



An  
Bord  
Pleanála

## Inspector's Report ABP-308800-20.

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### Development

Permission for internal refurbishment works to a restaurant including replacement flues and new external flues within the lightwell to the east of D'Olier Chambers – Protected Structure.

### Location

16A, D'Olier Chambers, D'Olier Street, Dublin 2.

### Planning Authority

Dublin City Council.

### Planning Authority Reg. Ref.

3355/20.

### Applicant(s)

Cindoor Ltd.

### Type of Application

Permission.

### Planning Authority Decision

Grant with Conditions.

### Type of Appeal

Third Party

### Appellant(s)

David & Moira Anderson.

### Observer(s)

TII.

### Date of Site Inspection

18/02/2021.

### Inspector

A. Considine.

## **1.0 Site Location and Description**

- 1.1. The subject site is located within Dublin City Centre, south of the River Liffey and at the junction of D'Olier Street, Hawkings Street, Townsend Street, Pearse Street College Street and Fleet Street, all around the Steine of the Long Stone Monument. The north elevation of Trinity College lies to the south while Pearse Street Garda Station lies to the south east. The D'Olier Chambers building lies adjacent to the Luas line and is within approximately 100m of the Trinity Luas stop.
- 1.2. D'Olier Chambers identified as a protected structure in the Dublin City Council Development Plan 2016-2022, PS no. 2303, is described as a corner-sited attached three-bay four-storey former office, built c.1890, having three-bay canted elevation to south-east, and shallow pedimented breakfronts to front (south-west) and south-east elevations, with further five-bay three- and four-storey elevation to west. The building was designed and built by the Irish architect J.F. Fuller as the southern branch of Gallagher & Company, tobacco manufacturers and is one of a number of late Victorian commercial buildings in Dublin which make extensive use of terracotta, providing textural and tonal variation with the brown brick of the façade. The pedimented breakfronts, surmounted by elaborately detailed chimneystacks, create a remarkable silhouette, and lend diversity to the architectural character of the area.
- 1.3. The subject application applies to the ground and basement floor of the building which has been used as a restaurant for a number of years. The upper floors, which are accessed separately, are in office use. The application site has a stated area of 195m<sup>2</sup> and comprises an existing floor area 305m<sup>2</sup> (144m<sup>2</sup> at basement level and 161m<sup>2</sup> at ground floor level).

## **2.0 Proposed Development**

- 2.1. Permission is sought, as per the public notices for permission for development at no. 16A D'Olier Chambers (which is a protected structure), D'Olier Street, Dublin 2 and on a wall within the lightwell to the rear of Chaplins Bar, 1-2 Hawkins Street, Dublin 2. The development will consist of the internal refurbishment of this existing ground floor restaurant over basement (305sqm) within the five storeys over basement property known as D'Olier Chambers (a protected structure) to include replacement of existing external flues with new external flues that will be attached to the wall

within the lightwell to the east of D'Olier Chambers and to the rear of Chaplins Bar; and internal refurbishment works that will include removal of existing seating and bar; and its replacement with new seating arrangement, new kitchen, including two pizza ovens; as well as internal ducting all at ground floor. No works are proposed at basement level, all at 16A, D'Olier Chambers, D'Olier Street, Dublin 2.

2.2. The application included a number of supporting documents including as follows;

- Plans, particulars and completed planning application form;
- Cover letter -

The letter submits that the works involve reconfiguration of the layout of the existing restaurant at ground floor within D'Olier Chambers for use as a pizzeria and the replacement of existing external flues with new external flues to the east of the restaurant and to the rear of Chaplin's Bar. The existing extract ventilation system will be replaced with a new and less invasive / quieter plant to suit the new kitchen and servery areas. The application does not seek to alter the existing use of the building, rather the flues and associated modifications will facilitate the change in restaurant type.

The cover letter also submits that as the applicant has a long-term lease, no consent from the landlords is required.

The letter also notes the rationale for the proposed development, considers compliance with the City Development Plan and notes that an Architectural Heritage Impact Assessment has been prepared for the proposed works. In terms of AA, it is submitted that having regard to the nature and scale of the proposed development, the nature of the receiving environment and proximity to the nearest European Site, no AA issues arise.

- Architectural Heritage Impact Assessment Report -

The AHIA includes an introduction and a description of the building while Section 3 presents an assessment of significance in terms of architectural, historical, archaeological, artistic, cultural, scientific, social and technical, as set out in the Architectural Heritage Protection Guidelines for Planning Authorities, DoAHG 2001. In terms of the restaurant the report states:

‘The open plan layout of the dining area survives from the late-nineteenth century use of the room as a tobacco show room. The

ceiling over the ground floor, incorporating down-stand beams with decorative cornices, is an important survival and is of architectural interest. There are no features of interest on the walls and floor of the ground floor or at basement level'.

