



An
Bord
Pleanála

Inspector's Report PL29S.249399

Development	Replace shopfront, internal alterations and erect a 3-storey rear extension.
Location	11 & 12 St. Andrew Street, Dublin 2
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	3071/17
Applicant(s)	Brian Rutledge
Type of Application	Appeal
Planning Authority Decision	Grant permission
Type of Appeal	First & Third
Appellant(s)	Brian Rutledge Appalachian Property Holdings
Observer(s)	None
Date of Site Inspection	11 th January 2018
Inspector	Karla Mc Bride

1.0 Site Location and Description

1.1. The appeal site is located on St. Andrew Street in Dublin 2. The surrounding city centre area is mixed use in character and the site is located adjacent to the South City Retail Core ACA. The site adjoins a private laneway to the rear with Andrew's Lane Theatre beyond and it is occupied by two mid terrace buildings that are in restaurant use at ground and first floor levels (The Cedar Tree & Nandos). The buildings are 4-storey over basement to the front and 2-storey to the rear.

2.0 Proposed Development

2.1. The proposed development would comprise the following changes to the existing 4-storey over basement c.1055sq.m building on a c.460sq.m site:

- The removal and replacement of the existing restaurant shopfront at no.11.
- Demolition of existing two-storey lean-to shed to the rear.
- Internal alterations at basement, ground and first floor levels.
- Construction of a 3-storey over basement c.217sq.m. rear extension to provide the following additional floor space:
 - Basement: 39sq.m.
 - Ground floor: 33sq.m.
 - First floor: 76sq.m.
 - New Second floor: 69sq.m.
- Adjustment to the roof of the existing 2-storey building at the rear of no.12.
- All associated site works.

Accompanying documents:

- Architects Report
- Conservation Report

3.0 Planning Authority Decision

3.1. Further Information

Further information was requested in relation to:

1. The relationship with the recently permitted hotel to the rear of the site (Reg. Ref. 4342/16 & on appeal to ABP) that has several windows fronting onto the laneway which would be blocked by the proposed extension – *no change*.
2. Submit an Architectural Conservation Report in relation to the shopfront at no.11- *details submitted*.
3. Clarify if the 2 units at nos.11 &12 will operate as one or two separate restaurants - *two separate own door restaurants*.
4. Submit cross sectional drawing to describe the relationship with nos. 31 – 37 Exchequer Street – *details submitted*.

3.2. Decision

Planning permission was granted for the proposed development subject to compliance with 16 standard conditions.

- No. 4 required that the extension be set back from the W boundary by 1m.
- No.12 required the preparation of a Construction Management Plan.

3.3. Planning Authority Reports

3.3.1. Planning Reports

The recommendation of the Planning Officer was reflected in the decision.

3.3.2. Other Technical Reports:

Drainage Division: No objection subject to conditions.

Waste Management: No objection subject to conditions.

Environmental Health: No objection subject to conditions.

City Archaeologist: No objection subject to conditions.

4.0 Planning History

Appeal site:

Reg. Ref. 2013/11: Permission granted for change of use of vacant upper floor offices to restaurant at nos.11-12 St. Andrew Street with extensions at first and second floor level, internal alterations, new shopfront and signage.

Neighbouring site to rear at Saint Andrew's Lane:

Reg. Ref. 2963/08: Permission granted for the demolition of the existing 2-storey theatre and its replacement with a new 7-storey over basement mixed use theatre, entertainment and office development (c.2,813sq.m.). Condition no. 3 required the omission of the 4th & 5th floors in the interest of orderly development and visual amenity, with a maximum permitted building height of c.34m.

Reg. Ref. 2073/11: Permission granted for amendments to Reg. Ref. 2963/08.

Reg. Ref. 4342/16: Proposed demolition of existing 2-storey theatre building (c.603sq.m.) and its replacement with a new 9-storey over basement hotel development (c.4,138sq.m.) comprising 155 bedrooms and associated uses, along with public realm upgrades to St. Andrew's Lane including resurfacing works and street lighting. Currently on appeal to ABP under PL29S. 248844.

5.0 Policy Context

5.1. Development Plan

Zoning objective: The site is located within an area zoned Z5 which seeks "To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity."

Architectural Conservation Area: Site adjoins the South City Retail Quarter ACA.

Protected Structures: There are several protected structures in the vicinity.

