



Development

1. Change of use of (i) The second floor from ancillary restaurant facilities to multi-purpose space (private events, dining, product launches etc.)(184/.7 sqm) with re-configured toilets, and a new balcony to the rear; (ii) The third floor from light industry (vacant) to ancillary restaurant facilities including full kitchen, goods storage and office (184.5 sq.m); (iii) The fourth floor from light industry (vacant) to licensed restaurant (19.4 sq.m) with a new covered terrace to the rear (24.1 sq.m; and (iv) The fifth floor from light industry (vacant) to ancillary office space & staff facilities (162.5 sq.m)
2. Roof Level extension (15.3 sq.m) to serve general plant area including lift shaft and staircore;
3. Refuse / recycle area at ground floor level with new door at Drury Street;
4. New toilets at first floor level replacing the existing kitchen;
5. Retention of existing balcony at the rear at first floor level and permission to extend it to 16.2 sq.m in area.
6. Retention of retractable canopy at the rear and permission to modify it to accommodate proposed balcony at second floor level;
7. Retention of the illuminated original steel "Drury Buildings" sign (600 mm high x c9m) and new projecting steel framed engraved oak sign (900mm high x 600mm) on Drury Street elevation and all ancillary site development works.

Location	52-55, Drury Street, Dublin 2
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	3857/18
Applicant(s)	Secret Bar Ltd.

Type of Application	Permission.
Planning Authority Decision	Grant Permission subject to conditions.
Type of Appeal	Third Party
Appellant(s)	Charles Feely.
Observer(s)	Transport Infrastructure Ireland.
Date of Site Inspection	13 th May 2019.
Inspector	Bríd Maxwell

1.0 Site Location and Description

1.1. The appeal relates to the Drury Buildings located at 52-55 Drury Street within the South City Retail Quarter Architectural Conservation Area of Dublin City. Located on the eastern side of Drury Street opposite Fade Street and on the south east corner of South City Markets the building occupies an area of 262 sq.m with frontage of 18.8m to Drury Street. Constructed in the 1940s the building extends to five storeys over ground level with a three storey return and small courtyard to the rear. The ground floor, first floor and second floor of the building currently operates as a licensed restaurant while the remaining three floors are currently vacant. The building was previously used for clothing manufacture and as a wholesale clothing warehouse. At street level the building has a rendered façade covered by a large painted graphic mural while the remaining floors are faced in brick. The site is within a vibrant mixed use area with a number of commercial uses and some residential uses.

2.0 Proposed Development

2.1. The proposal involves

1. change of use of

- (i) The second-floor from ancillary restaurant facilities to multi-purpose space (private events, dining, product launches etc.) (184.7 sqm) with re-configured toilets, and a new balcony to the rear;
- (ii) The third floor from light industry (vacant) to ancillary restaurant facilities including full kitchen, goods storage and office (184.5 sq.m);
- (iii) The fourth floor from light industry (vacant) to licensed restaurant (19.4 sq.m) with a new covered terrace to the rear (24.1 sq.m); and
- (iv) The fifth floor from light industry (vacant) to ancillary office space & staff facilities (162.5 sq.m)

2. Roof Level extension (15.3 sq.m) to serve general plant area including lift shaft and staircore;

3. Refuse / recycle area at ground floor level with new door at Drury Street;

4. New toilets at first floor level replacing the existing kitchen;
5. Retention of existing balcony at the rear at first floor level and permission to extend it to 16.2 sq.m in area.
6. Retention of retractable canopy at the rear and permission to modify it to accommodate proposed balcony at second floor level;
7. Retention of the illuminated original steel “Drury Buildings” sign (600 mm high x c9m) and new projecting steel framed engraved oak sign (900mm high x 600mm) on Drury Street elevation and all ancillary site development works.

2.2 Essentially the proposal involves the extension of the existing restaurant use which currently operates at ground first and second floor level to the upper floors. I note that in response to the Council’s request for additional information and in order to address concerns raised with regard to the protection of adjacent residential amenity, the nature of the proposal was modified with removal of the additional second floor balcony and rear terrace area on the fourth floor. It is proposed to retain and increase the size of the first-floor balcony while a new external stairs is proposed to link to the courtyard below. (Existing balcony is 8.475 sq.m and it is proposed to extend this to 16.2 sq.m) Further revisions were made to the proposed lift shaft and roof plant and the proposed projecting signage was omitted and brass light fittings in lieu of downlighter.

