



An
Bord
Pleanála

Inspector's Report ABP-303647-19

Development	Change of use from retail to café, 40sqm extension at rear of 2nd floor & construction of new third floor.
Location	4 Mary's Abbey, North City Dublin 7
Planning Authority	Dublin City Council North
Planning Authority Reg. Ref.	3296/18
Applicant(s)	The Lightstone Discretionary Settlement.
Type of Application	Permission.
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Tom O'Rahilly.
Observer(s)	Transport Infrastructure Ireland.
Date of Site Inspection	13/05/19
Inspector	Sarah Lynch

1.0 Site Location and Description

- 1.1. The site is located within the city centre to the east of the city's northern retail core and is located within the Zone of Archaeological Constraint in relation to Recorded Monument DU018-020. The site comprises a three-storey terraced commercial block with a retail use at the ground floor and an office use at 1st and 2nd floor. The ground floor comprises a shop front unit with large glazing panels. The upper floors are finished in red brick to the front and incorporate three window openings at each floor within this elevation.
- 1.2. The rear of the building faces onto a myriad of rear extensions to surrounding buildings. The appeal site has been extended extensively at ground and first floor. At present all fenestration within these rear elevations are within the northern and eastern boundary walls.
- 1.3. The buildings on either side of the appeal site appear to be solely commercial in nature, however it is of note that some upper floors of buildings located along Chapel Street to the north east are residential. The balconies serving these buildings can be clearly seen from the rear upper floors of the appeal site.
- 1.4. The building is located within a built-up area along Mary's Abbey and abuts the Luas lines which run to the northern retail core.

2.0 Proposed Development

- 2.1. The proposed development comprises the following:
 - Change of use from retail to café at ground floor.
 - Alterations to shopfront.
 - Construction of a 40 sqm extension to rear of 2nd floor.
 - Construction of 155sqm additional 3rd floor.

3.0 Planning Authority Decision

3.1. Decision

Permission was granted subject to standard conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The final planners report is consistent with the planning authority decision.

Further information was requested in relation to the following:

- Revision of proposed windows along neighbouring boundaries, in particular the northern boundary.
- Set back of third floor from front elevation.

All further information was responded to and determined to be acceptable by the Council.

3.2.2. Other Technical Reports

- Drainage Division – No objections subject to standard conditions.
- Air Quality Monitoring and Noise Control Unit – no objections subject to standard conditions.
- City Archaeologist – Subsurface remains of St. Marys Abbey (DU18-020048) and the associate Chapter House (DU018-367) are located due northeast of the proposed site. Conditions are recommended in relation to archaeology.

3.3. Prescribed Bodies

Transport Infrastructure Ireland –

- A construction traffic management plan to be submitted for written agreement of TII.
- A construction method statement shall be submitted for the written approval of TII.
- Section 49 contributions apply.
- Works permit from Luas operator is required.
- Full plans and details of all servicing access arrangements to be submitted to TII for approval.
- Deliveries to site shall limit interference with the Luas operations.

- Development shall comply with code of practice document.

3.4. Third Party Observations

A number of submissions were received from both local residents and the owners of adjacent buildings, the issues raised can be summarised as follows:

- Design of 3rd floor extension is not in keeping with character of the building.
- Existing windows in at 1st & 2nd floor in eastern elevation are unauthorised and as such there is no right to light.
- Overlooking.
- Applicant has failed to demonstrate that additional surface water can be catered for.
- Overdevelopment.
- Proposal will detract from character, appearance and quality of streetscape.
- Area has an abundance of cafes and restaurants, requirement for a more balanced mix of uses in the area.

4.0 Planning History

2390/09 Permission was **granted** for the retention of the installation of double-glazed powder coated aluminium windows.

3691/08 Permission was **granted** for the change of use of the existing 3 storey storage building, to use of ground floor as retail space, and office accommodation at 1st & 2nd floor level.

5.0 Policy and Context

5.1. Development Plan

Dublin City Development Plan 2016-2022

Land-Use Zoning Objective Z5:

‘To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity’.