Archaeology: Site located within a Site of Archaeological Interest for Dublin City.

Policy RD15 seeks to promote high quality shopfronts along with section 16.24.2, the Shopfront Design Guidelines and the South City Retail Quarter ACA Plan.

5.2. Natural Heritage Designations

European sites: The following areas are located within a 5km radius of the site:

- South Dublin Bay SAC (Site code: 000210)
- South Dublin Bay & River Tolka Estuary SPA (Site code: 004024)
- South Dublin Bay pNHA (Site code: 000210)

Natural Heritage Areas: None in immediate vicinity.

6.0 The Appeals

6.1. First Party Appeal against Conditions

Condition no.4:

- Works required to provide for improved staff and customer facilities and the 1m set back required this Condition will adversely affect the business.
- Applicant owns 3 properties along St. Andrew Street, nos.11 & 12 are own-door restaurants & no.13 is a retail shop, and all 3 have access to a rear service yard which is accessed via St. Andrew's Lane.
- Andrew's Lane Theatre (ALT) abuts the appeal site and it fronts onto St. Andrews Lane beside the entrance to the service yard.
- Several neighbouring buildings have windows that overlook the service yard however the ALT buildings do not contain windows that overlook this yard.
- Applicant previously owned one of the 2 ALT buildings (nos.12-17) and a right of way for escape exit purposes through the service yard to St. Andrews Lane was granted to the new owners.
- A 2008 permission (not implemented & now lapsed) contained windows in the E elevation to the service yard.

- Current hotel proposal has windows that overhang and also overlook the service yard along the entire length of the E elevation and not just the section which has existing windows, including next to the lean-to shed.
- Applicant objected to the proposed hotel (4342/16) as the proposed windows would interfere with his ability to develop the service yard, the PA sought FI in relation to this issue and the response incorporated only minor changes.
- The decision of the PA to grant permission for the hotel was appealed (PL29S.248844) and the Applicant, as an Observer, raised concerns in relation to the inadequacy of the FI response with regard to the E elevation and the applicant's development rights.
- Owner of ALT lodged an objection to the Applicant's proposed extension on the basis that it would block their proposed hotel windows in the E elevation.
- It would have been preferable to have an agreed position with ALT with regard to development along the site boundary.
- Condition no.4, which requires a 1m set back, lacks clarity and precision and it is unclear if it relates to the entire extension, given that part of the site is occupied by an existing shed that abuts the W boundary.
- The 1m setback would affect the functionality of the 3-storey extension, the ability to provide a lift & stairwell and an improved restaurant space.
- No objection to the principle of a hotel on the ALT site.
- No objection to the location of proposed windows in the same position as the existing windows as a precedent exists, but object to the location of proposed windows at a position where no windows exist as no precedent exists.
- Unfavourable precedent would be established.
- Condition no.4 would require at considerable compromise to grant legal easements to Right to Light and Ventilation to serve the proposed hotel.
- Condition no.4 is imbalanced and unduly harsh on the Applicant.
- The PA should have required the hotel to be set back and/or the omission of the windows that overlook the service yard, and the repositioning vents, the

position of the lean-to shed relative to the site boundary has not been properly evaluated, and the proposed development cannot be realised.

Condition no.14:

- Request that fan coil condenser units be permitted on the central 2-storey section of the extension without being subject to future planning request.

6.2. Third Party Appeal

General comments:

- Proposed extension at basement, ground & first floor levels will block the windows to 9-12 proposed hotel bedrooms (permitted by PA & under appeal) at 3 levels, as well as existing openings in the existing building.
- Increased floor area will result in increased activity & noise disturbance in the laneway for the hotel (waste collection, deliveries etc.)
- No Construction Management Plan or Conservation Assessment with regard to the nearby ACA.
- Several of the upper floor windows will overlook the hotel bedroom windows.
- Undesirable precedent for further inappropriate development abutting windows of permitted developments.
- Similar type of scheme with windows butting a separate site boundary was granted under DSDZ3552/16 at the North Lotts & Grand Canal SDZ, however the windows were omitted to reduce the impact on the development potential of the adjacent site, and the proposed windows should also be omitted.
- Notwithstanding the 1m setback required by Condition no.4, the proposal does not provide for an adequate setback from the permitted/proposed hotel.

