



An  
Bord  
Pleanála

## Inspector's Report ABP-302434-18.

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<b>Development</b>	Installation of new fascia boards, signage and down lighting on the front façade together with the infill of the courtyard to the front (south) of 13B providing 30sqm of additional area at ground floor and additional 30sqm open-air terrace dining at first floor, all with ancillary works.
<b>Location</b>	Marcel's Restaurant, 13A and 13B, Merrion Row, Dublin 2, D02 VF79.
<b>Planning Authority</b>	Dublin City Council.
<b>Planning Authority Reg. Ref.</b>	3206/18.
<b>Applicant(s)</b>	Central City Catering Ltd.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant subject to conditions.
<b>Type of Appeal</b>	Third Party.
<b>Appellant(s)</b>	O'Donoghues.
<b>Observer(s)</b>	Transport Infrastructure Ireland.
<b>Date of Site Inspection</b>	16 <sup>th</sup> & 17 <sup>th</sup> November, 2018.
<b>Inspector</b>	A. Considine.

## **1.0 Site Location and Description**

- 1.1. The subject site is located on the southern side of Merrion Row in Dublin 2, in close proximity to the St. Stephens Green area of Dublin City Centre. The area is a busy commercial area between St. Stephens Green and Baggot Street with a variety of bars and restaurants as well as other shops and services provided for in the area.
- 1.2. The subject site is operating as a bar and restaurant over the two properties, nos. 13A and 13B, Merrion Row, under the name 'Napper Tandy's'. The building is a single storey to the front of the building with a two storey element to the rear. There is an existing small terrace located to the front of no. 13B which is used as an outdoor area connected to the first floor restaurant. I did not get access to the terrace on the dates of my inspection, but it is set back from the front façade of the building by approximately 3.5m and it is not particularly visible from the public street.

## **2.0 Proposed Development**

- 2.1. Planning permission is sought for the installation of new fascia boards, signage and down lighting on the front façade together with the infill of the courtyard to the front (south) of 13B providing 30sqm of additional area at ground floor and additional 30sqm open-air terrace dining at first floor, all with ancillary works, at 13A and 13B Merrion Row, Dublin 2.
- 2.2. The alterations to the external façade include a new painted timber shop front. The proposed terrace is to have a glazed screen with planting along the front of the building. The submitted plans provide for a new double front door which will open into a hallway and a single door which will provide access to a new stairway. This stairway will provide direct access to the first floor terrace.
- 2.3. Although not included in the public notice, the development also proposes the provision of an awning.

## 3.0 Planning Authority Decision

### 3.1. Decision

The Planning Authority decided to grant permission for the proposed development including condition 4 which includes a number of elements and requires:

- a) the setting back of the proposed first floor terrace by a minimum of 1m from the front façade
- b) boundary details and mitigation measures to prevent overlooking of adjacent property
- c) restricts the use of the terrace to dining only and between the hours of 8am and 11pm only.
- d) restricts noise levels
- e) details of signage to be individual letting pin mounted brushed stainless steel or equivalent.
- f) illumination to be discreet
- g) omission of proposed awning.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The Planning Officers report formed the basis of the Planning Authority's decision to grant planning permission.

#### 3.2.2. Other Technical Reports:

**City Archaeologist:** The report notes the location of the site within the Zone of Archaeological Constraint for the Recorded Monument DU018-020, being Dublin City. It is recommended that a notify condition be included in any grant of planning permission and particularly relates to works at ground floor level.

**Drainage Division:** No objection.

The Board will note that the PAs Planning Report refers to a report from the EHO. This report is not on the file, nor is it on the Planning Authority web site.

### 3.2.3. Third Parties:

There is one objection submitted which primarily relates to the proposed extension to the roof terrace. The submission is summarised as follows:

- The detail of the roof plan has not been submitted.
- The planning history of the site demonstrates that the proposed terrace extension has not been looked favourably upon by the Board in the past.
- The terrace would be inherently damaging to the character of the surrounding properties and to the area.
- The proposal would be contrary to the development plan requirements for Architectural Conservation Areas and would not represent an appropriate intervention in the street.
- The development would impact commercial operations of the adjacent property.

