



An  
Bord  
Pleanála

## Inspector's Report ABP305594-19

---

<b>Development</b>	Extension to the rear of existing shop at ground floor level and existing restaurant and 1 <sup>st</sup> floor level with a roof terrace area.
<b>Location</b>	Fallon and Byrne 11-17 Exchequer Street, Dublin 2.
<b>Planning Authority</b>	Dublin City Council.
<b>Planning Authority Reg. Ref.</b>	3076/19.
<b>Applicants</b>	Fallon and Byrne.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant.
<b>Type of Appeal</b>	Third Party -v- Grant.
<b>Appellant</b>	Burlington Real Estate Limited.
<b>Observers</b>	None.
<b>Date of Site Inspection</b>	January 6 <sup>th</sup> 2020.
<b>Inspector</b>	Paul Caprani.

## Contents

1.0 Introduction .....	3
2.0 Site Location and Description .....	3
3.0 Proposed Development .....	4
4.0 Planning Authority's Decision .....	4
4.1. Decision .....	4
4.3. Documentation Accompanying the Application .....	4
4.8. Further Information Request .....	5
4.9. Further Information Submission .....	5
5.0 Planning History.....	6
6.0 Grounds of Appeal.....	6
7.0 Appeal Responses.....	7
8.0 Observations.....	7
9.0 Development Plan Provision.....	7
10.0 EIA Screening .....	8
11.0 Planning Assessment.....	8
12.0 Appropriate Assessment .....	9
13.0 Decision .....	10
14.0 Reasons and Considerations .....	10
15.0 Conditions .....	10

## 1.0 Introduction

ABP305594-19 relates to a third party appeal against the decision of Dublin City Council to grant planning permission for the extension of a shop with associated changes to the access and delivery area to the rear and the extension of a restaurant at first floor level opening onto a roof terrace. Dublin City Council issued notification to grant planning permission subject to 12 conditions and this was the subject of a third-party appeal. The third-party appeal does not object to the proposal per se but requests that two additional conditions be attached in order to protect the amenity of surrounding properties. The applicant in response to the grounds of appeal indicated that he has no issue with the attachment of the conditions requested.

## 2.0 Site Location and Description

- 2.1. The appeal site is located on Exchequer Street on the south side of the River Liffey in Dublin City Centre. The block on which the site is located is bounded by Exchequer Street to the south, Dame Court to the west and St. Andrew's Lane to the east. The building which is the subject of the current application faces southwards onto Exchequer Street. The building comprises of a large four-storey five double bay structure rising to just less than 19.5 metres in height. The building accommodates traditional style/ art deco shopfront at ground floor level with a brick façade on the upper floors.
- 2.2. The building accommodates a restaurant and wine cellar at basement level with a retail delicatessen and grocery store at ground floor level. A restaurant is also located at first floor level with a function room at second floor level. The third floor currently appears to be vacant. A surface car parking area is located to the north of the building. Access to the car park is provided via Andrew's Lane to the east. The wider area accommodates a mixture of retail and commercial activity at ground floor level with office and some residential development above. A six-storey 1960s style rectangular office block is located within the surface car park area to the north of the subject site.

### **3.0 Proposed Development**

- 3.1. At ground floor level it is proposed to extend the building to the rear to create an additional 158 square metres of retail/café/restaurant space.
- 3.2. At first floor level it is proposed to provide an extension to the existing restaurant to the rear of the building accommodating an additional area of 92 square metres. Further to the rear it is also proposed to provide a first-floor external terraced area which will extend the building at first floor level to a depth of just over 11.6 metres and will incorporate an area of 127 square metres. A separation distance between the external terraced area and the six-storey office block to the immediate north will be c.8 metres. It is also proposed to incorporate a 4 metre high brickwork boundary around external terrace which will extend up to second floor level. At second floor level it is proposed to incorporate open voids in the perimeter wall surrounding the external terrace. At second floor level it is also proposed to incorporate a small food preparation area (19 square metres) to the immediate east of the external terrace.

### **4.0 Planning Authority's Decision**

#### **4.1. Decision**

- 4.2. Dublin City Council issued notification to grant planning permission for the proposed development subject to 12 standard conditions.

#### **4.3. Documentation Accompanying the Application**

- 4.4. The application was accompanied by a Planning Design Report and an Engineering Services Report which included a site flood risk assessment.
- 4.5. Also submitted was a letter from the owner of the lands 'Eir Limited' which provided consent to make the application.
- 4.6. A letter from Transport Infrastructure Ireland notes that the subject site falls within an area to which the Section 49 Supplementary Development Contribution Scheme for the Luas Cross City Line applies. If the above application is successful and not exempt it is requested that a Section 49 Contribution Scheme Levy be submitted.

#### **4.7. Internal Reports**

- 4.7.1. An archaeological report recommends that planning permission be granted subject to a number of conditions.
- 4.7.2. A report from the Drainage Division states that there is no objection subject to compliance with the Greater Dublin Regional Code of Practice for Drainage Works.
- 4.7.3. A report from the Roads, Streets and Traffic Department recommends further information with regard to cycle parking a sweep path analysis.