Grounds of appeal:

- Adverse impact on permitted/proposed bedroom hotel despite the required 1m set back (9-12 bedrooms at upper ground, first and second floor level), and the proposed scheme should be amended or refused.

- Noise disturbance in bedrooms from immediately adjacent restaurant use, potential for vermin and noise disturbance from bin storage location adjacent to hotel, and insufficient waste collection details submitted.
- Intensification of use as a result of the increase in restaurant floor space with adverse impacts related to deliveries, noise, waste and bin & plant locations.
- Inadequate information in relation to construction impacts on the hotel and nearby ACA, particularly in relation to traffic, noise and dust.
- Overlooking of hotel bedroom windows from the first and second floor windows in the proposed rear extension, request the use of opaque glass.
- Undesirable precedent related to impacts on the permitted/proposed hotel and existing theatre, proposal should be amended so it does not directly block existing or proposed doors and windows, the 1m set back is inadequate, and the building has been used as a theatre since the 1980s.

6.3. First Party Response to Third Party Appeal

- The submission raised no new issues.
- The concerns raised by the Appellant lack substance.
- Appellant did not address the impact of the proposed hotel on the appeal site in the original application or FI response.
- Very modest increase activity associated with extension.
- Condition no.12 requires a Construction Management Plan.
- Existing buildings are not Protected Structure however a Conservation Report has been submitted in relation to the shopfront.
- There is a 21m separation between the proposed windows and St. Andrews Lane, with no overlooking concerns, the hotel would have a 0m separation.
- Proposed development would conform to established precedents in the area without setting any new precedents for future developments.
- The previous planning permission for the adjacent site has lapsed and should not be relied upon as a precedent for the proposed hotel.

- Acknowledge the presence of existing windows along the site boundary, however they do not extend to the full width of the boundary.
- No objection to the Appellant building on the boundary, but omit the windows.
- No change to bin storage locations proposed.
- Applicant is very familiar with the ALT building as he is the previous owner.

6.4. **Planning Authority Response**

None received.

6.5. **Observations**

None received.

7.0 Assessment

The issues arising in this case are:

- Principle of development
- Design & layout
- Built heritage
- Condition nos. 4 & 14
- Other issues

7.1. Principle of development

The site is located within an area which is covered by the Z5 zoning objective in the Dublin City Development Plan 2016-2022. This objective seeks “To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity.” The proposed development is compatible with this objective.

7.2. Design and layout

Context:

The appeal site occupies an established mixed use City Centre location which is characterised by a mix of 3 and 4 storey buildings of various ages and designs that are used for a variety of retail, restaurant and entertainment uses. The site comprises two mid terrace 4-storey over basement red brick buildings which front onto St Andrew Street, and a rear service yard that is accessed off St. Andrew’s Lane. The service yard adjoins the former Andrews Lane Theatre to the W which comprises a 2-storey structure that was recently used as a nightclub, with access off St Andrews’s Lane. The service yard also adjoins the rear boundary of nos. 31 and 33 Exchequer Street to the S, and there is a lean-to shed located in the SW section. Dublin City Council recently granted planning permission under Reg. Ref. 4342/16 for the demolition of the existing theatre building (c.603sq.m.) to the W and its replacement with a new 9-storey over basement hotel development (c.4,138sq.m.). This scheme is currently on appeal to the Board under PL29S.248844. The

proposed hotel would contain bedroom windows on all floor levels along the entire E elevation which is located directly on the boundary with the appeal site service yard.

The current Applicant submitted an Observation in relation to the proposed hotel development which raised concerns about the proximity of the windows to his site. The current Third Party Appellant (who is the Applicant for the hotel development) has also raised concerns about the proximity of the proposed 3-storey extension to the hotel bedroom windows.

The currently proposed 3-storey extension would extend across the service yard to the boundary with the existing theatre building/proposed hotel and it would abut several of the hotel bedroom windows on three floor levels. Condition no.4 of the planning authority's decision to grant permission requested a 1m set back from the site boundary with the theatre building/proposed hotel in order to provide a light well and to allow for light and ventilation to the adjoining sites. The current Applicant has appealed this condition.