Section 5 of the report sets out the architectural, heritage impact assessment of the proposed works. With regard to the proposed new ducts, it is noted that they will be routed to flues in the external lightwell through the same opening as currently used. The new flues will be c 1700mm lower in height than the existing apparatus at 5.5m above street levels which will reduce the visual impact of the mechanical plant – although it is noted that the lightwell is screened from public view on all sides. The ducts and flues will be supported with galvanised metal brackets fixed to the wall of the existing extension to Chaplin's Pub, which is not a protected structure. Internally, the ducting should be set c 400mm below the ceiling down-stand beams to avoid obscuring the decorative plasterwork or impact on the historic fabric of architectural interest.

The report concludes that while the interior of the restaurant forms part of the protected structure, its significance is limited to its open plan layout and the late-nineteenth century ceiling with down-stand beams and decorative cornices. The proposed works are deemed to be minor in nature and the implementation of same will not materially affect the character of the protected structure or any element that contributes to its special interest.

- Technical Report on Requirement for New Flues -

The report notes that the previous use of the application site was as a restaurant with a standard commercial kitchen. The ventilation system serving the previous kitchen consisted of a kitchen extract canopy above the cooking area and would have been grease laden, discharging all odours from the kitchen into the lightwell. The original ducting has a diameter of 400mm and terminates 7.2m above ground level.

The current proposal is to open a pizza restaurant which requires the installation of 2 new electric pizza ovens only. The ovens have a 300mm diameter flue which discharge to the atmosphere and requires a minimum height of 2.5m to provide sufficient natural draught through the oven. As the

new ovens are electric, there is no combustion process and no products of combustion will be discharged. All that will be discharged through the new flues is hot air and water vapour. There is no other cooking proposed in the new restaurant and no need for any extract canopies or grease extract ducts. A new heat recovery general ventilation system is to be installed as well as a new dishwasher. Existing internal toilet extract ductwork will be re-used.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

The Planning Authority decided to grant planning permission for the proposed development subject to 10 conditions.

#### **3.2. Planning Authority Reports**

##### **3.2.1. Planning Reports**

The Planning report considered the proposed development in the context of the details submitted with the application, internal technical reports, third party submissions and the City Development Plan policies and objectives.

The planning report considers that the proposed refurbishment and the changes to the internal layout appear to be reasonable and are unlikely to have a detrimental impact on the existing premises at ground floor level or the office space at upper floors. The report notes the objection submitted and refers to Section 34(13) of the Planning and Development Act in this regard.

The report further considers the comments of the Conservation Officer and concludes that proposed development is acceptable subject to compliance with a number of conditions. The Planning Officer recommends that permission be granted for the proposed development, subject to 10 conditions.

This Planning Report formed the basis of the Planning Authority's decision to grant planning permission.

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

**Drainage Division:** No objection subject to compliance with conditions.

**Air Quality Monitoring & Noise Control Unit:** The report advises that if permission is granted, 4 conditions are recommended as they relate to odour suppression measures, cleaning of the ducting system, no emissions including odours shall result in an impairment or, or an interference with amenities or the environment beyond the site boundary, and noise levels.

**Conservation Officer:** Report notes that the existing building on the site is a protected structure RPS No. 2303 and is located within an area zoned Z5. The building has also been surveyed by the NIAH (NIAH Ref. 50020287) as being of Architectural, Artistic, Historical and Social interest and has been afforded a regional rating. The building is located within a Conservation Area and the O'Connell Street and Environs Architectural Conservation Area.

The Conservation Officers report raises concerns with regard to the proposed alterations to the external doors along D'Olier Street which are shown on plans but omitted from the elevations. The impact of alterations to the façade of the building would be significant and prior to any works commencing on site, elevational drawings of the alterations to the doors shall be submitted.

With regard to the proposed new partitions, it is noted that they are proposed to extend to a height and terminate below the historic ceiling. Concerns are raised however, that these partitions might still be located too close to the underside of the historic ceiling and they do not take account of the legibility of the historic ceilings. The height of the partitions may also compromise the historic space and be oppressive for the end users. Revised elevations and sections are required showing these partitions reduced further in height and located within the historic floor plan in a sympathetic manner with reference to the historic bulkheads.

It is further requested that the ductwork be located within the space in a manner which will not impact on any historic decorative features. Any decorative features compromised by unsympathetic intervention in the past shall be restored and a conservation specification and methodology for the making good of all historic features in advance of works commencing on the site is to be submitted.

The Conservation Officer recommends a number of conditions.

### **3.2.3. Prescribed Bodies**

**TII:** The report notes that the development is located in close proximity to the Luas line and to the Luas Overhead Conductor System. There should be no adverse impacts on Luas operation and safety.

The proposed development falls within the area for an adopted Section 49 Supplementary Development Contribution Scheme – Luas Cross City (St. Stephen's Green to Broombridge Line) under S.49 Planning and Development Act, as amended.

