



An
Bord
Pleanála

Inspector's Report ABP-303942-19

Development	Amendments to previously approved development (Reg. Ref. 2245/16 & An Bord Pleanala Ref. PL29S.246463).
Location	16-18, Pembroke Street Lower and Windsor Place, Dublin 2
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	4264/18
Applicant(s)	Kingfisher Equity Management Ltd.
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Patrick Donegan, Residents of Windsor Place & Mackies Place, DeLa Salle Ltd., Benchmark Property Consultants
Observer(s)	Transport Infrastructure Ireland.

Date of Site Inspection

27/05/2019

Inspector

Gillian Kane

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1.0 Site Location and Description

- 1.1. The subject site, occupying no.s 16-18 is located on the western side of Pembroke Street Lower. The site extends westwards to the rear, with an access lane off Windsor Place.
- 1.2. The existing four-storey building with vehicular access off Pembroke Street is currently under construction and is hoarded along the street elevation. Fitzwilliam Square is located to the south east with the corner site property, Humbledon House is directly to the east opposite the appeal site. The junction with Baggot Street Lower is a short distance to the north. Georgian houses facing onto the street adjoin the northern and southern side boundaries and are in office use in multiple occupancies. The rear gardens of the two properties to the south Nos 50-51 have been converted into office carparks with entrances off and access from Laverty Court, a rear access lane.
- 1.3. Terraced houses adjoin the northern site boundary to the rear of No 15 Pembroke Street. The houses located on Mackies Place date from the nineteenth century. Three storey houses dating from the late twentieth century are located on Windsor Place and face westwards. Three blocks in a gated campus in commercial use and multiple occupancies are on the west side of Windsor Place opposite the rear of the site and the dwellings on Windsor Place.

2.0 Proposed Development

- 2.1. On the 25th October 2018 planning permission was sought for amendments to a previously permitted development (PL29S.246463) to comprise:
 - Reconfiguration of stairs, lifts and floor levels
 - 4 no. additional bedrooms, one each at 1st, 2nd and two at 3rd floor
 - Relocation of bar and restaurant from upper to lower ground floor
 - Provision of lobby café / bar at ground level opening onto Pembroke Street lower,
 - Relocation of four bedrooms from lower ground to ground level,
 - Omission of lightwell / ventilation void at lower ground floor
 - Increase in basement floor area of 217sq.m. to provide for meeting room, office and staff area, reconfiguration of plant room,

- Extension of front access stairs at 5th floor, reconstruction of storage room and provision of 1.6m high plan enclosure,
- Elevational amendments to rear / west façade, new entrance at ground level on front elevation

2.1.1. The application was accompanied by a planning statement and a Design Statement.

3.0 **Planning Authority Decision**

3.1. **Decision**

3.1.1. On the 21st February 2019 the Planning Authority issued notification of their intention to GRANT permission subject to 13 no. conditions.

Condition no. 4 requires that all conditions of the parent permission shall be complied with.

Condition no. 5 states that the lower ground floor bar / restaurant shall not be used as a late-night venue / nightclub.

Condition 6 restricts use of lower ground floor courtyard as a smoking area or terrace. Ground floor terrace shall have no live music or speakers

3.2. **Planning Authority Reports**

3.2.1. **Engineering Department:** No objection subject to standard conditions.

3.2.2. **Planning Report:** Serious reservations regarding the proposed relocation of the bar at lower ground level in this transitional zone, Pembroke St is Z8 Georgian Conservation Area, rear is Z1 Residential. Public house not a permissible use in either zone. Access directly from Pembroke St is a departure from integrity of originally permitted hotel. Applicant should be requested to reduce scale of proposed pub / restaurant and reconsider the inclusion of an independent access to the lower ground floor. Noting that the previous permission omitted 4th floor in the interest of visual amenity, proposed roof level plant would be visually obtrusive. Applicant should be requested to submit a VIA. Recommendation to request further information.

