



An
Bord
Pleanála

Inspector's Report ABP-300165-17

Development	Amendments to previous permission comprising change of use of first-floor office, revised layout and two-storey rear extension to form two restaurants, and a ground-floor side extension
Location	32-36 Main Street, Malahide, County Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F17A/0514
Applicant(s)	Architects Workshop Limited
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third-Party
Appellant(s)	Thomas Hynes
Observer(s)	Orchid Management Company Ltd. Peter Best & Lisa Fitzsimons
Date of Site Inspection	19 th February 2018
Inspector	Colm McLoughlin

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1.0 Site Location and Description

- 1.1. The appeal site has a stated area of 0.045ha and comprises a two-storey terrace building with an enclosed rear yard area off Main Street (R106 regional road), in the centre of Malahide village. It contains two cafés, both featuring front external seating areas, and a retail unit at ground-floor, as well as a vacant restaurant unit and a vacant office unit at first-floor level. Access to a rear parking and service area is available under an archway along the western boundary of the site. Access to the rear yard area is also available from the rear of the ground and first-floor units on site. The rear boundary to the site is formed by a 2.5m-high wall with a tree and planting inside this.
- 1.2. The immediate area to the east of the appeal site is characterised by commercial uses, including retail services, convenience and comparison outlets. Adjacent to the south of the site is a terrace of four houses, including No.1 The Priory with floor level approximately 1.5m above the rear yard to the appeal site. No.1 also features a single-storey rear projection, rear terrace area and side gable wall with north-facing windows over 1m from the boundary with the appeal site. Adjoining to the west is a single-storey building, which is currently in use as a beauty salon and features an east-facing window on the boundary and overlooking the rear of the appeal site. Adjoining to the east on Main Street is a two-storey terrace, including a restaurant unit at first-floor over a solicitor's office, a beauty salon and an off-license.

2.0 Proposed Development

- 2.1. The proposed development comprises revisions to a previously permitted development (ABP Ref. PL06F.247015), involving the following:
- Change of use of first-floor office to restaurant use, including a revised layout to the existing first-floor restaurant, to form two restaurants;
 - Two-storey rear extension and single-storey side extension, with a stated total area of 151sq.m, respectively over the rear yard and side access lane;

- The ground-floor extensions would comprise an undercroft service area, additional store (c.13sq.m) to Café Malahide, two enclosed bin storage areas (c.14sq.m), additional floor area to Seomra Tae café (c.6sq.m) and circulation space to provide a new access to first-floor restaurant;
- At first-floor level the rear extension would provide separate kitchens, circulation space and washrooms for both the first-floor restaurants (c.110sq.m);
- Associated alterations to the front elevation at ground floor to accommodate an additional entrance on the west end, serving a first-floor restaurant.

The application was accompanied by a letter of consent from the property owner to make the application.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority decided to grant permission subject to 12 conditions, the majority of which are of a standard nature, but also including the following requirements:

- C.2** conditions of previous permission apply (ABP Ref. PL06F.247015);
- C.3** opening hours (09:00 to 24:00 Monday through Sunday/Bank Holidays);
- C.4** restrictions and alterations required to rear service area;
- C.5** requirements and alterations to shopfront features;
- C.6** signage and lighting strategy required;
- C.12** Section 48 Development Contributions apply.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Officer (October 2017) noted the following:

- Proposals would enhance the social character of the village;

- The site is within the Architectural Conservation Area (ACA) for Malahide historic core and, subject to conditions, the proposed amendments to the permitted scheme would be acceptable;
- It is recognised that amendments to a previously permitted scheme would not be uncommon, taking on board the interest from specific potential end-users;
- Conditions mitigating against excessive noise levels/equipment along the south elevation of the proposed development, deterring patrons and staff from congregating on the fire escape stairs and addressing concerns relating to odours and other emissions from kitchens, would be warranted given the location adjacent to residential properties immediately to the south;
- A condition would be required to provide for more efficient and effective use of the proposed undercroft 'planting' area;
- Undue overlooking of residential properties and problems with parking would not arise;
- New shopfront entrance from the front street area would represent an improvement on the existing layout and would contribute positively to the visual amenities of the ACA;
- Details relating to new signage for the restaurants were not submitted and should be requested via condition.

3.2.2. Other Technical Reports

- Water Services - no objection subject to conditions;
- Air Pollution & Noise Control Unit (Environmental Health Officer) – no objection subject to conditions;
- Environmental Health Officer – no objection subject to conditions;
- Transportation Planning Section – no objection;
- Conservation Officer – Planning Officer's report notes that a verbal response was received, which confirmed that the Conservation Officer had no objection subject to conditions.

