



An
Bord
Pleanála

Inspector's Report ABP300969-18

| | |
|-------------------------------------|---|
| Development | Retention of Planning Permission for the retractable steel glazed screen enclosing an outdoor seating area. |
| Location | 63 South William Street, Dublin 2. |
| Planning Authority | Dublin City Council. |
| Planning Authority Reg. Ref. | 4362/17. |
| Applicant | David O'Brien. |
| Type of Application | Retention of Permission. |
| Planning Authority Decision | Refuse. |
| Type of Appeal | First Party -v- Refusal. |
| Appellant | David O'Brien. |
| Observers | None. |
| Date of Site Inspection | 14th May, 2018. |
| Inspector | Paul Caprani. |

Contents

| | |
|---|----|
| 1.0 Introduction | 3 |
| 2.0 Site Location and Description | 3 |
| 3.0 Proposed Development | 4 |
| 4.0 Planning Authority Decision | 4 |
| 5.0 Planning History..... | 5 |
| 6.0 Grounds of Appeal..... | 6 |
| 7.0 Appeal Responses..... | 8 |
| 8.0 Development Plan Provision..... | 8 |
| 9.0 Planning Assessment | 9 |
| 10.0 Appropriate Assessment | 11 |
| 11.0 Decision | 11 |
| 12.0 Reasons and Considerations | 12 |
| 13.0 Conditions | 12 |

1.0 Introduction

ABP300969-18 relates to a first party appeal against the decision of Dublin City Council to refuse retention of planning permission for a retractable steel glazed screen enclosing a seating area to the front of No. 63 South William Street, Dublin 2. Dublin City Council issued notification to refuse permission on the grounds that No. 63 is located within an Architectural Conservation Area and the proposal for which retention of planning permission is sought would be injurious to the character and amenities of this sensitive streetscape and would set an unwanted precedent for similar type development.

2.0 Site Location and Description

The appeal site is located at No. 63 South William Street. The site is located on the eastern side of the road between Coppinger Row and Wicklow Street. The subject site is located to the immediate north of the Powerscourt Townhouse Centre. The subject site forms part of a building which is developed in the mid-1990s as part of the Brown Thomas car park development. While many of the buildings along South William Street comprise of three and four storey 18/19th century structures the subject site is a modern infill development with no intrinsic architectural or historic value. The exit of the Brown Thomas car park is located to the immediate south of the subject site. A restaurant is located to the immediate north of the site. No. 63 comprises of a four-storey structure with a granite façade at ground floor level with a brick exterior finish on the upper floors together with projecting bay windows. To the front of the structure, encasing an outdoor seating area, is a retractable steel and glass structure with a striped canopy overhead. The structure comprises of a steel frame placed on steel plinths with glazing. The retractable seating area covers an area of 12.2 metres and is approximately 2.5 metres in width and 4.7 metres in length. It accommodates a maximum seating area for approximately 20 patrons. A residual footpath area of 2.825 metres is available to the front of the covered outdoor seating area for which retention of permission is sought.

3.0 Proposed Development

- 3.1. Planning permission is sought for the retention of outdoor retractable steel frame and canopy as described above.

4.0 Planning Authority Decision

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

“No. 63 South William Street is located in an Architectural Conservation Area and the outdoor seating area by reason of its design and materials would excessively dominate and be injurious to the character and amenities of this sensitive streetscape and would set an unwanted precedent for similar type development. The proposed development would, therefore, be contrary to the provisions of the Dublin City Development Plan 2016 – 2022 and not in accordance with the proper planning and sustainable development of the area.

The decision was dated 23rd January, 2018.

4.2. Application Submitted

- 4.2.1. The application was lodged on 24th November 2017. A covering letter submitted with the application states that the awning has been in situ since early 2005 and comprises of an overhead canopy and removable temporary fabric/glass walls which are removed and replaced each day. Details of Enforcement Proceedings undertaken by the council are also contained on file. Details of the applicant's response to the enforcement letter is also contained on file.
- 4.2.2. A report from **Transport Infrastructure Ireland** recommends that the proposed development falls within an area set out in the Section 49 Levy Scheme Luas Cross City. It notes that the Section 49 scheme lists several exemptions where the levy does not apply. If the above application is successful and not exempt as a condition of the grant, please include a Section 49 Luas Cross City contribution in accordance with the Scheme adopted.
- 4.2.3. A report from the Engineering Department Drainage Division stated that there is no objection subject to standard conditions.

