



An  
Bord  
Pleanála

## Inspector's Report

### ABP-306060-19

#### Development

Amendments to permitted development under Planning Ref. 2024/16 (An Bord Pleanála Ref. PL29N.246933) to include amendments to the permitted floor plans at ground to sixth floor levels,

#### Location

Formerly known as the 'Irish Distillers Building, Smithfield, Dublin 7. The site is bound by Phoenix Street to the south; Smithfield Square to the west, New Church Street to the north and Bow Street to the east

#### Planning Authority

Dublin City Council North

#### Planning Authority Reg. Ref.

3974/19

#### Applicant(s)

Linders of Smithfield Ltd.

#### Type of Application

Permission.

#### Planning Authority Decision

Grant permission

#### Type of Appeal

Third Party

#### Appellant(s)

An Taisce.

#### Observer(s)

None.

**Date of Site Inspection**

9<sup>th</sup> March 2020.

**Inspector**

Bríd Maxwell

## 1.0 Site Location and Description

- 1.1. The appeal relates to the former “Irish Distillers Building” site located at the southern end and to the east of Smithfield Square in central Dublin approximately 1.2km west of O’ Connell Street. The site which extends to 4,427sq.m in area comprises an entire city block bounded to the west by Smithfield Square, to the south by the red luas line / Smithfield Stop to the east by Bow Street and to the north by New Church Street. The site is currently under development with demolition of previous buildings complete and basement levels excavated and under construction. The permitted development included the part demolition of the buildings on site and construction of a commercial building ranging between 4 and 7 storeys over double basement level with a total gross floor area of 20,512.6 sq.m. (above ground floor level). The permitted building contains 18,236 sq.m of office floor space from ground to sixth floor, with 2 no retail units (486sq.m) a restaurant (169 sq.m) and a bar/restaurant (241 sq.m) at ground floor level.
- 1.2. On the opposite side of New Church Street to the north of the site is the Children’s Court house in a three-storey building and the Smithfield Village Apartments in a former distillery which is up to 6 storeys in height. The back of the church yard of St Michan’s is on the opposite side of Bow Street to the east. The four storey Law Library Building is also to the east and The Pheonix Court Building, an 8-storey high contemporary building lies on the southern side of the luas line to the south of the site.

## 2.0 Proposed Development

- 2.1 The proposed development involves amendments to the previous permission PL29N246933 to include:

Amendments to the previously permitted floorplans at ground to sixth floor levels through a variation of setbacks and provision of infill extensions that result in an increase in the permitted office floorspace from a permitted 18,236sq.m to 19,752sq.m (an increase of approximately 1,516 sq.m GFA) and an increase of 31

sq.m to retail unit 1 at ground floor level. The changes result in associated external amendments to the previously approved elevations of the permitted building.

Omission of Condition 4 of planning permission DCC Reg Ref 2024/16

PL29N246933 and the provision of rooftop plant enclosed by an aluminium louvre screen. The proposed roof plant will enable the efficient and sustainable servicing of the building in accordance with best practice and highest standards of building servicing techniques and current building regulations. The provision of a PV solar panel at roof level to supplement the renewable heat energy generated on site using heat pumps to comply with Part L2017 Building Regulations and associated NZEB requirements.

2.2 The precise detail of the proposed amendments are outlined in plans and particulars submitted with the application which include the following supporting documentation

- Planning Report Declan Brassil & Co
- Architectural Design Statement by BKD Architects.
- Daylight Assessment by BPG3
- Engineering planning report Punch Consulting Engineers
- Site Specific Flood Risk Assessment Punch Consulting Engineers
- Traffic and Transport Assessment Punch Consulting Engineers
- Outline Workplace Travel Plan Punch Consulting Engineers
- Sustainability and Energy Statement Ethos Engineering,

### 3.0 **Planning Authority Decision**

#### 3.1. **Decision**

3.1.1 By order dated 5<sup>th</sup> November 2019 Dublin City Council issued notification of its decision to grant permission and 9 conditions were attached including the following:

- Condition 2. Developer shall pay €116,179.7 in accordance with the Section 48 development contribution scheme.