3.3. Prescribed Bodies

- Irish Water – no objection.

3.4. Third-Party Submissions

- 3.4.1. Two submissions were received from neighbouring residents to the south during consideration of the application and the issues raised are covered under the grounds of appeal below.

4.0 Planning History

4.1. Appeal Site

- 4.1.1. The appeal site has been subject to numerous recent planning applications, including the following:
- Fingal County Council (FCC) Ref. F17A/0205 - permission granted (July 2017) for change of use of first-floor office to restaurant and two-storey rear extension comprising amendments to a previous permission (An Bord Pleanála [ABP] Ref. PL06F.247015);
 - ABP Ref. PL06F.247015 (FCC Ref. F15A/0608) – permission granted (December 2016) for change of use of first-floor office to restaurant and two-storey rear extension. The proposed development subject of this appeal have been submitted as amendments to this permission;
 - FCC Ref. F12A/0405 – retention permission refused (February 2013) for signage at first floor to unit 5;
 - FCC Ref. F10A/0165 – retention permission granted (July 2010) for change of use of part of existing ground-floor shop to coffee shop (Delfino);
 - ABP Ref. PL06F.227483 (FCC Ref. F07A/1019) – permission refused (July 2008) for modifications to FCC Ref. F05A/1729 comprising a two-storey rear extension (c.256 sq.m). Reason for refusal related to the inadequate provision for storage and service areas;
 - Ref. F05A/1729 – permission granted (March 2006) for a two-storey rear extension and extension to side of ground-floor retail unit (Sans Souci).

4.2. Surrounding Sites

4.2.1. Reflective of this inner-urban built-up location, there have been numerous recent applications for development on neighbouring properties, including the following on the adjoining sites:

- No.1 The Priory – FCC Ref. F17B/0313 – notification of a decision to refuse permission (February 2018) for a rear dormer window extension to dwellinghouse;
- Rear of No.1 Main Street – FCC Ref. F15A/0581 – retention permission granted (January 2016) for amendments to approved office development.

5.0 Policy Context

5.1. Development Plan

5.1.1. The appeal site has a zoning objective 'TC – Town & District Centre' within the Fingal Development Plan 2017-2023, with a stated objective to 'protect and enhance the special physical and social character of town and district centres and provide and/or improve urban facilities'. A restaurant is permitted in principle on 'TC'-zoned land. The Plan states that the vision for 'TC' zoned land is 'to maintain and build on the accessibility, vitality and viability of the existing urban centres in the County'. Chapter 6 of the Plan notes that there should be a good range of cafés and restaurants in centres, such as Malahide.

5.1.2. The appeal site is within an area subject of a Public Realm Strategy, including a Design Guide for Shopfronts, and is also within an ACA that includes the historic core of Malahide village. Objective DMS157 requires any alteration of a building within or adjoining an ACA to positively enhance the character of the ACA. The buildings at Nos.1 to 4 Killeen Terrace, proximate to the west of the appeal site, are protected structures (Record of Protected Structures Refs. 398-401). The Development Plan identifies a pedestrian/cycle path along Main Street fronting the site.

5.1.3. Other relevant objectives and sections of the Plan including the following:

- Objective Malahide 4 - facilitate and encourage the provision of an appropriate retail mix in Malahide;

- Objective ED58 - promote and facilitate tourism as one of the key economic pillars of the County's economy, including cafés and restaurants;
- Objective DMS04 - assess changes of uses in centres on their positive contribution to diversification and their cumulative effects;
- Objective DMS07 - new shopfronts should respect the character and architectural heritage of the streetscape;
- Chapter 7 - Noise is of particular concern in the urban areas where night-time activities such as public houses, clubs and restaurants have a significant impact on residential amenity.