- Section 11.1.5.3 – Protected Structures – Policy Application
- Policy CHC2 – Protect special interest of Protected Structures
- Section 14.8.5 - City Centre Zone 5
- Section 16.2.2.3 Alterations and Extensions
- Section 16.24.2 Shopfronts
- Section 16.24.3 Signs of Shopfront & other business premises
- RD15 – high quality design and finish for new shopfronts

Shopfront Design Guide – Dublin Corporation Planning Department

Project Ireland National Planning Framework 2040

- Section 1.3 Compact Growth
- Section 4.5 Achieving urban infill / brownfield development

5.2. Natural Heritage Designations

None

5.3. EIA Screening

Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity, 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

6.0 The Appeal

6.1. Grounds of Appeal

An appeal has been submitted by Simon Clear & Associates on behalf of Tom O’Rahilly (National Leprechaun Museum of Ireland Ltd), the appeal is accompanied by a report from a conservation architect Kelly & Cogan which sets out the impacts

of the development on the neighbouring protected structure. An Architectural Heritage report also accompanies the appeal which has been written by Kelly & Cogan and sets out the historical significance of the building and its surroundings. The issues raised within the ground of appeal can be summarised as follows:

Issues raised in relation to right of light and existing fenestration:

- Part of the eastern boundary wall is a party wall and is therefore part of the adjoining Protected Structure.
- Existing windows in eastern elevation at 1st and 2nd floor are unauthorised and not exempt development. The development potential of the adjoining property 2-3 Marys Abbey is therefore not compromised by way of authorisation.
- Proposed development would give rise to overlooking.
- The applicant has no right to light.
- Reference to widening of windows in the party wall without the consent of the neighbouring landowner is contrary to Article 22 of the Planning and Development Regulations, as amended.

Issues raised in relation to impact on Protected Structure:

- Proposal will result in a discontinuity of the terrace.
- 2-3 St Marys Abbey is a Protected Structure dating from 1866.
- Unauthorised windows impact on heritage significance of Protected Structure.
- Unauthorised windows constitute works to party wall of Protected Structure.
- Unauthorised windows materially affect the appearance of the rear portion of the Protected Structure by reason of their composition, design, structure and surrounding poor quality.
- These windows do not form the basis for right to light.
- Overlooking to be exacerbated by the widening of existing windows in eastern elevation.
- Absence of an Architectural Heritage Impact Appraisal.
- The further information response contained significant information and should have been re-advertised and circulated to the appellant.

- The proposed set back wall is not detailed in relation to its connection to the west party wall of no. 2-3 Marys Abbey.
- Proposed development will break the parapet and impact on visual amenity of the street.
- The proposed extension is excessive.
- The proposed development will result in the loss of much of the conservation value of no. 2-3 Mary's Abbey.

6.2. Applicant Response

MacCabe Durney Barnes have submitted a response to the ground of appeal on behalf of the applicant which can be summarised as follows:

- Windows within eastern elevation at 1st and 2nd floor have been in situ prior to 2010.
- Windows are exempt development pursuant to Section 4(1) (h) of the Planning and Development Act 2000, as amended.
- No enforcement has been issued in relation to windows.
- Rights to light is a civil matter.
- Windows in eastern elevation look towards extension to rear of 2&3 Mary's Abbey which is not part of Protected Structure.
- Revised plans are not considered to be significant.
- Rear extension of no. 2& 3 Mary's Abbey as per correspondence with Dublin City Council is not protected.
- Architectural Heritage Impact Appraisal is not required as wall is not protected.
- Re-use and upgrade of existing buildings in the city is in line with policies of Dublin City Development Plan.
- Design does not detract from the visual amenities of the area.
- There is already 100% site coverage within the site.

- No reference is made to unauthorised windows in the Dublin City planner's report.
- Flank wall is an integral part of the application premises and is not a boundary wall.
- Consideration of the windows within the eastern elevation can proceed irrespective of the findings of Cleary Compost v ABP case.
- Proposed development will not give rise to further overlooking to no. 2&3 Mary's Abbey.
- Neither appeal property or neighbouring property are in residential use.
- All properties of this type in the city centre are affected by overlooking to some degree.
- Further information was not misleading, and plans were expected to be amended.
- Proposal will reuse an existing building, bring more trade to the area, business and footfall and will assist with regeneration of the area.

6.3. Planning Authority Response

- None

6.4. Observations

Transport Infrastructure Ireland have made a submission which can be summarised as follows:

- Submission of construction management plan for agreements.
- Demolition and or construction method statement to be submitted for agreement.
- Section 49 Development Contributions apply.
- A works permit from the Luas operator is required.
- Details of servicing arrangements are required.

- Deliveries shall be made to limit interference with Luas operations.

6.5. Further Responses

- **Transport Infrastructure Ireland** - response upheld their original observation and stated that the development shall comply with TII's 'Code of engineering practice for works on, near or adjacent to the Luas light rail system'.
- **Appellant** – Kelly & Coogan submitted a response on behalf of the appellant which was supported by a letter from Tom Conlon Solicitors, the issues raised within the response are as outlined within the grounds of appeal in addition to the following:
 - Deed of Covenants submitted originally provided a right to light for no. 2,3&4 Mary's Abbey. This was amended in order to permit a comprehensive redevelopment of all these sites.