If the application is successful and not exempt – where the levy does not apply – a condition should include for the Section 49 Contribution Scheme Levy.

### **3.2.4. Third Party Submissions**

There is 1 no. third party objection/submission noted on the planning authority file.

The issues raised are summarised as follows:

- The applicant does not have the consent of the landowner to submit this application. The proposal would breach numerous covenants in the lease and the owners consent is required. The third party (landowner) has submitted a solicitors letter advising that no permission for the works has been given.
- The proposed works, save the new external flues, have all been adjudicated on by the Council in its decision on EXPP 0295/19.

- The new external flues do not comply with Building Regulations and as a result, if constructed as proposed, would have a detrimental impact on the occupancy and use of the offices on the upper floors at D'Olier Chambers.
- The flues being 1.7m lower in height than the existing flues will only further restrict the dispersal of odours, smells and fumes within the confined yard space, to the detriment of the objectors' other tenants at D'Olier Chambers.
- The development therefore will negatively affect the environment for the office units above which will threaten the long-term sustainable use of D'Olier Chambers and be contrary to the proper planning and sustainable development of Dublin City.
- Based on the information submitted, the existing ESB supply for the unit and the entire building would be exceeded, cutting off electricity supply to the other tenants at D'Olier Chambers. This issue has been disregarded by the applicants.
- The submitted Architectural Heritage Impact Assessment merely repeats descriptive text from the Renaissance Engineering Report and does not provide any assessment of the potential impact on the protected structure from the installation of the proposed mechanical ventilation system including the two external flues.
- There is no consideration of the potential impact on the building during the importation of the two electric pizza ovens and no assessment of the internal installation of the ventilation system on the protected structure, particularly the irreversible damage to the historic fabric of the building through the use of cantilever brackets as internal supports for the flues.
- The historic old arched window used as an opening for the ductwork would need to be enlarged to cater for the proposed new external flues. This would seriously and permanently compromise the historic integrity and fabric of the protected structure.
- It is requested that the application be returned as invalid or refused permission. The objections includes a number of enclosures.



## 4.0 Planning History

The following is the relevant planning history pertaining to the subject site:

**PA ref 2236/91:** Permission refused for the installation of an ATM and relevant signage for the following reasons:

1. The proposal to provide an A.T.M. in the front facade of a retail premises is inconsistent with Dublin Corporation's policy in relation to the provision of A.T.M.s which restricts these elements to Financial Services premises. As such, the proposal would constitute an undesirable precedent in this regard contrary to the proper planning and development of the area.
2. The proposed A.T.M. would further the commercialization of the public footpath creating queues and causing obstruction to the free pedestrian flow at this location close to a pedestrian crossing. It would, therefore, seriously detract from the amenities of the street, contrary to the proper planning and development of the area.

**PA ref 0295/19:** Exempted Development Certificate sought, and issued, for the refurbishment of the building. The refurbishment includes:

- Removing the non-structural and non-original partition wall on the ground floor to create an open kitchen;
- Redecoration throughout including replacing tiling to walls in the existing kitchen area and replacing tiling in the basement toilets;
- Removing the bar and relocating a small dispense bar to the kitchen area;
- Replacing fixed seating;
- Removing ceiling hung bottle racks and ceiling hung light fixtures and introducing new lighting which will be fixed and cabled from lightweight frames fixed to the floor. Existing tension cables running between the perimeter walls to be retained.

The Planning Authority issued the following declaration:

In pursuance of its functions under the Planning & Development Acts 2000 (as amended), Dublin City Council has by order dated 23-Sep-2019 decided to issue a Declaration that the above proposed development is EXEMPT from the requirement to obtain planning permission under Section 32 of the Planning & Development Acts 2000 (as amended).

**Reasons & Considerations:**

It is considered that the proposed works as summarised below comprise development which would come within the meaning of Section 4(1)(h) and Section 57 of the Planning and Development Act 2000 (as amended) and would not materially affect the character of the Protected Structure and therefore would NOT require planning permission when carried out in accordance with the Guidelines for Planning Authorities on Architectural Heritage Protection (2011) and in line with best conservation practice as per the additional information documentation under the supervision of the engineer and conservation architect:

1. Removing a non-structural and non-original partition wall on the ground floor to create an open kitchen.
2. Redecoration throughout including replacing tiling to walls in the existing kitchen area and replacing tiling in the basement toilets.
3. Removing the bar and relocating a small dispense bar to the kitchen area.
4. Replacing fixed seating.
5. Removing ceiling hung bottle racks and ceiling hung light fixtures and introducing new lighting which will be fixed and cabled from lightweight frames fixed to the floor. Existing tension cables running between the perimeter walls to be retained.

## 5.0 Policy and Context

### 5.1. Architectural Heritage Protection Guidelines for Planning Authorities (Department of Arts, Heritage and the Gaeltacht 2011).