- 4.2.4. A report from the **Roads and Traffic Division** notes the width of the remainder of the public footpath and having regard to this footpath it is considered that the screen does not cause an undue obstruction and therefore there is no objection to this development. It is noted that part of the screen extends onto the public land. However, there is a concurrent application to renew the existing Section 254 Street Furniture Licence. The Roads, Streets and Traffic Department have no objection subject to two standard conditions.
- 4.2.5. The **Planner's Report** sets out planning policies as it relates to the subject site and states that there are serious concerns regarding the retention of the outdoor seating area in its current form. Having regard to the fact that the proposal is situated in a prominent location along a heavily pedestrianised street in an Architectural Conservation Area. It is therefore considered that the proposal will constitute a visually obtrusive feature at this location and excessively dominate the streetscape. It is considered that a more subtle outdoor seating area, with simple canvas screens and outdoor seats and complimented by a traditional style open ended blind may be acceptable at this location. However, the seating area does not complement or harmonise with the architectural character of the subject site and for this reason it should be refused.
- 4.2.6. In its decision dated 23rd January, 2018 Dublin City Council refused planning permission for the reasons set out above.

5.0 **Planning History**

No history files are attached. Reference is made in the planner's report to the following planning history.

Under 2783/04 planning permission was approved for the placing of two tables, four chairs and canvas screens on a pavement area in the front of the premises. A retractable awning and to relocate the existing signage from the front of the premises at No. 63 South William Street was also granted.

Under 1552/04 planning permission was approved for a change of use of the existing retail unit from a hairdressing salon to a delicatessen.

6.0 Grounds of Appeal

- 6.1. The decision of Dublin City Council was the subject of a first party appeal submitted on behalf of the applicant by Tom Phillips and Associates, Town Planning Consultants. The grounds of appeal set out the site location and description and details of the development for which retention of planning permission is sought. It is acknowledged that South William Street has a recognised architectural heritage value and is predominantly Georgian in character. The street is dominated by the Powerscourt Townhouse and the Dublin Civic Museum. The street has evolved into fashion wholesale and a restaurant/café and bar district. It is noted that there are numerous examples of outdoor terraced seating which brings essential vibrancy to this Architectural Conservation Area.
- 6.2. The grounds of appeal go on to argue that the screens in question are of a high quality practical nature and constitute a necessity for the commercial business. It is argued that they do not have a negative or dominating impact on the South City Inner Retail quarter but on the contrary, the development contributes to the general ambience, character and quality of the street.
- 6.3. The proposal permits an active street scene for a range of weather conditions. It is argued that the subject screening is significantly higher in quality than other screening structures throughout the city.
- 6.4. Notwithstanding this argument, the applicant has expressed a willingness to consider alterations if required such that it can achieve the appropriate balance between providing adequate protection to the restaurant and maintaining the integrity and character of the street.
- 6.5. The grounds of appeal go on to argue that while the subject site is located in an ACA, No. 63 is not itself a protected structure although it acknowledges that there are a significant amount of protected structures along South William Street. It notes that the structure is located on privately owned land, is modestly sized and does not protrude further out into the street than other seating areas on the street. Reference is made in the grounds of appeal to various policies contained in the development

plan in relation to Dublin's conservation areas and it is argued that the proposal in no way contravenes any policy statements referred to in the grounds of appeal.

