



An
Bord
Pleanála

Inspector's Report ABP 306668-20

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| Development | Change of use from car park and retail to bar and jazz club with part retail / cafe-bar, the construction of a sub-basement for customer toilets and store. |
| Location | 47, Drury Street, Dublin 2. |
| Planning Authority | Dublin City Council. |
| Planning Authority Reg. Ref. | 3651/19 |
| Applicant | Widestar 2 Ltd. |
| Type of Application | Permission |
| Planning Authority Decision | Grant Permission with Conditions |
| Type of Appeal | Third Party |
| Appellants | SW Restaurant Ltd. |
| Observer(s) | None |
| Date of Site Inspection | 01 st July 2020 |
| Inspector | Brendan Coyne |

1.0 Site Location and Description

- 1.1. The site is located on the eastern side of Drury St. in Dublin 2 and comprises a ground floor unit and basement level of a three-storey building, which extends to South William Street to the east. At ground floor level, the appeal premises comprises a retail unit, an external entrance lobby and a vehicular entrance and ramp leading to a basement car park. The basement car park is currently used for storage and incorporates a plant / boiler room, 2 no. plant / water tank rooms and a stairwell at its western end. A right of way fire escape at the eastern end of the basement provides access to South William Street via a stairwell. The ground floor elevation of the premises along Drury St. comprises a red brick façade, a pedestrian entrance door to the upper / basement floors, a retail display window and entrance, and a roller shutter vehicle entrance to the basement car park. The upper floors have a concrete façade and elongated window fenestration.
- 1.2. Adjoining property to either side of the appeal site comprise a vacant unit (Protected Structure) to its northern side and a retail unit to its southern side at ground floor level. Adjoining property to the rear / east, opening onto South William Street comprise a kitchen / food preparation area at basement level and a restaurant at ground floor level. The first and second floors of the subject property are in use as a cookery school. The character of the surrounding area comprises a wide mix of city centre uses including offices, restaurants, cafés / bars and retail.

2.0 Proposed Development

- 2.1. Permission sought for the following;
- Change of use of the basement from a car park to a bar and jazz club,
 - Change of use of the ground floor from a retail unit to a retail unit with ancillary café / bar,
 - Construction of a sub-basement for the provision of customer toilets and a store (c.45.6 sq.m.),
 - Increase in the height of the basement level and re-configuration of the internal layout to make it fit for purpose,

- Modifications to the fire escape exit to South William Street at basement level,
- New pedestrian entrance and façade treatment to the ground floor retail / café-bar unit,
- Associated elevation changes and all associated site works.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Dublin City Council granted permission for the proposed development subject to 18 no. Conditions. Noted Conditions include:

Condition No. 4 (a) The measures outlined in the Acoustic Consultants Report shall be implemented in full. (b) Music associated with the use must be inaudible at the nearest noise sensitive premises. (c) The noise levels from the site, during the operational phase, measured as an LAeq (5 min at night, 15 min in day) when all proposed plant is operating, shall not exceed the LA90 by 5dB(A) or more. (d) During the construction and demolition phases, the proposed development shall comply with British Standard 5228 “Noise Control on Construction and Open Sites Part 1”.

Condition No. 6 The ground floor unit shall be a retail unit with ancillary / bar use. If the café / bar element becomes the dominant use a change of use application would be necessary.

Condition No. 11 The opening hours of the bar / jazz club and the retail unit with ancillary café / bar.

Condition No. 13 a) The retention of a suitably qualified licensed archaeologist to advise regarding archaeological implications of site clearance, demolition and /or construction. b) The resolution of archaeology in the project budget and timetable. c) Archaeological monitoring of all demolition and sub-surface works. d) Archaeological Method Statement to be submitted to the Planning Authority prior to commencement of development...

Condition No. 16 The proposed works for the basement shall be carried out in such a manner as to protect and ensure the continuing stability of adjoining properties.