3.3. Further Information

- 3.3.1. On the 18th December 2018 the applicant was requested to reconsider the location or reduce the height of and provide photomontages of the plant on the roof. Additionally, they were requested to reduce the scale of the proposed pub / restaurant and reconsider the proposed access from Pembroke Street.
- 3.3.2. On the 25th January 2019, the applicant responded to the request with drawings showing the amended roof top plant and visual impact images. In response to the second item of FI, the applicant stated that the proposed bar / restaurant, including the access from the street was as per client requirements and within best practice. The response stated that any reduction in scale would be detrimental to the ability of the hotel to operate.
- 3.3.3. **Planning Report:** Amendments to roof level acceptable. Use of lower ground floor should be conditioned to ensure protection of residential amenities. Recommendation to grant permission.

3.4. Prescribed Bodies

- 3.4.1. Transport Infrastructure Ireland: Proposed development is within s49 Luas Cross City St. Stephens Green to Broombridge line scheme.

3.5. Third Party Observations

- 3.5.1. Five objections to the proposed development were submitted to the Planning Authority. The issues raised mirror those raised in the four third-party appeals and are discussed in section 6 and 7 below.

4.0 Planning History

- 4.1.1. **PL29S.246463** (Planning Authority reg. ref) Planning permission was granted for a change of use from offices to a 108-no. bedroom hotel. Condition no. 2 required the omission of the fourth floor, with the result that the permitted no. of bedrooms is 98 no. the reason for the Boards condition was “In the interest of visual amenity and to protect the integrity of vistas from within the south city Georgian core including views from within and across Fitzwilliam Square”.
- 4.1.2. **PL29S.225863** (Planning Authority Reg. Ref. 4295/07): Permission was refused for a mixed-use office and residential development on a site comprising Nos. 15-18

Pembroke street owner and No 51 and 52 Fitzwilliam Square West (inclusive of the appeal site) for reasons relating to adverse impact of design, bulk, height, and design detail on the adjacent Architectural Conservation and protected structures.

- 4.1.3. **Planning Authority Reg. Ref. 4199/08:** Permission was granted for a mixed-use office and residential development on a site comprising Nos. 16-18 Pembroke Street Lower and lands at the rear of Nos. and No 51 and 52 Fitzwilliam Square West (inclusive of the appeal site) including of basement carparking. This permission was never implemented.
- 4.1.4. **PL29S.242677** (Planning Authority Reg. Ref. 2845/13): Permission was refused for a 130-bedroom hotel, for reasons relating to congestion and adverse impact on amenities if the area and residential property, scale, bulk and lack of separation distance from adjoin development, overdevelopment, adverse impact on the Conservation area and protected structures and lack of a Services Management Plan.

5.0 Policy and Context

5.1. Dublin City Development Plan 2016 - 2022

- 5.1.1. The subject site is subject to two zoning designations. The eastern section of the site fronting on to Pembroke Street Lower is zoned Z8, Georgian Conservation Area which has the stated objective "*to protect the existing architectural and civic design character and allow only for limited expansion consistent with the conservation objective*". Hotel use is a permissible use. Section 11.1.5.5 of the development plan states that the conservation of these areas is a key objective of the City Council.
- 5.1.2. To the rear (west) of the site, the zoning objective is Z1, Sustainable Residential Neighbourhoods, which has the stated objective 'to protect, provide and improve residential amenities'. Hotel use is open for consideration.
- 5.1.3. Indicative site coverage is 45-60% for lands zoned Z1 and 50% for lands zoned Z8. Indicative plot ratio for lands zoned Z1 are 0.5 – 2 and 1.5 for lands zoned Z8.
- 5.1.4. The subject site is just outside the boundary of the Fitzwilliam Square and Environs Architectural Conservation Area. Although the subject site is not a protected structure, the adjoining buildings all along Pembroke Street are all listed on the RPS.

- Policy Objective CHC4 provides for protection of the special interest and character of all Conservation Areas.
- Detailed policies, objectives, standards and guidance are set out in Chapter 11 for development affecting protected structures.
- According to Section 11.1.5.4 and conservation area and ACAs the planning authority seeks to ensure that development complements the character of the area including settings of protected structures and conserves and protects special historic and architectural interest. According to Section 11.1.5.6 new development should be exemplary positive in impact and should enhance the area.
- According to section 16.10.15 it is the policy of the planning authority to discourage significant underground development and excavation work basements and, extensions to existing basement development, adjacent to residential properties in conservation areas and/or included on the record of protected structures. It is stated that significant basement development has been sought in planning applications in recent years and there is concern as to risk of flooding and excessive provision habitable accommodation over one hundred percent in site coverage. Such development in Flood Zone A or B areas is not permissible according to Policy SI13.

