



An  
Bord  
Pleanála

## Inspector's Report ABP304717-19

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<b>Development</b>	Amendments to permitted development (Reg. Ref. 2026/16 – PL29N.246933) to include 1. Provision of rooftop plant. 2. Omission of condition 4. 3. Solar panel at rooftop. 4. Modifications to floor area.
<b>Location</b>	Former “Irish Distillers Building”, Smithfield, Dublin 7.
<b>Planning Authority</b>	Dublin City Council.
<b>Planning Authority Reg. Ref.</b>	2176/19.
<b>Applicant</b>	Linders of Smithfield Limited.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant Permission.
<b>Type of Appeal</b>	Third Party.
<b>Appellant</b>	Smithfield Village Management Limited.
<b>Observers</b>	Transport Infrastructure Ireland.
<b>Date of Site Inspection</b>	21 <sup>st</sup> October, 2019.
<b>Inspector</b>	Sarah Lynch.

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## 1.0 Site Location and Description

The application relates to the former “Irish Distillers Building” located in Smithfield, Dublin 7. The site is to the south-east corner of the main square. To the south is the LUAS Red Line, to the west is Smithfield Square, to the east is Bow Street beyond which are the rear of St. Michan’s Church and the Law Library Building and to the north is the Children’s Court and part of the Smithfield Village development. The latter includes a residential component comprising a six-storey block with setbacks.

## 2.0 Proposed Development

Permission is sought for amendments to a permitted scheme which is primarily office/commercial use with some retail, restaurant and bar use at ground floor. The proposed amendments to the permitted development are:

- Provision of plant at roof level.
- Omission of Condition 4 at the permitted development.
- PV solar panel at rooftop.
- Modification as ground and first floor level to provide an additional 31.8sqm to retail unit at ground floor and 13.5sqm to office at first floor.

## 3.0 Planning Authority Decision

The planning authority decided to grant permission subject to 9 no. conditions including:

- To be in accordance with plans and particulars including further information received on 26<sup>th</sup> April, 2019.
- Contribution under Scheme.
- Contribution under Supplementary Development Contribution Scheme towards LUAS Cross City.
- Comply with all conditions of previous permission save as amended by this grant of permission.

- External finish of ground floor infill extension to match existing building.
- Comply with Codes of Practice.
- Hours of construction.
- Maintenance of roadways.

### 3.1. Planning Authority Reports

#### 3.1.1. Planning Reports

The consolidated report dated 20<sup>th</sup> May, 2019 refers and includes the following comments:

- The proposed ground floor 31 square metre increase to the retail unit would allow for a 1 metre minimum setback from the northern boundary and total footpath width remaining of 3.6 metres to 3.8 metres and impacts a public realm area which would be of limited value. No objection. The drawings show a retail use and permission would be required for a change of use to restaurant.
- The CGI's submitted show that the proposed plant would not appear to have an impact when viewed from the locations shown.
- Section 16.7.2 of development plan is noted.
- The proposed plant area would be 26 metres from the apartments on the northern side of New Church Street and would appear to be visible from the existing top floor apartments but additional impact on views from these apartments is likely to be minor. Overshadow study is required. Noise can be addressed by condition.
- TII requirements addressed by Condition 5 of parent permission.
- A Section 49 levy is required.
- Archaeological impact related to the additional floor area can be attached requiring compliance with Condition 11 of the parent permission.
- Responding to the further information the conclusions of the shadow analysis are described. Subject to screening it is considered that the proposed plant

would not have any undue adverse impact on the residential amenities of adjoining occupiers. Screening by way of the proposed aluminium louvre screen is considered acceptable.

- Regarding the proposed solar panels and the recommendation in the Inspector's report under PL29N.246933 that these would be visible from the other side of Smithfield and the quays and should be omitted the current proposals is for a 23.2-metre-long photovoltaic zone in the south elevation of the building. This will ensure near zero energy consumption and the panels would be set into the green roof below parapet level and would therefore not be visible.

### 3.1.2. Other Technical Reports

- Engineering Department Drainage Division indicates no objection subject to compliance with Code of Practice and conditions of previous permission in relation to surface water management.
- City Archaeologist's report requests compliance with Condition 11 of the previous permission.

## 3.2. Prescribed Bodies

Transport Infrastructure Ireland recommends a number of conditions including in relation to:

- Construction Traffic Management Plan to be submitted for the written agreement of the planning authority with written approval by TII.
- Demolition or construction method statement to be agreed, which shall resolve all LUAS interface issues.
- Vibration and settlement monitoring regime to be agreed.
- Levy.
- Other details including requirement for a works permit, developer to be liable for any costs associated with removal and reinstatement of LUAS Infrastructure, access and maintenance agreement with TII, 2.75 metre offset,

servicing and delivery arrangements. In summary there is a requirement for a CMP, for compliance with Code of Engineering Practice, Section 49 levy.

