



An  
Bord  
Pleanála

## Inspector's Report PL29S.249126

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<b>Development</b>	Extension to Restaurant, additional use as a bar/café, demolition of extension to the rear and change of use of warehouse and pizzeria to use as a restaurant and bar together with all ancillary works.
<b>Location</b>	16 Harcourt Street and Mews building to rear (protected structure) and 19 Montague Street, Dublin 2.
<b>Planning Authority</b>	Dublin City Council.
<b>Planning Authority Reg. Ref.</b>	3150/17.
<b>Applicant</b>	Gambetta Limited.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse.
<b>Type of Appeal</b>	First Party -v- Refusal.
<b>Appellant</b>	Gambetta Limited.
<b>Observers</b>	None.
<b>Date of Site Inspection</b>	20 <sup>th</sup> September, 2017.
<b>Inspector</b>	Paul Caprani.

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## 1.0 Introduction

PL29S.249126 relates to a first party appeal against the decision of Dublin City Council to refuse planning permission for an extension to an existing current use of a basement of a building as a licensed restaurant for use as a café/bar and restaurant at No. 16 Harcourt Street, Dublin 2 (Protected Structure RPS No. 3525). The proposed extension will also incorporate a change of use a mews building which is currently used for storage to the rear of No. 16 Harcourt Street and the use of No. 19 Montague Street which until recently accommodated a restaurant use to use as licenced premises / cafe. In its single reason for refusal, Dublin City Council stated that the proposed development would constitute a “Superpub” and would lead to an overconcentration of licensed premises in the area which would give rise to an unacceptable level of disturbance and noise and would create an undesirable precedent for similar type uses in the area.

## 2.0 Site Location and Description

- 2.1. The L-shaped site faces onto Harcourt Street and Montague Street and backs onto Montague Lane to the south of Stephen’s Green in Dublin’s City Centre. The site incorporates No. 16 Harcourt Street and its former mews building to the rear both of which are listed on the Record of Protected Structures. No. 16 comprises of a four-storey overbasement Georgian building. The three-bay four-storey overbasement structure forms part of the original fabric of Harcourt Street which was laid out in the 1770s. No. 16 forms the northern part of an original five-bay dwelling. Documentation submitted with the planning application form indicates that Nos. 16 and 17 Harcourt Street was until the mid-19<sup>th</sup> century, the principle residential dwelling on Harcourt Street. No. 16 and No. 17 have been separated into separate dwellings since the mid-19<sup>th</sup> century. The upper floors above basement to the front of the building accommodate offices and do not form part of the subject application.
- 2.2. Currently the basement is vacant. Until quite recently it accommodated an Indian restaurant which comprised of a waiting area, reception, and front restaurant area together with a back restaurant area, kitchen and storage areas.

- 2.3. The basement leads out onto a backyard/courtyard area which separates the main building at No. 16 Harcourt Street from a mews structure to the rear. This brick structure possibly dates from the Georgian era and is also within the curtilage of the protected structure. It has a double floor to ceiling height and is currently used for storage purposes. It is currently in a state of disrepair but incorporates mainly original external features. It appears from the photographs on file that the vast majority of internal features associated with this mews building have been lost. The mews building to the rear of No. 16 fronts onto Montague Lane.
- 2.4. No. 19 Montague Street comprises of a two-storey structure of a later date, dating from the early 20<sup>th</sup> century according to information contained on file. It formally accommodated a small pizzeria at ground floor level and storage above. It adjoins the mews building to the south and forms the corner site between Montague Street and Montague Lane which runs to the rear of Harcourt Street.

### 3.0 **Proposed Development**

Planning permission is sought for the following works:

- It is proposed to remove a large number of internal partitions within the existing basement area. Most of these partitions date from c.1990 but some of the internal walls probably/possibly date from the original structure (see drawing 3.1.014 for details of internal partitions to be removed).
- The basement roof to the rear of No. 16 at ground floor level is also to be removed.
- A number of internal partitions are to be removed on both ground and first floor of 19 Montague Street for the purposes of accommodating the proposed development.
- The original window opes at the mews building to the rear of No. 16 are to be removed and significant elevation changes are proposed on the front and rear of the mews building and also significant elevational treatments are proposed at first and ground floor level at No. 19 Montague Street.