5.2. Natural Heritage Designations

- 5.2.1. The subject site is located 1.5 km from the South Dublin Bay SAC and the South Dublin Bay and River Tolka Estuary SPA.

5.3. EIA Screening

- 5.3.1. Having regard to nature and scale of the development and the built-up urban location of the site 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 Third Party Appeals

6.1. Patrick Donegan, 51-52 Fitzwilliam Square West

- The description of the proposed development in the public notices is factually incorrect. One of the proposed additional bedrooms is on a mezzanine floor and is not a second bedroom on the third floor as stated in the notice. The permitted floor area is 5,025sq.m. The increase to 5,520sq.m. as stated is actually 495sq.m.
- The proposed development of the basement should count in plot ratio calculations as it gives a true reflection of the extent of development. The level of permitted development is in excess of the development plan and the cumulative effect of the proposed development represents over development.
- No evidence that the Planning Authority have approved the construction management plan has been found. The applicant cannot rely on an updated version of an unapproved plan.
- The proposed pub/ restaurant will become a night-club, causing noise and disturbance.
- The Board is requested to refuse permission.

6.2. Residents of Windsor Place and Mackies Place

- The Board accepted that the previously permitted development would affect Protected Structures in the area to a limited extent. The conditions attached to the permission would make the development tolerable for the residents. It is submitted that the proposed development attempts to circumvent those conditions.
- The description of the proposed development is inaccurate as it refers to four bedrooms moving, when five bedrooms are to be relocated.
- The proposed extension at roof level is an attempt to overcome condition no. 2 of the Boards decision (removal of the top floor). The proposed roof level plant would have a significant impact on the amenities of the adjoining properties.
- Condition no. 12 of the permitted development required that no plant was on the roof level. The residents fear that the proposed roof level plant will cause noise and disturbance and will be used to create a precedent for an additional floor.

- It is submitted that the proposed 108 no. bedrooms is not credible in the existing and proposed floorspace and that there is enough room for the plant within the permitted building.
- The previously permitted plot ratio is 3.69 which exceeds the 0.5-2.0 recommendation for Z1 zones (front of site) and 1.5 for Z8 zones (rear of site). the removal of the proposed fourth floor reduced the plot ratio to 3.65. The proposed development increases it to 4.01. This represents significant over-development of the site.
- The planning history on the subject site comprises 7 no. applications in 5 no. years. It is submitted that the case may be made in the future that the scale of the bar / restaurant is excessive, and an application made to change to bedroom use or a nightclub. The Board is requested to restrict such uses by condition. The Board is requested to attach a condition that requires all patrons to have left the premises by midnight, in the interest of protecting the residential amenity of the adjoining residents.
- The Board is requested to attach a condition that restricts room capacity and use of the hotel that set out in the description.
- The proposed plant must be maintained in the lower basement area. The adjoining residents have concerns about the proposed excavation in terms of duration, methods, impact on groundwater and impacts on adjoining structures.
- The proposed changes increase the basement from the permitted 3.30m below ground to 4.65m below ground and move closer to the homes on Windsor Place and Mackies Place. These dwellings date from 1801 and do not have proper foundations. As heritage buildings they are vulnerable to trauma.
- Windsor Place is heavily used and of insufficient width to cater for large vehicles. All servicing of the development must occur from Pembroke Street only.
- Given the proximity of the proposed increased basement the submitted out-of-date construction management plan is not acceptable.
- The applicant states that no public access will be available from the hotel / restaurant to the rear lower ground floor. The appellant questions if access will be available from the lower ground floor to the services area.

- Notwithstanding that the appellant requests the Board to refuse permission, if permission is granted the Board is requested to add a condition stating that all services / deliveries / collections including waste be from Pembroke Street. The Board is requested to make this condition binding to all future owners by way of a section 47 agreement.