3.2. Planning Authority Reports

3.2.1. *Planning Report*

3.2.2. Initial Report (25th September 2019)

- The site is zoned Z5 and the subject premises is a Protected Structure within the South City Retail Quarter Architectural Conservation Area. A restaurant and public house are permissible uses within Z5 zoned lands.
- The site is located on a Category 2 Street. The purpose of this designation is to protect the primary retail function of these streets in the retail core with an emphasis on higher order comparison retail and a rich mix of uses.
- The Planning Authority has serious concerns with the further loss of retail on this category 2 shopping street. The ground floor use is proposed as a retail unit with a café / bar. It is considered that this unit should remain in full retail use.
- The information submitted with the application does not address noise nuisance associated with the proposed use.
- It is unclear if the performance venue will be a ticketed or drop-in venue.
- There is a bench proposed on the public footpath outside the retail unit. This would be subject to a street furniture licence and cannot form part of this application.

3.2.3. Further information was requested addressing the following:

1. The concerns of the Planning Authority regarding the loss of retail on this Category 2 shopping street. The ground floor unit should remain in full retail use. Submit details of the opening hours of the proposal.
2. Submit an Acoustic Report prepared by a suitably qualified consultant.
3. Clarify if the jazz club will be a ticketed event or a drop-in venue and submit a management plan addressing the avoidance of queues on the narrow public footpath along Drury Street.
4. Clarify if the proposed bench on the public footpath is within the applicant's ownership or on the public footpath.

3.2.4. Second Report (22nd January 2020)

- The retail unit at ground floor level incorporates an ancillary café / bar element. This is acceptable subject to it not becoming the dominant use.
- The applicant has clarified the opening hours of the retail unit with ancillary café / bar unit and jazz bar.
- As the jazz club will be a drop-in venue, there will be no pinch-point time at which a crowd or queue will form on the public footpath.
- The applicant has submitted a management plan. No food will be prepared on site.
- The capacity of the jazz club will be 200 patrons and the capacity of the retail unit with ancillary café / bar will be 20-30 patrons.
- The applicant will apply for a street furniture licence for the proposed bench.
- The applicant has addressed the concerns of the Planning Authority raised in the additional information request.

3.3. Other Technical Reports

Transportation Planning Division: No objection subject to Conditions.

Drainage Division: No objection subject to Conditions.

Environmental Health: No objection subject to Conditions.

Archaeology Division: No objection subject to Conditions.

3.4. Prescribed Bodies

Transport Infrastructure Ireland:

- The proposed development falls within an area set out in a Section 49 Levy scheme for Light Rail. No objection to the proposed development subject to a Condition requiring a Section 49 Contribution Scheme Levy.

4.0 Planning History

4.1.1. Subject Site:

P.A. Ref. 2811/11 Permission GRANTED in November 2011 for development at Nos. 18/19 South William Street and 47 Drury Street comprising;

- Internal alterations
- Change of use of greater part of ground floor retail area to restaurant
- Change of use of part of basement car park to associated restaurant use
- New façade including external doors, shop front and glazing modifications
- External seating and tables area planters and glazed screening, pavement-located basement access goods-hatch, lighting and signs on South William Street
- New open space in the middle of the building within glazed-wall enclosure
- New right of way including staircase and route to Drury Street
- Plant at roof level

4.1.1. Relevant Applications on Adjoining Site to the North – No. 46 Drury St.

P.A. Ref. 3652/19 Permission GRANTED in March 2020 for the change of use from a retail / commercial use to bar / restaurant / performance venue and associated works at 46 Drury Street (Protected Structure No. 2393). The works include:

(a) the reforming and extension of the existing semi-basement (providing an additional floor area of c.40sq.m.) for ancillary kitchen, stores, keg lift, staff welfare facilities and customer toilets;

(b) removal of existing ground, first and second floors and their replacement with new floors at ground and first floor level (creating a double height first floor space); (c) new glazed entrance door;

(d) new gate to lane; and

(e) all associated site and development works.

There will be an overall net reduction in floor area from c.404sq.m. to c325sq.m. All works proposed on a site of 0.0171ha (171sq.m.).

P.A. Ref. 2354/15 Permission GRANTED in January 2016 for the change of use from retail/commercial to a licensed restaurant and performance venue/gallery use, with attendant internal alteration and alterations to the existing shopfront.