- 5.1.1. The proposed development involves works to a protected structure and as such, *'Architectural Heritage Protection, Guidelines for Planning Authorities'* are considered relevant. These guidelines are issued under Section 28 and Section 52 of the Planning and Development Act 2000. Under Section 52(1), the Minister is obliged to issue guidelines to planning authorities concerning development objectives:
- a) for protecting structures, or parts of structures, which are of special architectural, historical, archaeological, artistic, cultural, scientific, social, or technical interest, and
  - b) for preserving the character of architectural conservation areas.
- 5.1.2. The guidelines provide guidance in respect of the criteria and other considerations to be taken into account in the assessment of proposals affecting protected structures. The guidelines seek to encourage the sympathetic maintenance, adaption and re-use of buildings of architectural heritage.
- 5.1.3. Chapter 13 deals with Curtilage and Attendant Grounds and Section 13.5 relates to Development within the Curtilage of a Protected Structure and Section 13.8 of the Guidelines relate to Other Development Affecting the Setting of a Protected Structure or an Architectural Conservation Area. The following sections are considered relevant:
- Section 13.8.1
  - Section 13.8.2
  - Section 13.8.3

### 5.2. National Inventory of Architectural Heritage

- 5.2.1. The National Inventory of Architectural Heritage (NIAH) is a unit within the Department of Environment, Heritage and Local Government engaged in compiling

an evaluated record of the architectural heritage of Ireland. Where an NIAH survey of a particular area has been published, relevant planning authorities will be provided with information on structures within the area of that survey. The planning authority can assess the content of, and the evaluations in, an NIAH survey with a view to the inclusion of structures in the RPS according to the criteria outlined in these guidelines.

5.2.2. This area of Dublin City Centre is identified as an ACA and the supporting documents identify a large number of protected structures and structures listed on the NIAH. The proposed development before the Board relates to a development to a protected structure and D'Olier Chambers are included in the NIAH as follows:

- D'Olier Chambers, NIAH ref 50020287 – Regional Rating.

**Description:**

Corner-sited attached three-bay four-storey former office, built c.1890, having three-bay canted elevation to south-east, and shallow pedimented breakfronts to front (south-west) and south-east elevations, with further five-bay three- and four-storey elevation to west. Now in use as restaurant. Pitched slate roof, hipped to canted bay, having yellow brick chimneystacks with moulded terracotta detailing and cornices, moulded terracotta balustraded parapet having moulded cornice and piers surmounted by ball finials. Cast-iron rainwater goods. Moulded terracotta cornice and platband, over brown brick, laid in Flemish bond, to walls, with yellow brick pilasters, terracotta panels having foliate and figurative motifs, fascia with dentillated cornices to third floor, stepped to breakfronts to front and south-east elevations, scrolled consoles and raised lettering: 'D'OLIER CHAMBERS'. Dentillated cornice and moulded string course to ground floor, granite plinth course. Round-headed window openings to pediments, moulded terracotta surrounds and fluted keystones with fleur-de-lis, moulded terracotta foliate details to tympana and spandrels, pilasters having fluted entablatures, timber casement windows and plain fanlights. Square-headed window openings to second and third floors, dentillated and egg-and-dart motifs to terracotta fasciae, moulded terracotta lintels, timber casement windows. Wrought-iron balconettes on moulded terracotta cornices and terracotta sills to second floor windows. Balustraded

terracotta balconettes to third floor windows to breakfronts. Round-headed window openings to first floor, moulded terracotta surrounds, decorative panels to pilasters, stepped reveals, fluted keystones, timber casement windows and integral fanlights, some coloured glass. Moulded panels to aprons having swags and foliate details. Segmental-headed window openings to ground floor, terracotta reveals, hood mouldings, keystones and sills with panelled aprons, coloured glass tympana and timber framed windows. Segmental-headed door openings, terracotta reveals and hood mouldings, keystones, double-leaf glazed timber doors and coloured glass tympana. Coffered ceiling with rosette motif to interior. Some basement lights with granite pavers to front.

### Appraisal

With its form, scale, and elaborate terracotta embellishment, this building is a striking addition to the streetscape. It is prominently sited overlooking the junction of D'Olier Street, Fleet Street, College Street, Pearse Street, Townsend Street and Hawkins Street. D'Olier Chambers was designed and built by the Irish architect J.F. Fuller as the southern branch of Gallagher & Company, tobacco manufacturers. Fuller specified that J.C. Edward's best buff terracotta and facing bricks were to be used. This is one of a number of late Victorian commercial buildings in Dublin which make extensive use of terracotta, providing textural and tonal variation with the brown brick of the façade. The pedimented breakfronts, surmounted by elaborately detailed chimneystacks, create a remarkable silhouette, and lend diversity to the architectural character of the area.

## 5.3. Development Plan

- 5.3.1. The Dublin City Development Plan 2016 – 2022, is the relevant policy document relating to the subject site. Under the Plan, the subject site is zoned Z5, where it is the stated objective 'consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity'.