6.3. **Delasalle Ltd, 15 Pembroke Street Lower**

- It is clear that the Planning Authority had serious reservations about the scale and impact of the proposed development. It is submitted that the Applicant's response to these concerns failed to address the issues raised.
- Appellant occupies property directly adjoining appeal site. Their primary concern is the impact of the proposed basement on their property. The proposed basement is increased to 775sq.m. and 4.65m below ground level. Basement excavation adjoining a protected structure and within a conservation area is significant. The proposed development was not assessed by a conservation officer.
- The appellant questions the future use of the proposed basement, given its size.
- The application lacks information on the structural integrity of adjoining buildings, detailed method statements and a construction management plan. It is submitted that an up-dated CMP is not appropriate given the sensitivity of the site.
- The applicant's submission that the basement is an independent structure is unsubstantiated in the absence of supporting documentation.
- The Board is requested to refuse permission for the basement proposal.
- The Board sought to cap development on the site with a condition that omitted the 4th floor (reducing the permitted no. of bedrooms from 108 to 98). It is submitted that the subject application is a direct contravention of this Board decision.
- The proposed development at basement and roof level is an attempt to maximise the site yield and represents overdevelopment, which is contrary to the principles of proper planning.
- It is submitted that while the Board has previously permitted a breach of recommended plot ratio, that the site is now at capacity.

- It is submitted that the Planning Authority has not assessed the proposal against the development plan and that no justification has been made for doubling the plot ratio.
- The appellants are concerned that the proposed development at basement level will interrupt their legal entitlements to the sewers, drains and water courses running beneath their property.
- The Board is requested to refuse permission.

6.4. **Brockpem Management, Windsor Place**

- Appellants are the managing agents of Windsor Place development.
- The single lane access to Windsor Place provides access to the 26-no. own-door offices and 8 no. apartment units. It is submitted that the junction is already at over-capacity and additional traffic would exacerbate the on-going difficulties.
- The appellant is concerned about the introduction of service provider trucks which would lead to further queuing on Windsor Place. It is submitted that the proposed development has not addressed this concern.
- It is submitted that the conditions of the Planning Authority do not address the appellants concern regarding the 'desire line' to the rear of the property.
- The proposal to increase the size of development is an attempt to recover that removed in the previous application. It is suggested the permitted application was not sufficiently thought through and was only to secure a permission.
- It is submitted that it will be difficult to control noise which will spill out the rear and cannot be properly regulated.
- Enlarging the hotel increases the likelihood of the lane being used for servicing.
- The Board is requested to refuse permission.

6.5. **Applicant Response**

6.5.1. An agent for the applicant has responded to the four third-party appeals as follows:

Accuracy

- The site has changed ownership since previous planning applications were made.

- All floor areas and room numbers are accurate.
- No construction activity will occur over Windsor Place. Demolition of structures on site over the last 6-months occurred through the Pembroke Street entrance. This practice will continue as per the Construction Management Plan.
- The appellants suggestion that the hotel will be serviced via Windsor Place is incorrect. The detailed servicing management plan demonstrates the effective operation of the hotel via Pembroke Street only.

Basement Excavation

- The approved basement has a floor area of 728sq.m. The proposed basement is 775sq.m.
- The lowering of the proposed basement by 1.6m is to facilitate the appropriate floor to ceiling height for the proposed restaurant. The proposed deepening is a sensible and valuable use of city centre land.
- It is submitted that this proposal has no structural or other effect on adjoining properties.

Over development

- The proposed addition of 4 no. bedrooms (98 no. to 102 no.) is 4%. The expansion of public areas (440sq.m.) is less than 8.5% of total gross floor area. This raises the plot ratio to 4.0 which is submitted to be not significant as the increase is below ground and not visible.

Plant at Roof Level

- The proposed roof level addition is 14sq.m. and is necessary to allow the main staircase to rise to roof level. The proposed plant are air handling units which must be located externally. All other plant is located internally. The proposed screened extension is modest in nature and the screened plant is barely perceptible.

Construction Management Plan

- A Construction management plan has been submitted to the Planning Authority in accordance with the permitted development.
- The applicant has engaged with 51/52 Fitzwilliam Square (P. Donegan), Hottinger Group 15 Pembroke Street Lower, Ms. Maura O'Sullivan 5 Windsor Place.

- Internal and external dilapidation surveys were undertaken of all adjoining properties to record their condition prior to demolition.