- In terms of new works to be carried out in the basement of No. 16, it is proposed to reconfigure the layout to incorporate new seating areas/seating/dance floor area together with toilets and a waste storage area.
- It is also proposed to provide a new basement level in the mews building to accommodate a kitchen area, a staff area, a keg store and a cold store area.
- At ground level it is proposed to provide a new access from the basement to the ground floor courtyard which will provide an outdoor courtyard/beer garden with direct access to the mews building to the rear. The mews building at No. 19 Montague Street are to be amalgamated to accommodate additional seating area and a separate bar servery area.
- At first floor level it is proposed to incorporate a new floor within the existing mews building and a new stairwell is proposed to link ground and first floor levels. The first floor of the mews building will be knocked through to link with the first floor of No. 19 Montague Street and this will incorporate an additional bar serving area and seating area. A balcony is proposed at first floor level overlooking the internal courtyard.
- The total floor area of the new development (new and retained together with all ancillary uses) amounts to 1,256 square metres.

#### 4.0 **Planning Authority's Decision**

- 4.1. Dublin City Council refused planning permission for a single reason which is set out below.

*It is considered that the proposed licensed restaurant/café/bar development would constitute a "Superpub" which in accordance with the Dublin City Development Plan 2016 – 2022 – Chapter 16.32 is discouraged, and will lead to an overconcentration of licensed premises in this area of the city. In addition, given the narrow/restricted nature of Montague Street and Montague Lane the proposed servery and entry/exit points to and from the proposed licensed premises would also give rise to an unacceptable level of disturbance to the amenities of the area. Furthermore, the proposal including the large external seating area will generate noise pollution from and at the boundaries of the proposed establishment, which will have a detrimental*

*impact on nearby residential amenity, environmental quality and the established character of the area. On balance, the proposed development would undermine the character of the subject site, the streetscape and the amenity of nearby residents, would result in an undesirable precedent for further such development, would depreciate the value of property in the vicinity and as such would be contrary to the proper planning and sustainable development of the area.*

#### 4.2. **Documentation Submitted with the Application**

4.2.1. The documentation submitted with the application included the following:

- A **Cover Letter** from the applicants.
- A **Letter of Consent** from the tenants of the offices on the ground and upper floors of No. 16 Harcourt Street (Nurses on Call) and a separate letter from the applicants (Gambetta Limited) stating that they are the owners of the mews building and No. 19 Montague Street.

4.2.2. The following reports were also submitted with the application.

- **An Architectural Heritage Impact Assessment.** It describes a history of the development of Harcourt Street and describes in detail the existing buildings on site. The historical importance of the building (Nos. 16 and 17) is highlighted and it is noted that these two dwellings originally form the principle residence on Harcourt Street. It is stated that with the exception of the barrel vaulting in the rear of the basement within the building, there is little else within the basement area of architectural merit. It includes that the proposed development will have a neutral impact on the building in historical or architectural terms and will only result in the limited loss of historic fabric. The impact is mainly confined to the proposed alteration of the mews building to the rear.
- **Harcourt Street Design Statement.** This document sets out the proposal, planning policy and planning history as it relates to the subject site and details the potential impact arising from the proposal in terms of noise, traffic, structural works, waste management and conservation etc. It concludes that the proposal will address an underutilised site and will intensify existing café/bar uses already granted permission on site.

- **An Acoustic Report.** It notes that the busiest times in terms of music will be outside business hours. Furthermore, the report suggests a number of mitigation measures which will be put in place in order to minimise sound propagation beyond the site.
- **A Mechanical and Electrical Services Report.** This report details measures to be put in place to minimise potential impacts from extractor fans, fan sound levels and fumes arising from the preparation and cooking of food on site.
- **An Engineering Report.** This report sets out details of the structural works to be undertaken as part of the renovation of the existing buildings and also sets out the water supply and drainage arrangements. In terms of the latter there are no plans for any new connections to the existing water supply and foul sewer network.
- **A Fire Safety Report** was also submitted.