P.A. Ref. 3743/18 Permission GRANTED in April 2019 for amendments and modifications to development permitted under Reg. Ref. 2354/15.

5.0 Policy and Context

5.1. Development Plan

Dublin City Council Development Plan 2016-2022 is the statutory plan for the area.

Zoning: The site is located in an area zoned objective 'Z5' 'City Centre' 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.'

Architectural Conservation Area: The site is located within the South City Retail Quarter Architectural Conservation Area (ACA). The following provisions relating to Conservation Areas are noted:

Section 11.1.5.6 Conservation Area – Policy Application

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...
5. The repair and retention of shop- and pub-fronts architectural interest.

Changes of use will be acceptable where, in compliance with the zoning objective, they make a positive contribution to the character, function and appearance of

Conservation Areas and their settings. The Council will consider the contribution of existing uses to the special interest of an area when assessing change of use applications and will promote compatible uses which ensure future long-term viability.

The following policies relating to Public Houses and Performance Spaces are noted:

Policy CHC24: To ensure the continued development of Dublin as a culturally vibrant, creative and diverse city with a broad range of cultural activities provided throughout the city, underpinned by quality cultural infrastructure.

Policy CHCO28: To discourage an over-concentration of large public houses in any particular area to ensure a balanced mix of cultural uses, including venues for live music, theatre, film and dance, whilst protecting the residential amenities of city centre residents.

Policy CHC37: To protect and support Dublin city's existing cultural assets by facilitating the enhancement and/or growth of existing cultural spaces, including performance and entertainment spaces, while protecting the existing amenities of an area.

The following provisions relating to Retail are noted:

The site is located on a designated Category 2 Street in the Central Shopping Area of Dublin City Centre (Fig.8).

Section 7.6.1 Primacy of the City Centre & Retail Core Area

Policy RD15: To require a high quality of design and finish for new and replacement shopfronts, signage and advertising. Dublin City Council will actively promote the principles of good shopfront design as set out in Dublin City Council's Shopfront Design Guidelines.

Policy RD17: To promote active uses at street level on the principal shopping streets in the city centre retail core and in Z4 district centres and having regard to the criteria for category 1 and category 2 streets and special planning control areas.

Appendix 3 Retail Strategy

Section 3.7 Guidance on the scale and location of development. The

designation controls the extent of provision of non-retail uses at ground floor level.

Appendix 3: Category 2 Streets

Chapter 16 Development Standards – relevant provisions include:

Section 16.2.2.3 Alterations and Extensions

Section 16.10.17 Retention and Re-Use of Older Buildings of Significance which are not Protected.

Section 16.24.2 Shopfronts

Section 16.24.3 Signs of Shopfront & other business premises

Section 16.30 Street Furniture

Section 16.32 Night Clubs/Licensed Premises/ Casinos/Private Members' Clubs

South City Retail Quarter ACA

Section 3(i): Land Use - Change of Use Policy

Section 4: Shop Front Design and Advertisement Structures

5.2. Natural Heritage Designations:

None

5.3. EIA Screening

- 5.3.1. Having regard to the nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. An appeal was received from McCutcheon Halley Planning Consultants representing the third-party appellant SW Restaurant Ltd., against the decision made by the Planning Authority to grant permission for the proposed development. The Appellant trades as 'SOLE Restaurant' at Nos. 18-19 William Street, Dublin 2. The main grounds of appeal are summarised under the headings below;

6.1.2. Possible Change of Use

- The proposed jazz club is not a defined use in planning law and will inevitably evolve into a nightclub / café bar. Such change of use would be difficult to enforce and would generate a larger no. of patrons resulting in an intensification of use that will undermine the appellants business.

6.1.3. Works to and Use of the Fire Escape

- The drawings submitted propose works to the fire escape route which is outside the site boundary.
- These works will adversely impact the operation of the Appellant's restaurant business.
- The use of the fire escape is unclear i.e. restricted to emergency use or use as a general entrance / exit from the proposed jazz club.
- The Appellant expresses concern that this emergency access will become a general entrance and exit for the proposed jazz club.
- This exit onto South William Street is primarily used as an emergency fire exit. It cannot function as a general entrance / exit for the Jazz Club as it would jeopardise the security of the Appellant's premises.