6.6. **Planning Authority Response**

6.6.1. None on file.

6.7. **Observations**

6.7.1. Transport Infrastructure Ireland: Proposed development is within s49 Luas Cross City St. Stephens Green to Broombridge line scheme.

6.8. **Further Responses**

6.8.1. **Response of Benchmark Properties to other Appeals**

- Supports the submission of Delasalle Ltd, regarding applicant's inadequate response to the Planning Authority's request for further information and overdevelopment of site leading to negative impacts.
- Supports the 'planning creep' suggestion of residents of Windsor place and Mackies Place and the need to restrict the use of Windsor Lane to service the site.
- Supports the submission of Patrick Donegan regarding overdevelopment.

7.0 **Assessment**

7.1.1. I have examined the file and the planning history, considered national and local policies and guidance, the submissions of all parties and inspected the site. I have assessed the proposed development and I am satisfied that the issues raised adequately identify the key potential impacts and I will address each in turn as follows:

- Principle of development
- Revisions to Permitted Development
- Basement

7.2. **Principle of the Proposed Development**

7.2.1. The principle of hotel use on the subject site has been established by the Board decision under PL29S.246463. The Board was satisfied that the permitted development would not interfere unduly with the character of Protected Structures in

the vicinity of the site, would not seriously injure the residential amenities of neighbouring dwellings, would be acceptable in terms of traffic safety and convenience and would be in accordance with the proper planning and sustainable development of the area.

7.3. Revisions to Permitted Development

- 7.3.1. At lower ground floor level, the permitted development provided for 12 no. bedrooms, staff facilities, a ventilation courtyard and toilet facilities open to the public (drawing no. 254-P-00-02 refers). Permission is now sought for the same footprint but a bar / restaurant of 246sq.m., dining area of 119sq.m. 5 no. bedrooms and servicing areas (drawing no. 254-P-FI-02-01 refers). The use of the lower ground floor by the public is significantly intensified. The ground floor plan is proposed to be changed from the permitted bar / restaurant with access directly off Pembroke Street and 11 no. bedrooms to a smaller (183sq.m.) public foyer area with terrace, a self-check-in and 17 no. bedrooms. The proposed changes to the ground level involve significantly fewer public areas.
- 7.3.2. At third floor level, stair cores are to be relocated and the number of bedrooms is increased from the permitted 14 no. to 17 no. At the fourth-floor level, it is proposed to introduce plant and two lift enclosures.
- 7.3.3. With the exception of the addition of a second entrance door on Pembroke Street, the proposed changes do not result in significant alteration to the permitted elevations. I am satisfied that the addition of plant and lift enclosures at fourth floor level will not be significant, will not be visually injurious and does not contravene condition no.2 of PL29S.246463.
- 7.3.4. The cumulative impact of the proposed changes is an increase in bedroom numbers from the permitted 98 no. to 102 no. and an increase in bar / restaurant space area to 440sq.m. (approx.). Whilst this intensification of use in itself is not problematic, it can lead to greater pressure on the Servicing Management Plan, as the larger pub / restaurant and the greater number of bedrooms will consequentially increase the scale and extent of deliveries and traffic to the site.
- 7.3.5. I note the concerns of the Appellants regarding the possibility of Windsor Lane becoming a traffic route to the rear of the hotel and concur with these concerns. I note the Boards Order and the reference to the need for a “strict operation of the

proposed site Servicing Management Plan” in order for the development not to cause significant congestion, obstruction and interference with the free and safe flow of traffic. An updated Servicing Management Plan has not been submitted with the subject application. I am not satisfied that it has been demonstrated that the scale of the proposed bar / restaurant and increased number of bedrooms can be accommodated within the existing Servicing Management Plan and that traffic would not be generated on the adjoining Windsor Lane.

7.3.6. Further, I accept the concerns of the appellants that the scale of the proposed bar/ restaurant is such that noise pollution would occur. I note that there is no external open space available to the proposed lower ground floor restaurant. Given the distance to the access to the ground floor terrace, this could lead to patrons using the basement courtyard as an informal smoking area as it is immediately accessible.