3.0 **Planning Authority Decision**

3.1. **Decision**

By order dated 2 January 2019 Dublin City Council issued notification of decision to grant permission and 12 conditions were attached which included the following:

Condition 2. Development Contribution €1,450.18. S 48 Development Contribution Scheme.

Condition 3. Development Contribution S47. €786.49 Luas Cross City.

Condition 4. Use as a restaurant only and not as a public house or for any other late night uses.

Condition 5. "The development shall be revised as follows

- a) The proposed down lighters and /or brass light fittings located to the front elevation of the building shall be permanently omitted.
- b) The proposed balconies at 1st and 2nd floor level and the external terrace at 4th floor level shall be permanently omitted.
- c) The proposed outdoor landscaped /smoking area shall have no live musical performance or speakers erected externally or directly into the external area,
- d) Details regarding the proposed mural to the steel doors should be indicated in drawing form.

Development shall not commence until revised plans, drawings and particulars showing the above amendments have been submitted to, and agreed in writing by the planning authority."

Condition 9. Compliance with British Standard 5228 Noise control on construction and open sites. Noise shall not cause annoyance. Rated noise levels shall not constitute reasonable ground for complaint as provided in BS4142.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.1.1 Initial planner's report considered the proposal to be acceptable in principle and unlikely to have a negative impact on the site or surrounding area. Proposed intensification of use at this the city centre location will likely enliven the street and increase footfall in the area. However serious reservations expressed regarding the proposed retention of existing rear balcony area and additional balconies to the building. Landscaped courtyard / smoking terrace at ground level considered adequate given proximity to residential properties.

3.2.1.2 Additional information sought to include omission of balconies, detailed noise mitigation measures and amendments to lift shaft and roof plant at roof level. The

down lighters and projecting signage to front elevation to be omitted to avoid visual clutter. Refuse recycle area to ground level onto Drury Street resulting in dead frontage on a prominent city centre site and would be visually obtrusive. Further information requested to address these concerns.

3.2.1.3 Following submission of additional information the planners report expresses the view that that the omission of the first-floor balcony is desirable to protect neighbouring amenity. Brass light fittings to front elevation will add to visual clutter and should be omitted. Proposed refuse/recycle area acceptable in light of waste management issues. Permission was recommended subject to conditions.

3.2.2. Other Technical Reports

3.2.2.1 Engineering Drainage Division. – No objection subject to compliance with the Greater Dublin Regional Code of Practice for Drainage Works Version 6.0.

3.2.2.2 Environmental Health Report. - notes concern with regard to the proximity of balconies to residential properties resulting in negative impact on residential amenity. Refusal recommended.

3.3. Prescribed Bodies

3.3.1 Transport Infrastructure Ireland TII – no observations on the application. Location within area set out for Section 49 Levy scheme for Light Rail.

3.4. Third Party Observations

3.4.1 Submission from Thornton O Connor, Town Planning on behalf of the appellant Charles Feely part owner of no 25. William Street South expresses concerns, further subsequently reiterated within the grounds of appeal, regarding overlooking of amenity space, noise and other disturbance. Application fails to assess the true impact of the additional outdoor space on adjacent residential uses. Dublin City Council and An Bord Pleanála have previously considered that noise and

disturbance of eating / drinking establishments with an outdoor commercial space can seriously impact on adjacent residential amenity.

4.0 **Planning History**

3795/11 Permission granted on 21st February 2012 for change of use of ground and first floor from light industry/wholesale warehouse to licensed restaurant; change of second floor from light industry/wholesale warehouse for ancillary restaurant use, alterations to façade, reinstatement and illumination of signage, provision of outdoor smoking area and bin storage to rear.

5.0 **Policy and Context**

5.1. **Development Plan**

5.1.1 The Dublin City Development Plan 2016-2022 refers. The site is zoned Z5 : City Centre – “To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic character and dignity.”

5.1.2 The site is within an Architectural Conservation Area.

- Drury Street is designated as a Category 2 shopping street within the city centre retail core. “Streets in this category are those that already have a mix of retail and non-retail uses.” “Complementary non-retail uses such as a café and restaurants that add to the vibrancy of the street and create a mixed-use environment to provide for a more integrated shopping and leisure experience, will be considered favourably but with regard also to the primary retail function of the street.”
- Section 7.6.1 Primacy of the City Centre and Retail Core Area.
- Section 16.29 Restaurants.
- Section 16.24.2 Shopfronts.
- Section 16.24.3 Signs of Shopfront and other business premises.