6.1.4. Waste Storage

- The level of storage provision for the proposed development is inadequate.
- The scale of the proposed development will generate a considerable volume of waste.

- The drawings submitted do not identify an area for waste storage.
- It is a concern that in the absence of a designated waste storage area that waste will be stored on the public footpath along South William Street. This would be unsightly, attract vermin and create unpleasant odours, thereby adversely impacting the Appellant's business.

6.1.5. **Noise & Disturbance to Neighbouring Property**

- Noise and disturbance generated from both the construction and operational phase of the Jazz Club will generate noise and disturbance that will impact the Appellant's restaurant business by reason of their proximity to each other.

6.1.6. **Absence of a Smoking Area and Street Congestion**

- The absence of a smoking area for the proposed development will result in patrons congregating on South William Street if no restriction is imposed on the use of the fire escape. This will result in congestion outside the Appellant's premises.

6.1.7. **Loss of Retail Use on a Category 2 Shopping Street**

- There has been no confirmation of the Dublin Vinyl Company occupying the retail component of the proposal. It is likely therefore that the retail element of the proposal will be minimal. Such development would be contrary to Policy RD:17 of the Development Plan.

6.2. **Applicant Response**

The response received from RPS Group Ltd., representing the Applicant, is summarised under the headings below;

6.2.1. **Possible Change of Use**

- The intended use for the basement is a bar and jazz club, not a nightclub.
- The proposal seeks to optimise the full potential of an unutilised unit.
- The proposed development will maintain the individuality of each element - a bar and jazz club at basement level and a complementary retail unit with ancillary café / bar at ground floor level.

- The proposed uses are permissible on Z5 zoned lands.
- The ground floor unit will be in keeping with the retail focused nature of the street.
- Due to its size and scale, the existing unit in its current form is not viable. The existing occupant is operating on a significantly discounted rate on a month by month basis. The unit is not sustainable as a standalone unit but could operate successfully as a retail unit with ancillary café / bar and complementary and associated bar and jazz club in the basement.
- It is envisaged that the retail element of the unit will sell goods that complement the bar and jazz club i.e. vinyl's, merchandise and other music related products.
- The layout shows that the retail element is located to the front providing retail focused curb appeal along Drury Street.
- The café / bar element is restricted to a counter area which can serve coffee to browsing patrons. During the evening / night-time, it will provide a discrete bar option for patrons with an extended retail browsing time.
- The proposal will provide another specialist retail offer to Drury Street, bolstering the variety of goods offered on the street and drawing in new customers. This will add vibrancy and vitality to an area of Dublin identified by Dublin Town (an initiative of Dublin City Centre Business Improvement District) as the 'Creative Quarter'.

6.2.2. **Works to and Use of the Fire Escape**

- In accordance with fire safety building regulations, it is proposed to maintain the existing fire escape to the rear of the basement, which opens onto South William Street.
- As indicated on the drawings submitted, no works are proposed outside the red line boundary.
- The works associated with the fire escape will include the provision of a fire escape lobby within the basement unit that will be accessible from the general seating area via a small staircase and a step down from the stage area.
- No external modifications are proposed to the fire escape entrance fronting onto South William Street.

- The fire escape will be used for periodic back of house services and during emergency situations only.
- Restricting the use of the emergency access (right of way) to the restaurant only would be contrary to health and safety practice and should therefore be accessible to the proposed bar and jazz club also.
- The Appellant's unit mirrors that of the Appellant's unit, having a second fire escape egress point next to the ground floor retail unit on Drury Street. The Applicant does not deem this an issue on Drury Street, with no significant adverse impacts being experienced. Therefore, it is anticipated that the same will be experienced on South William Street.

6.2.3. **Waste Storage**

- The waste generated on site will be made up of general waste and dry recyclables, with no food being prepared on site.
- At the end of each shift, the waste will be compiled and disposed of in bins located on Drury Street.
- Service collections will also be made via Drury Street.
- The proposed development will have no impact on South William Street from a waste storage perspective.