5.1.1. Table 12.8 outlines that a norm of one car parking space per 15sq.m is required for restaurants.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The appellant states that they reside in and own No.1 The Priory, which adjoins the appeal site to the south. The principal grounds of appeal can be summarised as follows:

- Proposed development would be only 2.6m from the side gable of the appellant's home;
- Kitchen elements of the proposed development are closer to the appellant's home, than in previous proposals and would therefore have greater impact on their residential amenities. The long hours of operation for restaurants would further intensify the impact of the proposed development;
- Noise and odour mitigation measures were not included as part of the subject application, and conditions are requested to address this, including setting the proposed extension an additional 5m from the rear boundary;
- Discrepancies are noted in the elevation drawings and other plans relating to an east-facing window;
- Details relating to extraction are not provided and this should be sought by means of a new planning application and not by condition;

- Proposed development would result in loss of existing trees and planting, which provide screening between the appeal site and the appellant's home. To address overlooking and provide a noise and odour barrier, replacement trees should be provided;
- First-floor south facing rear windows to the proposed development would overlook windows and garden space to the appellant's home;
- Further consideration of the finish to the rear elevations of the proposed development is required, to address the visual impact.

6.2. Applicant's Response

6.2.1. A response to the grounds of appeal was received on behalf of the first party, which may be summarised as follows:

- Relocating the proposed kitchens further from the boundary would have negligible benefit to the residential amenities of the appellant, given that noise, odour and overlooking problems would not arise from the rear-facing non-openable and frosted windows;
- Proposed extraction system would be likely to be positioned in approximately the same location as the existing extraction system and the applicant would be willing to forward details to the appellant prior to making a compliance submission in this regard;
- Contemporary design approach including materials and 'butterfly' roof, would reduce the impact of the proposals from the rear.

6.3. Planning Authority Response

6.3.1. The Planning Authority responded to the grounds of appeal to state that they consider the matters raised in the appeal to have been previously addressed in their assessment and that the proposed development is appropriate based on the advice of the Environmental Health Officer.

6.4. Observations

6.4.1. Two observations to the appeal were received, both supporting the appellant's grounds of appeal. One observation was received from the neighbouring residents

at No.2 The Priory and one observation is stated to be on behalf of the management company of the adjoining four houses in 'The Priory'. Matters raised within both the observations are covered in the grounds of appeal above.

- 6.4.2. Observations were requested from the Department of Culture, Heritage & the Gaeltacht, the Heritage Council, An Taisce, The Arts Council and Fáilte Ireland. No responses from these bodies were received.

7.0 Assessment

7.1. Introduction

- 7.1.1. In December 2016 planning permission was granted by An Bord Pleanála under Ref. PL06F.247015 (FCC Ref. F15A/0608) for development on the appeal site involving a change of use of a first-floor office to a restaurant and construction of a two-storey rear extension. Since receipt of the previous permission, further amendments were also permitted by the Planning Authority in July 2017 (under FCC Ref. F17A/0205). Neither of these permitted developments have been commenced. The subject appeal proposals have been submitted as amendments to the permission granted by An Bord Pleanála in 2016 and the applicant has submitted drawings to illustrate the difference between the permitted and proposed developments (see Drawing Nos. 1-3-00, 1-3-01, 2-3-00 and 3-3-00). The footprint and height of the rear extension would largely remain the same in the revised current development. The primary differences between the permitted and proposed developments comprise the formation of two first-floor restaurants with separate accesses and the positioning of kitchens to the rear, as opposed to the one restaurant previously permitted, which included seating areas to the rear. In comparison with the previously permitted development, the current development also includes the provision of an infill extension to the side access lane, a rear extension to retail unit 1 (Café Malahide) and omission of bicycle parking.
- 7.1.2. As the proposals are for amendments to a similar development approved by the Board on the appeal site (Ref. PL06F.247015), my assessment addresses whether or not there has been a material change in circumstances that would warrant a reversal of the Board's previous decision. I also note that in the intervening period

since the 2016 permission, the Planning Authority has adopted a new Development Plan for the area, but this does not materially revise zoning objectives for the appeal site. Matters relating to the principle of the development, the impact on neighbouring protected structures at Killeen Terrace, the impact on the adjacent beauty salon, overshadowing and car parking, were previously assessed and adjudicated upon by An Bord Pleanála under Ref. PL06F.247015. Furthermore, these matters did not form the principal grounds of appeal. Accordingly, considering the scale and nature of the subject proposals, I do not intend revisiting these matters in detail within my assessment below.

7.1.3. Having regard to the above, I consider the substantive issues for assessment in determining the current appeal are as follows:

- Impact on Residential Amenities;
- Design and Visual Impact.

7.2. Impact on Residential Amenities

7.2.1. The surrounding village centre is predominantly characterised by two-storey buildings with commercial businesses at ground and first-floor level. The appeal site contains two cafés and a retail unit at ground floor, as well as a vacant restaurant and a vacant office unit at first-floor. There is a terrace of four two-storey houses directly to the rear and set on ground c.1.5m higher than the rear of the appeal site. No.1 The Priory, the appellant's property, sides onto and shares the rear boundary with the appeal site. A detached building occupied by a beauty salon adjoins the southwest corner of the appeal site.