5.3.2. The primary aim of the land use zoning objective is to sustain life within the centre of the city through intensive mixed-use development. The strategy is to provide a dynamic mix of uses which will interact with each other, help create a sense of community and sustain the vitality of the inner city both by day and night. Ideally this mix of uses should occur both vertically through the floors of the building as well as horizontally along the street frontage. While a general mix of uses (retail, commercial, residential etc.) will be desirable throughout the area. Retail will be the predominant use at ground floor level of the principle shopping streets. D'Olier Street is not designated as a principle shopping street in the development plan. In terms of permissible uses, restaurants are permitted uses under the Z5 zoning objective.

5.3.3. The subject building is a Protected Structure. Chapter 11 of the CDP deals with Built Heritage and Culture and Section 11.1.5.4 deals with Architectural Conservation Areas and Conservation Areas where it is stated that DCC will seek 'to ensure that development proposals within all Architectural Conservation Areas and Conservation Areas complement the character of the area, including the setting of protected structures, and comply with development standards'.

5.3.4. The following policies are relevant in the context of the proposed development site:

**Policy CHC1:** To seek the preservation of the built heritage of the city that makes a positive contribution to the character, appearance and quality of local streetscapes and the sustainable development of the city.

**Policy CHC2:** It is the policy of Dublin City Council to ensure that the special interest of protected structures is protected. Development will conserve and enhance Protected Structures and their curtilage and will:

- a) Protect or, where appropriate, restore form, features and fabric which contribute to the special interest
- b) Incorporate high standards of craftsmanship and relate sensitively to the scale, proportions, design, period and architectural detail of the original building, using traditional materials in most circumstances
- c) Be highly sensitive to the historic fabric and special interest of the interior, including its plan form, hierarchy of spaces, structure and architectural detail, fixtures and fittings and materials

- d) Not cause harm to the curtilage of the structure; therefore, the design, form, scale, height, proportions, siting and materials of new development should relate to and complement the special character of the protected structure
- e) Protect architectural items of interest from damage or theft while buildings are empty or during course of works
- f) Have regard to ecological considerations for example, protection of species such as bats.”

**CHC4:** To protect the special interest and character of all Dublin’s Conservation Areas. Development within or affecting a conservation area must contribute positively to its character and distinctiveness and take opportunities to protect and enhance the character and appearance of the area and its setting, wherever possible.

Enhancement opportunities may include:

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

Development will not:

1. Harm buildings, spaces, original street patterns or other features which contribute positively to the special interest of the Conservation Area
2. Involve the loss of traditional, historic or important building forms, features, and detailing including roofscapes, shop-fronts, doors, windows and other decorative detail

3. Introduce design details and materials, such as uPVC, aluminium and inappropriately designed or dimensioned timber windows and doors
4. Harm the setting of a Conservation Area
5. Constitute a visually obtrusive or dominant form.

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.

#### **5.4. Scheme of Special Planning Control (O'Connell Street and Environs 2016)**

- 5.4.1. D'Olier Chambers lies approximate to the southern boundary of the above scheme and as such the subject site is located within the confines of the scheme. A major consideration in this scheme is to maximise the use of buildings and to attract and encourage a strong and complementary mix of uses on the upper floors of all buildings. The objective is to seek a more intensive use of the upper floors and basement levels of buildings in the area and to seek the redevelopment of vacant underutilised or underperforming sites within the area.
- 5.4.2. Another key objective is to secure the retention of the historic fabric of the area. It states that Dublin City Council is committed to promoting the continued beneficial use and maintenance of these buildings in order to prolong their life and ensure their future preservation.

#### **5.5. Natural Heritage Designations**

- 5.5.1. The site is not located within any designated site. The closest Natura 2000 site is the South Dublin Bay SAC (& pNHA)(Site Code: 000210) which is located approximately 3km to the south east and the South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024) which is located approximately 2.5km to the north east of the site.
- 5.5.2. The Royal Canal pNHA (Site Code 002103) lies approximately 1.1km and the Grand Canal pNHA (Site Code 002104) lies approximately 1.3km to the east while the



North Dublin Bay pNHA, (Site Code 000206), is located approximately 2.4km to the north east of the site.

## **5.6. EIA Screening**

- 5.6.1. Having regard to nature and scale of the development, together with the brownfield nature of the site, 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. This is a third-party appeal against the decision of the Planning Authority to grant planning permission for the proposed development. The issues raised reflect those raised with the PA during their assessment of the proposed development and are summarised as follows:
- The appellants wish to inform the Board of their difficulty in accessing the full planning file at the City Council offices where neither a copy of their lease with the applicant nor the licence agreement with Chaplin's Bar were made available for inspection.
  - This information should have been freely available to the appellants as owners of the building and because the applicant expressly relies on both documents as letters of consent.
  - Issues also raised with regard to the time it took to retrieve the file.
  - The inclusion of exempted development is submitted as being a means to deflect attention from the true intent which is to terminate the flues at a low level into a confined area where they will undoubtedly cause an intolerable nuisance to other occupants of D'Olier Chambers and possibly adjoining buildings.