6.2.4. **Noise & Disturbance to Neighbouring Property**

- The Applicant submitted an Assessment of Potential Noise Impact, prepared by AWN Consulting, in support of the Planning Authority's Further Information request.
- An environmental noise survey was conducted in accordance with 'ISO 1996-2: 2017 Acoustic - Description, Measurement and Assessment of Environmental Noise – Determination of Sound Pressure Levels' in order to quantify the existing noise environment in the vicinity of the development site.
- The noise survey informed the proposed noise control measures in order to minimise / remove any noise impact issues that may arise as a result of the proposed development.

- Details provided of the recommendations of the noise survey include the following noise control measures;
 - A suspended ceiling
 - Wall linings
 - New partitions
 - Acoustic doorsets
 - Suitably attenuated mechanical ventilation with a compressor limiter.
- The drawings submitted with the application reflect and illustrate the noise control measures above.
- With regard potential crowd noise, it is envisaged that there will be no / minimal crowds or queues forming outside the venue as the proposed jazz club will operate as a drop-in service with patrons walking straight into the premises.
- The locale is a busy urban area and the proposed bar and jazz club with a capacity for c. 200 persons will not add significantly to the volume of people already in the area.
- During the construction phase, the proposed development will comply with the British Standard 5228 “Noise Control on Construction and Open Sites Part 1”.
- It is considered that the noise generated by the proposed development either during the operational or construction phase will not have any significant impact on adjoining and adjacent premises.

6.2.5. Absence of a Smoking Area and Street Congestion

- No general access will be provided to the premises via South William Street, with the fire escape used only during emergencies and periodic service access only.
- The proposed jazz club and retail unit will be accessible via Drury Street only.
- There will be no / minimal crowds or queues forming outside the venue as the proposed bar and jazz club will operate predominantly as a drop-in service, with patrons walking straight into the premises.
- The proposed development would not impact on access to / from the existing use on the upper floors i.e. the cookery school.

6.2.6. **Loss of Retail Use on a Category 2 Shopping Street**

- The proposed development will include a retail unit with ancillary café / bar, replacing the existing retail only unit.
- The dominant use for the unit at ground floor is retail, with its shop window fronting onto Drury Street and a discrete café / bar located to the rear of the unit.
- The proposed unit will maintain the retail presence at this location on a Category 2 shopping street, as identified in the Development Plan.
- The retail / café unit will provide an active street level frontage onto Drury Street, ensuring the vitality of the property both during the day and at night.
- Drury Street currently has 3 no. cafes in operation, which represents 10% of the street, with retail use currently accounting for 51% of the uses.
- It is considered that the proposed development of a retail unit with ancillary café / bar will further add to the variety and vitality of the street and will not detract from the predominantly retail focused street.
- With regards the bar and jazz club, bars currently account for only 8% of Drury Street. Thus, it is considered that the proposed bar and jazz club will not lead to an over concentration of late-night venues.
- The proposal is modest in scale and differs in style from that of a traditional bar, providing a unique atmosphere and alternative cultural experience.

6.3. **Planning Authority Response**

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

6.4. **Observations**

None received

7.0 Assessment

7.1. I have reviewed the proposed development and the correspondence on the file. I note the Planning Authority is satisfied that the proposed development is compatible with the 'Z5' zoning objective of the area, subject to the ground floor unit retaining its primary retail function with the ancillary café / bar. Having regard to the Grounds of Appeal, the main issues for consideration can be summarised under the following headings;

- Proposed Use
- Proposed Works to and Use of the Fire Escape
- Waste Storage
- Noise & Disturbance
- Absence of a Smoking Area and possible Street Congestion
- Loss of Retail Use on a Category 2 Shopping Street

These are addressed below.

7.2. Proposed Use

7.2.1. The appellant object to the proposed development on the grounds that the proposed jazz club is not a defined use and will inevitably evolve into a nightclub / café bar. The Appellant puts forward that such change of use would be difficult to enforce and would generate a larger number of patrons, resulting in an intensification of use that would undermine the appellant's business i.e. 'Sole Restaurant', located on adjoining premises fronting on to Nos. 18-19 South William Street. The Applicant contests this ground of appeal, as set out in Section 6.2 above.

