



An  
Bord  
Pleanála

## Inspector's Report ABP-300332-17

### Development

PROTECTED STRUCTURE; Change of use of Retail Store to Café located at Ground and First Floor ONLY with internal alterations which include provision of new ground floor WC's, storage area office, counter and food display & drainage provisions. The application also includes for full re-decoration of the front facade and historic canopy, lighting upgrade and for modifications to the existing signage.

### Location

Ground and First Floor ONLY, 16, Clare Street, Dublin 2

### Planning Authority

Dublin City Council South

### Planning Authority Reg. Ref.

3819/17

### Applicant(s)

Kirkenvale Ltd.

### Type of Application

Permission

### Planning Authority Decision

Refuse

<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Kirkenvale Ltd.
<b>Observer(s)</b>	Oriel Fine Art Limited
<b>Date of Site Inspection</b>	13 <sup>th</sup> March 2018
<b>Inspector</b>	Ronan O'Connor

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## 1.0 Site Location and Description

- 1.1. The site is located at No. 16 Clare Street, a four storey over basement building. The building is a Protected Structure. The existing use at ground and first floor levels is a souvenir shop. There are a large number of other Protected Structures in the vicinity.
- 1.2. There is a diverse range of uses surrounding the appeal site including retail, office, gallery, café/restaurant, hotel and residential.

## 2.0 Proposed Development

- 2.1. PROTECTED STRUCTURE; Change of use of Retail Store to Café located at Ground and First Floor ONLY with internal alterations which include provision of new ground floor WC's, storage area office, counter and food display & drainage provisions. The application also includes for full re-decoration of the front facade and historic canopy, lighting upgrade and for modifications to the existing signage.

## 3.0 Planning Authority Decision

### 3.1. Decision

Refuse permission for one reason as follows:

*No. 16 Clare Street is a significant protected structure, originally physically connected to No. 95 Merrion Square and its arrangement represents a unique plan type to Merrion Square similar to the west corner of the north terrace to Parnell Square. The proposed change of use to café and associated fit-out and signage within this prestigious site would be in conflict with its particular character and surviving significance and would harm the special interest and setting of the protected structure and wider Merrion Square Conservation Area. The proposed development would therefore be contrary to Policy CHC2 and CHC4 which seeks to protect the special interest and character of Protected Structures and Conservation Areas, where Development within or affecting a conservation area must contribute positively to its character and distinctiveness, and take opportunities to protect and*

*enhance the character and appearance of the area and its setting, wherever possible. The proposed development could lead to a proliferation of similar uses along the terrace and would therefore be contrary to the proper planning and sustainable development of the area.*

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The report of the planning officer reflects the decision of the planning authority.

Points of note are as follows:

- Notes enforcement history currently on the site relating to render failing and possible endangerment issues.
- Raises serious concerns in relation to the proposed change of use, a use that may undermine the setting and character of this important protected structure
- Building and ornate canopy contributes to the streetscape value of the Conservation Area
- While the proposed works are relatively minor, there is concern that the proposed new use is of lower order/does not benefit the protected structure/would detract from its special interest and character
- Already two café/bakery outlets in the immediate terrace/area is well served by similar outlets
- Notes concerns of the Conservation Officer
- Recommendation to refuse permission.

#### **3.2.2. Other Technical Reports**

Archaeology Division – No objection subject to conditions

Drainage Division – No objection subject to conditions

Conservation Section – Recommends refusal

### **3.3. Prescribed Bodies**

#### **3.3.1. Transport Infrastructure Ireland: Luas Cross City Contribution may be required.**

### 3.4. **Third Party Observations**

3.4.1. 3 No. Third Party Observations were received. The issues raised are as follows:

- Too many café/restaurants
- Litter issues
- Deliveries clog up the bus lanes
- Enforcement proceeding in relation to render/public safety hazard
- Previous removal of unauthorised elevated decking
- Literary iconic building featured in James Joyce's Ulysses
- New owners seem to be an investment company
- Could become a Starbucks or McDonalds
- Would devalue importance of building
- Use will not fit in with the environs
- 16 seats are proposed outside
- Would devalue property value
- Could possibly be a fast food restaurant
- Dirt and noise

## 4.0 **Planning History**

1372/08 Grant - PROTECTED STRUCTURE - The development consists of minor repairs and repainting of the external facade, including modifications to existing shop signage and alterations to the existing shopfront. The work being carried out is to a protected structure within a conservation area.

## 5.0 Policy Context

### 5.1. Development Plan

5.1.1. The relevant development plan is Dublin City Council Development Plan 2016-2022.

Relevant policies and standards include:

- Policy CHC2 - To ensure that the special interest of protected structures is protected.
- Policy CHC4 – To protect the special interest and character of all Dublin’s Conservation Areas
- Policy CHC5 – To protect Protected Structures and preserve the character and the setting of Architectural Conservation Areas.
- Policy CEE12 –To promote and facilitate tourism as one of the key economic pillars of the city’s economy – This supports the increase in tourist facilities including cafes and restaurants
- Section 16.29 – Restaurants- Provides guidance for the consideration of restaurant proposals.
- Appendix 24: Protected Structures and Buildings in Conservation Areas.