### **3.3. Third Party Observations**

A letter of objection submitted to the planning authority on behalf of Smithfield Village (Management) CLG raises issues which are reiterated in the appeal. The significance of and the reason for the imposition of Condition 4 refers. The proposed plant zone will have an injurious impact on visual and residential amenities of the apartments and rooftop private and communal amenity terraces serving those apartments and otherwise as described.

### **4.0 Planning History**

Reg. Ref. 2024/16/PL29N.246933

### **5.0 Policy Context**

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’.

### **6.0 The Appeal**

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

The main points of the appeal are:

- Objection in particular to provision of rooftop plant enclosure and omission of Condition 4. Also to the infill at ground level which represents further overdevelopment of the site.
- In the village the apartments are at second, third, fourth and fifth floor levels and some of the fifth floor level units are duplex incorporating an additional

floor. In the original application objections were made about impacts on residential amenities by reason of height, mass and scale having regard to proximity to the apartments.

- The imposition of condition 4 by the Board is clear evidence of serious concern about possible adverse effects any development above roof level would have, inter alia, on the residential amenities of Smithfield Village.
- Sections of the aluminium screen which demarcates the plant enclosure appears to extend to the parapet on the edge of the building at New Church Street. The height is 2.55 metres above the permitted parapet level.
- The outlook from the apartments has already been compromised by the permitted development and the plant would have an intrusive impact. While the reduction in access to daylight and sunlight may be described as marginal it still represents a further deterioration in residential amenity levels. The Board's Inspector previously observed that the aspect from the apartments would be substantially diminished and in this context any further deterioration in that outlook would be unacceptable.
- Noise emissions which were addressed by Condition 6 (which conditions fails to comply with DMG requirement of being precise and easily understandable) needs to be addressed by a specific level consistent with the preservation of appropriate daytime and night time standards and a monitoring programme be put in place.
- Queries the use of basement area where the plant was to be positioned.
- Additional floor area constitutes further overdevelopment of the site and should be refused.
- Use of additional floor area (if permitted) should be restricted to retail which is the permitted use.

## 6.2. Applicant Response

- The rationale for the amendments relate to a change in building regulations since the date of the previous grant of permission.

- The overall design of the proposal has been cognisant of adjacent residential properties.
- Regulations dictate that lift overruns are required and thus this necessitates an increase in height.
- Fire regulations require vents to the fire fighting lobbies which are required to open onto the roof.
- The heat pump requires free air in order to reclaim and reject heat from the external air. There the chillers are required to be at roof level.
- Air handling units are provided at roof level.
- Other plant items such as soil and waste stack terminal vents are provided at roof as they terminate at 300 mm above finished floor level. The life safety generator and hot water heater flues also terminate above roof level to ensure that combustion fumes do not affect the building tenants or occupants of the buildings in the vicinity.
- The location of the plant has been specifically chosen to protect the amenity of the Smithfield apartments.
- The proposed plant items above roof level have been grouped and placed within an aluminium louvred screen to minimise any potential impact on high level long distance views.
- The proposed infill corner is proposed to provide for a more coherent and rationalised building.
- The infill of this section will ensure that the colonnade and set back of the western elevation simply and clearly address Smithfield square and the corner of New Church street.
- The infill will not impinge on the footpath.
- A shadow analysis demonstrated that the proposed revisions would not result in any significant increase in overshadowing or loss of light.
- Vertical sky component reductions predicted at the Smithfield Village. Apartments is stated at -0.2 and -0.4%.



- Daylight retained in the Smithfield Village apartments is significantly higher than minimum recommended standards.
- The additional plant will not be visible from the surrounding area.
- The parent permission acknowledged that the views and vistas available to the Smithfield Village apartments would be interrupted by the original development but in the context of the site's location within the city it was noted that it would not be reasonable to insist that these were maintained. It was further noted that the proposed development would not deprive this development of a reasonable outlook. It is submitted by the applicant that the additions do not further deteriorate the outlook from these apartments.
- The applicant will comply with any conditions imposed by the Board in particular in relation to noise.
- Enforcement proceedings are separate to this planning application and are of no relevance to the appeal.

### 6.3. Further Responses

A further response was prepared by Jim Brogan on behalf of the Smithfield Village (Management). The issues raised within the grounds of appeal were reiterated and no new issues arose.

