



An  
Bord  
Pleanála

## Inspector's Report

### ABP-309063-20

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<b>Development</b>	Demolition of restaurant, and construction of a new restaurant and 6 residential units
<b>Location</b>	Silks Restaurant, The Mall, Malahide, Co Dublin
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F20A/0347
<b>Applicant</b>	Marcus Sung
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	Third Party
<b>Appellants</b>	Deirdre Rochford DAA
<b>Date of Site Inspection</b>	8 <sup>th</sup> March 2021
<b>Inspector</b>	Dolores McCague

## 1.0 Site Location and Description

- 1.1.1. The site is located close to the village centre of Malahide on the southern side of The Mall. It is occupied by a detached two storey building which was formerly Silks Restaurant. The restaurant building is a part two storey, part single storey dormer building with a domestic appearance. The site is rectangular in shape, with a long narrow configuration; the short axis along the street. The building has been extended to the rear. A garden located to the rear accommodates an outdoor seating/smoking area and there is surface car parking to the front. The site slopes steeply upwards from the rear of the building with a series of steps connecting the lower and upper parts of the rear garden. The existing building is elevated above the public road, with the front of the site sloping gently upwards from the Mall.
- 1.1.2. The predominant uses in the area are commercial and residential. To the west of the site is a petrol filling station, with Heeley's View Apartment complex, a 5 storey development to the rear. Vehicular access to the apartments is from The Mall. Malahide library, a protected structure, adjoins the filling station / apartment access to the west. To the east, large detached properties, set within their own grounds, facing The Mall, extend as far as Grove Rd, interrupted by another road, The Rise. The property to the immediate east is also in commercial use and accommodates Therapie Hair Restoration. The Silks property ridge line is lower than this adjacent building. A further infill 2 storey dwelling 'Somerton' has been constructed to the rear of Therapie Hair Restoration, with access eastwards from The Rise. The ground levels associated with this dwelling are higher than the subject site. Opposite the site, facing east towards a green area is St. James Terrace, comprising period properties of two and three storeys, mostly protected structures. Malahide Lawn Tennis and Croquet Club occupies the green.
- 1.1.3. The site is within the boundary of the Architectural Conservation Area (ACA) for Malahide Historic Core.
- 1.1.4. The site is given as 0.11ha.

## 2.0 Proposed Development

2.1.1. The proposed development comprises the demolition of the existing two-storey restaurant, and the construction of a new restaurant and 6 no. residential units consisting of 5 no. 2 Bedroom Apartments and 1 no. 2 bedroom Duplex Apartment; 8 no. associated surface car parking spaces; associated landscaping, boundary treatments, bin storage, cycle parking, signage and site development works.

2.1.2. Documents provided with the application include:

Drawings.

A report from GSP Fire Ltd, Chartered Engineers & Fire Safety Consultants.

A report from RM Breen Associates, Sustainable Building Services Design, Project Management.

A report from John Greene B.Arch, MUBC, MRAI, Architect and Historic Building Consultant.

2.1.3. Additional information provided following the Planning Authority's request includes:

Drawings and mechanical and electrical planning report by RM Breen Associates in relation to mechanical ventilation.

Revised drawings with annotations, responding to the Planning Authority's concerns.

## 3.0 Planning Authority Decision

3.1.1. Planning authority decided to grant permission subject to 26 conditions, including:

Materials and finishes per drawings unless otherwise agreed.

Undergrounding of services

Construction hours

Operational hours, and delivery hours

Noise limits

Management scheme

A dedicated parking space for each apartment and 2 for staff of the restaurant

A bond

Development Charge for shortfall in public space

Development Charge.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

There are two planning reports on the file. The first recommending a further information request includes:

- There is reference to the lift core and a water tank on both the roof plan and proposed section BB, however these elements have not been referenced on the elevation drawings. The flat roof section of the building sits approx. 100mm above the ridge level of the front section and is set back 9.4m from the front elevation. While the comments of the conservation officer are noted, having regard to the set back, together with the minimal increase in height, it is considered that the proposal will not be visually obtrusive in the streetscape. Discrepancy in drawings to be addressed.
- The western elevation will be highly visible, across the garage forecourt. It is proposed to finish this elevation with a mix of brick and render and some protruding brick features and recesses. It is considered that the mix of material finishes, together with light well recess, allows for this long elevation to be broken up effectively and that it will not be visually overbearing on the streetscape. Conservation officer requests measures to soften this elevation with inclusion of planting.
- Residential amenity – accords with floor area standards. Concerns have been raised re. overlooking. The proposed building is provided with a separation distance of 12.597m from the rear boundary. The proposed building does not extend beyond the rear of the neighbouring dwelling to the east and is 1.2m from the eastern boundary and will not give rise to overlooking.
- Having regard to the orientation of the site, issues of overshadowing are not anticipated.
- Balconies are in excess of requirements. Units 3, 4, 5 and 6 have balconies with southern orientation, along the rear of the building. Balconies to Units 1, and 2, located opposing windows serving bedrooms of Units 4 and 6, centrally

within the building, are of concern re. overlooking and daylight. Windows serving bedroom no. 1 in units 3 and 5, directly opposing the stair core and bedroom no. 2 in these units, are served with a small window located within a light well.

- The proposed smoking area for the restaurant under / aside residential accommodation may cause noise and smell nuisance, to residents / neighbours. The front may offer a more appropriate location.
- Communal open space 42 sqm required, 167.2 to be provided.
- Car parking is below requirement for residential use and should be reserved for residents and staff. Customer parking would not be viable. Given the town centre location, it is considered that parking associated with the restaurant could be accommodated between on-street and public car parks having regard to its off peak hours of operation.

#### 3.2.2. Other Technical Reports

#### 3.2.3. Water Services - conditions.

#### 3.2.4. Conservation Officer Section:

ACA designation places a level of protection on the exterior of buildings which positively contribute to the character of the area and controls on how new build addresses the streetscape. Comments are confined to the potential impact on the streetscape. The building has a very deep plan which may give rise to other planning concerns.

The existing building appears to be a late 20th century structure that mirrors some elements of the characteristic mid-20th century houses of The Rise and The Mall but is not as successfully executed. In particular, there are a variety of competing roof profiles and sizes on the front elevation for the roofs of the dormer windows, the breakfront projections and the porch. The Conservation Officer has no objection in principle to the replacement of the existing building as long as the design of the new build is sympathetic to the setting. The site is on the edge of the commercial core of Malahide where it begins to transition into residential streets of primarily two-storey houses.

The design and scale of the current proposal as it presents onto The Mall is more appropriate than previous applications. The design of the front elevation and front section is a reinterpretation of the forms of the existing building on the site and other buildings on The Mall with catslide roofs. While, the proposed scale is comparable to that of the other properties to the east it does now project slightly higher than these and the building it is replacing. No additional elements should project above over this ridge height.

The flat-roofed block to the rear should sit below the front ridge height including any plant or equipment on it e.g. water tanks, ducts, vents, communications equipment and antenna.

The current proposal shows the parapet of the rear block as being above the front ridge line and a water tank is higher again. Revisions should be made to the design to sit the rear block and any plant on its roof below the front ridge line.

The materials proposed in general are acceptable subject to clarification of the exact colour of the brick (samples should be agreed with the planning authority). It is asked though that windows and doors are timber or metal and not uPVC as proposed.

Details of and the extent of all of the proposed signage for the restaurant need to be provided prior to the commencement of any works, included materials, dimensions and number of signs. Direction in the Fingal Development Plan on signage within ACAs should be followed.

The proposed layout has a very deep-plan, flat-roofed apartment block running back behind the front elevation. A section of this rear element is partially visible from the main street of The Mall / Dublin Street due to the open nature of the petrol station forecourt to the west. It has previously been asked for the height of this to be brought below the ridge line of the front section of the building. It is noted that the drawings indicate that no soft landscaping is proposed to the front or sides of the development.

Where possible measures should be incorporated into the design to soften the front forecourt and the west elevation with planting.

#### 3.2.5. Parks and Green Infrastructure Division:

Conditions:

## 1. Landscape Plan

- i. In the interest of visual amenity, the submitted landscape plan shall be implemented on completion of the construction works with the additional inclusion of hedging and / or trees within the car parking area, in particular inside the front boundary wall.
- ii. All plantings in hard surface areas must have appropriately sized constructed planting pits to provide sufficient rooting volume for the selected species.
- iii. Any failures shall be replaced in the following planting season until such time that the plantings are established.