- 6.6. The grounds of appeal also include pictures of numerous outdoor seating areas which are surrounded by screening structures and canopies and it is suggested that the subject structure for which retention of planning permission is sought is of a higher quality than many such other structures throughout the city. It is also noted that many other structures throughout the city are placed on the public footpath and do not have the benefit of a private landing as is the case at the subject site. It is therefore argued that the high-quality materials included in the current application does not detract from the character of the street.
- 6.7. Notwithstanding the arguments set out above the applicant is willing to modify the proposal and in this regard is happy to provide flower boxes, wooden panelling or other treatment if required.
- 6.8. The recommendations of an enclosed Conservation Report to provide a monotone canopy with neutral tone panels is acceptable to the applicant. The applicant has already expressed a willingness to alter the upper panels so that they could be removed and erected only when needed during adverse weather conditions.
- 6.9. Also attached to the grounds of appeal is
 - a copy of the local authority's planner's report.
 - A letter from a business representative group supporting the application for retention.
 - An Architectural Conservation Impact Report. It concludes that the development for which retention is sought does not constitute a visually obtrusive or dominant form of development on the subject site. It is argued that an open terrace where patrons would be exposed to the elements would diminish the quality and experience for patrons. It is also stated that proximity to the car park exit necessitates an extra level of safety and protection for customers. It is stated that South William Street and surrounding streets have developed as an important restaurant/bar/café area and this helps define the contemporary character of the street and its surroundings. In this regard it will

enhance the historic streetscape and the amenities for both local community and for Dublin tourism in general.

7.0 Appeal Responses

7.1. Dublin City Council have not submitted a response to the grounds of appeal.

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 subject site is zoned Z5 “to consolidate and facilitate the development of the central area and to identify, reinforce, strengthen and protect its civic design character and dignity”. The site is located within a designated Conservation Area. While many of the buildings along South William Street are listed in the Record of Protected Structures, the subject site is not a protected structure.

8.2. Policy RD7 requires a high quality of design and finish for new and replacement shopfronts, signage and advertising. Dublin City Council will actively promote and seek the principles of good shopfront design as set out in the Dublin City Council’s Shopfront Design Guidelines.

8.3. Section 11.1.5.4 relates to Architectural Conservation Areas. Dublin City Council will seek to ensure that development proposals within all architectural conservation areas complement the character of the area including the setting of protected structures and comply with development standards.

8.4. Policy CHC4 seeks to protect the special interest and character of all Dublin conservation areas including:

- The repair and retention of shop and pub fronts of architectural interest.

8.5. It is the policy of Dublin City Council to ensure that development will not:

- Harm buildings, spaces, original street patterns or other features which contribute positively to the special interest of the conservation areas.
- Introduce design, details and materials such as PVC, aluminium and inappropriately designed dimensioned timber windows or floors.

- Harm the setting of a conservation area.
- Constitute a visually obtrusive or dominant form.

9.0 Planning Assessment

- 9.1. The Board should note from the outset that the current application before it relates to the retention of planning permission for the retractable steel glazed screen and canopy and not the seating area outside the subject area. It appears that the seating area to the front of the premises has the benefit of planning permission. Thus, the application relates to the structure surrounding and over the seating area only.
- 9.2. The sole reason for refusal cited by Dublin City Council express concerns in relation to the design and materials used in the structure. Having inspected the site and compared it with similar site structures in the area I consider the development in question constitutes a simple design with the use of extensive glazing at neutral dark colours on the metal panels supporting the structure.
- 9.3. In terms of the impact of the proposal on the designated Architectural Conservation Area and the streetscape, the Board will note that South William Street is an important historical city centre street and this is reflected in the number of protected structures on the street and the number of key landmark buildings not least of which is Powerscourt Townhouse. Notwithstanding this point, the street accommodates a variety of uses including restaurants and cafes many of which have outdoor seating areas some covered and some uncovered. These outdoor seating areas have become particularly prevalent along this upper section of the street and many adjoining streets in recent years such as Suffolk Street, Exchequer Street, Wicklow Street, Drury Street and Castle Market. In fact, it has become a somewhat ubiquitous characteristic of the south city inner retail quarter. In this regard I do not consider that the development for which retention is being sought could be considered either inappropriate or uncharacteristic of the Architectural Conservation Area. Nor in my view would the proposal be regarded as having an undesirable precedent, as I note the proliferation of similar type covered seating areas and awnings in the wider architectural conservation area (see photo's attached).