## 4.0 Planning History

The following is the relevant planning history pertaining to the site:

**ABP ref PL29S.243239 (PA ref 2052/14):** Permission was sought for alterations to existing two storey licenced restaurant to omit the first floor kitchen and ancillary areas at 13A, Merrion Row, and to block up the existing ope in the separating wall between 13A and 13B at first floor level and to construct a new kitchen and toilets at first floor rear and to extend the terrace at first floor. The Board decided to grant permission for the proposed development subject to conditions, including condition 3 which omitted the extension of the terrace in the interests of visual and residential amenity.

**PA ref 5791/07:** Permission granted for change of use of 13B Merrion Row from office to restaurant, external seating terrace at the front to rear, single storey extensions to front for porch and refuse storage at 13B and new ground floor link at 13A and 13B.

## **5.0 Policy Context**

### **5.1. Development Plan**

The Dublin City Development Plan, 2016-2022 is the relevant policy document relating to the subject site.

The site is located within the city centre which is zoned Z5. It is the stated objective of this zoning 'to consolidate and facilitate the development of the central area, and to identify, reinforce and strengthen and protect its civic design character and dignity.' The site is also located within a Conservation Area and chapter 11 of the Plan deals with Built Heritage and Culture.

Chapter 16 of the Plan deals with Development Standards: Design, Layout, Mix of Uses and Sustainable Design.

Full details of the relevant sections of the City Development Plan are provide as an appendix to this report.

### **5.2. Natural Heritage Designations**

The site is not located within or adjacent to any Natura 2000 site. The closest designated sites are the South Dublin Bay SAC, Site Code 000210, and the South Dublin Bay and River Tolka Estuary SPA, Site Code 004024, which are located approximately 2.5km to the east of the site.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

This is a third party appeal against the decision of the Planning Authority to grant permission for the proposed development. The grounds of appeal are similar to those raised during the PAs assessment of the development and are summarised as follows:

- Notes that the site is located within an ACA and that the proposed development will alter the façade and physical structure and will set a negative precedent.

- The Council and the Board have previously considered that the extension of the terrace was unacceptable as it would damage the character of the area.
- The setting back of the terrace by 1m, as conditioned by the Council, would neither mitigate its visual obtrusiveness from the street view nor would it mitigate the implications on the adjoining commercial properties, including the first floor windows of the adjacent property.

It is requested that the Board overturn the decision of the local authority and refuse permission.

## 6.2. **Applicant Response**

None

## 6.3. **Planning Authority Response**

None

## 6.4. **Observations**

Transport Infrastructure Ireland submitted an observation in relation to the appeal advising that the subject site falls within the area set out by a Section 49 Levy Scheme. The subject development is not exempt from payment of the levy and it is recommended that a Section 49 Luas Cross City (St. Stephen's Green to Broombridge Line) Contribution Scheme Levy be included in the schedule of conditions.

## 7.0 Assessment

Having undertaken a site visit and having regard to the relevant policies pertaining to the subject site, the nature and scale of the proposed development and the nature of existing and permitted development in the immediate vicinity of the site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. Introduction
2. Visual Amenity issues and impacts on ACA
3. First floor terrace & Courtyard
4. Other Issues & Development Contributions
5. Appropriate Assessment
6. Environmental Impact Assessment

### 7.1. Introduction:

7.1.1. The proposed development seeks to alter the front elevation of no. 13B Merrion Row, Dublin 2. The subject site includes no. 13A Merrion Row and comprises a recently opened bar and restaurant called Napper Taddy's. The bar area is located within the ground floor area of 13A, with the kitchen at first floor level, while the two floors of 13B comprise seating areas associated with the bar/restaurant and toilets. There is a small permitted terrace located at first floor level and an existing courtyard to the front of no. 13B at ground floor level, with the front wall and doors to the restaurant at a set back from the road. From a perusal of historical maps of this area of Dublin City, it appears that no. 13B was the only building constructed with a set back of the front wall of the building to the street.