## 2. Shortfall of Public Open Space

There is a shortfall in the quantum of public open space generated through the development works of 225m<sup>2</sup>. The applicant is required to make up this shortfall by way of a financial contribution in accordance with section 48 of the Planning & Development Act 2000, in lieu of the public open space provision. This contribution will be applied towards the continued upgrade of local class 1 open space facilities in the Malahide area namely Malahide Demesne.

### 3.2.6. Environmental Health Air and Noise Unit:

Conditions:

1. During the demolition and construction phases no heavy construction equipment/machinery (to include pneumatic drills, construction vehicles, generators, etc) shall be operated on or adjacent to the construction site before 8.00a.m. Or after 7.00p.m., Monday to Friday, and before 8.00 a.m. and after 13.00p.m. On Saturdays.
  - No activities shall take place in site on Sundays or Bank Holidays.
  - No activity, which would reasonably be expected to cause annoyance to residents in the vicinity, shall take place on site between the hours of 7.00p.m. and 8.00a.m.
  - No deliveries of materials, plant or machinery shall take place before 8.00a.m. in the morning or after 7.00p.m. in the evening.
  - No night time works shall be carried out without prior consultation with the Environmental Health Officers Air & Noise Unit of Fingal County Council.

If there is any occasion when work must be carried on outside daytime hours, this department, local residents and businesses in areas which are likely to be affected by noise from the proposed works should be notified in advance e.g. in letter or leaflet or advertisement form, of:

- Name, address and telephone number of company carrying out works.
- Nature of and reason for works.
- Likely duration and times of work.

2. During the demolition and construction phase of the proposed development B.S.5228:2009+A1:2014 "Noise Control on Construction and Open Sites Part – Code of practice for basic information and procedures for noise control shall be adhered to. Where noise levels exceed the threshold steps will be taken by the contractor to review the works and implement additional mitigation measures where practicable. Noise emissions from the site shall be broadband in nature and free from audible tonal characteristics.

3. During the demolition and construction phase, all necessary steps shall be taken to contain dust and airborne pollutants arising from the site and to prevent nuisance to persons in the locality. This shall include i) covering skips, ii) covering slack heaps, iii) netting of scaffolding, iv) regular road and pavement damping and sweeping, v) use of water spray to suppress dust, vi) proper paved or hard stand access for trucks and vehicles to and from the site to prevent dirt and dust from the site being carried from the site on to public roads etc.

4. A dust management plan shall be implemented. The generation of airborne dust shall be kept to a minimum. During dry periods, dust emissions from heavily trafficked locations on/off site shall be controlled by the spraying of surfaces with water and wetting agents. Windblown dust emissions on site surfaces shall be sprayed by a mobile tanker bowser.

5. The development shall be so operated to ensure that there will be no emissions of malodours, gas, dust, fumes or other deleterious materials from activities associated with the restaurant that would give reasonable cause for annoyance to any person in any residence, adjoining unit or public place in the vicinity.

6. The development shall be so operated to ensure that there will be no noise emissions from activities associated with the restaurant that would give reasonable



cause for annoyance to any person in any residence, adjoining unit or public place in the vicinity.

### 3.2.7. Environment

Conditions:

- 1) Prior to commencement of the development, a detailed construction and demolition waste management plan shall be submitted to, and agreed in writing with, the Environment Division, prepared in accordance with 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. This Plan shall include details of the various waste streams to be generated during site clearance and construction phases including expected tonnages as well as details of the methods to be used and specific licenced facilities (including permit numbers) to be employed for the prevention, minimisation, recovery and disposal of waste materials in accordance with the provisions of the Eastern Midlands Regional Waste Management Plan 2015 - 2021.
- 2) The applicant shall ensure that all hauliers hold a valid waste collection permit for any construction and demolition waste material collected from the site and that both collection and facility permit numbers are provided as part of the C & D Waste Management Plan. Waste material shall be delivered to authorized waste recovery/disposal facilities only with records kept for all waste streams moved off site as set out within the Waste Management (Collection Permit) Regulations 2007 as amended.
- 3) The applicant shall provide details of any proposed exportation / importation of soil and stone material for the site and confirm the destination/source location of materials as applicable.