#### 4.3. **Planning Authority's Assessment of the Application**

- 4.3.1. A report from the Waste Management Division sets out the necessary requirements in terms of waste management to facilitate the proposed development.
- 4.3.2. An environmental health officer's report expresses concerns about late night noise, impact on residential amenity and the lack of noise mitigation measures. It recommends additional information in respect of noise remedy measures.
- 4.3.3. A conservation report notes the contents of the proposal and concludes that it is an improvement over the previous application which was refused planning permission on site (see Planning History below). If planning permission is to be granted for the current proposal, it is suggested that a number of conditions relating to conservation issues be attached.
- 4.3.4. A drainage report states that there is no objection to the proposed development subject to conditions.
- 4.3.5. A report from Transport Infrastructure Ireland specifically restricts comments to the potential impact arising from construction works on existing Luas operations on Harcourt Street.

- 4.3.6. A report from the Roads, Streets and Traffic Planning Division states that there is no objection subject to a number of conditions.
- 4.3.7. The planner's report details the planning history, the current proposal and the development plan policy as it relates to the subject site. The report expresses serious concerns in relation to the following issues:
- Impact on surrounding residential amenity through substantial noise pollution.
  - It is considered that the proposed development constitutes a "Superpub" and would result in the overconcentration of cumulative impact arising from bars in this part of the city.
  - The potential to create anti-social behaviour on the surrounding streets particularly late at night.
- 4.3.8. It was therefore recommended that planning permission be refused for the sole reason set out above.

## 5.0 Planning History

- 5.1. There are no history files attached to the current application. However, the planning history is set out in the Local Authority's Planner's Report and relevant history is summarised below:

Under Reg. Ref. 4427/16 planning permission was sought at Nos. 16 and 17 Harcourt Street and 19 Montague Street for the demolition of a modern rear extension at basement level and ground floor level to the rear of the main building and the construction of various works to accommodate the extension to the existing use as a licensed restaurant at basement level and additional use as a café/bar together with alterations to the mews building to the rear to accommodate a bar at ground floor, restaurant café/bar and seating area at first and second floor level within the mews. Modifications were also sought within the existing courtyard area including the incorporation of external terraces and new additional external stairs.

Works were also sought at No. 17 Harcourt Street which included the creation of two new openings at basement level within the main building for the purpose of circulation and reconnection of existing properties. Modifications were also sought to the mews building to the rear of No. 17 Harcourt Street together with a change of



use from storage to licensed premises at ground floor and first floor level.

Permission was also sought for a change of use from pizzeria to licensed restaurant and bar at No. 19 Montague Street.

In its decision, Dublin City Council refused planning permission for three reasons relating to an overconcentration of licensed premises in the area as well as an unacceptable impact on amenities of the area through disturbance. It is also considered that the proposed interventions at Nos. 16 and 17 Harcourt Street are not reversible and would result in a significant loss of legibility and would affect the character of both buildings. The final reason for refusal considered that the additional second floor to the protected mews buildings to the rear of Nos. 16 and 17 Harcourt Street would have a detrimental visual impact and would negatively impact on the historic character and fabric of the protected mews buildings.

Under Reg. Ref. 4321/15 planning permission was approved at No. 17 Harcourt Street for a change of use from office to licensed restaurant and café/bar at basement level.

## **6.0 Grounds of Appeal**

- 6.1. The decision of Dublin City Council was the subject of a first party appeal submitted by CDP Architecture on behalf of the applicant Gambetta Limited. The grounds of appeal are set out below:
- 6.2. The Local Authority Planner's Report is detailed and it is noted that the planner who dealt with the application considered that the proposed use is acceptable in principle.
- 6.3. The grounds of appeal note that the current proposal is considerably smaller than the scheme that was previously refused by Dublin City Council (Reg. Ref. 4427/16).
- 6.4. It is noted that the planner does not define what constitutes a Superpub nor is this term specified in planning legislation or in the Dublin City Development Plan.
- 6.5. The vacancy of the site detracts from the surrounding public realm and streetscape.
- 6.6. The application was accompanied by an acoustic review and it is noted that ambient noise levels in the area are exceeded presently as a result of existing uses and as such it is argued that the impact in terms of noise and disturbance is neutral.

A further acoustic report submitted with the grounds of appeal (see Appendix J of submission) also concludes that the proposal will have no impact on the surrounding environment in relation to noise disturbance. It is stated that the acoustic consultant's report attached addresses all the concerns raised in the environmental health officer's report on file.