- Condition 3. Developer to pay €58,786.00 in respect of Luas cross city scheme. Section 49 Supplementary Development Contribution Scheme.

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

3.2.1.1 Planner's report considers that the proposed development improves the design and appearance of the building enabling set-back forms to be simplified. Overall it is considered that the modifications will improve the appearance of the building resulting in a simpler composition thereby contributing positively towards the streetscape and the character of the area.

### **3.2.2. Other Technical Reports**

3.2.2.1 Engineering Department report indicates no objection subject to compliance with Greater Dublin Regional Code of Practice for Drainage Works. Version 6.0.

## **3.3. Prescribed Bodies**

3.3.1 Transport Infrastructure Ireland (TII) recommends conditions regarding Section 49 Supplementary Development Contribution Scheme. No adverse impact on Luas operation and safety.

3.3.2 Submission of An Taisce raises the concerns also raised in the grounds of appeal with regard to the increased scale of the development at the expense of the mitigating aspects of the permitted scheme. The nature of the application undermines the delivery of proper planning and sustainable development. Note the unauthorised demolition of historic limestone elevations. Concerns regarding size, height and footprint of the development given a sensitive context in particular the residential apartments within Smithfield Village and the general scale and pattern of development along the east side of Smithfield.

### 3.4. Third Party Observations

3.4.1 Submission by Jim Brogan, Planning and Development Consultant on behalf of “Smithfield Village (Management) CLG” - objects to the development particularly the amendments comprising the proposed expansions of the upper floors of the development and consequential increase in floorspace. Proposal constitutes overdevelopment. Increased height will cause injury to residential and visual amenity of apartments and roof top private /communal terraces in the Smithfield Village. Object to rooftop plant and requested omission of condition 4.

## 4.0 Planning History

### **ABP 304717-19 (2176/19)**

Permission granted for amendments to previously permitted development to include provision of rooftop plant and omission of condition 4 of permission 2024/16 PL29N246933.

**0317/19** In Section 5 referral of the question of whether the dismantling and reconstruction of a stone wall in accordance with the details submitted with DDC Planning Ref. 2024/16 (ABP Ref. PL29N.246933), is not exempted development The dismantling and reconstruction of a structure, which is not a protected structure and is not situated in an architectural conservation area, in the course of the carrying out of development on foot of permission granted by the Planning Authority and An Bord Pleanála (Reg. Ref. 2024/16, An Bord Pleanála Ref. PL29N.246933), within the lifetime of the permission granted, would allow for the completion of the development in accordance with the permission granted.

### **PL29N 246933 (2024/16)**

Permission for part demolition of existing Irish Distillers Building and construction of commercial building ranging in height between 4 and 7 storeys with associated works and services.

**2660/11** Refusal of permission for mixed use commercial development within a 7-storey building over three basement levels. With Gross Floor area of 25,415 sq.m. Refused on grounds of negative impact on historic character. Inadequate setback overshadowing of upper levels of Smithfield apartment and overdevelopment

**1502/02** Permission granted for a 6/7 storey mixed use (office / retail( regeneration scheme over 1.5 basement levels comprising 23,941 sq.m of floorspace (including 9 no retail / showroom / restaurant units and a creche) and 115 basement level car parking spaces. Not implemented

## **5.0 Policy Context**

### **5.1 Context**

#### **5.1.1 Project Ireland 2040 – National Planning Framework**

5.1.1.1 The National Planning Framework represents the overarching national planning policy document, setting a course for planning and includes a number of strategic outcomes including compact Growth, careful management of existing public landbanks and brownfield sites to create attractive places for people to live and work while preventing sprawl.