5.2. Natural Heritage Designations

None

5.3. EIA Screening

The proposed development does not constitute a class of development for which environmental impact assessment is required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 The appeal is submitted by Thornton O Connor Town Planning on behalf of Charles Feely, part owner of no 25 William Street South which adjoins to the south east of the appeal site. Grounds of appeal are summarised as follows:

- Mitigation measures as set out in noise assessment will be difficult to control.
- Permission is ambiguous. It is not clear in condition 5(b) whether the retention of the existing balcony at 1st floor has been granted. Condition refers only to 'proposed balcony' and therefore it is assumed that permission is granted for the existing unauthorised balcony to be retained at 1st floor level. This appears to be contrary to the intent of the planning officer as report expressed the view that it is reasonable to omit the balcony at 1st floor level.
- Appellant has significant concerns in relation to noise disturbance and overlooking issues arising from the retention of the 1st floor balcony.
- Change of use of upper floors will result in intensification of use of 1st floor balcony and ground floor courtyard.
- Serious negative impact on residential amenity arising from noise disturbance and overlooking. Residents of no 25 currently sleep with earplugs to reduce sleep disturbance. This will be further intensified by the extension of the restaurant use intensifying the use of the outdoor space including first floor level balcony.
- Condition 5b does not specify the removal of the existing unauthorised balcony and does not refer to the proposed external stairs which connects the outdoor spaces

further potentially intensifying use and providing overlooking opportunity on ascent or descent.

- Photographs submitted in response to request for additional information do not demonstrate true relationship with neighbouring residential properties as the photographs exhibit the retractable canopy structure in the fully extended position and are therefore misconceiving.
- Noise assessment results appear to demonstrate inconsistencies. Map provided demonstrates appellant's property as being within noise level in excess of 60dB.
- Planning precedent analysis demonstrates that Dublin City Council and An Bord Pleanála have previously considered noise and disturbance of eating /drinking establishments with associated outdoor spaces can seriously impact on residential amenity. Notably noise and disturbance impact accentuated at upper levels in partially enclosed areas.

Precedent cases (DLRC09Q/0458 and PL06D234795.) Eagle House Pub, Glathule, Co Dublin. Outdoor smoking area refused on grounds of negative impact on residential amenity. (2740/12 and PL29N241027) No 4 Ormond Quay Lower Dublin 1. Retention of smoking area refused on grounds of negative impact on residential amenity. (3436/16) MVP Pub No 29 Clanbrassil street Upper. Roof top garden and smoking area refused on grounds of noise impact on residential amenity. (3552/14) Kiely's Pub No 22-24 Main Street and Mulberry Lane Donnybrook. External roof terrace refused on grounds of lack of mitigation and noise screening measures.

- Proposed development would represent inappropriate development contrary to the Dublin City Development Plan and would set an undesirable precedent for similar such development and as such would be contrary to the proper planning and sustainable development of the area.

6.2. Applicant Response

The submission by Kieran O Malley & Co Ltd. Town Planning Consultants on behalf of the applicant is summarised as follows:

- First party refutes ground of appeal that the proposal would impinge on residential amenity at no 25 William Street South.
- Appeal was unexpected as first party spoke to the appellant at further information stage.
- Notably no complaints submitted to local authority in relation to Drury Buildings or renewal of license.
- Agree that Council's decision permitted the retention of the existing balcony at first floor level and the retractable canopy.
- There is no residential garden or any discernible type of garden to the rear of no 25 William Street South as evidenced in photographs 1 and 2 taken from the upper floors within the appeal site.
- The existing balcony at first floor level is laid out as 3 no two-seater tables. It is not a designated smoking area, it is an external part of the restaurant with occupancy of 6 people (reduced to 4 if stairs provided).
- Applicant reaffirms commitment to implementing all mitigation measures recommended in the noise assessment.
- Ground floor courtyard is not a designated smoking area per se and is laid out with tables and was approved by Dublin City Council in the initial planning permission 3795/11.
- Consider that the stairs from the first-floor balcony to the ground floor courtyard has not been omitted but this has been raised by the appellant the Board is invited to adjudicate on this aspect. The proposed stairs would improve synergy and movement between the ground and first floors of the existing restaurant. If permission is granted it would reduce seating capacity at first floor balcony from 3 no two-seater tables to 2 no two-seater tables and there would also be a slight reduction at ground floor courtyard because seating wouldn't be provided beneath the proposed stairs and additional circulation space would be required,
- It is physically impossible to overlook the so-called private amenity space to the rear of no 25 from the first-floor balcony. 3-4 metre high wall between the site and the private amenity space renders it impossible to overlook even from