7.2.2. The site is located in an area zoned objective 'Z5 - City Centre' 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.' As set out in Section 14.8.5 of the Dublin City Development Plan 2016-2022, the primary purpose of this zone is to sustain life within the centre of the city through intensive mixed-use development and to provide a dynamic mix of uses which interact with each other,

help create a sense of community, and which sustain the vitality of the inner city both by day and night.

7.2.3. The following relevant uses are permitted in principle under lands zoned 'Z5 - City Centre' - cultural, creative, artistic, nightclub, public house and restaurant. The appellant is correct that there is no provision for a jazz club under the zoning use classifications. I note however that the list of uses under the zoning objectives of the Development Plan is not exhaustive. The Development Plan sets out that such uses will be dealt with in accordance with the overall policies and objectives in this plan. Having regard to the nature and use of the proposed jazz club and bar, it is my view that such use would be consistent with a nightclub. Such development is permitted in principle under the Z5 zoning objective of the site. The subject premises comprises an unutilised basement car park, currently used for storage. I consider that the proposed jazz club and bar would enhance the vitality of this section of the street at night time, while the proposed retail unit with a subsidiary café / bar would ensure retail use is the predominant use at ground floor level along this principal shopping street. Such development provides an acceptable mix of uses in accordance with the Z5 zoning objective and requirements of Section 14.8.5 of the Development Plan.

7.2.4. The documentation submitted with the application details that the proposed jazz club would have the capacity for 200 persons and the retail / café / bar unit would have the capacity for 20-30 patrons. Given that the proposed development would be accessed via Drury Street, I do not consider that the number of patrons visiting the proposed development would impact on the Appellant's business which fronts onto South William Street. Any change of use to the premises would require planning permission (unless exempted development) and in the event of an unauthorised use would be subject to enforcement proceedings by the Planning Authority. On this basis, I recommend that the appeal should not be upheld in relation to this issue.

7.3. Proposed Works to and Use of the Fire Escape

7.3.1. The Appellant objects to the proposed development on the grounds that the proposal provides for works to the fire escape route at basement level, which is located outside the site boundary as outlined in red. The Appellant puts forward that such works would adversely impact on the operation of the Appellant's restaurant business. The

Appellant is unclear if the use of the fire escape would be restricted to emergency use or use as a general entrance / exit to and from the proposed jazz club. The Appellant expresses concern that the use of the emergency fire exit from South William Street as a general entrance and exit to the proposed jazz club would jeopardise the security of the Appellant's premises.

7.3.2. The Applicant has responded to this ground of appeal, as detailed in Section 6.2.2 above.

7.3.3. The Site Layout Plan submitted details the area of the premises subject to proposed works, as outlined in red. The right-of way fire escape is located at the eastern end of the basement, located within the applicant's ownership as outlined in blue. The plans submitted show no proposed works to the right-of way fire escape. The Applicant, who owns this fire escape, has confirmed that the fire escape will be used for periodic back of house services and during emergency situations only. No external modifications are proposed to the fire escape entrance fronting onto South William Street. Given that a) the Applicant owns the right-of way fire escape, b) that no works are proposed to the fire escape and external entrance, c) that the use of the right-of way stairwell would be limited to occasional use and c) that the entrance door along South William Street is separate to the entrance serving the Appellant's restaurant, it is my view that the use of the fire escape stairwell and entrance / exit onto South William Street would not adversely impact on the Appellant's restaurant business. On this basis, I recommend that the appeal should not be upheld in relation to this issue.

7.4. **Waste Storage**

7.4.1. The Appellant objects to the proposed development on the grounds that the level of storage provided is inadequate, in particular storage for waste. The Appellant expresses concern that this will result in waste being stored on the public footpath along South William Street, attracting vermin and creating odour nuisance. The Applicant contests this, as detailed in Section 6.2.3 above.

7.4.2. The Floor Plans submitted detail that a store room (c. 10.8 sq.m.) would be provided at basement level serving the proposed jazz club. The Applicant states that at the end of each shift, all waste will be compiled and disposed of in bins located on Drury Street,

where service collection will be made. That Applicant states that no food will be prepared on site and that waste will comprise of general waste and recyclables.