#### **5.1.2 S28 Ministerial Guidelines.**

- Urban Development and Building Height Guidelines, Department of Housing Planning and Local Government, December 2018
- Architectural Heritage Protection Guidelines for Planning Authorities (2011)
- Urban Design Manual A best practice Guide. May 2009.
- The Planning System and Flood Risk Management (including the associated 'Technical Appendices') Dept Environment Heritage and Local Government November 2009.
- Design Manual for Urban Roads and Streets, DMURS

## **5.2 Development Plan**

5.2.1 The Dublin City Development Plan 2016-2022 refers.

The site is zoned 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.”

The site is adjoining the designated Conservation Area of Smithfield Square.

## **5.3 Natural Heritage Designations**

None

## **5.4 EIA Screening**

5.4.1 There is no real likelihood of significant effects on the environment based on the nature, size and location of the proposed development and therefore no EIA is required in this instance.

# **6 The Appeal**

## **6.1 Grounds of Appeal**

6.1.1 The third-party appeal is submitted by An Taisce. Grounds of appeal are summarised as follows:

- Concern arises regarding the nature of the application in terms of an amendments to permitted development which undermines the delivery of proper planning and sustainable development as the Planning Authority or interested bodies cannot make a rounded assessment of the proposed development in the first instance.
- Permission granted *en masse*. Concern regarding lack of availability of planner’s report on line.



- Unacceptable demolition of historic limestone elevations in breach of the permission. Applicant maintained that a structural fault had arisen necessitating demolition but there was no evidential substantiation of this. The unauthorised action warrants a significant fine.
- Original permission was subject to two third party appeals on grounds of impact on sensitive residential context, how the development fits into the general scale and pattern of development along the east site of Smithfield, proximity to the historic church and churchyard of St Michan's, protected structure and removal of trees and soft landscaping from within the site. An Bord Pleanála is urged to ensure the delivery of a sensitive development at this location which incorporates elements to mitigate the impacts of the permitted development on the surrounding environment. Request that the proposed amendments in this case are refused permission.

## 6.2 Applicant Response

6.2.1 The response by Declan Brassil and company on behalf of the first party is summarised as follows:

- Since the grant of parent permission and prior to the lodgement of this third party appeal the Board granted permission (13 November 2019 under 304717-19 2176/19) for amendments to the parent permission to include provision of rooftop plant and omission of condition 4 provision of solar panel at rooftop and modifications to permitted floor plates.
- The purpose of the proposed amendments is to achieve design efficiencies to optimise the sustainable development and use of this brownfield city centre site situated on a high capacity transportation corridors and to provide large office floorplates and an overall floor area that meets the needs of the tenant for the building. The OPW intends to consolidate a number of state department in the building including the Chief State Solicitors Office, State Valuers. PRA Office the Ordinance Survey of Ireland and others depending on available space in the building.
- As regards the principle of an amendment application there is no basis for the assertion that amendment applications frustrate or preclude a rounded assessment

of a proposed development in the first instance. Description is sufficiently detailed to describe all proposed amendments.

- The extent, scope and any potential impacts associated with the proposed amendments are clearly described and illustrated and are readily discernible from the submitted application documents.
- No basis for alleged adverse amenity impacts.
- Design alterations and revised massing have been carefully considered and modelled having regard to the context of the site and in particular the proximity of residential apartments to the north.
- Computer Generated Images facilitate a comparison of the appearance.
- Whilst the proposal does not seek to increase the overall height of the permitted development, it seeks to adjust the height of the previously permitted brick shoulder heights and setback levels. It is submitted that the streetscape context established by the size and character of Smithfield Square to the west and the height of newer buildings to the south, east and along the western side of Smithfield, absorbs the proposed increased shoulder heights successfully without significantly affecting the perceived mass and height of the permitted building.
- The permitted setback levels above the brick shoulder height and parapet level comprised two staggered double setback upper floor elements that resulted in a complex modulation of the building. The proposed amendments enable the setback forms to be simplified whereby the double setback arrangement is replaced with a simple single set back floor in a position that generally corresponds with that of the permitted lower set back floor. This has a marked improvement on the building creating cleaner lines whilst retaining effective modulation of the upper floor. This improved appearance would also contribute positively to the streetscape.
- Detailed daylight and sunlight assessment report by BPG3 accompanies the application. It assesses the incremental changes proposed to the massing of the scheme with reference to the previously permitted results and relevant BRE Guidance standards.