#### **4.8. Further Information Request**

- 4.8.1. The initial planning report requested further information on the basis of the report prepared by the Roads, Streets and Traffic Departments Report.

#### **4.9. Further Information Submission**

- 4.9.1. Further information was submitted by the applicant on 16<sup>th</sup> August, 2019 which includes drawings indicating a sweep path analysis.
- 4.9.2. On foot of this further information submitted the Roads, Streets and Traffic Department recommended that planning permission be granted subject to 3 conditions.
- 4.9.3. On this basis a further planning report concluded that the proposed development will upgrade an established a city centre restaurant and will contribute to the animation of the area without seriously injuring the amenity of existing buildings and would therefore be in accordance with the proper planning and sustainable development of the area. It is on this basis that Dublin City Council recommended a grant of planning permission.

#### **4.10. Observation**

- 4.10.1. One observation was submitted by the current appellant highlighting concerns that the proposed development will adversely impact on the amenity of the Central Hotel Chamber office building to the immediate west of the subject site through general noise and disturbance arising from the proposed external terrace.

## 5.0 Planning History

- 5.1. There are no history files attached.
- 5.2. The planner's report makes reference to one historical application pertaining to the site under Reg. Ref. 6881/06 planning permission was approved to convert the second floor offices to restaurant/function room and all associated works and services.

## 6.0 Grounds of Appeal

- 6.1. The decision of Dublin City Council to issue notification to grant planning permission was appealed on behalf of Burlington Real Estate Limited by John Spain and Associates. It states that Burlington Real Estate Limited is the asset manager for the Central Hotel Chambers Partnership and the owners of Central Hotel Chambers building at No. 7 – 9 Exchequer Street which adjoins the application site. Burlington Real Estate have raised concerns regarding the impacts of the proposal on the adjacent office building in terms of overlooking, noise and disturbance. Whilst the appellants are in agreement with the plans submitted with the application which include an external awning system over the first-floor extension area and a planting screen at second floor level, details of the quality and the specifications of these proposals have not been provided in the planning documentation. Following discussions with the applicant it was agreed that an awning will be installed on and over the west side of the first floor terrace in order to protect the privacy of the Central Hotel Chambers office building and that an external evergreen planting to the overall height of approximately 2 metres will be located on the second floor terrace to protect the privacy of the adjoining office block.
- 6.2. In order to ensure that the applicant complies with the above requirements it is respectfully suggested that the Board include the above two requirements in the form of two additional conditions in any grant of planning permission.
- 6.3. The suggested wording of the conditions is set out in the grounds of appeal.

## 7.0 Appeal Responses

7.1. A response on behalf of the applicant from 'Plus Architecture' states that it fully supports the proposal from John Spain and Associates to attached the above conditions to the grant of planning permission and the applicants are willing to undertake and carry out the works on the basis set out in the grounds of appeal. The applicants have no issue with the objection letter and request that the matter be dealt with as swiftly as possible.

## 8.0 Observations

No observations have been submitted in respect of the appeal.

## 9.0 Development Plan Provision

9.1. The site is governed by the policies and provisions contained in the Dublin City Development Plan 2016-2022.

9.2. The subject site is governed by the zoning objective Z5 which seeks to consolidate and facilitate the development of the central area, and to identify, reinforce and strengthen and protect its civic design character and dignity. The subject site is also located within an Architectural Conservation Area.

9.3. Section 16.29 of the Development Plan specifically relates to restaurants. It notes the positive contribution of café and restaurant uses and the clusters of such uses to the vitality of the city. In considering applications for restaurants the following will be taken into consideration.

- The effect of noise, general disturbance, hours of operation and fumes on the amenity of nearby residents.
- Traffic considerations
- Waste storage facilities.
- The number/frequency of restaurants and other retail services in the area (where the proposal relates to a Category 1 or Category 2 shopping street as defined in the City Centre Retail Core, Principle Shopping Streets in Chapter 7 and Appendix 3 of the Plan).

- The need to safeguard the vitality and viability of shopping areas in the city and to maintain a suitable mix of retail uses.

## 10.0 EIA Screening

Having regard to the nature of the development comprising of a modest ground floor and first floor extension to an established use in an urban area it is reasonable to conclude that there is no real likelihood of significant effects on the environment from the proposed development. The need for an environmental impact assessment, can therefore be excluded by way of preliminary examination.

## 11.0 Planning Assessment

- 11.1. I have read the entire contents of the file, visited the subject site and its surroundings and I would agree that the principle of development on the subject site is appropriate and would fully accord with the zoning objectives and policy statements contained in the development plan which in general, seeks to encourage café and restaurant uses within the city centre in order to enhance the vitality and vibrancy of the city centre.
- 11.2. I am further satisfied that, notwithstanding the fact that the site is located within an Architectural Conservation Area, I consider that the modern design is unlikely to detract from the original character of the building particularly having regard to the fact that the proposed extension is located to the rear of the building and will only be visible from an area of private car parking which is located centrally within the urban block. The Board will also note that while the main building is located within the confines of a designated Architectural Conservation Area the proposed extension is located adjacent to, but outside the northern boundary of this designation.
- 11.3. On the above basis I consider the principle of the proposed development to be acceptable and that it is not necessary to determine the application on a de novo basis. The Board therefore can restrict its deliberations in my opinion to the issues raised in the grounds of appeal i.e. whether or not it is appropriate to attach the conditions suggested. The Board should further note that the conditions in question