- The destruction of the old arch window to facilitate new ducting would materially affect the architectural heritage of the protected structure.
- It is submitted that the Conservation Officer was mistaken in her opinion that the proposal includes unnecessary relocation of a door on the D'Olier Street elevation. If it is proposed, the inclusion of Condition 9(d) is not an appropriate response.
- Many of the elements of the proposed development have been adjudicated upon by the PA and their inclusion is considered to deflect from the proposed new external flues.
- The issue of flues has been subject to lengthy discussions with the appellants, and it is their position that they must comply with the Building Regulations. If constructed as proposed, they will have a detrimental impact on the occupancy and use of the offices on the upper floors of the building.
- Nuisance from fumes and odours raised and appellants appointed experts agree that compliance with Building Regulations necessitated ventilation to atmosphere above D'Olier Chambers. What is now proposed will not comply.
- The planning implications of non-compliance with Building Regulations is the detrimental impact and permanent nuisance on the occupants of the upper floors and will threaten the long-term sustainable use of D'Olier Chambers.
- It is nonsense to suggest that as the pizza ovens are electric there will be no combustion process and that all that will be discharged is hot air and water vapour.
- It is submitted that Condition 6 attached to the PAs decision to grant is misleading, poorly constructed, imprecise and is unenforceable. It also infers that the EHO accepts that the ovens would emit odours. No 'odour suppression measures' were included with the applicants report.
- The AHIA submitted with the applicant does not provide any assessment of the potential impact on the protected structure from the installation of the proposed mechanical ventilation system including two external flues.

- A close examination of the lodged plans show that the historic old arch window used as an opening for the ductwork needs to be enlarged to cater for the proposed new external flues.
- No justification has been offered for the proposal to removal original doors from the D'Olier Street elevation.
- The applicant does not have the consent of the landowner to submit the application. This is not a legal dispute, it is a planning requirement as part of the validation process for all planning applications, Article 22(2)(g) refers.

It is requested that the application be deemed invalid or alternatively, permission is refused. There are a number of enclosures with the appeal.

## 6.2. **Applicant Response**

The first party submitted a response to the third-party appeal. The submission is summarised as follows:

- It is submitted that the legal interest of the applicant was fully set out in the Long-term Lease, which enables the applicant to apply for planning permission without the consent of the landlord.
- It is requested that the Board question the validity and reasoning behind the appeal which appear to be solely for commercial purposes and to dismiss the appeal as being vexatious under s138 of the Act.
- For clarification purposes, revised drawings indicating that the new flue arrangement will pass through the existing ope and technical not addressing the flue requirement for the restaurant and confirming that the flue height and arrangement is correct in terms of Building regulations is provided.
- It is noted that the proposal includes fixing new external flues to the rear of Chaplin's Bar, which is not a Protected Structure.
- The proposed flues have been designed and located to both meet with the required Building Regulations as well as to ensure that the flues ventilate to atmosphere and are appropriately designed for the purpose of the restaurant.

The appellants are incorrect in a number of assertions that they make and misunderstand the need and function of the flues in this instance.

- There are no noxious odours or fumes associated with the proposed electric pizza oven flues.
- No works to the semi-circular arch window or to the exterior of the protected structure are proposed. The project team carefully considered the proposed pathway and specific location of the proposed flues.
- The first party confirm their willingness to comply with the requirements of condition 9 of PAs decision.
- With regard to the third-party claims in relation to consent, it is submitted that the Planning Authority validated the application and the relevant documents were submitted with the planning application.
- The Planning Officer rightly noted that the planning process is not designed as a mechanism for resolving disputes about title to land or premises, which are ultimately a matter for the courts.

It is requested that the Board uphold the decision to grant permission. There are a number of enclosures with the applicants' response to the third party appeal including drawings and a technical letter from Renaissance Engineering Ltd.

### **6.3. Planning Authority Response**

None.

### **6.4. Observations**

There is one observation submitted from Transport Infrastructure Ireland. The content of the observation is the same as that submitted to the PA during its assessment of the proposed development and is detailed above in section 3.2.3 of this report.