7.4.3. Having regard to the store room provided at basement level, the nature of waste collected and its disposal of daily, I am satisfied that adequate storage space is provided for the proposed development. The disposal of waste in bins located on Drury Street would not impact on the Appellants property which fronts onto South William Street. On this basis, I recommend that the appeal should not be upheld in relation to this issue.

7.5. Noise & Disturbance

7.5.1. The Appellant objects to the proposed development on the grounds that noise and disturbance generated from both the construction and operational phase of the jazz club will impact the Appellant's restaurant business by reason of their proximity to each other. The Appellant contest this, as set out in Section 6.2.4 above.

7.5.2. The proposed jazz club is located in the basement of the subject premises. The Appellant's restaurant is located over the proposed jazz club at ground floor level. The Planning Authority in its initial assessment requested the Applicant to submit an Acoustic Report prepared by a suitably qualified consultant. In response to this, the Applicant submitted an Assessment of Potential Noise Nuisance, prepared by AWN Consulting Ltd. acoustic consultancy practice. The qualifications and experience of the author of this report, Chris Dilworth, is stated in this report. The report submitted details the following;

- An environmental noise survey conducted to quantify the existing noise environment in the vicinity of the site.
- Results of sound pressure levels over the period 25/10/2019 – 31 /10/2019 for day, evening and night periods. The noise survey confirms that the area around the proposed development is typical of a busy urban location.
- Proposed noise control measures including;
 - A mass barrier suspended ceiling hung throughout the main section of the venue, as indicated on drawing submitted. Details provided of its composition and construction requirements.

- Wall linings - details provided of their depth / composition and construction requirements.
- New partitions - details provided of their locations and thickness.
- Acoustic doorsets - details provided of their locations and performance requirements.
- Location of Wall Lining and New Partitions - details provided of their locations and performance requirements.
- Raised Floor
- Mechanical Ventilation
- Venue Audio System
- Residual Noise Impact
- Noise Emissions to the local Environment and to the restaurant above

7.5.3. The report concludes that subject to the implementation of the proposed noise control measures, the resultant noise break-out levels to the local environment are predicted to be inaudible and the noise transfer to adjacent premises is predicted to fall within appropriate limit values.

7.5.4. I note that the Planning Authority's Environmental Health Officer outlined no objections to the proposed development subject to Conditions requiring the following:

- The measures outlined in the Acoustic Consultants Report be implemented in full.
- Music associated with the use must be inaudible at the nearest noise sensitive premises.
- The noise levels from the site, during the operational phase, measured as an LAeq (5 min at night, 15 min a day) when all proposed plant is operating, shall not exceed the LA90 by 5dB(A) or more.
- A Construction Management Plan shall be prepared on behalf of the developer and shall be submitted to, and agreed in writing, by the Planning Authority prior to commencement of development.

7.5.5. Having regard to the Potential Noise Impact Assessment and its resultant proposed noise control measures, I am satisfied that subject to a Condition requiring the above,

the noise generated from the proposed development both during the operational and construction phase will not have any significant impact on adjoining and adjacent premises. On this basis, I recommend that the appeal should not be upheld in relation to this issue.

7.6. Absence of a Smoking Area and possible Street Congestion

- 7.6.1. The Appellant objects to the proposed development on the grounds that the absence of a smoking area for the proposed development will result in patrons congregating on South William Street if no restriction is imposed on the use of the fire escape. This will result in congestion outside the Appellant's premises.
- 7.6.2. It is not a requirement of the Dublin City Development Plan that a licensed premises provides a designated smoking area. As detailed by the Applicant in Section 6.2.5 above, the proposed jazz club and retail unit will be accessible by patrons via Drury Street only. On this basis, the proposed development will not adversely impact on the Appellant's restaurant business along South William Street. Any bench on the public footpath to the front of the premises along Drury Street would require a street furniture licence from the Planning Authority. On this basis, I recommend that the appeal should not be upheld in relation to this issue.