- 6.7. Reference is made to the conservation officer's assessment of the application. The grounds of appeal state that they are generally in agreement with the conservation officer's conclusions and that issues raised can be adequately dealt with by way of condition.
- 6.8. The grounds of appeal make reference to the Dublin City Council Drainage Division Report. The report from Transport Infrastructure Ireland and the report from the Dublin City Council Roads, Street and Traffic Division. It states that the applicant is in general agreement with the points made in each of these reports and any issues raised in the said reports can be adequately dealt with by way of condition.
- 6.9. Reference is made to the observations submitted to Dublin City Council objecting to the proposed development (observation from Wolfe Developments), this observation expresses concerns in relation to noise, anti-social activity and litter associated with existing late night venues on Harcourt Street. In response, it is stated that the applicant is proposing to put an agreement in place for the upkeep of the external front entrance areas and to carry out cleaning works after hours each night. In terms of noise it is argued that there would be no impact on the observer's property as this property operates during normal business hours whereas the restaurant/café/bar will have its busiest time after 6 p.m. each evening. In relation to the first floor balcony at the mews building, it is proposed that the balcony be vacated by patrons at an agreed time in the evening in order to reduce noise nuisance. Furthermore, it should be noted that no live music or amplified music will be played or located in open plan areas of the proposed development. Any impacts in terms of ventilation or air conditioning will be slight at the observer's property (No. 18 Harcourt Street) which does not directly adjoin the subject property. Finally appropriate areas have been designated for waste storage within the development.
- 6.10. In response to the specific issues cited in the reason for refusal, the grounds of appeal contend that the proposal constitutes a limited expansion of an already

established use on the subject site. The proposal creates a viable and usable floor plate from which a business can sustain itself. Furthermore, it is noted that the external areas associated with the development will have no impact on the streetscape as they are insular in nature. It is suggested that the subject proposal cannot be considered a largescale development or “Superpub” with the development being largely dedicated to seating areas for customers who will be availing of food in the area.

- 6.11. In terms of entrance and exit points it is stated that the current proposal has been carefully considered from an architectural and management/operations perspective.
- 6.12. It is stated that various design strategies have been employed to ensure that the area does not give rise to an unacceptable level of disturbance. These include the introduction of glazing along Montague Lane and Montague Street. This will increase passive surveillance and mitigate against anti-social behaviour. There are a number of exit and entry points along Montague Street and Harcourt Street which allows for the free movement of people without congestion.
- 6.13. With regard to the basement of No. 16 Harcourt Street specific areas have been designated for queuing in the late evening with two entrance points onto the main seating area.
- 6.14. With regard to the impact of the proposal on the character of the area, it is noted that there are various bars/late night venues in proximity of the subject site. However, it is contended that the proposed development is not typical of existing venues in the area. The proposed café/bar venue is based on the European model of more informal dining experience together with fine wines and cocktails. Currently the basement of No. 16 Harcourt Street is unkempt and unappealing. The proposed works will involve the cleaning and upgrading of the front entrance area and this will add to the vitality and character of Harcourt Street. It is therefore considered that the proposal will not have a detrimental impact on the established character of the area. The proposal will also involve the upgrading and utilisation of the mews building to the rear of No. 16 Harcourt Street. The fact that the proposal will bring an historic established building back into use should be seen as positive development. The new architectural design and treatment will provide a more contemporary design along Montague Street and Montague Lane. The proposal will

incorporate a redesign of the shopfront and will open up the façade of the building along Montague Lane which will create a new lease of life to this corner building. The proposal will revive the above sections of streetscape. In this regard rather than setting an undesirable precedent, it is argued that the proposal will set a positive precedent.

- 6.15. Under the Z8 land use zoning objective, a range of uses are permitted within this Georgian area and it is noted that a restaurant and nightclub are both open for consideration. It must be noted that the subject site is located within a mixed use area comprising of offices, retail and other various types of licensed premises. For these reasons it is argued that the proposed development is in accordance with the proper planning and sustainable development of the area and the Board are therefore requested to grant planning permission for the proposal. A number of appendices are attached including an acoustic review (Appendix J) and an indicative existing established uses in the area map (Appendix K).

## 7.0 **Appeal Responses**

A response from Dublin City Council dated 15<sup>th</sup> September, 2017 states that Dublin City Council has no further comment to make and considers that the planner's report on file adequately deals with the proposal.

