



An
Bord
Pleanála

Inspector's Report ABP-305391-19

Development

PROTECTED STRUCTURE & RETENTION: Retention (for 2 years) of outdoor seating area structure. A small area of the site falls within the North Lotts and Canal Dock Strategic Development Zone Planning Scheme area, however the majority of the site is outside of the SDZ Planning Scheme Area. The specific development, the subject of this retention application is located outside the SDZ Planning Scheme area.

Location

The Malting Tower, Grand Canal Quay, Clanwilliam Terrace, Dublin 2

Planning Authority

Dublin City Council South

Planning Authority Reg. Ref.

3447/19

Applicant(s)

Osteria Lucio

Type of Application

Street furniture license

Planning Authority Decision

Refuse

Type of Appeal

First Party

Appellant(s)

Osteria Lucio

Observer(s)

TII

Date of Site Inspection

19th December 2019

Inspector

Colin McBride

1.0 Site Location and Description

- 1.1. The appeal site is located at Clanwilliam Terrace to the south east of the city centre. The appeal site is occupied by a restaurant at the ground floor of an existing 6-storey structure (residential on the levels above). The site is adjacent the rail line with a bridge over the road adjoining the site. Grand Canal Quay is located to the north of the site. To the south are existing two-storey office development along Clanwilliam Street. The rail bridge adjoining the site is a protected structure.

2.0 Proposed Development

- 2.1. Permission is sought for the retention (for 2 years) of outdoor seating area structure. The structure is an aluminium and grass enclosure with retractable roof, with a floor area of 23.2sqm and 2.9m in height.

3.0 Planning Authority Decision

3.1. Decision

Permission refused based on the following reasons...

1. The subject site is located within a Conservation Area and the outdoor seating by reason of its design and material would excessively dominate and be injurious to the character and amenities of this sensitive streetscape and would set an unwanted precedent for similar type development. In addition having regard to Section 111.1.5.1 CHC2(b) and (d) of the Dublin City Council development Plan 2016-2022; the proposed retention of the enclosure would seriously injure the special architectural character of the historic building at the Malting Tower and the architectural character of the adjoining bridge-a Protected Structure. The proposed development would therefore be contrary to the provisions of the Dublin City development Plan 20126-2022 and not in accordance with the proper planning and sustainable development of the area.

2. The outdoor seating area enclosure to be retained, which creates a fixed structure on the public footpath and reduces the width of the public footpath to less than 1m metre, endangers public safety by reason of traffic hazard and obstruction of pedestrians. The proposed development would therefore be contrary to the provisions of the Dublin City development Plan 2016-2022 and not in accordance with the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planning report (no date): The design of the proposal was considered inappropriate within the ACA and adjoining a protected structure. The proposal was also considered to reduce the width of the footpath significantly. Refusal was recommended based on the reason outline above.

3.2.2. Other Technical Reports

Architectural Conservation Officer (27/08/19): Refusal recommend on the basis that the design of the proposed structure would have an adverse impact on the character of an ACA and the setting of protected structure.

Drainage Division (30/07/19): No objection.

Transportation Planning Division (09/07/19): Refusal recommended on the basis that the structure reduces the width of footpath to less than 1m and endangers public safety by reason for traffic hazard and obstruction of pedestrians.

3.3. Prescribed Bodies

TII (30/07/19): The proposal is subject to a Section 49 Supplementary Development Contribution (Luas C1) in the event of grant of permission.

3.4. Third Party Observations

John Dorman

Francis Neary

Anne O'Mahony

Brian Daly

The issues raised in the submission can be summarised as follows...

- Detrimental impact on pedestrian movement, contrary development plan policy, impact on wheelchair users, detrimental visual impact.

4.0 Planning History

2783/04: Permission granted for the placing of 2 no. tables, 4 no. chairs, and canvas screens on the pavement area, provision of retractable awning and relocation of signage.

1552/04: permission granted for change of use of an existing retail unit from a hairdressing salon to a delicatessen.

5.0 Policy Context

5.1. Development Plan

5.1.1 The relevant Development plan is the Dublin City development plan 2016-2022. The site is zoned Z6-Employnet/Enterprise with a stated objective 'to provide for the creation and protection of enterprise and facilitate opportunities for employment creation'.

Policy RD7: To require a high quality of design and finish for new and replacement shopfronts, signage and advertising. Dublin City Council will actively promote and seek the principles of good shopfront design as set out in Dublin City Council's Shopfront Design Guidelines.

5.1.2 The appeal site is located with an Architectural Conservation Area.

The Planning and Development Act, 2000 (as amended), section 81(1), requires that a development plan shall include an objective to:

‘Preserve the character of a place, area, group of structures or townscape, taking account of building lines and heights, that –

a) is of special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest or value, or

b) contributes to the appreciation of protected structures, if the planning authority is of the opinion that its inclusion is necessary for the preservation of the character of the place, area, group of structures or townscape concerned and any such place, area, group of structures or townscape shall be known as and is in this Act referred to as an “architectural conservation area”.