the first-floor balcony. Putting the retractable roof into its retracted position also doesn't allow for overlooking into the residential garden as erroneously alleged by the appellant.

- Canopy would also serve to reduce the spread of noise from the approved ground level courtyard.
- Predicted noise levels show a small increase at the rear elevation of the appellant's property which is the only residential property to the rear of Drury buildings.
- No 25 William Street south is at a busy city centre location and experiences the noise and general disturbance associated with city centre living including from the various restaurant outlets directly opposite on William Street South,
- As each planning application is considered on its merits precedent is not a planning consideration. Precedents referred to in the appeal are all materially different to the 8.5 sq.m first floor balcony at Drury Buildings.

6.3. **Planning Authority Response**

The Planning Authority did not respond to the appeal.

6.4. **Observations**

Submission from Transport Infrastructure Ireland TII notes location of the site within the area set out in S49 Cross City Levy Scheme (St Stephen's Green to Broombridge Line).

7.0 **Assessment**

- 7.1. The site is located within zoning objective Z5 which seeks *“to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity.”* Noting also the location of the site within a category 2 street, this designation seeks to protect the primary retail function

of these streets as the principal shopping streets in the retail core with an emphasis on higher order comparison retail and a rich mix of uses. The designation allows for uses complimentary to the main shopping focus such as cafés, bars, restaurants and galleries. I consider that the principle of development is acceptable having regard to the zoning objectives pertaining to the site and the policy context. The provision of an active and vibrant use to the currently vacant upper floors will contribute positively to the vitality and vibrancy of this city centre location. I consider that the main issues for consideration are those matters raised within the appeal regarding potential impact on residential and other amenities and no other substantive issues arise. Appropriate Assessment also needs to be addressed.

7.2 I note that the third-party does not object in principle to the change of use of upper floors and the key concern relates to the first-floor balcony proposed for retention which extends to 8.475sq.m. and its cumulative impact with existing outdoor commercial space. The appeal asserts that condition 5 of the planning authority's decision is ambiguous - Does it include permission to retain the balcony and retractable canopy? The wording of condition 5 is as follows:

"The development shall be revised as follows

- a) *The proposed down lighters and /or brass light fittings located to the front elevation of the building shall be permanently omitted.*
- b) *The proposed balconies at 1st and 2nd floor level and the external terrace at 4th floor level shall be permanently omitted.*
- c) *The proposed outdoor landscaped /smoking area shall have no live musical performance or speakers erected externally or directly into the external area,*
- d) *Details regarding the proposed mural to the steel doors should be indicated in drawing form.*

Development shall not commence until revised plans, drawings and particulars showing the above amendments have been submitted to, and agreed in writing by the planning authority."

- 7.3 I note that the Local Authority did not respond to the appeal therefore did not choose to clarify its perspective on the matter. I consider that the retention element is somewhat unresolved in the wording of the decision and it is therefore appropriate that the Board provide clarity on this issue.
- 7.4 On the issue of potential overlooking of the rear amenity space associated with No 25 South William Street South, I note the submissions of the first party question the use of this space having regard to its overgrown state and apparent convoluted access from the residential use at second and third floor levels of the property. Regardless of its current state it is appropriate that private residential amenity space and established residential amenity is protected. Having visited the appeal site, I can confirm that it is not possible to overlook this private space from the first-floor balcony proposed for retention. I note that the canopy was in its retracted state on the date of my site and regardless overlooking of this space does not arise. As noted by the first party the limited size of this space provides that it may only accommodate six people. I consider that having regard to the established use on the site and to the limited size of the balcony the level of noise or other disturbance emanating from its use is not significant. In terms of location relative to the windows to the residential property, I consider that the nature and use of this area is not significant in terms of creation of an increased sense of overlooking of the property. As regards the proposal to provide an external stairs access from the courtyard to first floor balcony and notwithstanding the limited size I consider that the circulation link has greater potential to cause disturbance to adjacent amenity. I therefore consider that this element should be omitted.
- 7.5 As regards noise impact I note the Noise Impact Assessment by Irwin Carr Consulting and submitted in response to the request for additional information. The report outlines a number of mitigation measures including upgrading to double glazed units, internal noise monitoring and control. The report outlines that background noise levels measured at the site over two separate weekend periods to establish existing noise level to front and rear. It is asserted that the impact of the proposed amendments would be negligible as compared to existing noise levels on