### 7.2. Visual Amenity Issues & Impacts on ACA:

7.2.1. The proposed development will include the removal of an existing metal roller door and the installation of a new shopfront at no. 13B Merrion Row. As part of the works, the existing courtyard area to the front of the building will be enclosed and will be incorporated to the floor area of the restaurant. The development proposes a new

painted timber shopfront which will incorporate two new windows and a set of double doors. A second, single, door is proposed to be installed to provide direct access to the proposed extended terrace. I will address this element further below in section 7.4 of this report.

7.2.2. The subject site is located within an area zoned Z5 in the current Dublin City Development Plan. It is the stated objective of this zoning 'to consolidate and facilitate the development of the central area, and to identify, reinforce and strengthen and protect its civic design and character'. The site is included within an Architectural Conservation Area and properties to the rear (south) of the site, on Hume Street, are protected structures. In this regard, it is necessary to consider the impact of the proposed development on the character of the ACA and the protected structures.

7.2.3. With regard to potential impacts on protected structures on Hume Street, I am satisfied that there is no issue arising as all works are proposed to the northern elevation of the building. With regard to the impacts on the ACA, I have no objections in principle to the proposed new shopfront or the infilling of the existing courtyard area into the restaurant. The shopfront is proposed to be constructed in timber and painted. In the context of the streetscape, which has a variety of shopfronts, I have no objections in this regard. The development will also involve the enclosing of an existing courtyard behind the shopfront and glazing and the removal of the existing metal roller door. In my opinion, the proposed works will enhance the aesthetics of the building and will add positively to the streetscape.

7.2.4. I note the concerns of the Planning Authority in relation to the proposed finishes of the shopfront signage. It is recommended that the applicant be required to use backlit stainless steel lettering pin mounted directly onto the existing fascia. In terms of the Dublin City Development Plan, Section 16.24.2 of the plan deals with shopfronts and requires that they should:

1. Relate satisfactorily to the design, proportions, materials and detail of the upper parts of the building
2. Complement their context and the quality and character of adjoining shopfronts, especially where these form part of a consistent group of traditional shopfronts.



In terms of the above, I would have no objection to the painted timber shopfront as proposed. However, I also note that the applicant has not raised an objection to the condition included by Dublin City Council. In this regard, I recommend that the Board include a condition which requires full details to be agreed prior to the commencement of any development works in any grant of permission.

### **7.3. First floor terrace & Courtyard:**

7.3.1. The Board will note that the issue of the terrace has previously arisen as part of a planning application for the site. Under PA ref. 5791/07, permission was granted to include the as constructed terrace. The existing permitted terrace has a stated floor area of approximately 20.3m<sup>2</sup> and is set back from the front building line by 3.25m and is not necessarily visible from the public road. In this regard, I am satisfied that the principle of the terrace has both been permitted and established at this location.

7.3.2. Under ABP ref PL29S.243239 (PA ref 2052/14), permission was sought to extend this terrace to the front wall of the building and to the west, maintaining a gap between the terrace and the appellants adjacent property to the east. The Board will note that the PA refused permission for the terrace extension and condition 3 of the Boards decisions also required the omission of the extension to the terrace. The reason for the omission of the terrace extension related to the protection of visual and residential amenity.

7.3.3. The proposed extension will result in a usable terrace area of approximately 50m<sup>2</sup>, more than doubling the size of the existing terrace. In order to ensure safety, the development proposes the installation of a new glazed screen and planting along the front wall to enclose the terrace at first floor level. All of these features add to the visual impact of this element of the proposed development. The Board will also note that the proposed terrace extension is a particular issue for the appellant.

7.3.4. Under the current application, the Board will note that the PA has considered that in the intervening 4 years since the previous application to extend the terrace, circumstances in the locality have varied in terms of vibrancy and use and that the setting back of the terrace by 1m from the front elevation, the terrace is unlikely to have a detrimental visual impact. It is further considered that as the surrounding

properties are primarily in commercial use, the terrace is considered acceptable in terms of potential noise pollution. A condition to restrict the use of the terrace after 11pm is recommended to be included.