Proposed 3-storey extension:

The proposed 3-storey over basement "L" shaped extension would be located to the rear of nos.11 and 12 St. Andrew Street which are c.17m high. It would occupy the S section of the existing service yard which contains a lean-to structure which would be demolished. The proposed extension would abut the site boundaries with the existing/proposed structures to the W at Andrew's Lane Theatre and the existing structures at nos. 31 & 33 Exchequer Street to the S. It would extend c.12m along the S site boundary and c.11m along the W site boundary. It would be c.7m to 10.5m high above ground level with windows in the N facing elevation to the remaining service yard at first and second floor levels.

The proposed c.39sq.m. basement section would interconnect with the existing basement at no.11 to provide a prep kitchen, storage, toilets and a lift & stairwell. The proposed c.33sq.m. ground floor section would also interconnect with no.11 to provide the main kitchen, lift and stairwell, whilst the section to the rear of no.12 would contain bin storage and a shared escape to the service yard for both buildings. The proposed 76sq.m. first floor section would interconnect with no.12 and it would contain a dining area, lift and stairwell to the rear of no.11, and another dining area to the rear of no.12. The proposed c.69sq.m. second floor would contain the lift and

stairwell to the rear of no.11 and an independent office to the rear of no.12, and this new floor would not interconnect with either of the existing buildings.

Discussion:

Relationship to nos. 31 & 33 Exchequer Street:

The existing commercial buildings to the S at nos. 31 & 33 Exchequer Street have several upper floor windows in the N elevation which are well set back from the site boundary with the existing service yard and proposed extension. Therefore, the proposed development would not have an adverse impact on the neighbouring buildings in terms of overlooking, overshadowing or overbearance.

Relationship to Andrew's Lane Theatre:

The existing Andrew's Lane Theatre building to the W has several windows at ground and first floor level along with two door openings in the E elevation to the existing service yard. However, none of these openings are located in the S section of the theatre building in the vicinity of the proposed extension. Therefore, the proposed development would not have an adverse impact on the existing theatre building in terms of overlooking, overshadowing or overbearance. Furthermore, the neighbouring theatre building would continue to have an escape right of way over the N section of the service yard to St. Andrew's Lane and beyond.

Relationship to proposed hotel:

The proposed hotel building to the W of the appeal site would have several windows on all floor levels along the entire E elevation which would be located directly on the boundary with the service yard. This scheme was granted permission by the City Council under Reg. Ref. 4342/16, it is currently before the Board under PL29S. 248844, and the Third Party Appellant to this appeal is the applicant for the proposed hotel. The Third Party Appellant has raised concerns that the proposed 3-storey extension would block bedroom windows in the S section of the E elevation of the proposed hotel and the First Party Appellant has appealed Condition no.4 which requires a 1m set back from the site with the proposed hotel.

Under the existing arrangement both sites are already occupied by buildings that abut the site boundary. The S section of the appeal site is occupied by an existing building (a solid lean-to shed) which abuts the W site boundary with the existing

theatre building, and the theatre building also abuts this boundary. Several bedroom windows in the E elevation of the proposed hotel at ground and possibly first floor level would abut this existing structure and would therefore be blocked in the event that permission is granted for the hotel. Furthermore, this relationship would remain as it now stands in the event that permission is refused for the proposed extension or if the applicant decides not to implement the permission.

Notwithstanding the above, as this appeal relates to the proposed 3-storey extension, and in the absence of a decision in relation to the proposed hotel, it would be unreasonable to require an amendment to the proposed development in order to facilitate a development on the neighbouring site that may or may not be granted planning permission.

Ventilation and maintenance:

Under the existing arrangement the ventilation equipment for the restaurant is located in the S section of the site and is externally positioned in between the W elevation of No.11 and the E elevation of the lean-to shed. Under the proposed arrangement, the ventilation equipment would occupy a similar position in the S section of the site, however it would be located within a services duct that would be c.4m wide and c.0.6m deep which would extend for the full height of the proposed extension from basement to roof level. The submitted plans do not indicate how this enclosed structure would be accessed or maintained, or how the existing restaurant at no.12 would be ventilated, and it is also unclear how the overall structure would be maintained, given that it would abut the site boundaries to the W and S.

Notwithstanding the conclusion reached above with regard to the relationship between the proposed extension and the proposed hotel, it would be for this reason (i.e. ventilation and maintenance) that a 1m set back should be required. This would allow for essential maintenance works to be carried out in the future.