## 7.0 Assessment

- 7.1. This is third party appeal against a decision to grant permission for proposed alterations to a previously approved office development. The proposed site is located within the former Irish Distillers Building in Smithfield and is subject to the Z5 zoning objective 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'. The grounds of appeal relate to the potential impact on neighbouring residential amenity in relation to noise disturbance, loss of light and outlook and overbearing appearance of the development. Concerns were also raised in relation to the overdevelopment of the site and the height of the louvred enclosure. Having reviewed the particulars of the file I am satisfied that no other substantive issues

arise over and those raised within the grounds of appeal. The matters for consideration before the Board can therefore be summarised as follows:

- Loss of outlook and overshadowing.
- Overdevelopment.
- Visual Impact.
- Noise
- Appropriate Assessment

### **Loss of outlook and overshadowing**

- 7.2. It is contended by the appellant that the proposed development will result in an unacceptable level of overshadowing to the apartments within the Smithfield Village development and will further deteriorate the outlook from these apartments to an unacceptable level.
- 7.3. In response to concerns relating to overshadowing and loss of outlook and light the applicants carried out a shadow analysis which specifically assessed impacts on the Smithfield Village development. A significant number of rooms were identified at the Smithfield development for the purpose of the study. The study outlined that all windows assessed within the Smithfield had in excess of the minimum requirements in relation to access to skylight however a concern was raised in relation to rooms identified as H, J and K. It was outlined within the study that this broad brush approach has limitations and only assesses the impact at a particular point on the window and does not take into account the size of the window or the size of the room served by the window.
- 7.4. A more in depth analysis was therefore carried out with regard to these rooms and the average daylight factor was applied. Both before and after development scenarios were assessed and results found that whilst these windows would lose between 7 and 11% of daylight, the resultant daylight to these rooms would remain significantly in excess of the minimum recommended by the BRE requirements. It was therefore concluded that the overshadowing resulting from the proposed development would not be significant in the context of existing day light availability to these units.

- 7.5. It is also contended by the appellant that the loss of outlook from the existing apartments will be deteriorated to an unacceptable level. I note that reference was made to the impact on outlook from the Smithfield Village Apartments at the time of the previous appeal. However, it is important to note that whilst it was noted that the proposed development would diminish the open vistas available to the apartments it was stated that the development would not deprive any of the windows of a reasonable outlook. It was further noted within the previous appeal, that the expanse of the views available to the Smithfield Village apartment were as a result of the underutilisation of the appeal site and it would not be in keeping with the proper planning and sustainable development of the area to insist on their retention.
- 7.6. Having regard to the design of the louvred encasement proposed and the recessed position it will occupy within the roof set back from the Smithfield Village Apartments and given the stepped back design of the top floors of the permitted development, I do not consider that the additional plant proposed at roof top level will exacerbate the loss of outlook from the Smithfield Village Apartments or other surrounding development to such a significant degree as to warrant a refusal.
- 7.7. Finally, I note that concerns were raised in relation to the visual impact of the solar panels. I note that solar panels were omitted from the previous appeal, however it is now proposed to install these panels below the parapet to the south of the proposed plant zone. These panels will now effectively be out of sight from the surrounding area. It is important to note at this juncture that solar panels proposed within the previous appeal were to be located on the roof and would have been visible from the surrounding area. The revised proposal therefore addresses the visual concerns previously raised and as such I consider the installation of these panels to be acceptable.
- 7.8. In conclusion having regard to the limited impact of the development on the Smithfield Village apartments in terms of overshadowing, loss of light and loss of outlook, I consider that the proposed development will not result in any significant impacts to the residential amenity of this development and as such is acceptable in this regard.

## **Overdevelopment**

- 7.9. It is contended by the appellant that the proposed extension would result in an overdevelopment of this site. It is proposed to increase the ground floor area of the development by 31.8sqm and the first floor area by 13.5sqm. As per Section 16.5 of the Dublin City Development Plan 2016-2022, the indicative plot ratio for sites within Z5 zoning is between 2.5 and 3.0 while the indicative site coverage is 90%.
- 7.10. The proposal provides for a plot ratio of 4.65 whilst this is in excess of that permitted for Z5 zoned sites. It is the policy of Dublin City Council as outlined in Section 16.5 to permit such higher plot ratios in certain circumstances where development adjoins major public transport termini and corridors, where there is an appropriate mix of residential and commercial uses and where the development facilitates a comprehensive redevelopment in areas in need of urban renewal. Other such circumstances include where a development maintains existing streetscape profiles and where a site already has the benefit of a higher plot ratio.
- 7.11. The merits of the higher plot ratio have already been determined within the original appeal for the development, the marginal increase in floor space from 20,513m<sup>2</sup> to 20,558m<sup>2</sup> results in an insignificant increase in plot ratio relative to the permitted development. I do not consider this minimal increase to be an overdevelopment of the site and I do not consider it to be of such significance in this urban infill site to warrant a refusal of the proposal.
- 7.12. Further to the appellants concerns in relation to this element of the development, I note that the additional floor space provides for an additional 31m<sup>2</sup> of floor area in front of the permitted retail unit on the northwestern corner of the site fronting New Church Street. I concur with the Council that the proposal would align the frontage of the retail unit with the adjoining office area and would allow for a total remaining footpath width of 3.6m to 3.8m. The proposal would remove a small setback area in front of the retail unit; however, part of this area is of limited value in terms of public realm. The small corner area set back at first floor level would also be filled in. The applicants' response to the grounds of appeal contends that this would create a more coherent and rationalised building corner and eliminate an inefficient and enclosed dead-end space, which would not contribute to or enhance pedestrian flow and could result in anti-social activity.