7.3.5. I attended at the site at approximately 5:30pm on a Friday evening and while I did not get access to the terrace, I can confirm that the area was very busy with both pedestrians and cars, and music was being piped into the courtyard area of the subject site. The wider area is certainly a vibrant area of Dublin City Centre, particularly on a Friday evening. I attended again early on Saturday morning and found the area still busy with traffic. On both occasions, I found that the existing terrace was not a dominant or obvious feature in the streetscape either during the day or in the evening, being well set back from the front of the building.

7.3.6. If permitted as proposed however, this would change. It is notable that the restaurant has incrementally extended into the courtyard area at ground floor level and while I have no real objections in this regard, subject to clarification on the matter of bin storage which I will discuss further below, I would have serious concerns regarding the extension of the terrace. The necessary glazed screen and planting proposed to enclose the terrace would significantly increase its visibility in the streetscape. Should the Board be minded to permit the overall proposed development, I recommend that this element be omitted in the interests of visual amenity and orderly development.

#### **7.4. Other Issues & Development Contributions:**

7.4.1. The Board will note that the proposed layout provides for a separate door to the front elevation which will provide direct access to the proposed extended terrace. I do not consider this appropriate or necessary as there is already an existing stairs which provides access to the ground floor and proposed new double front doors. Should the Board be minded to grant permission in this instance, this door and stairs should be omitted. Further to the above, the proposed inclusion of the stairs at this location would remove the existing bin store which is located in this ground floor area. The submitted proposed layout plans do not indicate an alternative location for bin storage and as such, to permit this entrance and stairs would result in uncertainty in this regard.

7.4.2. With regard to the proposed installation of an awning, the Board will note that the only other awning in the vicinity is the one on O'Donoghues, immediately adjacent to the subject site. The PA has considered the need for the awning, given the orientation of the building towards the north and have concluded that it is an unnecessary design feature. I would agree and would concur that a grant of permission in this instance would contribute to visual clutter in the streetscape. Should the Board be minded to grant permission in this instance, I would recommend that this element of the development be omitted.

7.4.3. In terms of development contributions, the Board will note that the proposed development liable to pay a Section 48 contribution in accordance with the general development contribution scheme. In addition, the site is located within the area set out in the Section 49 contribution scheme for the LUAS Cross City Scheme. In this regard, two development contribution conditions should be included in any grant of permission.

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

The site is not located within or adjacent to any Natura 2000 site. The closest designated sites are the South Dublin Bay SAC, Site Code 000210, and the South Dublin Bay and River Tolka Estuary SPA, Site Code 004024, which are located approximately 2.5km to the east of the site.

Having regard to the location of the subject site, together with the nature and scale of the proposed development on zoned lands, I am satisfied that there is no potential for impact on any Natura 2000 site, warranting AA.

#### **7.6. Environmental Impact Assessment**

Having regard to the nature and scale of the proposed development, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 8.0 Recommendation

It is recommended that planning permission be granted for the proposed development for the following reasons and considerations and subject to the following conditions.

## 9.0 Reasons and Considerations

Having regard to the provisions of the Dublin City Development Plan 2016-2022, the pattern of development in the area and the information submitted in relation to the proposed development, the Board is satisfied that, subject to compliance with the following conditions, the proposed development would not seriously injure the visual amenity or the character and residential amenities of the area and 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. The proposed development shall be amended as follows:
  - (a) The extension of the first-floor terrace shall be omitted.
  - (b) The proposed single doorway and stairs from the public footpath on the front elevation shall be omitted.
  - (c) The proposed awning shall be omitted.

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

**Reason:** In the interests of visual amenity and the proper planning and sustainable development of the area.

3. Prior to the commencement of any development on site, proposals for dealing with refuse and bin storage shall be submitted for the written agreement of the planning authority.

**Reasons:** In the interests of amenity and the proper planning and sustainable development of the area.

4. Details of the shopfront, signage and lighting shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development on site.

**Reason:** In the interest of the amenities of the area/visual amenity.

5. 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.

6. The developer shall pay to the planning authority a financial contribution 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. 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 Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

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A. Considine

Planning Inspector

18<sup>th</sup> November, 2018