Other elements:

The removal of the existing shopfront at no.11, which has no intrinsic heritage value, and its replacement with a more contemporary design similar to the neighbouring shopfront at no.12 is considered acceptable in terms of visual amenity. The existing buildings are not protected structures and the proposed alterations to the internal layout is considered acceptable. The proposed adjustment to the roof of the existing

2-storey building at the rear of no.12 is considered acceptable in terms of visual amenity. The contents of the Conservation Report are noted.

7.3. **Built Heritage**

The appeal site is located within the Site of Archaeological Interest for Dublin City and the standard archaeological condition should be applied. The site is also located opposite the South City Retail Quarter Architectural Conservation Area and there are several Protected Structures in the vicinity. However, the existing buildings are not protected structures and they are not located within a Conservation Area. The proposed rear extension would be subordinate to the existing buildings in terms of height and scale. It would not be visible from St. Andrew Street to the E or Exchequer Street to the S, and no adverse visual impacts on the nearby Architectural Conservation Area are anticipated.

7.4. **Condition nos.4 and 14**

The First Party has appealed Condition no.4 and Condition no. 14 of the planning authority's decision to grant planning permission.

Condition no.4 required a 1m set back from the western site boundary and the issues raised in relation to this condition have been addressed in section 7.2 above.

Condition no.14 required that no additional development shall take place above roof level, including lift motors, air handling equipment, storage tanks, ducts or other external plant other than those shown on the drawings hereby approved, unless authorised by a prior grant of Planning Permission. The applicant requested that fan coil condenser units be permitted on the central 2-storey section of the extension without being subject to future planning request. Having regard to the city centre location, the built up character of the surrounding area, the configuration of the site and the proximity of the proposed extension to the neighbouring site boundaries, I am satisfied that the requirements set out under Condition no.14 are reasonable in this case and that the condition should be retained in its entirety.

7.5. Other issues

Appropriate assessment: The proposal would be located within an established built up and serviced area which does not have a direct connection to a European site.

Disturbance during construction: The standard conditions related to demolition and construction works and operational hours should apply.

Environmental services: The arrangements are considered acceptable subject to compliance with the requirements of Irish Water and the planning authority.

Flooding: The site is not located within a flood risk zone and the proposed development would not give rise to a flood risk within the site or surrounding area.

Financial contributions: Standard S.48 and Luas Cross City S.49 conditions apply.

8.0 Recommendation

Arising from my assessment of this appeal case I recommend that planning permission should be granted for the proposed development for the reasons and considerations set down below, subject to compliance with the attached conditions.

9.0 Reasons and Considerations

Having regard to the provisions of the current Development Plan and to the nature, and scale of the proposed development, it is considered that subject to compliance with the following conditions, the proposed development would not seriously injure the amenities of the area or of property in the vicinity or give rise to a traffic hazard. 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, 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. Prior to commencement of development, revised drawings shall be submitted to the planning authority for written agreement in relation to the following items:

- (a) The proposed rear extension shall be set back from the western site boundary by a distance of 1m along the entire west facing elevation.

- (b) Design details for the shopfront and signage on the façade of no.11 St Andrew's Street, along with samples of materials and colours.

Reason: In the interest of orderly development and visual amenity.

3. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of Irish Water and the planning authority for such works and services as appropriate.

Reason: In the interest of public health and to ensure a proper standard of development.

4. The management of waste during the construction and operational phases of the development, shall comply with the requirements of the planning authority for such works and services as appropriate.

Reason: In the interest of public health and to ensure a proper standard of development.

5. The site development and construction works shall be carried out such a manner as to ensure that the adjoining streets are kept clear of debris, soil and other material and cleaning works shall be carried on the adjoining public roads by the developer and at the developer's expense on a daily basis.

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

6. The site works and building works required to implement the development shall only be carried out between 7.00 hours and 18.00 hours, Monday to Friday and between 08.00 hours and 14.00 hours on Saturdays and not at all on Sundays or Bank Holidays.

Reason: To safeguard the residential amenities of adjacent dwellings.

7. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:

- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and

- (b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site, and
- (ii) the impact of the proposed development on such material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

8. The developer shall pay to the planning authority a financial contribution a financial contribution of €13,521.58 (thirteen thousand, five hundred and twenty one euro and fifty eight cent) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

9. The developer shall pay to the planning authority a financial contribution of €7,334.00 (seven thousand, three hundred and thirty-four euro) in respect of the Luas Cross City Scheme in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

Karla Mc Bride
Planning Inspector
12th January 2018