## **7.0 Assessment**

Having undertaken a site visit and having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site, the nature and scale of the proposed development and the nature of existing and permitted development in the immediate vicinity of the site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. Principle of the development
2. Impacts to Protected Structure & Design
3. Other Issues
4. Appropriate Assessment

### **7.1. Principle of the development**

- 7.1.1. The proposed development seeks permission to carry out internal refurbishment works to the existing ground floor restaurant within the D'Olier Chambers Protected Structure, building. The works will include the replacement of existing external flues with new external flues that will be attached to the wall within the lightwell to the east of D'Olier Chambers and to the rear of Chaplin's Bar. The development also includes internal refurbishment works that will include the removal of existing seating and bar and its replacement with new seating arrangement, new kitchen, including two pizza ovens as well as internal ducting at ground floor level. Having undertaken a site inspection, I would note that the building was closed on the date of my inspection, during the Level 5 Covid-19 lockdown, so I could not gain access to the interior of the building.
- 7.1.2. The existing building has been occupied by a restaurant at ground floor level for a number of years and the current proposal seeks to change the internal layout and remove the existing commercial kitchen and extract canopy above the cooking area. The extraction system associated with the commercial kitchen is described as having been grease laden, discharging all odours from the kitchen into the lightwell. The proposed development requires the installation of 2 new electric pizza ovens only. It

is submitted that no other cooking is proposed in the new restaurant and no need for any extract canopies or grease extract ducts.

- 7.1.3. The subject site is located within the city centre and in an area zoned Z5, where it is the stated objective 'consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity'. The primary aim of the land use zoning objective is to sustain life within the centre of the city through intensive mixed-use development. The strategy is to provide a dynamic mix of uses which will interact with each other, help create a sense of community and sustain the vitality of the inner city both by day and night. In terms of permissible uses, restaurants are permitted uses under the Z5 zoning objective. As such and having regard to the most recent use of the site as a restaurant, the proposal is acceptable in principle, subject to the detailed considerations below.

## **7.2. Impacts to Protected Structure & Design**

- 7.2.1. It is the stated policy of Dublin City Councils Development Plan, Policy CHC1 refers, to seek the preservation of the built heritage of the city that makes a positive contribution to the character, appearance and quality of local streetscapes and the sustainable development of the city. In addition, Policy CHC2 seeks to ensure that the special interest of protected structures is protected. The Board will note that the subject building is a Protected Structure which lies within an ACA and therefore, it is necessary to consider the impact of the proposed development on the subject building, as well as adjacent protected structures.
- 7.2.2. Policy CHC2 sets out a number of criteria for works to protected structures. The proposed development seeks to carry out works to the interior of the building only and does not include external works or works to the historic fabric of the building. I note the comments of the Dublin City Conservation Officer in this regard and would conclude that there is no objection in principle to the works proposed, subject to compliance with the requirements of the Conservation Officer as they relate to the internal layout.
- 7.2.3. In addition to the above, the development proposes to replace the existing ventilation system, ducts and flues and install a mechanical ventilation system. It is proposed to

use the existing opes to run the new ducting and there will be no alterations to the window or historic fabric of the building in this regard. The external flues will connect to the wall of Chaplin's Bar which is not a protected structure, rather than the D'Olier Chambers building. As such, and notwithstanding the third-party submission, I have no objection in principle to this element of the proposed development.

- 7.2.4. Overall, I would have no great objections to the proposed development in principle. I acknowledge the comments of the DCC planning officer and the Conservation Officer and I am satisfied that the development adequately accords with the requirements of Policy CHC2 or CHC4 which seek to protect the special character of protected structures and Conservation Areas. Subject to compliance with appropriate conditions with regard to the internal works, and agreement with the City Conservation Officer, I am satisfied that the development will not significantly impact on the character or architectural features of the protected structure on the site, or adjacent to the site, and suggest that it would not negatively impact the fabric, form and character of the protected structure.

### **7.3. Other Issues**

#### **7.3.1. Compliance with Building Regulations**

The Board will note that the third-party considers that the proposed development, and in particular the proposals for ventilation and flues, do not comply with the Building Regulations. In particular, it is submitted that the flues as proposed will have a negative impact on the environment of the office spaces on the upper floors of D'Olier Chambers. It is submitted that the shorter flues as proposed will discharge into a confined yard and not to the atmosphere above Chaplin's Bar as required by the Regulations.

In response, the applicant submits that the design of the proposed ventilation system fully accords with the relevant Building Regulations and have been appropriately designed for the restaurant. In addition, I note the recommended condition 6 of the PAs decision to grant permission which sets out the requirements of the Dublin City Council EHO.

I am generally satisfied that the applicant has addressed the issues raised in the third-party appeal in this regard and that Building Control matters are to be dealt with under a separate code.

#### **7.3.2. Consent Issue**

The Board will note that the pertinent issue arising in the third-party appeal relates to fact that the applicant did not seek, or receive, permission to make the planning application from the property owners – the third-party appellants. Having regard to all of the information available to me, I am generally satisfied that the applicant has provided sufficient legal interest to make the planning application.

In addition, I would be satisfied that the provision of Section 34(13) of the Planning & Development Act, 2000 as amended, which states ‘A person shall not be entitled solely by reason of a permission under this section to carry out any development’ is sufficient to ensure that the civil issue relating to the content of the long term lease agreement between the parties, if relevant, is rectified prior to the commencement of development on the site.