- Having regard to the findings of the assessment it is submitted that the proposed amendments to the permitted envelope of the development would not result in adverse residential amenity impacts from a daylight and sunlight perspective.
- Proposed development only affects the permitted setbacks and massing along the eastern side and north-eastern corner of the building and would not materially alter the context and relationship with the church and graveyard at St Michan's. Relationship between the application site and clock tower at St Paul's Church on Arran Quay remains unchanged.
- Regarding demolition of limestone elevations on Bow Street this is of little relevance to the application and appeal. Notably DCC issued a Section 5 declaration dated 29 July 2019 declaring that the removal of the wall and its subsequent reinstatement is exempted development.

### **6.3 Planning Authority Response**

6.3.1 The Planning Authority did not respond to the grounds of appeal.

### **6.4 Observations**

6.4.1 None

### **6.5 Further Responses**

6.5.1 The submission of the third-party appellant in response to the first party response to the appeal is summarised as follows:

- An Taisce considers the entire matter concerning the former Irish Distillers Building to be extremely concerning. Events relating to the Distillers building are central to the current application and parent permission for redevelopment on the site.

- Noting the planning history on the site the initial application refused on grounds of negative impact on residential amenity, excessive plot ratio and demolition of existing converted historic stone warehouse. Subsequent permission 2024/16 246933 proposed retaining the cut stone Distillers Building within the development. When work got underway the Distillers Building was completely demolished effectively securing the complete demolition and site clearance. The distillers building had been renovated and adapted for office use circa 1980 and the building was part of a distinctive collection of historic of stone warehouses along the Bow Street Conservation Area. The 1990s HARP regeneration plan acknowledged the stone warehouse heritage of the area. The action taken is the worst possible example for the destruction of the built heritage in the middle of a construction boom. The rebuilt stone wall will look like a newly built wall.
- The permitted development included setbacks to mitigate impacts on surrounding environment and the proposal to remove these now is not proper planning and sustainable development.
- Consider that the application should be refused, however if the Board is minded to grant permission it is recommend that at the least the setbacks in the upper floors of the northern elevation be maintained. Setbacks in the eastern elevation facing Bow Street should be maintained in order to preserve the scale and balance of the street and preserve the qualities and characteristics of the Conservation Area streetscape and vistas along the street and mitigate impact on the adjacent historic landmark Protected Structure St Michan's Church and its graveyard.

## **7 Assessment**

7.1.1 The grounds of appeal relate to the question of overdevelopment, impact on architectural heritage and impact on established residential amenity. As regards matters raised within the appeal in respect of the availability of documents to public view, such matters of beyond the remit of the Board in terms of assessment of the appeal. As regards concerns raised regarding the nature of the application as an amendment to an existing permission and fears that this would preclude the rounded assessment of the proposal I consider that the nature, extent, scope and potential

impacts associated with the proposed amendments are clearly described and illustrated within the application documents thereby enabling the detailed assessment of the proposal.

7.1.2 As regards issues raised with regard to the demolition of the cut stone distillers building façade, I note that matters of enforcement fall under the jurisdiction of the Planning Authority. I note the decision of Dublin City Council 0317/19 whereby the Council issued notification of decision on whether the dismantling and reconstruction of a stone wall in accordance with the details submitted with 2024/16 (ABPPL29N246933) is exempted development (See Planning History Section 4 above).