## 8.0 **Development Plan Provision**

- 8.1. The site is governed by the policies and provisions contained in the Dublin City Development Plan 2016-2022. The site is governed by two separate zoning objectives. The front (eastern) portion of the site accommodating the main building (No. 16) is zoned Z8 – 'Georgian Conservation Area'. The zoning objective seeks to protect the existing architectural and civic design character and to allow only for limited expansion consistent with the conservation objective for the area. The development plan notes that in the south Georgian core where residential levels are low it is the aim to encourage more residential use in the area. Uses open for consideration include nightclub and restaurant.
- 8.2. The remainder of the subject site to the rear including the mews building and No. 19 Montague Street is governed by the zoning objective Z4 – 'district centre to provide

for improved mixed service facilities'. A restaurant use is permitted in principle under this zoning objective while nightclub is a use which is open for consideration.

8.3. Section 16.29 sets out Dublin City Council's policies in relation to restaurants. The positive contribution of café and restaurant uses and the cluster of such uses to the vitality of the city is recognised. In considering applications for restaurants the following will be taken into consideration.

- The effect of noise, general disturbance, hours of operation and fumes on the amenities of nearby residents.
- Traffic considerations.
- Waste storage facilities.
- The number and frequency of restaurants and other retail services in the area.
- The need to safeguard the vitality and viability of shopping areas in the city and to maintain a suitable mix of retail uses.

8.4. Section 16.32 relates to nightclub/licensed premises/casino/private members' clubs. It states that in recognition of the importance of Dublin as a thriving and multi-dimensional capital city, there is a need to facilitate the concept of a 24-hour city particularly in the city centre and other key district centres. Dublin City Council will encourage entertainment/cultural/music uses which help create an exciting city for residents and tourists alike and which are capable of attracting people in cutting edge industries such as digital media.

8.5. There is a need to strike an appropriate balance between the role of these entertainment uses in the economy of the city and to maintain high quality retail functions on primary city centre streets and ensure a balanced mix of uses and also to protect the amenities of residents from an overconcentration of late night venues.

8.6. Noise emanating from and at the boundaries of these establishment are issues which will need to be addressed in planning applications for such establishments. Noise insulation and reduction measures particularly relating to any mechanical ventilation or air conditioning will be required to be submitted with any such planning application.

- 8.7. The development of Superpubs will be discouraged and the concentration of pubs will be restricted in certain areas of the city where there is a danger of overconcentration of these to the detriment of other uses. In cases where new uses including uses such as casinos, private members' clubs, extension to the existing use or variation in opening hours of a public house are proposed, the onus is on the applicant to demonstrate that such proposed development will not be detrimental to the residential, environmental or established character or function of the area.
- 8.8. Matters that shall be taken into account by the Planning Authority in assessing these applications for these uses and extension to these uses include:
- The amenity of neighbouring residents and occupiers.
  - Hours of operation.
  - Traffic management.
  - Shopfront treatment and impact on streetscape.
  - Proposed signage.

## 9.0 **Planning Assessment**

I am satisfied that the development will have minimal impact on the integrity of the protected structure. Most of the alterations proposed at basement level relate to modifications which were undertaken in the 1990s. The impact on original structures within the basement are minimal. The architectural assessment submitted with the application indicates that the barrel vaulting at basement level is the most significant architectural feature and this barrel vaulting is to be retained under the current application. Where alterations of a more significant nature are proposed in the case of the mews building to the rear, the fact that this building will be brought back into active use is in my view a positive planning gain and would offset any impact arising from the alterations to the fenestration and openings within the structure. I am satisfied therefore that the proposed development will not have any adverse impact on the architectural or historic integrity of the protected structure in question. I am also satisfied that the proposed development will not give rise to any adverse impact in terms of traffic or visual amenity etc.

Thus, I consider that the Board can restrict its deliberations in the main to the issues cited in Dublin City Council's reason for refusal and the issues raised by the appellant in the grounds of appeal. These issues are set out below.

- Compatibility of the Use with the Existing Zoning Objective set out in the Development Plan
- Whether or not the Proposal Constitutes a "Superpub"
- Overconcentration of Uses in the Area
- Expansion of the Existing Use on Site
- Impact on Residential Amenity through Excessive Noise and Anti-Social Behaviour

#### **9.1. Compatibility of the Use with the Existing Zoning Objective set out in the Development Plan**

The use of the premises as a restaurant and nightclub are uses that are open for consideration under the Z8 zoning objective. The use of a nightclub is also open for consideration under the Z4 zoning objective whereas the use of a restaurant is permitted in principle. Section 14.4 of the development plan states that an open for consideration use is 'one which may be permitted where the Planning Authority is satisfied that the proposed development would be compatible with the overall policies and objectives for the zone and would not have undesirable effects on permitted uses and would otherwise be consistent with the proper planning and sustainable development of the area'. It is apparent therefore that the proposed development while not permitted in principle, it should nevertheless be evaluated on its merits and it is proposed to evaluate these issues in more detail in my assessment below.