7.2.2. As per the requirements set out in Chapter 7 and Objective DMS04 of the Fingal Development Plan, it is vital that noise and other emissions from the proposed restaurants are controlled to avoid undue impacts on neighbouring residential amenities, including the cumulative effects of same. The grounds of appeal of the resident at No.1, assert that the revised proposals for two restaurants, would have a significant negative impact on their neighbouring residential amenities, by virtue of overlooking and increased noise and emissions with kitchens now proposed in the extension closest to their property. The observations to the appeal support this assertion. To address their concerns, the appellant suggests positioning the

proposed rear extension an additional 5m to the south, further away from the boundary with their property. In response, the applicant considers that relocating the proposed kitchens further from the boundary would have negligible benefit in addressing the impact on residential amenities, given that noise, odour and overlooking problems would not arise from the proposed non-openable, frosted rear-facing windows.

7.2.3. The issue of overlooking from the proposed development into the appellant's property does not arise at ground-floor level, due to the shared boundary being formed by a wall that is approximately 2.5m in height on the appeal site side. The proposed development would only incorporate two windows on the rear elevation at first-floor level, approximately 2.2m to 2.8m from the rear boundary with the appellant's property and a further 1.1m from the side gable wall, which includes windows. The 'proposed section' on Drawing No. 3-3-00, identifies that these kitchen windows would be a minimum of 1.8m above finished-floor level and Drawing No. 2-1-00 states that these windows would be double-glazed. Furthermore, I note the applicant's response to the grounds of appeal stating that these windows would feature frosted glazing and would be non-openable. I consider that these additional design features would significantly address the potential for direct and excessive overlooking of the appellant's property and if the Board is minded to grant permission for the proposed development, a condition should be attached to require same. Consequently, I do not consider that the proposed development would detrimentally impact on the residential amenities of neighbouring properties as a result of overlooking.

7.2.4. The grounds of appeal assert that measures to mitigate against noise and emissions, including odours from the kitchens of the proposed restaurants, have not been incorporated into the proposed development and that the loss of screen planting along the rear boundary to the appeal site would exacerbate this further. As stated by the applicant and considered necessary to address the potential for overlooking, the rear-facing first-floor windows would not be openable. There are currently two cafés and a vacant restaurant on the appeal site, served by air extraction equipment on the rear elevation and vents in the roof. In their response to the appeal, the applicant has stated that proposed extractors would be likely to be positioned in approximately the same location as the existing extractors.

Furthermore, the Planning Authority's notification included two conditions (4 and 8), restricting use of the rear areas and equipment on site, which would further mitigate against noise and emissions from the proposed development. The applicant has not appealed against these conditions and I consider that conditions addressing potential noise and emissions would be necessary and reasonable, should the Board be minded to grant permission. Extraction and cooler equipment associated with the uses on site, should be positioned as far as possible from No.1 The Priory and should not be positioned on the rear elevation to the extension. It would be preferable to house the equipment in the undercroft area. Taking into consideration the village centre location, including the existing uses on the appeal site and the proposed design and mitigation measures to address noise and emissions, I do not consider that neighbouring residential amenities would be adversely impacted.

- 7.2.5. In conclusion, I consider that the proposed amendments to create two restaurants at first-floor level, would not detrimentally impact on the amenities of neighbouring properties in the vicinity, primarily due to the nature and scale of the existing uses on site, the nature, scale and design of proposed restaurants, the village centre location and the mitigation measures to be attached via conditions. Therefore, I recommend that permission should not be refused on the basis of the impact of the proposals on residential amenities.

7.3. **Design & Visual Impact**

- 7.3.1. The proposed works associated with the development would largely involve a rear extension and internal alterations, with only minor alterations to the shopfronts, primarily comprising an infill ground-floor extension to the side access lane to facilitate an access to one of the first-floor restaurants. The appeal site is located within an Architectural Conservation Area (ACA), which comprises the historic core of Malahide. This area is also covered by a guidance document titled Malahide Public Realm Strategy – Design Guide for Shopfronts, which is referenced in the Development Plan, as a tool to guide the development of the central area. Objective DMS157 of the Development Plan requires any alteration of a building within or adjoining an ACA to positively enhance the character of the ACA. The existing archway access forms a void along the street front and does not add to the streetscape. I consider that the infilling of this space with appropriate shopfront