7.0 Assessment

- 7.1. The subject 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'. I consider the proposed development to be acceptable in principle with the zoning objective for the area.
- 7.2. It is important to note at the outset that revised plans have been submitted in response to a request for further information, the following assessment will be in relation to these final approved plans. The main changes proposed within the revised plans are the omission of windows from the northern elevation and the redesigning of windows at the third floor along the eastern elevation. Changes also include a redesign and recessing of the third-floor extension along the front elevation to provide for a more subservient form of development.
- 7.3. The main issues pertaining to this appeal are those set out within the grounds of appeal. No other substantive issues arise in this instance. Appropriate Assessment will also be considered in addition to the following:
- Overdevelopment & Impact on streetscape.
 - Impact on integrity of Protected Structure.

- Overlooking.
- Appropriate Assessment
- Other Matters

Overdevelopment & Impact on streetscape.

- 7.4. It is contended by the appellant that the proposed extension is an overdevelopment of the site in that it covers 100% of the site area. It is further contended that the proposed 3rd floor which can be seen from the front elevation as a glazed recessed element, would have a negative impact upon the integrity of the terrace and would be out of keeping with the character of development in the street.
- 7.5. It is recognised within Section 16.2.2.3 of the Dublin City Development Plan 2016-2022 that opportunities for major expansion within the city centre are limited and this leads to substantial pressure for extensions and alteration to existing buildings. It is a requirement of this plan for such extensions and alterations to be sensitively designed and detailed to respect the character of the existing building, its context and the amenity of adjoining occupiers.
- 7.6. Section 16.2.2.3 requires such developments to respect the rhythms or groupings of buildings and be subordinate to the existing building in scale and design. The proposed extension is largely located to the rear of the existing building with only a limited amount of the third floor visible from the adjoining public road. The portion to be visible from Mary's Abbey will comprise a light weight largely glazed flat roof structure which will be recessed from the front building line in order to provide a subservient form of development.
- 7.7. It is of note as seen within the attached photographs that a similar style of extension is present to the south west of Capel Street. I consider this element of the development to be acceptable. The proposed use of materials provides for an extension which does not overbear the existing building, and which sits in a subservient manner when viewed in the context of the existing terrace of properties along this street. The proposal is of similar height no. 5 Mary's Abbey which is located to the west of the appeal site and is dwarfed slightly by the existing 4 storey corner building to the west at the junction of Meetinghouse Lane and Mary's Abbey.
- 7.8. Furthermore, the existing buildings opposite the appeal site which are a modern interpretation of the older buildings on the street and are of similar height and

incorporate additional, higher recessed elements at roof level. The proposed 3rd floor will be reflective of this design but at a lower overall height.

- 7.9. Overall, I consider that the proposed design of the 3rd floor extension when viewed from the front elevation is acceptable and has been designed in a sympathetic manner in accordance with the requirements of the Dublin City Development Plan. Furthermore, it is of note, that the existing building covers the full footprint of the development site, any extension to this building, cannot therefore, increase site coverage. Notwithstanding this, it is of note that in areas subject to the Z5 zoning objective a site coverage of 90% in less developed sites is permissible.

Impact on integrity of Protected Structure

- 7.10. It is contended by the appellant that the existing windows within the eastern elevation of the appeal site, at 1st and 2nd floor, which it is contended are unauthorised, have an adverse impact upon the heritage significance of the adjacent Protected Structure no. 2&3 Mary's Abbey. The appellant states that these windows materially affect the appearance of the rear portion of the Protected Structure by reason of their composition, design, structure and surrounding poor quality. A significant number of points have been raised within the grounds of appeal in relation to these windows and it is apparent from the documentation submitted that the appellants main concern is in relation to the impact of these windows and any additional windows within this elevation upon the future development potential of no. 2&3 Mary's Abbey.
- 7.11. With regard to the impact on the integrity of the Protected Structure I do not consider the insertion of two windows within a neighbouring property to be of such significance as to have a serious negative impact upon the setting, curtilage, integrity or heritage significance of the adjoining Protected Structure to the east. The main issue in relation to fenestration within the eastern elevation of the proposed extension will be addressed within the following Section.

Overlooking

- 7.12. As mentioned above the applicant has made a significant number of points within the grounds of appeal in relation to the presence of two windows within the rear eastern elevation to the northern end of the existing extension. It is contended by the

appellant that these two windows are unauthorised and can therefore not set a precedent for any right to light along this elevation.