7.7. Loss of Retail Use on a Category 2 Shopping Street

- 7.7.1. The Appellant objects to the proposed development on the grounds that there has been no confirmation of the Dublin Vinyl Company occupying the retail component of the proposal at ground floor level. The Appellant puts forward that it is likely therefore that the retail element of the proposal will be minimal and that such development would be contrary to Policy RD17 of the Dublin City Development Plan. The Applicant contests this, as detailed in Section 6.2.6 above.
- 7.7.2. I note that the Planning Authority imposed a Condition (No. 6) requiring that the ground floor unit be a retail unit with ancillary café / bar and that if the café / bar becomes the dominant use, permission for a change of use would be required. I am satisfied that this Condition would adequately ensure that the dominant use of the ground floor unit would remain in retail use along this Category 2 Street in the Central Shopping Area

of Dublin City Centre. On this basis, I recommend that the appeal should not be upheld in relation to this issue.

7.8. Screening for Appropriate Assessment

- 7.8.1. Having regard to the nature and scale of the proposed development, to the location of the site within a fully serviced urban environment, and to the separation distance and absence of a clear direct pathway 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 be granted subject to conditions, for the reasons and considerations below.

9.0 Reasons and Considerations

Having regard to the city centre location, the zoning objective for the site and the policies of the current Dublin City Development Plan 2016-2022, 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 property in the vicinity and would not have an adverse effect on the character and setting of the South City Retail Quarter Architectural Conservation Area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

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| 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 plans and particulars submitted on the 17th day of December 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 |
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| | <p>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.</p> <p>Reason: In the interest of clarity.</p> |
| 2. | <p>The predominant use of the ground floor unit shall be retail. The café / bar within the ground floor unit shall be ancillary to the retail use and shall not become the dominant use within the unit.</p> <p>Reason: To restrict the use and clarify the extent of this planning permission.</p> |
| 3. | <p>The Developer shall comply with the following requirements:</p> <p>(i) The construction and operation of the development shall be carried out in accordance with the Noise Impact Assessment report submitted. The proposed noise control measures within this report shall be implemented in full.</p> <p>(ii) Music associated with the use shall be inaudible at the nearest noise sensitive premises.</p> <p>(iii) The noise levels from the site, during the operational phase, measured as an LAeq (5 min at night, 15 min a day) when all proposed plant is operating, shall not exceed the LA90 by 5dB(A) or more.</p> <p>Reason: To protect the amenities of property in the vicinity of the site.</p> |
| 4. | <p>The 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.</p> |

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| | Reason: In the interests of public safety and residential amenity. |
| 5. | <p>Details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of visual amenity.</p> |
| 6. | <p>The hours of operation of the jazz club and bar shall be between 18:00 - 23.30 Monday to Wednesday, 17:00 - 02.30 Thursday to Saturday and 17:00 - 23.30 hours on Sundays.</p> <p>The hours of operation of the ground floor retail unit with ancillary café / bar shall be 11:00 - 23:30 Monday to Saturday and 12:00 - 23:30 on Sundays.</p> <p>Reason: In the interest of the amenities of property in the vicinity.</p> |
| 7. | <p>No signage shall be erected on site or attached to the building without a prior grant of planning permission.</p> <p>Reason: In the interest of visual amenity.</p> |
| 8. | <p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health.</p> |
| 9. | <p>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:</p> <p>(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</p> |

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| | <p>(b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.</p> <p>The assessment shall address the following issues:</p> <p>(i) the nature and location of archaeological material on the site, and</p> <p>(ii) the impact of the proposed development on such archaeological material.</p> <p>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.</p> <p>In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.</p> <p>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.</p> |
| 10. | <p>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</p> |

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| | <p>be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>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.</p> |
| 11. | <p>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, 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.</p> <p>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.</p> |
| 12. | <p>Site development and building works shall be carried out only between the hours of 0800 and 1900 from Mondays to Fridays inclusive, between 0800 and 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.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p> |

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| 13. | <p>All necessary measures shall be taken by the contractor to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.</p> <p>Reason: To protect the amenities of the area.</p> |
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Brendan Coyne
Planning Inspector

15th July 2020