entrance features would be a welcome addition to the streetscape, thereby meeting Objective DMS157 of the Plan. There are specific considerations set out in the ACA Statement of Character and the Public Realm Strategy – Design Guide for Shopfronts document regarding shop frontages and signage. I note the inclusion of conditions within the Planning Authority’s notification regarding the requirement for agreement of elevational treatments (condition 5) and signage and lighting (condition 6), and I consider conditions requiring these details to be agreed with the Planning Authority to be reasonable to attach. 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. A discrepancy in the proposed rear elevation building height, identified as c.6.5m on Drawing No. 2-1-00 and c.5.8m on Drawing No. 2-1-01, should also be addressed via condition.

- 7.3.2. In conclusion, the proposed development would enhance the character of the ACA, by incorporating a new entrance into the existing archway, in line with Objective DMS157 of the Development Plan. Therefore, I recommend that permission should not be refused on the basis of the impact of the proposals on visual amenities.

8.0 Appropriate Assessment

- 8.1.1. Having regard to the minor nature of the proposed development and the location of the site in a serviced urban area and the separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

9.0 Recommendation

- 9.1.1. I recommend that planning permission should be granted, subject to conditions, as set out below.

10.0 Reasons and Considerations

10.1.1. Having regard to the 'TC – Town and District Centre' zoning, the nature and scale of the proposed development, and the existing pattern of development in the vicinity, including the existing uses on site, the village centre location and the provisions of Fingal Development Plan 2017-2023, which require consideration of the cumulative effects of developments on local amenities, it is considered that subject to compliance with the conditions below, the proposed development would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would be in accordance with the provisions of the Fingal Development Plan 2017-2023 and would enhance the character of the Architectural Conservation Area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by further information received by the planning authority on the 10th day of August 2017, 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. Apart from any departures specifically authorised by this permission, the development shall be carried out and completed in accordance with the terms and conditions of the permission granted on 5th December 2016 under appeal reference number PL06F.247015, planning register reference number F15A/0608, including those conditions relating to water supply and drainage (4), service cables (5), site development works (6), hours of

operation (7) and waste management (8), and any agreements entered into thereunder.

Reason: In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous permission.

3. The proposed development shall be amended as follows:
 - (a) 8 no. cycle parking spaces shall be provided in the undercroft area;
 - (b) The access doors to the restaurant bin stores shall be located in the eastern elevation of the bin store structure;
 - (c) An access door to the undercroft area shall be provided in the eastern elevation of the lift lobby area;

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

Reason: To protect the residential amenities of property in the vicinity and to provide for an orderly development.

4. Details of the materials, colours and textures of all the external finishes to the proposed buildings, including details of windows, signage and lighting addressing Main Street and informed by the Malahide Public Realm Strategy - Design Guide for Shopfronts and accurate elevation and consistent details of the rear elevations to the extension, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of the visual amenities of the area.

5.
 - (a) All entrance doors in the external envelope shall be tightly fitting and self-closing;
 - (b) All windows shall be double-glazed and tightly fitting. The rear-facing first-floor windows serving the proposed kitchens shall be non-openable

and fitted with obscure glazing;

(c) Noise attenuators shall be fitted to any openings required for ventilation or air conditioning purposes;

(d) The external fire stairs located on the east elevation shall not be used as an external smoking area;

(e) With the exception of areas identified for such purposes on Drawing No. 1-3-00, the undercroft area shall not be used as a waste and goods storage area;

(f) Air extraction, vents and similar equipment shall not be positioned on the rear elevation to the extension.

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

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

6. (a) During the operational phase of the proposed development, the noise level arising from the development, as measured at the nearest dwelling shall not exceed:-

(i) An Leq,1h value of 55 dB(A) during the period 0800 to 2200 hours from Monday to Saturday inclusive.

(ii) An Leq,15 min value of 45 dB(A) at any other time. The noise at such time shall not contain a tonal component.

At no time shall the noise generated on site result in an increase in noise level of more than 10 dB(A) above background levels at the boundary of the site.

(b) All sound measurement shall be carried out in accordance with ISO Recommendation 1996:2007: Acoustics - Description and Measurement of Environmental Noise.

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

the site.

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

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

8. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

9. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours 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.

10. The developer shall pay to the planning authority a financial contribution 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. Details of the application of the terms of the Scheme 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 the proper application of the terms of the Scheme.

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.

Colm McLoughlin
Planning Inspector

21st February 2018