#### **9.2. Whether or not the Proposal Constitutes a "Superpub"**

The applicant points out in the grounds of appeal that there is no definition as to what constitutes a Superpub either in the development plan or in planning legislation. I would consider a Superpub use to constitute large floor area given over exclusively to pub use where such uses extend over the entirety of a large ground floor of a building or where such uses occupy multiple floors within the building. There can be little doubt that the proposed development in this instance

while scaled back from the original proposals under Reg. Ref. 4427/16, it still nevertheless occupies a large floor area amounting to 826.2 square metres or just under 9,000 square feet according to the Schedule of Proposed Areas submitted with the planning documentation. I further note that the total floor area of the proposed development (new and retained) according to the planning application form amounts to some 1,256 square metres which amounts to over 13,500 square feet. This in my view constitutes a very large licensed premises which is distributed over three floors (basement, ground floor and first floor). I do acknowledge however that the proposed development also incorporates a café/restaurant/eatery and in this regard the proposal does not exclusively constitute a public house/bar. Whether or not the proposed development constitutes a “Superpub” is perhaps a moot point. There can be little doubt however that the proposed development represents a largescale licensed premises in the context of a typical pub within Dublin City Centre. This in my view is a material consideration in assessing whether or not the development is suitable for the subject site.

### **9.3. Overconcentration of Uses in the Area**

- 9.3.1. I would express similar concerns to that of Dublin City Council with regard to the overconcentration of nightclubs/licensed premises on Harcourt Street particularly having regard to the size and scale of the development proposed. Harcourt Street is a premier street of conservation importance with a high concentration of protected structures an excellent example along its alignment of high quality Georgian architecture. It is for this reason alone that the street has attracted the Z8 zoning objective as a Georgian Conservation Area.
- 9.3.2. There is already a high concentration of similar type nightclubs particularly in the basement areas along the western street, (see photographs attached to this report) There are three large establishments to the south of the subject site. In fact, according to Appendix K of the applicant’s submission as part of the grounds of appeal, it is apparent that of the 12 buildings on the western side of Harcourt Street to the south of Montague Street, six of these buildings or 50% accommodate nightclub/licensed premises at basement level. A grant of planning permission in this instance will exacerbate this trend. This in my view would be contrary to the express statements contained in the Dublin City Development Plan which seeks to



“discourage the concentration of pubs in certain areas of the city where there is a danger of overconcentration of these uses to the detriment of other uses”.

- 9.3.3. I consider this provision in the development plan to be particularly apt and applicable to the site in question where there is an appreciable cluster of licensed premises/nightclubs already on a street which is designated as a Georgian Conservation Area. While it can be reasonably argued that the proposed development does not adversely impact in a physical way on the architectural character/design and overall setting of the street, an overconcentration of nightclub uses would not be compatible with enhancing the civic and historic integrity of the Georgian Conservation Area. Furthermore, it is an express statement in the development plan that the south Georgian core which includes Harcourt Street accommodates historically low levels of residential use and it is the aim to encourage more residential use in the area. I would submit that an overconcentration of late night opening nightclub venues would not be conducive to attracting residential use in the area.
- 9.3.4. The applicant argues that the proposed development is not typical of clubs/licensed premises in the area. It is contended that the proposal is more typical of a European style bar/café as it will serve as an eatery during the day and a licensed premises/club during the evening and night-time. I acknowledge that the proposed development as described by the applicant will add to the vitality and vibrancy of Harcourt Street during the daytime. However, it would be my opinion that the incorporation of a late nightclub use would cumulatively add to similar type established uses along Harcourt Street and this in my view would be to the detriment of the overall land use mix befitting of a street of such architectural and civic importance in such close proximity to the city centre.

