheld that condition for development contribution attached;

6.4. **Observations**

The observations submitted as summarised as follows:

- Concern that proposal will overshadow property at No. 1 The Priory particularly late to mid-afternoon;
- Extension at 6m is 2.6m at its closest running almost full length of observer's property overlooking and overbearing the property;
- Trees along boundary which provide screening of observer's property to be removed with no replacement to facilitate continued privacy and request appropriate screening is conditioned;
- Proposed fire escape only 1m from boundary wall and overlooks back garden and gable wall windows;
- Concern proposed fire escape will be used as a smoking area and request smoking area is conditioned at ground floor level away from boundary with observer

7.0 **Assessment**

In my opinion, the key issues in this appeal are as follows:

- Principle of Proposal
- Impact on Amenity of Adjoining Properties
- Design, Signage and Colour Scheme
- Appropriate Assessment

7.1. Principle of Proposal

The subject site is located on lands zoned 'TC' the objective of which is to protect and enhance the special physical and social character of town and district centres and provide and/or improve urban facilities. The proposal to provide an extended restaurant would comply with the zoning objective. I note the concerns on file about

the potential impact of the proposal on the protected structures located along Killeen Terrace however I consider that the matter has been adequately addressed in the submissions made by the applicant.

7.2. Impact on Amenity of Adjoining Properties

The principle issues raised in this appeal by both the appellant and the observer relate to the impact of the proposed extension on the amenity of their properties, the appellant's property comprising a single storey structure which includes signage for both a beauty salon and medical surgery on its front facade and the observers, a private residential dwelling house. I will address each in turn.

The appellant's property is located along the southwestern boundary of the appeal site and includes a window within its elevation addressing the appeal site. This window is located above head height in the elevation. I note the applicant's response to the appeal and the query regarding the permission sought for this window and the issue of trespass in respect of the window opening into the appeal site. The appellant does not provide any evidence of permission sought or granted for this window and it is not clear from the evidence on file how long the window has been in situ. Notwithstanding, the appellant is concerned that the window, which they state provides light and ventilation to the unit, will be overshadowed by the proposal.

While the window may be overshadowed at certain times of the day, I would note that the proposed building is not directly in front of the window with a gap of c.1m between the rear building line of the proposal and the boundary wall to the rear of the site. In addition, there are three roof lights along this side of the roof structure which provide both daylight and ventilation. The appellant refers to comments in the Planners report about the need for the blind which was stated by the Planner to prevent views but the appellant states that it is required to control the level of light. I do not think that the need for the blind is a material issue however I do note that the location of the window looking into the appeal site provides that views into the appellant's property are currently, in principle, directly available from the appeal site. Therefore, I do not agree that the privacy of the medical centre is compromised by the proposal. I would suggest that the privacy of the medical centre is compromised by the location of the window facing into the yard.

The appellant states that the further information submitted did not address concerns raised nor were they addressed by the PA and that the visual impact assessment and historic buildings report do not address the impact on doctor's surgery. Firstly, the concerns raised about the window were addressed by the PA as is clear in the Planners report which refers to the window. Secondly, the visual impact assessment and historic buildings report were requested in respect of the consideration of the impact of the proposal on the protected structures within Killeen Terrace. The lack of a daylight/shadow analysis is also raised however I do not consider that the potential impact on the appellant's property would necessitate such an analysis.

The appellant is also concerned about the impact of the proposed balcony on the privacy of the surgery by way of the window and the entrance to the surgery. The matter of the window is addressed in the preceding paragraphs with views of this window already available from the yard. Notwithstanding, the proposed balcony is located such that views of the window will be oblique and therefore would not be adverse. In addition, I note that the applicant has proposed that they are willing to accept a condition requiring the erection of an obscure glazed screen and the Board may decide that such screening is necessary. The front entrance to the surgery is in full view of the Main Street and I would suggest to the Board that the privacy of the entrance of a commercial premises is not a material planning consideration.

The proposed bin store would provide a better means of storing waste within the site than currently exists and I do not think that the proposal would compromise the ventilation of the appellant's property. While the appellant correctly points out that the car parking on site would be reduced, the location of the site within the town centre so close to the DART station with on street parking available, the absence of car parking to serve the development is not a significant issue.