7.13. Thus, having reviewed the plans and particulars submitted I consider the design massing of this element of the development to be acceptable.

### **Visual Impact of Plant**

7.14. The covering submission notes that the proposed roof plant area would include lift overrun, air conditioning units and hot water plant, smoke vents, automatic openable vents, kitchen extraction flue and a photovoltaic panel area. It is stated that plant items projecting above the permitted roof parapet would be grouped in a consolidated fashion around the permitted central atrium and immediately to the west, east and south of it, enclosed by an aluminium louvred screen. It is contended that the proposed roof plant is necessary to ensure proper servicing of the permitted building in accordance with current standards and regulations and best practice. The proposed photovoltaic panels are being provided to comply with new building regulations which require increased energy conservation measures and the introduction of buildings with near-zero energy requirements. It is noted that the panels would not project above the permitted parapet level, and therefore would have no visual impact when viewed from the surrounding area. It is contended that the location of the proposed plant would also minimise its visual impact on the area. CGIs have been submitted and these show that the proposal would not appear to have an impact when viewed from the locations shown.

7.15. I note that 7 storeys is the limit for commercial development within this location, however I further note that Section 16.7.2 of the Dublin City Development Plan states that plant, flues and lift overruns should not be included in the height of the building, as long as they are set back and properly screened and do not significantly add to the shadowing or otherwise of natural light beyond that of the main structure.

7.16. I note that the proposed plant area is situated c.26m from the top level of the existing apartment development on the northern side of New Church Street. The proposed plant area would be visible from existing the top floor apartments; however, having regard to the development permitted it is unlikely that any additional impact on the views enjoyed from these apartments would significant.

7.17. Having regard to the information submitted with the application and appeal in particular the photomontages of the proposed development in the context of

surrounding streets, I consider the visual impact of the proposed plant area to be minor and would not warrant a refusal of the development on this basis.

### **Noise**

- 7.18. It is contended by the appellants that the proposed plant will result in noise disturbance to these apartments. The applicant has proposed to enclose the proposed roof top plant within a louvred encasement. I consider that noise issues can be adequately dealt with by condition.

### **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.

## **8.0 Recommendation**

- 8.1. I recommend that permission is granted subject to the following 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 and would not be an overdevelopment of this urban infill site. 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. The development shall comply with all conditions of the previous permission on the site (An Bord Pleanála Ref. PL29N.246933) save as where amended by this grant of permission.

**Reason:** To clarify the scope of the permission.

3. The external finish of the ground floor infill extension shall match the finish of the existing building in respect of materials and colour.

**Reason:** In the interests of visual amenity.

4. Noise levels from the proposed development shall not be so loud, so continuous, so repeated, of such duration or pitch or occurring at such times as to give reasonable cause for annoyance to a person in any residence, adjoining premises or public place in the vicinity. All mechanical plant and ventilation inlets and outlets should be sound insulated and/or fitted with sound attenuators as necessary to ensure that the noise level as expressed as LAeq over 15 minutes at 1 meter from the façade of any noise sensitive location does not exceed the background level by more than 10 dB(A) for daytime i.e. 0700 – 1900 and shall not exceed the background level for evening and night time i.e.1900 - 0700. Generators and high duty compressors shall be provided with localised barriers or acoustic enclosures as appropriate.

**Reason:** In the interest of residential amenity

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. 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.

7. The site and development works shall be carried out in such a manner as to ensure that the adjoining street(s) are kept clear of debris, soil and other material and if the need arises for cleaning works to be carried out on the adjoining public road, the said cleaning works shall be carried out at the developers expense.

**Reason:** In the interest of orderly development.

8. 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 details of construction and demolition operations, for the written agreement of the planning authority.

**Reason:** In order to safeguard public transport infrastructure.

9. 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.



10. The demolition and 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. 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

11. 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.

12. 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.

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Sarah Lynch  
Planning Inspector

31<sup>st</sup> October 2019