#### 9.4. **Expansion of the Existing Use on Site**

The applicant contends throughout the grounds of appeal that the proposed development in this instance represents a logical and appropriate expansion of an existing restaurant use on site. While restaurant use is permitted in principle under the Z4 zoning objective, it is only open for consideration under the Z8 zoning objective. The sole use of the subject site exclusively for restaurant purposes would in my view be a more compatible use and more appropriate for Harcourt Street. It is

not anticipated that any exclusive restaurant use would incorporate a late night music and dance venue such as proposed under the current application. The use of the premises exclusively for a restaurant would contribute in a more appropriate way to the vitality and vibrancy of street activity particularly during the daytime and early evening time. I do not consider that it can be reasonably argued that the transformation of a restaurant premises into a bar/café/late nightclub constitutes a limited expansion of the existing established use on site. The gross floor area of the existing restaurant on site is estimated to be approximately 270 square metres. The gross floor area of the proposed development is estimated to be a circa four-fold increase in the size of the development. This does not in my view represent a limited expansion as suggested in the grounds of appeal.

## 9.5. Impact on Amenity

- 9.5.1. Dublin City Council's reason for refusal suggests that the proposed development would have an unacceptable impact in terms of noise pollution and this would be detrimental to nearby residential amenity. The applicant in the grounds of appeal argues that this is not the case and submitted a detailed acoustic assessment in support of this contention. The baseline surveys carried out as part of the acoustic assessment indicated that there was no material change in the 16 hour  $L_{Aeq}$  between 7.00 a.m. and 11.00 p.m. on the various dates on which the survey was undertaken. The baseline survey recorded  $L_{Aeq}$  levels of between 59 and 62 dB(A)  $L_{Aeq}$ . This suggests that noise limits are already being substantially exceeded at present. This statement in my view lends weight to my conclusion that presently there is an overconcentration of nightclub type uses within the area as there is no appreciable or material change in the ambient noise environment between normal daytime business hours and night-time hours. I do acknowledge however having regard to the ambient noise levels of the existing environment, it is unlikely that the provision of an additional late night music venue will have a significant or material impact on the ambient noise environment having regard to the already high noise levels regarded in the area.
- 9.5.2. While the proposed development will incorporate a number of external outdoor areas in the form of courtyard mezzanine floors and balconies these external areas are all fully enclosed within the envelope of the building and this would in my view somewhat assist in attenuating noise propagation to any significant extent beyond

the confines of the site. Perhaps more importantly it appears from my site inspection and from the information submitted with the grounds of appeal that there are no noise sensitive receptors in the form of residential development contiguous or even adjacent to the subject site. All the buildings surrounding the subject site appear to be in either office, commercial or institutional use. The nearest residential development appears to be the two blocks of flats facing northwards onto Cuffe Street which at the closest point are approximately 100 metres away. I do acknowledge however that I did not undertake a detailed land use survey as part of my site inspection and it is possible that some of the upper floors of buildings in the immediate area including the buildings on Harcourt Street may accommodate some residential development. However, on balance having regard to the existing ambient noise levels in the area and with the incorporation of appropriate mitigation measures as set out in the acoustic report submitted with the grounds of appeal, it is unlikely that the proposed development would contribute in any significant or material way over and above ambient noise levels that exist in the area. Thus additional noise generated by the proposal would not, in my view have an appreciable impact on residential amenity in the surrounding areas.

## **10.0 Conclusion and Recommendation**

Arising from my assessment above I consider that the proposed development constitutes an overconcentration of late night licensed premises in the area and would therefore be contrary to the proper planning and sustainable development of the area. I therefore recommend that the decision of Dublin City Council in this instance be upheld and planning permission be refused for the proposed development in accordance with the reasons and considerations set out below.

## **11.0 Appropriate Assessment**

Having regard to the nature and scale of the proposed development and its location within Dublin City Centre and the nature of the receiving environment together with the 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 and projects on a European site.

## 12.0 Reasons and Considerations

It is considered that the proposed use of the subject site as a licensed restaurant/café/bar/nightclub would result in an overconcentration of such land uses on Harcourt Street, a street designated in the development plan as a Georgian Conservation Area. The proposed development of an additional nightclub/licensed premises at this location would therefore be contrary to Section 16.32 of the Dublin City County Development Plan which seeks to discourage the overconcentration of such uses to the detriment of other uses. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

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Paul Caprani,  
Senior Planning Inspector.

4<sup>th</sup> December , 2017.