Policy CHC4

To protect the special interest and character of all Dublin’s Conservation Areas. Development within or affecting a conservation area must contribute positively to its character and distinctiveness, and take opportunities to protect and enhance the character and appearance of the area and its setting, wherever possible.

Enhancement opportunities may include:

1. Replacement or improvement of any building, feature or element which detracts from the character of the area or its setting
2. Re-instatement of missing architectural detail or other important features
3. Improvement of open spaces and the wider public realm, and re-instatement of historic routes and characteristic plot patterns
4. Contemporary architecture of exceptional design quality, which is in harmony with the Conservation Area
5. The repair and retention of shop- and pub-fronts of architectural interest.

Development will not:

1. Harm buildings, spaces, original street patterns or other features which contribute positively to the special interest of the Conservation Area

2. Involve the loss of traditional, historic or important building forms, features, and detailing including roof-scapes, shop-fronts, doors, windows and other decorative detail
3. Introduce design details and materials, such as uPVC, aluminium and inappropriately designed or dimensioned timber windows and doors
4. Harm the setting of a Conservation Area
5. Constitute a visually obtrusive or dominant form.

5.1.3 Section 16.30 Street Furniture

Certain uses in the public realm, including elements of street furniture, can lead to problems of visual clutter and to obstruction of public footpaths for pedestrians, in particular people with disabilities. These elements include newspaper stands, telephone kiosks, traffic and bus signs, tables and chairs, taxi and bus shelters as well as unauthorised A-frames and spinner stands erected by retailers. It is an objective of Dublin City Council to control the location and quality of these structures in the interests of creating a high-quality public domain.

All outdoor furniture provided by private operators including retailers, publicans and restaurateurs, etc., and utility companies should be to the highest quality, preferably of good contemporary design avoiding poor historic imitation and respect the overall character of the area and quality of the public realm and be so located to prevent any obstruction or clutter of all footpaths and paved areas including landings.

In this regard, street furniture requires either a licence under Section 254 of the Planning and Development Act, 2000 (as amended) or planning permission (including street furniture erected on private lands). In both instances, the applicant is required to submit details of the location, design, specification and quality of the proposed elements of street furniture. Details of maintenance and cleansing schedules, together with a certificate of structural stability, may also be required. In considering applications for outdoor tables and chairs, the planning authority shall have regard to the following:

- Size and location of the facility

- Concentration of existing street furniture in the area
- The visual impact of the structure, particularly in relation to the colour, nature and extent of advertising on all ancillary screens
- Impact on the character of the streetscape
- The effects on the amenities of adjoining premises, particularly in relation to hours of operation, noise and general disturbance
- Impact on access and visibility.

5.2 National Policy

5.2.1 Design Manual for Urban Roads and Streets

Section 4.3.1 Footways, Verges and Strips (attached).

5.3 Natural Heritage Designations

None in the vicinity.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 A first party appeal has been lodged by McGill Planning on behalf of the applicants Osteria Lucio, The Malting Tower, Grand Canal Quay, Clanwilliam Terrace, Dublin 2. The grounds of appeal are as follows...

- It is noted the design and scale of the proposed structure is acceptable in the context of visual amenity and architectural heritage and that it provides a more vibrant streetscape in an area lacking in ground floor activities of this nature. It is considered the form and external material use are of good quality and would be acceptable in the context of the ACA and architectural heritage.
- In relation to the second reason it is noted that there is no through access for vehicles under the railway bridge and as a result the area outside the restaurant operates as a shared surface with pedestrian and cyclists having

use of the full extent of the street. On this basis it is noted that the proposal does not obstruct pedestrians and note that there is a lack vehicular movement at this location.

6.2. Planning Authority Response

6.2.1 No response.

6.3. Observations

TII (19/09/19): The proposal is subject to a Section 49 Supplementary Development Contribution (Luas C1) in the event of grant of permission.

7.0 Assessment

7.1. Having inspected the site and examined the associated documents, the following are the relevant issues in this appeal.

Visual amenity/Architectural Conservation Area/Architectural Heritage.

Footpath width/pedestrian movement/traffic.

Appropriate Assessment.