relate to points of detail which appear to be accepted by both parties on the basis that the conditions proposed will assist in diminishing potential adverse impact on surrounding amenity. The first suggested condition relates to the construction of a permanent awning system to be installed on and over the west side of the first-floor roof terrace in order to protect the privacy of the adjoining office block and to reduce noise generation from the terrace. I consider the provision of such an awning would be reasonable and would assist in reducing potential adverse impacts on surrounding amenity through noise and disturbance. Furthermore, the awning would not be readily visible from any public vantage points in the surrounding area so as to detract from the overall proposed sign. This condition is therefore acceptable in my view.

- 11.4. The second condition specifically relates to a point of detail which is already indicated on the drawings submitted. This point of detail relates to the proposed external planting which is indicated on Drawing No. 380\_PFB\_02\_02 be implemented as part of the condition and be at least 2 metres in height. The condition further suggests that any such external planting should consist of evergreen species and should be in place prior to the occupation of the proposed terrace.
- 11.5. Again, I consider such a condition would be reasonable and would both protect the visual amenities of the occupants of adjoining buildings and would also enrich and complement the aesthetic of the proposed terraced area to the rear. I would reiterate that it is apparent from the applicant's response to the grounds of appeal that both conditions have been fully endorsed by the applicant.
- 11.6. On this basis I would recommend that the Board uphold the grounds of appeal in this instance and attach the conditions as outlined in the grounds of appeal.

## 12.0 **Appropriate Assessment**

Having regard to the nature and scale of the proposed development and nature of the receiving environment together with the 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.

## 13.0 Decision

Grant planning permission for the proposed development in accordance with the plans and particulars lodged, based on the reasons and considerations set out below.

## 14.0 Reasons and Considerations

Having regard to the Z5 zoning objective pertaining to the site which seeks to consolidate and facilitate development of the central area and to identify, reinforce and strengthen and protect its civic design character and dignity, 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, would not be prejudicial to public health and would generally be acceptable in terms of traffic safety and convenience. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

## 15.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further information submitted to the planning authority on the 16<sup>th</sup> day of August 2019, 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 the commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. The proposed roof terrace shall be for dining purposes only and shall be closed between the hours of midnight. and 8 a.m. daily and no external amplification of music shall be permitted onto the terrace area.

**Reason:** In the interest of orderly development and neighbourhood amenity.

3. No advertisement or advertisement structure other than those shown on the drawings submitted with the application shall be erected or displayed on the building in such a manner as to be visible from outside the building, unless authorised by a further grant of planning permission.

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

4. Site development and building works shall be carried out only between the hours of 0700 to 1800 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 [residential] amenities of property in the vicinity.

5. Site development works and construction works shall be carried out in such a manner so as to ensure that the adequate streets are kept clear of debris, soil and other material and if the need arises for cleaning works such cleaning works shall be carried out on the adjoining public road at the developer's expense.

**Reason:** To ensure adjoining roadways are kept in a clean and safe condition during construction works in the interest of orderly development.

6. Water supply and drainage arrangements, including the attenuation of surface water shall be agreed in writing with the planning authority prior to the commencement of development.

**Reason:** In the interest of public health.

7. The applicant or developer shall enter into water and/or wastewater connection agreements with Irish Water prior to the commencement of development.

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

8. The following requirements of Dublin City Council's Transportation Planning Division shall be complied with.
  - (a) Prior to the commence of development and the appointment of a contractor, a construction management plan shall be submitted to the planning authority for the written agreement. This plan shall provide details of intended construction practice for the development including traffic management, hours of working, noise management measures and off-site disposal of construction and demolition waste.
  - (b) All costs incurred by Dublin City Council including any repairs to the public road and other such services as a result of the development shall be at the expense of the developer.

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

9. A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

**Reason:** To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

10. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which 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, and
- (b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site, and
- (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

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 area and

to secure the preservation in-situ or by record and protection of any archaeological remains that may exist within the site.

11. A permanent awning system provided over the first floor terraced area shall consist of a heavyweight material capable of attenuating sound from the outdoor terraced area. Details of the proposed materials and specification for the awning system shall be agreed in writing with the planning authority prior to the commencement of development.

**Reason:** To protect the amenity of surrounding properties.

12. The external planting bordering the external terrace indicated on Drawing No. 380\_PFB\_02\_02 shall be at least 2 metres in height consisting of an evergreen species and shall be in place prior to the occupation of the proposed terrace. Details of the proposed planting system shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

**Reason:** To protect the visual amenities of the area and the amenity of surrounding properties.

13. The developer shall pay to the planning authority a financial contribution of €25,358 (twenty-five thousand three hundred and fifty-eight euro) 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. The application of any indexation required by this condition 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.

**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 the Luas Cross City Line 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.

---

Paul Caprani,  
Senior Planning Inspector.

January 7th, 2019.