- 9.4. The fact that the steel frame covered area does not detract or obscure a protected structure also add weight to the argument to grant retention of permission in this instance. The building in question, while in keeping with the historical setting of South William Street, is of no historical or architectural value.
- 9.5. I also consider that the covered outside eating area adds a vibrancy and vitality to the streetscape which supports and complements the associated retailing activity which is predominant in this area. There are numerous references throughout the development plan for the need to develop and support café and restaurants in order to enable more tourism and visitor attractions to the city centre. Street side cafes and bars create a more cosmopolitan and European feel to the city centre. These uses enliven and contribute to the vitality of the historic areas of the city and should, subject to appropriate amenity safeguards be encouraged.
- 9.6. Finally, due to the inclement weather and excessive rainfall experienced it can be considered somewhat inevitable that all outdoor seating areas, if they are to contribute to the vitality and enlivenment of the city centre streetscape, will be required to incorporate covering to protect patrons from the elements. The fact that the site is located to an underground car park would also in my view make the covering of the outdoor seating area more conducive dining and relaxing.
- 9.7. Finally, I note that there is sufficient residual footpath width to the front of the subject site to ensure that the proposed development in no way impinges or obstructs pedestrian movement along the footpath. A residual footpath width of 2.8 metres is located at the outdoor seating area and this is adequate to allow for the unobstructed flow of pedestrians, prams, wheelchairs etc. to the front of the premises. I further note that the report on file from the Roads, Traffic and Planning Division came to a similar conclusion in that the screen does not cause any undue obstruction and the Department stated that there was no objection to the development from a traffic/pedestrian safety/convenience point of view.
- 9.8. In conclusion therefore and arising from my assessment above I consider that the proposed design and materials incorporated in the covering of the outdoor seating area is acceptable and that the retention of the structure would not be out of character and would not impact on the visual amenities of the streetscape or the Architectural Conservation Area in which the site is located. In this regard I

recommend that the Board overturn the decision of Dublin City Council and grant retention of planning permission for the structure in question.

- 9.9. In relation to the requirement to levy the applicant in accordance with the supplementary development contribution scheme, a submission to the Planning Authority by Transport Infrastructure Ireland request that if the above application is successful and is not exempt, a condition of a grant of permission should include a supplementary contribution scheme under Section 49 for the Luas Cross City route. The subject site falls within the catchment area of the Luas Cross City Line and there is a requirement under this supplementary contribution scheme to attach a levy of €38 per square metre in the case of commercial and retail development. While there are exemptions to this contribution (as set out in Section 11 of the Scheme) I note that any exemptions and reductions shall not apply to permissions for retention of development. As this application relates to a permission for retention of development the development contribution would apply in this instance. I therefore recommend that if the Board are minded to grant planning permission in this instance, that a sum of €464 (12.2 square metres x €38) be applied.

10.0 **Appropriate Assessment**

Having regard to the nature and scale of the proposed development and 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 or projects on a European site.

11.0 **Decision**

Grant retention of planning permission based on the reasons and considerations set out below.

12.0 Reasons and Considerations

It is considered that the retention for the retractable steel glazed screen enclosing an outdoor seating area to the front of No. 63 South William Street subject to conditions set out below would not seriously injure the amenities of the area and property in the vicinity, would not be prejudicial to public health and would be generally acceptable in terms of traffic safety and convenience. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

13.0 Conditions

1. The retractable steel glazed screen shall be retained 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 the commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The canopy area which constitutes the roof of the enclosed steel glazed screens shall be replaced with a new canopy of a more neutral tone. Details of the replacement canopy shall be agreed in writing with the planning authority within two months of this order.

Reason: In the interest of visual amenity.

3. Surface water and drainage arrangements including the attenuation and disposal of surface water shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

4. No structures including temporary structures, portable structures or any flags, poles, or bunting shall be placed on the footpath in the vicinity of the outdoor seating area. An area of unobstructed footpath 2.8 metres in width shall be retained along the frontage of the retractable steel glazed screen enclosing.

Reason: In the interest of orderly development.

5. The developer shall pay to the planning authority a financial contribution of €464 (four hundred and six four euro) in respect of the Luas Cross City (St. Stephen's Green to Broombridge line) 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. The contribution shall be paid prior to the 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 the Board to determine.

Reason: It is a requirement of the Planning and Development Act 2000 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.

Paul Caprani,
Senior Planning Inspector.

14th May, 2018.