7.3.7. I note the applicant’s argument that plot ratio has been discredited as a crude measure. However, it remains a development plan policy and as such is used as a guide to help control the bulk and mass of buildings (section 16.5 of the development plan refers). The proposed development raises the plot ratio to 4, which is significantly in excess of the recommended 0.5-2 (Z1 zone) and the 1.5 (Z8 zone). The development plan allows higher plot ratios where certain circumstances prevail, however none apply to the subject site. I note that Board considered that the omission of the top floor of ten bedrooms would prevent over development of the site. The corollary of that is, that any intensification of the subject site would represent over development of the site.

7.3.8. I note the applicant’s submission that without the increased bar / restaurant the hotel is not viable, however, that is not a planning consideration. Nor should it take precedence over the zoning objectives and policy objectives governing the subject site and wider area.

7.4. **Basement**

7.4.1. Drawings no. 254-P-FI-02-01 and 254-P-00-02 show the proposed basement as permitted under the extant scheme and that proposed under the current scheme. The Board will note that the figure of an increase from 728sq.m. to 775sqm. quoted in the applicant’s response to the third-party appeals is not correct. The increased 271sq.m., including an increased depth of 1.6m (from the permitted 3.3m) is to allow

the basement level to be actively used. The permitted development provided only for water tanks, boiler system and other plant. The proposed development comprises meeting rooms, a gym, offices, stores, staff facilities and a canteen. It is considered that this represents a significant intensification of use. The basement will go from being an area used only by maintenance staff to one which is intensively used by guests and staff throughout the day and possibly the night (staff).

7.4.2. I share the adjoining property's concerns regarding the movement of the proposed basement closer to protected structures. I note the policy of DCC to discourage significant basement excavations adjoining Conservation Areas or protected structures. The development plan states that when considering applications for same, the proposed basement should generally not exceed the footprint of the original building. The proposed development significantly exceeds this criterion.

7.4.3. It is considered that the proposed basement increase in footprint and depth and the resultant significant intensification of use is contrary to section 16.10.15 of the development plan which discourages such significant development adjoining protected structures and an ACA.

7.5. **Appropriate Assessment**

7.5.1. I note that the Board accepted and adopted the Planning Inspector's analysis in relation to screening for Appropriate Assessment and concurred with her conclusions under the permitted development PL29S.246463. The Board considered that the proposed development either individually or in combination with other plans and projects would not be likely to have a significant effect on any European site in particular the North Dublin Bay Special Area of Conservation (Site Code Number 0206), the South Dublin Bay Special Area of Conservation (Site Code Number 00210) or the South Dublin Bay and River Tolka Special Protection Area (Site Code 4014) and the North Bull Special Protection Area in view of the site's conservation objectives.

7.5.2. Having regard to the nature and scale of the proposed development, which is for alterations and additions to the above application, it is considered that no appropriate assessment issues arise, and that the proposed development would not 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. I recommend permission be refused for the following reason:

- 1 Having regard to the adjoining protected structures along Pembroke Street Lower, the Fitzwilliam Square and Environs Architectural Conservation Area 2009 and, the location of the subject site within an area subject to the zoning objective Z8, to protect the existing architectural and civic design character and to allow only for limited expansion consistent with the conservation objective, and “Z1” to protect, provide and improve residential amenities as set out in the Dublin City Development Plan 2016-2022, it is considered that the proposed development, by reason of:
 - (a) the proposed extent of underground excavation adjoining the Architectural Conservation Area and adjacent to the protected structures, some of which are in residential use, would be in material conflict with section 16.10.15 of the Dublin City Development Plan which discourages such significant development in the context of protected structures,
 - (b) the scale and extent of the alterations, specifically the proposed bar / restaurant at lower ground level, would be in material conflict with the provisions and policies set out in sections 11.1.5.4, 16.10.15 and, Policy Objective CHC4 of the Dublin City Development Plan, 2016-2022.The proposed development as a result, would contravene materially the (Z8) zoning objective for the site as set out in the Dublin City Development Plan, 2016-2022 providing for protection of existing architectural and design character, and limited expansion consistent with the conservation objective. The proposed development would also fail to protect and provide for and improve residential amenities as provided for in the (Z1) zoning objective for the rear / north-western section of the site. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Gillian Kane
Senior Planning Inspector

17 June 2019