The observation submitted to the Board is from the owner of No. 1 The Priory the side elevation of which directly adjoins the rear boundary of the appeal site. I would note that there is a small window at first floor level within this elevation. The concerns expressed relate to the potential of the proposal to overshadow the property at particularly late to mid-afternoon. While I would acknowledge the concerns expressed about the extent of the elevation addressing the observer's boundary I note the proposal is north of the Priory and therefore the overshadowing likely to arise would not in my opinion be adverse. The concerns raised about

overlooking are addressed, I would suggest by the fact that the windows proposed on the proposed elevation addressing the rear boundary are high level at 1.8m with no overlooking achievable. The concern about being overbearing is one which I acknowledge, but the site is located on the Main Street and it is considered reasonable that lands such as the appeal site would be developed appropriately to improve facilities and services for the area.

The observer suggests that screening should be provided along this boundary however I would suggest that the boundary wall is of such a height as would not necessitate additional screening.

Concern is expressed about the proximity of the fire escape at only 1m from boundary wall and the potential of same to overlook the back garden and gable wall windows. The observer is also concerned that the fire escape would be used as a smoking area. The fire escape is proposed along the eastern boundary of the site and I would note that it would be bounded on its western side by the wall of the proposed restaurant thereby preventing any views across the site into the observer's property with views at first floor level towards the observer's property limited to the very corner of the site. I do not therefore consider that the impact on the residential amenity of the property would be adverse.

7.3. Design, Signage and Colour Scheme

I note the issues raised in the request for further information about signage to the front façade, the colour scheme proposed to the façade and the design of the security gate. The matter of signage was considered to be satisfactorily addressed by the applicant in the further information response. However, I note the inclusion of conditions within the PA's notification regarding the requirement for agreement on the colour proposed to the façade and the security gate. The site is located on the Main Street in Malahide and within the Architectural Conservation Area of the Historic Core. There are specific considerations set out in the Statement of Character regarding extended frontages and signage. Therefore, if the Board are minded to grant permission, I would suggest that it would be appropriate to include a condition requiring agreement on these matters prior to the commencement of development.

7.4. Appropriate Assessment

- 7.4.1. Having regard to the nature and scale of the proposed development, nature of the receiving environment, the likely emissions arising from the proposed development, the availability of public water and sewerage in the area, and proximity to the nearest European sites, I am satisfied that 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 a European site.

8.0 Recommendation

- 8.1. I recommend that permission should be granted for the development subject to the conditions outlined below.

9.0 Reasons and Considerations

Having regard to the location of the site within the town centre of Malahide and the town centre zoning of the site, it is considered that, subject to the conditions outlined below, that the proposed development would not seriously injure the character of the area or the residential amenities of property in the vicinity and would 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.

10.0 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 14th day of June 2016, 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 development shall be amended as follows:

(a) A colour scheme for the façade addressing the Main Street shall be agreed with the Planning Authority prior to commencement of development.

(b) design details for the proposed security gate onto Main Street shall be agreed with the Planning Authority prior to commencement of development.

Revised drawings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of visual amenity.

3. Water supply and drainage arrangements, including the attenuation and disposal of surface water and provision for existing foul sewer connections within the site, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

4. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. All existing over ground cables shall be relocated underground as part of the site development works.

Reason: In the interest of visual and residential amenity.

5. Site development and building works shall be carried out only between the hours of 08.00 to 19.00 Mondays to Fridays inclusive, between 08.00 to 14.00 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 residential amenities of property in the vicinity.

6. The hours of operation of the proposed restaurant shall be from 0900 to 2400 Monday to Sunday including Bank Holidays.

Reason: In the interest of residential amenity.

7. A plan containing details of 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 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: In the interest of residential amenity, and to ensure the provision of adequate refuse storage.

8. The developer shall pay to the planning authority a financial contribution as a special contribution under section 48(2) (c) of the Planning and Development Act 2000, as amended, in lieu of open space provision towards the cost of amenity works in the area of the proposed development in accordance with the requirements of the requirements of the Fingal Development Plan based on a shortfall of 0.137 hectares of open space. The amount of the contribution 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 for determination. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

Una Crosse
Senior Planning Inspector

November 2016