#### **7.3.3. Other Third-Party Issues**

The Board will note that the appellants have raised concerns regarding inaccuracies in the planning documents, including perceived works to the external façade of the building on the D’Olier Street elevation. The floor plans submitted seem to suggest that the door in this elevation is extended. The elevational drawings do not reflect this. The first party submits that there is no external works proposed as part of the proposed development. I am satisfied that this is acceptable.

I also note the contention that the description of the proposed development, which included elements previously deemed to be exempted development by the Planning Authority, was an attempt to deflect attention from the true intent which is to terminate the flues at a low level into a confined area. I also note the indication that the applicant and the third party, as landlord, have engaged in discussions with regard to the flues. The Board will note that I have considered all aspects of the proposed development.



#### **7.3.4. TII Issues**

The Board will note that the submitted observation from the TII notes that the development is located in close proximity to the Luas line and to the Luas Overhead Conductor System. There should be no adverse impacts on Luas operation and safety.

I also note the PAs inclusion of condition 10 which requires that the developer comply with the requirements of Transport Infrastructure Ireland. While it is open to the Board to include a similar condition in any decision to grant permission, having regard to the minor nature of the proposed works, I do not consider it necessary to do so.

#### **7.3.5. Development Contribution**

The subject development is not liable to pay a S48 development contribution as it relates to works to a protected structure. There is no increase in floor area or any net additional commercial floor space.

In terms of the S49 Luas Cross City Supplementary Development Contribution Scheme, section 11 of the scheme sets out the categories of development which will be exempted from the requirement to pay development contributions under the scheme. Works to protected structures are exempt and therefore, no contribution is payable in this instance.

#### **7.3.6. Appropriate Assessment**

The site is not located within any designated site. The closest Natura 2000 site is the South Dublin Bay SAC (& pNHA)(Site Code: 000210) which is located approximately 3km to the south east and the South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024) which is located approximately 2.5km to the north east of the site.

Overall, I consider it is reasonable to conclude on the basis of the information available that the proposal individually or in combination with other plans or projects, would not adversely affect the integrity of a Natura 2000 site having regard to the nature and scale of the proposed development and separation distances involved to adjoining Natura 2000 sites. It is also not considered that the 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**

I recommend that planning permission be granted for the proposed development for the following stated reason and subject to the following stated conditions.

## **9.0 Reasons and Considerations**

Having regard to the pattern of permitted development in the area, to the provisions of the Dublin City Development Plan 2016-2022, and to the layout and design as submitted, the Board considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure or affect the character of the Conservation Area or Protected Structure, or the existing amenities of other buildings or uses in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## **10.0 Conditions**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further particulars submitted to An Bord Pleanála on the 30<sup>th</sup> day of November 2020, 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. All proposed works to the protected structure, both internally and externally, shall be carried out under the supervision of a qualified professional with

specialised conservation expertise and in accordance with the requirements of the Dublin City Council Conservation Officer. Prior to the commencement of any development on the site, full details shall be submitted for the written agreement of the Planning Authority.

**Reason:** To secure the authentic preservation and the protection of the fabric, form and character of this protected structure and to ensure that the proposed works are carried out in accordance with best conservation practice.

3. Prior to commencement of development, details of all signage associated with the development shall be submitted to, and agreed in writing with, the planning authority.

**Reason:** In order to safeguard the amenities of the area and the protected structure.

4. Notwithstanding the provisions of the Planning and Development Regulations, 2001, or any statutory provision amending or replacing them, no advertisement signs (including any signs installed to be visible through the windows), advertisement structures, banners, canopies, flags, or other projecting elements shall be displayed or erected on the buildings or within the curtilage of the site, unless authorised by a further grant of planning permission.

**Reason:** In the interest of visual amenity, and to permit the planning authority to assess all signage on this site through the statutory planning process.

5. No additional development shall take place at roof level including any lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunications aerials, antennas or equipment, unless authorised by a further grant of planning permission.

**Reason:** In order to protect the visual amenities of the area and to permit the planning authority to assess any such development through the statutory planning process

6. 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 noise management measures and traffic management measures.

**Reason:** In the interests of public safety and residential amenity.

7. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July, 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

**Reason:** In the interest of sustainable waste management.

8. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

9. The developer shall comply with the requirements of the Environmental Health Section of Dublin City Council with regard to the installation and maintenance of the new ventilation system, ducts and flues. No emissions, including odours shall result in an impairment of, or an interference with amenities or the environment beyond the site boundary or any other legitimate uses of the environment beyond the site boundary and the LAeq level measured over 15 minutes (daytime) or 5 minutes (night-time) at a noise sensitive premises when plant is operating shall not exceed the LA90 (15 minutes day or 5 minutes night), by 5 decibels or more, measured from the same position, under the same conditions and during a comparable period with no plant in operation.

**Reason:** In the interests of the amenities of both the immediate neighbours and general surroundings.

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A. Considine  
Planning Inspector  
11<sup>th</sup> March 2021