7.1.3 I propose to assess the development as outlined on its planning merit under the following broad headings.

- Question of overdevelopment - scale and visual impact and impact on architectural heritage
- Impact on the residential amenity
- Appropriate Assessment

## **7.2 Question of overdevelopment – Scale and Visual Impact and impact on architectural heritage**

7.2.1 The proposed changes to the permitted scheme involve amendments to the previously permitted floorplans at ground to sixth floor levels through a variation of setbacks and provision of infill extensions. The amendments result in an increase in the permitted office floorspace of 1,516sq.m GFA from a permitted 18,236sq.m to 19,752sq.m. and an increase of 31 sq.m to retail unit 1 at ground floor level. The changes result in associated external amendments to the previously approved elevations of the permitted building. The proposal also seeks the omission of Condition 4 of planning permission DCC Reg Ref 2024/16 PL29N246933 to enable the provision of rooftop plant enclosed by an aluminium louvre screen. The proposal seeks the provision of a PV solar panel at roof level is intended to supplement the renewable heat energy generated on site using heat pumps to comply with Part L2017 Building Regulations and associated NZEB requirements.

7.2.2 The third-party appellant contends that the proposed development represents an overdevelopment of the site and is concerned that the amended proposal removes the mitigating aspects of the previously permitted development. I note that the plot ratio associated with the development proposal increases from 4.63 to 4.98 which exceeds the indicative plot ratio standards as set out in the development plan of 2.5-3.0 for Z5 lands. Site coverage is 71%. The Development Plan provides for increased plot ratio and higher site coverage in particular circumstances such as adjoining major public transport termini and corridors, where an appropriate mix of residential and commercial uses is proposed, to facilitate comprehensive redevelopment of areas in need of urban renewal, to maintain existing streetscape profiles or where a site already has the benefit of a higher site coverage plot ratio. The merits of a higher plot ratio have been accepted in the governing permission on this site and the increased floor area and amendments now proposed need to be assessed in terms the specific nature and qualitative elements of the proposed development and the appropriateness of these changes having regard to the specific characteristics of the site context.

7.2.3 The proposal essentially includes outward extensions to the set back upper floor volumes. Along the western side of the building the outward extensions is achieved by raising brick shoulder height by one floor (from five to six floors) addressing Smithfield and from six to seven floors addressing the corner of Smithfield and the Luas line. It is argued by the first party that this enables the setback forms to be simplified replacing the double set back arrangement with a single set back floor. Along the eastern part of the building the shoulder height is raised by one floor and upper floor set back simplified. Along Bow Street frontage the building form is simplified by removing the east-facing projecting vertical glazed element and reducing the number of building planes for five to three. Along New Church Street to the north the intermediate set back at 4<sup>th</sup> floor level is omitted and extended to permitted fifth floor set back level and at the western end the parapet height is increased.

7.2.4 Having considered the proposed amendments, in their detail, I consider that as demonstrated within the computer generated images, the proposal does not give rise to a negative visual impact. As outlined by the first party the eye is drawn vertically to the termination of the solid elements rather than the presence of the setback lighter elements which do not contribute to the same degree to the perceived bulk and mass of the building. It is submitted that the streetscape context established by the size and character of Smithfield Square to the west and the height of newer buildings to the south east and along the western side of Smithfield absorb the proposed increase shoulder heights successfully without significantly affecting the perceived mass and height of the permitted building. It is submitted on this basis that the proposed building sits comfortably within this context. The simplification of the upper setback levels creates clear lines whilst retaining effective modulation of the upper floors. It is asserted that the improved appearance will contribute positively to the streetscape. I would accept the design justification as set out and I consider that the verified photomontages demonstrate that the visual impact arising from the proposed amendments are appropriate. I consider that it has been demonstrated that the magnitude of visual impact arising is acceptable having regard to the context of the site. I do not consider that the proposed amendments give rise to any disproportion in terms of scale, bulk and height and I am inclined to agree that the simplification of the design form achieved by the amendments as outlined are capable of being accommodated successfully on the appeal site.