7.2. Visual amenity/Architectural Conservation Area/Architectural Heritage.

7.2.1 The proposal is for the retention (for 2 years) of outdoor seating area structure. The structure is an aluminium and grass enclosure with retractable roof, with a floor area of 23.2sqm and 2.9m in height. Permission was refused on the basis that the subject site is located within a Conservation Area and the outdoor seating by reason of its design and material would excessively dominate and be injurious to the character and amenities of this sensitive streetscape and would set an unwanted precedent for similar type development. In addition having regard to Section 111.1.5.1 CHC2(b) and (d) of the Dublin City Council development Plan 2016-2022; the proposed retention of the enclosure would seriously injure the special architectural character of the historic building at the Malting Tower and the architectural character

of the adjoining bridge-a Protected Structure. The proposed development would therefore be contrary to the provisions of the Dublin City development Plan 2016-2022 and not in accordance with the proper planning and sustainable development of the area.

7.2.2 I would note that the structure proposed is semi-permanent structure attached to the facade of the existing restaurant. It projects out onto the public footpath and is designed to provide full enclosure to a space formerly used for external seating open to the elements. The restaurant itself is located within an existing structure, The Malting Tower, which is attractive in character and located in a designated architectural conservation area (ACA). Despite the claims of the applicants/appellant, the area has an attractive character due to the cobbled street, the adjoining stone bridge, which is a protected structure and the existing structure on site. I would be off the view that the proposed structure is an unattractive structure that projects out into the public realm and instead of enhancing the vibrancy of the streetscape as claimed by the applicant, has the opposite impact in hiding the facade of the existing restaurant to the detriment of the visual character and streetscape of the area. I would consider that such would have disproportionate visual impact, lacking in any architectural quality or positive contribution to streetscape and be detrimental to the character of the area, which is designated ACA and would contrary Development Plan policy in regards ACA's. I would consider that the overall visual impact and the nature and scale of proposed structure would be detrimental to the visual amenities of the area regardless of whether such is within an ACA or not and that the permitting the proposed development would set an undesirable precedent for similar development through the city.

7.3. Footpath width/pedestrian movement/traffic:

7.3.1 Permission was also refused on the basis the outdoor seating area enclosure to be retained creates a fixed structure on the public footpath and reduces the width of the public footpath to less than 1m metre, endangering public safety by reason of traffic hazard and obstruction of pedestrians. The structure in question does project onto

the public footpath and does reduce the width of the footpath area available to the public to less than 1m. the applicants/appellants note that the fact that through traffic is not facilitated under the bridge and the area outside the restaurant is a cul-de-sac means that the area acts as a shared surface facilitating pedestrian movements safely and that the reduced width of the footpath is not an issue.

7.3.2 Development Plan policy under Section 16.30 of the Dublin City Development regarding Street Furniture notes that such should “be so located to prevent any obstruction or clutter of all footpaths and paved areas including landings”. I would note that the Design Manual for Urban Street and Roads includes recommended standards for footpath widths depending on location and level of activity (attached). These standards range from 1.8m wide for areas of low pedestrian traffic, 2.5m wide for areas of low to moderate pedestrian activity, 3m for areas of moderate to high pedestrian activity and 4 m wide for areas of high pedestrian activity. I would consider that the existing situation with the street furniture taken in conjunction with is unacceptable and provides a significantly reduced width in a moderate pedestrian trafficked area. I would acknowledge that the site is adjoining an area where through traffic does not occur, however there is still a clear distinction between the area dedicated to the public footpath and the area that is the public road and facilitating traffic movements. I would consider that the proposed development, which projects significantly into the public footpath, would be an obstruction or clutter of a footpath with insufficient width to cater for such without impact on pedestrian movements as well as being severely constrained in regards to pedestrians with impaired mobility (wheelchair users, the visually impaired). I would consider that the proposal would be contrary to Development plan policy and the recommendations of the Design manual for Urban Roads and Streets. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

7.4 Appropriate Assessment:

7.4.1 Having regard to the nature and scale of the proposed development and its proximity to the nearest 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 refusal based on the following reasons.

9.0 Reasons and Considerations

1. The subject site is located within a Conservation Area and by reason of its design, scale and its projecting nature relative to the existing streetscape would have disproportionate and detrimental impact on the visual amenities of the area and character of the designated Architectural Conservation Area. The proposed development would contrary be contrary objective CHC4 of the County development plan, which seeks 'to protect the special interest and character of all Dublin's Conservation Areas' would set an undesirable precedent for similar development throughout the city and would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The proposed development would be located within the existing pedestrian footpath and reduce the effective width of the pedestrian footpath so as to constitute an obstruction or clutter of a footpath with insufficient width to cater for such without impact on pedestrian movements as well as being severely constrained in regards to pedestrians with impaired mobility. The proposed development at this location would, therefore, be would be contrary to the provisions of the Dublin City Development Plan 2016-2022 concerning such development and the recommendations of the Design Manual for Urban Roads and Streets, and would, therefore, be contrary to the proper planning and sustainable development of the area.

Colin McBride
Planning Inspector

19th December 2019