### 3.3. Further Information

3.3.1. A further information request issued 10 September 2020 on 4 points:

- 1) show all aspects of the proposed development on drawings. No additional elements should project above / over the ridge height such as the water tanks, ducts, vents, communications equipment and antenna.
- 2) investigate soft landscaping along the western boundary.

3) units do not provide for an adequate level of residential amenity for any potential future resident: location of some balconies opposing windows serving habitable rooms and natural daylight to some units, address.

4) the proposed smoking area for the restaurant under / beside residential accommodation may cause noise and smell nuisance, relocate.

3.3.2. A response to the further information request, received 6<sup>th</sup> November 2020, includes revised drawings, a daylight and sunlight analysis, and a mechanical and electrical planning information report by RMBA (RM Breen Associates).

3.3.3. Further Reports

3.3.4. Second Report of Architectural Conservation Officer:

Item 1 The response states that no additional elements will project over the proposed ridge height and also indicates that the water pumps have been relocated to the ground floor. This satisfactorily addresses the concerns raised.

Item 2 Drawing No. 3.1.100\_Rev A of the floor plans and Drawing No. 3.1.200\_Rev A of the elevations shows an amount of soft landscaping has been provided on the western boundary and to the forecourt but is limited in extent and height. The exact type of planting proposed is not stated.

Where the planting is positioned on the west boundary behind the front building line it should be as tall as possible to soften the extent of this long elevation. The Parks Superintendent should be consulted as to what species should be used and if the depth of the planting bed is sufficient.

3.3.5. Second Parks and Green Infrastructure Division – soft landscaping along the western boundary is acceptable.

3.3.6. Second Planning Report recommending permission, includes:

Further information responses are satisfactory. The proposed development will provide for a good quality residential amenity for any future potential residents.

### 3.4. **Prescribed Bodies**

3.4.1. DAA

The proposed development is located within Noise Zone C. The Fingal Development Plan 2017-2023 contains the following objective in respect of this area:

## Objective DA07

Strictly control inappropriate development and require noise insulation where appropriate in accordance with table 7.2 within Noise Zone B and Noise Zone C and where necessary in Assessment Zone D, and actively resist new provision for residential development and other noise sensitive uses within Noise Zone A, as shown on the Development Plan maps, while recognising the housing needs of established families farming in the zone.

Policy objective DA07, as set out above, seeks to strictly control provision of new residential development and other noise sensitive uses within Zones B, C and where appropriate in Zone D. In the interests of proper planning and sustainable development of the area, DAA requests the following requirements be implemented by way of a request for further information and/or planning condition, as appropriate:

1. The existing and predicted noise environment of the site be fully assessed with consideration for future airport growth;
2. The applicant should demonstrate that internal noise levels appropriate for the proposed habitable rooms can be achieved and maintained; and,
3. Appropriate noise mitigation measures should be proposed by the applicant and implemented as required by the Fingal Development Plan 2017-2023.

### 3.4.2. IW – Conditions.

## 3.5. Third Party Observations

### 3.5.1. Third party observations made on the application have been read and noted.

## 4.0 Planning History

There have been a number of previous applications pertaining to the site and in the vicinity. These are set out in detail in the Planning Authority Planner's Report. In particular:

**303087**, PA Reg Ref F18A/0509 in an appeal against the PA's decision to refuse planning permission for the demolition of existing two-storey restaurant and the construction of a new restaurant and 9 no. residential units, (in two large blocks, located on a raised podium with car parking provided at lower ground level, and

associated site works, the Board refused permission (Feb 2019) for 3 reasons: 1 - the scale of new structures in an ACA should be appropriate to the general scale of the area and not its biggest buildings. It is considered that, by reason of its scale and design, the proposed development would conflict with the character of the Architectural Conservation Area and conflict with the provisions of the guidelines and the guidance set out in the current Fingal County Development Plan; 2 - height, design and proximity of the development to the eastern and southern boundaries of the site, would seriously injure the amenities of the adjoining properties by reason of overshadowing and overbearing impacts; and 3 - inadequate separation distance between blocks would result in significant internal overshadowing to the proposed residential units and communal open space and provide for a substandard level of residential amenity.