Drury Street and within the surrounding area. As evidenced within the report the noise level at the rear of the premises, and clearly that giving rise to concerns by the appellant, is primarily determined by the external areas. I note that the layout plans submitted in governing permission 3795/11 depicted the outdoor space to the rear of the premises as an open courtyard / smoking terrace whereas submitted plans accurately depict this area as currently laid out with tables and chairs as an outdoor/garden restaurant. The application as made does not expressly reference this space and therefore it does not form part of the development under consideration, though clearly cumulative issues and implications are a matter to be considered. Issues of compliance / enforcement are for the planning authority. I note that arising from concerns with regard to potential amenity impacts a condition was imposed as part of 3795/11 restricting hours of operation from 08.00 am to 12.00am 7 days a week including bank holidays.¹ A condition was imposed also setting noise limits during periods of entertainment uses. Given the increased intensity of the use within the building I consider it appropriate to reaffirm the use of the overall premises as a licensed restaurant as opposed to a late-night bar venue. I consider that the noise arising from the proposed development is not significant in the established context and I consider that appropriate mitigation measures can be put in place to contain noise. As regards the precedent cases cited by the appellant I am inclined to agree that cases referenced are not comparable in terms of scale or context and it is appropriate that the appeal site is assessed on its own merit.

7.6 Arising from my assessment, I consider that the Board should uphold the decision of the Planning Authority to grant permission for the proposed change of use and including permission for retention of first floor balcony and canopy. Subject to the incorporation of appropriate conditions I consider that the appellant's concerns particularly with regard to noise can be allayed.

7.7 As regards Appropriate Assessment having regard to the minor nature of the development, its location in a serviced urban area, and the separation distance to any European site, no Appropriate Assessment issues arise and it is not considered

¹ I note that advertised opening hours are Sunday to Thursday 12pm – 11:30pm. Friday & Saturday 12pm-12:30am. <http://drurybuildings.com/cocktail-bar/>

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.

8.0 Recommendation

8.1. It is recommended that permission is granted subject to the following schedule.

9.0 Reasons and Considerations

9.1 Having regard to the provisions of the Dublin City Development Plan 2016-2022, the existing pattern of development in the area, the established use of the site and the nature and scale of the proposed development, it is considered that subject to compliance with the conditions set out below, the proposed development and development to be retained would not seriously injure the amenities of the area or of property in the vicinity. The proposed development and development to be retained would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on 29th November 2018 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 proposed extension to the existing first floor balcony to be retained and the proposed external stairs to link to courtyard shall be omitted.
- (b) The proposed downlighters / and or brass fittings to the front elevation shall be omitted.

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

- 3. The premises shall be used as a licensed restaurant and shall not be used as a public house or for any other late night uses. The restaurant shall only operate between 08:00 and 12:00am Mondays to Sundays inclusive.

Reason: In the interest of residential amenity.

- 4. The operators of the premises shall control odour emissions for the restaurant in accordance with details and measures to be submitted and agreed in writing with the Planning Authority prior to the commencement of development.

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

- 5. Water supply and drainage arrangements, including the disposal and attenuation of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health

- 6. (a) During the operational phase of the proposed development, the noise level arising from the development, as measured at the nearest noise sensitive location 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. No advertisement or advertisement structure (other than those shown on the drawings submitted with the application) shall be erected or displayed on the building (or within the curtilage of the site) in such a manner as to be visible from outside the building, unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

8. Details of all storage of refuse including food waste associated with the development shall be agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interest of public health and visual amenity.

9. 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.

10. The developer shall pay to the planning authority a financial contribution in respect of Luas Cross City 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

Bríd Maxwell
Planning Inspector

14th May 2019