7.2.5 As regards impact on architectural heritage it is noted that the site is located within an historic urban area of rich architectural heritage including the distinctive stone warehouses and fine historic properties including St Michan's Church and Graveyard (Protected Structure 1550). I note that the governing permission sought to celebrate the historical context by incorporating the stone walls of the former distillery warehouse building and reinstatement of the building line to the east of Smithfield Square. The structures also sit within an evolving setting of modern buildings of significant scale and height. I consider that it has been demonstrated that the proposed development will have an acceptable impact on the character of the surrounding historic properties.

### **7.3 Impact on the amenities of adjoining property.**

7.3.1 On the question of the impact of the proposed amendments on the amenities of the adjacent properties I note the sunlight and daylight study carried out by BP3 which assesses the proposal in the context of the BRE guide "Site layout planning for daylight and Sunlight. A Guide to Good Practice. The study of impact on skylight Study A access to habitable rooms within Smithfield Village Apartments indicates that the majority of cases the windows would retain skylight access levels which conform to guideline recommendations. In the remaining cases where skylight access fall short of the target it has been demonstrated that acceptable levels of internal daylight would be retained. Overall it is shown that daylight levels are substantially similar to those associated with the permitted scheme. As regards sunlight levels to neighbouring dwellings (Study B) full compliance with guidelines targets is achieved. As regards sunlight levels to neighbouring outdoor amenity spaces full compliance with BRE Guidelines has been demonstrated. As regards roof plant enclosure this section of the roof enclosure is not visible from Smithfield Apartment Complex. I note that permission 304717 permitted roof plant enclosed within an aluminium louvred screen.

7.3.2 I regard the analysis undertaken to be reasonable and based on the details submitted and having regard to the design of the development, I consider that the additional overshadowing arising is not significant in the context of the site. On this basis I consider that the amendments proposed are acceptable in terms of impact on residential amenity.

### **7.4 Appropriate Assessment**

7.4.1 As regards appropriate assessment Article 6(3) of the Habitats Directive 92/43/EEC requires Appropriate Assessment to be carried out for any plan or project not directly connected with or necessary to the management of a European Site (or site) concerned, but that is likely to have a significant effect thereon, on its own or in combination with other plans or projects, in view of its conservation objectives. The proposed development is not directly connected with or necessary to the management of any European site.



7.4.2 Having regard to the brownfield nature of the site and scale of the development an amendment to an extent permission and nature of the receiving environment and 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 and projects on a European Site.

7.4.5 It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development individually or in combination with other plans or projects would not be likely to have a significant effect on any European site, in view of the sites' conservation objectives, and a Stage 2 Appropriate Assessment (and submission of an NIS) is not therefore required.

## **8 Recommendation**

8.1 Having considered the contents of the planning application, the decision of the planning authority, the provisions of the development plan, the grounds of appeal and the responses thereto, my inspection of the site and my assessment of the planning issues, I recommend that permission be granted for the development for the reasons and considerations set out below.

## **9 Reasons and Considerations**

9.1 Having regard to the planning history, to the location of the development and pattern of development in the area, and to the provisions of the Dublin City Development Plan 2016-2022, to the nature, scale, layout and design incorporated in the proposed amendments to the permitted development, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of adjoining properties or the visual amenities of the area it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans and projects on a

European Site. and would be in accordance with the proper planning and sustainable development of the area.

## **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 PL.29N.246933) save as where amended by this grant of permission.

Reason: To clarify the scope of this permission.

3. 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.

- 4 The developer shall pay to the planning authority a financial contribution in respect of the Luas Cross City Scheme 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. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the scheme.

Reason: It is a requirement of the Planning and Development Act 2000 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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Bríd Maxwell  
Planning Inspector

1<sup>st</sup> April 2020