**221995**, PA Reg Ref F06A/1385 - Permission refused (September 2007) by the Board for demolition of the existing structure and construction of a four storey, mixed use development over basement, landscaped garden at the rear, car parking to the front and associated boundary treatment. Reasons for refusal are the same as those for PL06F.212846.

**212846** PA Reg Ref F05A/0456 - Refusal of Permission (January 2006) for the demolition of the existing structure and construction of a four storey, mixed use development over basement. Reasons - scale of development which it was considered would conflict with the character of ACA, would seriously injure the visual amenities of the area and have an adverse impact on the residential amenities of an adjacent property by reason of overshadowing and overbearing impacts.

**F16A/0168** - Outline permission for a 2 storey detached dwelling to the rear of Silks restaurant refused in June 2016 for the reason that the subdivision of the site, with no direct vehicular access or in curtilage parking was considered haphazard, with a long (33m) narrow, unsupervised laneway and remote positioning of parking, which would lead to a poor level of amenity and safety for occupants, and seriously injure the amenities of the area.

**F16A/0345** - Outline permission refused in October 2016 for a 2 storey detached dwelling to the rear and parking area to the front of Silks restaurant. Reason for refusal similar to that under F16A/0168.

**F08A/0366** - Permission granted in September 2008 for a three storey over basement mixed use development, with basement parking.

## 5.0 Policy Context

### 5.1. Development Plan

5.1.1. The Fingal County Development Plan 2017-2023 is the operative plan. Relevant provisions include:

The site is zoned 'TC': to protect and enhance the special physical and social character of town and district centres and provide and/or improve urban facilities.

The site is located within the Architectural Conservation Area of Malahide Historic Core.

There is an indicative cycle/pedestrian route along the Mall to the front of the site.

Relevant policies and objectives include:

Objective DMS39: New infill development shall respect the height and massing of existing residential units. Infill development shall retain the physical character of the area including features such as boundary walls, pillars, gates / gateways, trees, landscaping and fencing or railings.

Table 12.11 of the Plan sets out Direction for Proposed Development within Architectural Conservation Areas and notes the following key points:

- Existing buildings and structures should be retained and reused rather than replaced. Applications for demolition of buildings that contribute to the character of an ACA will only be granted in exceptional circumstances. The onus will be upon the applicant to justify the demolition of the building. The Council will start from the premise that the structure should be retained.
- Development proposals for new build need to follow a sensitive design approach that respects the established character of the ACA in terms of the scale, massing, bulk, plot sizes, proportions and materials of the adjoining buildings to the development site. Direction can be taken from traditional forms and dimensions that are then expressed in a contemporary manner or with contemporary elements rather than an exact copy of a historic building style. Where a totally contemporary design

approach is taken, the detailing, materials and overall design must be carefully handled and be of a high quality to ensure the proposal does not compromise the integrity and character of the area.

- Demolition of structures that positively contribute to the streetscape character will not normally be permitted.

Objective DMS157: Ensure that any new development or alteration of a building within or adjoining an ACA positively enhances the character of the area and is appropriate in terms of the proposed design, including: scale, mass, height, proportions, density, layout, materials, plot ratio and building lines.

Objective DMS158: All planning applications for works in an Architectural Conservation Area shall have regard to the information outlined in Table 12.11.

Objective DMS28: A separation distance of a minimum of 22 metres between directly opposing rear first floor windows shall generally be observed unless alternative provision has been designed to ensure privacy. In residential developments over 3 storeys, minimum separation distances shall be increased in instances where overlooking or overshadowing occurs.

Objective DMS85: Ensure private open spaces for all residential unit types are not unduly overshadowed.

## **5.2. Architectural Conservation Area of Malahide Historic Core Statement of Character**

The Statement of Character notes that Malahide Historic Core Architectural Conservation Area (ACA) has The Diamond as its focal point and the four streets radiating from it: New Street, Church Road, Dublin Road and The Mall (the latter two now forming Main Street). It acknowledged that The Mall is more disparate in character to the other streets radiating from The Diamond. It is stated that the vistas from the ACA to points outside the ACA also enhance the ACA's character, notably the view from The Mall terminated by the Grand Hotel and the railway bridge from The Strand.

Regarding Infill Developments the document states:

Designation as an ACA puts an onus on prospective developers to produce a very high standard of design, which respects or enhances the particular

qualities of the area. New buildings should be designed to blend into the streetscape of Malahide using the materials, proportions and massing which determine its special urban character. Contemporary interpretations should be favoured over pastiche in order to maintain the authenticity of the fabric of the town.