- 7.13. I have reviewed the planning history pertaining to the appeal site and note that permission was granted under planning reference 2390/09 for the retention of windows at 1st and 2nd floor. An additional 2 windows have been inserted within the northern end of the eastern elevation since the submission of this planning application. No subsequent planning application has been granted to regularise these additional windows.
- 7.14. It is of importance to note at this juncture, that the determination of whether works are or are not development and if they are or are not exempted development are not a matter for consideration under this appeal. The regularisation of these windows is a matter for the planning authority and not for the Board to adjudicate on.
- 7.15. Of relevance to this assessment is the potential impact of the additional windows proposed at the third floor within the eastern elevation of the proposed extension. It is of note that the proposed windows within the eastern elevation are located directly above the permitted windows at the 1st and 2nd floors. The outlook from the proposed windows at the 3rd floor would be significantly similar to that of the existing permitted windows at the 1st and 2nd floor, and as such, I do not consider this element of the proposal to impact the neighbouring property to the east to such an extent as to warrant a refusal or indeed exacerbate the current situation of overlooking to such an unacceptable degree as to refuse the development.
- 7.16. It is important to note that the outlook from the permitted windows within the eastern elevation is established and has the benefit of planning permission. As such I consider the proposal in this regard to be acceptable.
- 7.17. In the context of the proposed development, I note that a significant level of development has occurred to the rear of the appeal site and to the rear of buildings along Capel St and Meetinghouse Lane. To prevent development in such a city centre site where space is at a premium would be unacceptable and contrary to the provisions of the Dublin City Development Plan which seeks permit such extensions, were the amenity of neighbouring properties is protected.
- 7.18. The refusal of such a development, where the amenities of adjacent properties have been protected, would also be contrary to NSO 1 of the National Planning

Framework which seeks to provide for compact development and requires that a significant proportion of future development is provided for on infill/brownfield sites within the built footprint of developed areas. In summary therefore, I consider the issue of overlooking to be minor and I consider the applicants attempts to limit any such impacts on surrounding properties to be acceptable.

Appropriate Assessment

- 7.19. 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 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.

Other matters

- 7.20. Significant reference is made within the grounds of appeal to rights of light and the protection of these rights within the deeds of covenant for the neighbouring properties. Further reference is made to the legal interest of the applicant and a requirement for permission from the adjoining landowner to carryout works within the eastern elevation of the site. These are largely legal matters and are not matters that the Board can finally determine. Section 34 (13) of the Planning and Development Act, states that the granting of permission does not entitle a person to carry out development and covers the eventuality that the development cannot be implemented for legal reasons.

Conclusion

- 7.21. Having regard to the plans submitted and the foregoing assessment along with the history of the site, I consider that the applicant has proposed a development which seeks to limit any impact on neighbouring properties in terms of overlooking and has designed the proposed extension so as not to limit the impact on the potential future development of adjacent sites. The proposal is therefore in accordance with the policies of the Dublin City Development Plan 2016-2022 and supports the notion of compact growth and consolidation of urban areas as required by the National Planning Framework.

8.0 Recommendation

- 8.1. Having regard to the foregoing assessment I recommend that permission is granted subject to conditions.

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, 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 would not seriously injure the amenities of the area or of property in the vicinity. 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. Details of the materials, colours and textures of all the external finishes to the proposed buildings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

3. 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

4. No signage, advertising structures/advertisements, security shutters, or other projecting elements, including flagpoles, shall be erected within the site unless authorised by a further grant of planning permission.

Reason: To protect the visual amenities of the area.

5. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall -

(a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,

(b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and

(c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

6. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the amenities of property in the vicinity.

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

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

8. Prior to the commencement of development, the developer shall Liaise with both Transport Infrastructure Ireland and the tram operators. In this regard a Construction Traffic Management Plan shall be submitted which shall identify mitigation measures to protect operational Luas Infrastructure, for the written agreement of the planning authority.

Reason: In order to safeguard public transport infrastructure.

9. Prior to the commencement of development, the developer shall Liaise with both Transport Infrastructure Ireland and the tram operators. In this regard, the applicant shall submit full plans and details of all servicing access arrangements for the development including construction, for the written agreement of the planning authority.

Reason: In order to safeguard public transport infrastructure.

10. Prior to the commencement of development details of a suitable ventilation system shall be submitted to and agreed in writing with the planning authority.

Reason: In the interest of public health.

11. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. All existing over ground cables shall be relocated underground as part of the site development works.

Reason: In the interests of visual and residential amenity.

12. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of streets, footpaths, watermains, drains, open space and other services required in connection with the development, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be determined by An Bord Pleanála.

Reason: To ensure the satisfactory completion of the development

13. 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.

14. 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.

Sarah Lynch
Planning Inspector

15th May 2019