5.1.2. The site is zoned Z8 – To protect the existing architectural and civic design character, and to allow only for limited expansion consistent with the conservation objective.

5.1.3. The site is in a Conservation Area and is within a Zone of Archaeological Interest. The building is a Protected Structure (RPS 1891).

### 5.2. Natural Heritage Designations

5.2.1. None

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The grounds of appeal, as submitted by the First Party Appellants, are as follows:

- Building reads as part of Clare Street, not Merrion Square
- It is clear that the street is not a strong location for retail
- This is reflected in the City Development Plan where the street is not designated a Category One or Category Two shopping street
- Was in use a book shop/then a men's clothing shop/now a souvenir shop
- The Grafton Street Retail Special Planning Area prohibit and discourage this form of retail as inconsistent with achieving a high quality of development
- Its presence here shows the unsuitability and lack of attraction and demand for higher order retail
- Fully aware of the history of the building/application was accompanied by a detailed Architectural Heritage Assessment and Photographic Survey
- Proposal is for a coffee shop only/requires only a coffee maker, counter, table and chairs/not for a restaurant with kitchens, vents, waste etc/reversible
- Coffee shops like to be in historical, period or interesting buildings to differentiate themselves but also to attract patrons
- Bible Bookshop on Dawson Street example of how a coffee shop can operate in a bookshop
- Refusal was largely driven by the report of the Conservation Officer
- Report of the CO focussed on the relationship of this building to buildings in Merrion Square/Clare St may have been a 'processional route/none of these factors are relevant to a current use of the ground and first floor of this building
- CO agrees that the proposal as applied for will have minimal impact but fears for something not applied for



- In the interest of the applicant to be sensitive to the fabric of the building/will retain the external appearance of the building with its ornate canopy
- Building was assessed as if it is Merrion Square – it is not
- Use is not a low order/high end coffee shops in Vienna and many European Cities
- Plan type is not been altered/history is not relevant when considering a use in part of the building
- Proposal would contribute positively to the protection of the building/will bring vibrancy/provide evening activity/unlikely to lead to a proliferation of similar uses/most of the area is office/overall character unlikely to change
- Demand for retail space is falling/what is preferable – a vacant unit or a coffee shop?/proposal will ensure long-term viability of the building
- Restaurant is permissible under the current zoning
- Policy RE10 recognises the importance of the locally traded service sector
- Para 10.5.2 allows for uses complimentary to retail such as cafes, bars, restaurants and galleries
- The constraints of Section 16.29 'Restaurants' do not apply

## 6.2. **Planning Authority Response**

6.2.1. None

## 6.3. **Observations**

6.3.1. An observation was received from Oriel Fine Art Limited, 17 Clare Street, Dublin 2.

This is summarised as follows:

- Too many café/restaurants
- Litter issues
- Deliveries clog up the bus lanes
- Enforcement proceeding in relation to render/public safety hazard

- Previous removal of unauthorised elevated decking
- Literary iconic building featured in James Joyce's Ulysses
- New owners seem to be an investment company
- Could become a Starbucks or McDonalds
- Would devalue importance of building

#### 6.4. **Further Responses**

6.4.1. None

### 7.0 **Assessment**

7.1. The following assessment covers the points made in the appeal submissions, and also encapsulates my de novo consideration of the application. The main planning issues in the assessment of the proposed development are as follows: -

- Principle of the proposed development
- Design and Conservation/Impact on the Protected Structure
- Other Issues
- Appropriate Assessment

#### 7.2. **Principle of the proposed development**

7.2.1. Under the Z8 zoning, a restaurant is a use that is open for consideration. The zoning matrix does not specifically state that a café is a permissible use, nor a use that is open for consideration, but within the Development Plan the terms café and restaurant are used in conjunction with each other. Appendix 21 of the City Development Plan classes a café and a restaurant as the same use. 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, would not have undesirable effects on the permitted uses, and would otherwise be consistent with the proper planning and sustainable development of the area.

- 7.2.2. As noted above the site lies within an area zoned Z8. The aim is to protect the architectural character/design and overall setting of such areas. A range of uses is permitted in such zones, as the aim is to maintain and enhance these areas as active residential streets and squares during the day and at night-time.
- 7.2.3. I do not consider that a café use at this location would be in conflict the zoning objective above, as it would not conflict with the aim of maintaining and enhancing the area, and would also result in both a day and evening time use, enhancing the vitality of the area
- 7.2.4. Policy CEE12 supports in the increase in tourist facilities including cafes and restaurants. Section 16.29 'Restaurants' states that the positive contribution of café and restaurant uses and the clusters of such uses to the vitality of the city is recognised and states that when 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/frequency of restaurants and other retail services in the area (where a proposal relates to a Category 1 or 2 shopping street as defined in 'City Centre Retail Core, Principal Shopping Streets' in Chapter 7 and Appendix 3).
  - The need to safeguard the vitality and viability of shopping areas in the city and to maintain a suitable mix of retail uses.
- 7.2.5. While I note there are number of other cafe/restaurant uses in the area, the concentration of same needs to be considered where the proposal relates to a Category 1 or 2 shopping street, which is not the case in this instance.
- 7.2.6. A further criteria set out in Section 16.29 is the need to safeguard the vitality and viability of shopping areas in the city and to maintain a suitable mix of retail uses. The site is not a Principal Shopping Area and the site does not lie within the central shopping area, as defined in Figure 8 of the Development Plan. Notwithstanding this, I note that there is a diverse range of uses in this area, ranging from galleries, cafes/restaurants, retail, office and residential and I do not consider the loss of this

retail unit would undermine fundamentally the vitality and viability of the area. The introduction of a café use would enhance vitality and viability of the area, in my view, as it would bring in an evening use enhancing street activity and footfall.

- 7.2.7. The principle of a cafe in this location is therefore acceptable, subject the considerations below.

### **7.3. Design and Conservation/Impact on the Protected Structure**

- 7.3.1. I have had regard to the report of the planning officer, as well as the comments of the Conservation Officer. I note an Architectural Heritage Assessment was submitted with the application and I have had regard to same.
- 7.3.2. The main concerns of the planning authority are that the proposed use is not befitting the historical significance of the building and that the possible fit out, proliferation of signage as well as the insertion of a cooking kitchen would undermine its character.
- 7.3.3. I am cognisant of the possibility of these potentially inappropriate elements negatively impacting on this historically significant Protected Structure, but the proposals, as detailed within the application documents, do not detract from the character of the building, in my view. In relation to the use itself, I do not concur that a café use is an inappropriate use for the building, especially in light of the minimal amount of intervention to the physical fabric of the building as proposed under this application. The introduction of such as use, in a building where demand for retail does not appear to be strong (as evidenced by the existing lower order use and the previous closures of retail uses), is preferable to a lower order use, or a vacant unit, in my view.
- 7.3.4. I note the concerns of the Conservation Officer in relation to the use of the upper floors, and the lack of a holistic response to the building. However I do not consider that this is a sufficient reason for refusal, especially given that the existing use only occupies the ground and first floors also, and this proposal is not, on its own, resulting in the deterioration or dilapidation of the upper floors of the building.
- 7.3.5. The proposal is retaining all of those existing features of historical importance to the building and introducing a use that will help to ensure a viable use of a significant Protected Structure. As such it is my view that the proposal is acceptable having regard to design and conservation issues, and will not detract from the character of this Protected Structure.

#### **7.4. Other Issues**

- 7.4.1. In relation to the effect of noise, general disturbance, hours of operation and fumes on the amenities of nearby residents, I do not consider that the operation of this café use, with no on site cooking facilities, and limited amount of seating, will result in an adverse impact on residential amenity.
- 7.4.2. In relation to traffic, the impact on the surrounding road network will be minimal given the scale of the development proposed.
- 7.4.3. I have had regard to the Luas Cross City Development Contribution Scheme and I note the proposal is not liable for the Luas Cross City Contribution as it involves a change of use from one commercial/retail use to another without any net increase in floorspace.

#### **7.5. Appropriate Assessment**

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

#### **8.0 Recommendation**

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

#### **9.0 Reasons and Considerations**

Having regard to the zoning objective for the site and the policies of the current Dublin City Development Plan 2016-2022, it is considered that the proposal would not be detrimental to the integrity of the Protected Structure, nor would the proposals detract from the character or setting of any nearby Protected Structures.

Furthermore, it is considered that the proposed development would not seriously injure the residential or visual amenity of the area. 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. All works to the Protected Structure, shall be carried out under the supervision of a qualified professional with specialised conservation expertise.

**Reason:** To secure the authentic preservation of the Protected Structures and to ensure that the proposed works are carried out in accordance with best conservation practice

3. The change of use hereby approved is for a café use only, and any proposal to operate as a takeaway (sale of fried goods) for the consumption on or off the premises shall be subject to a separate planning application.

**Reason:** In the interest of proper planning and development and in order to protect surrounding residential amenity.

4. No advertisement or advertisement structure, the exhibition or erection of which would otherwise constitute exempted development under the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, shall be displayed or erected on the buildings unless authorised by a further grant of planning permission.

**Reason:** In the interest of visual amenity.

5. Site development and building works shall be carried out only between the hours of 0700 to 1800 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.

6. The developer shall comply with the requirements set out in the Codes of Practice from the Drainage Division, the Roads and Traffic Department and the Noise and Air Pollution Section of Dublin City Council.

Reason: To ensure a satisfactory standard of development.

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Rónán O'Connor  
Planning Inspector

15<sup>th</sup> March 2018