The Statement of Character states:

Demolition will only be permitted where the structure makes no material contribution to the character or appearance of the area, or does not have the potential to do so through reinstatement of historic features. There will be a presumption in favour of retaining any structure that makes any positive contribution to the character of the ACA to avoid incremental loss or damage to its special character. Where permission is sought for demolition on the grounds of structural defects or failure, a condition report produced by a suitably qualified and experienced conservation professional, supported by photographs and drawings indicating locations of defects will be required. Justification on structural grounds for any demolition within the ACA must include details of repairs or remedial works normally used in similar circumstances demonstrating why they are not suitable in that instance. A full photographic record will be required before any demolition commences.

### **5.3. Guidelines for Planning Authorities: Architectural Heritage Protection**

5.2.4 Sets out comprehensive guidance regarding development in Conservation Areas.

Section 3.10.1 addresses new development in ACA's and states:

When it is proposed to erect a new building in an ACA, the design of the structure will be of paramount importance. Generally, it is preferable to minimise the visual impact of the proposed structure on its setting. The greater the degree of uniformity in the setting, the greater the presumption in favour of a harmonious design. However, replacement in replica should only be contemplated if necessary, for example, to restore the character of a unified terrace and should be appropriately detailed. Where there is an existing mixture of styles, a high standard of contemporary design that respects the character of the area should be encouraged. The scale of new

structures should be appropriate to the general scale of the area and not its biggest buildings. The palette of materials and typical details for façades and other surfaces should generally reinforce the area's character.

#### **5.4. Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities. (DHPLG 2018).**

- 5.4.1. These guidelines provide recommended minimum standards for floor areas for different types of apartments; storage spaces; sizes of apartment balconies/patios and room dimensions for certain rooms.

#### **5.3 Natural Heritage Designations**

- 5.3.1 The nearest Natura site is Malahide Estuary SAC and SPA located c 130m from the subject site.

#### **5.5. EIA Screening**

- 5.5.1. Having regard to nature and scale of the development comprising an infill residential and commercial development and the urban location 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. Two third party appeals against the decision to grant permission have been made.
- 6.1.2. A third party appeal has been made by Evan Duggan Associates Ltd on behalf of Deirdre Rochford, 1 The Rise, Malahide. The issues raised include:
- Notes planning history pertaining to the site.
  - Demolition of building that should be a protected structure.



- Apts 4,5,6 and 7 directly overlook appellant's private amenity space from windows and balconies. No precedent, Heeley's view Apartments and Somerton have no direct window or balconies facing (permissions F03A/1096 and F04A/0778).
- Concerned re. use of the rear garden. No amenity space for restaurant, the small area 11.2m x 9m is inadequate and will affect appellant, and proposed garden area will become smoking area without proper controls.
- Long bulky design of apartments, no design solution for bedroom windows and poor residential amenity. Proposed windows offer no light and face a concrete wall 2m away. Proposed 2 bed units, can only allow 1 bed per Fingal Apartment guidelines.
- Car parking – none for restaurant and shortfall for apts.
- Service deliveries inadequate, will require deliveries to be placed on the front driveway; unsightly and generating rubbish. Inadequate bin storage. Proposed domestic sized bins is substandard. Commercial bins required are substantially larger.
- Details for ventilation and smells. This is currently an issue.
- The proposed elevation is overshadowed by the rear apartment. The parapet of the rear is higher than the north elevation; out of keeping with the ACA.

6.1.3. A third party appeal against the decision to grant permission has been made by the DAA. The issues raised include:

The proposed development is located within Noise Zone C as set out in Variation 1 of the Fingal Development Plan 2017-2023

The proposed residential development constitutes a noise sensitive use within a noise zone. DAA request the decision be modified to require adequate levels of noise insulation where appropriate.

They refer to their submission which requested, by way of a request for further information and/or planning condition, as appropriate, the applicant to demonstrate that internal noise levels appropriate for habitable rooms in the proposed development can be achieved and maintained.

Their submission was acknowledged but not included by condition.

DAA considers a transparent approach should be taken and that Fingal County Council should take all reasonable steps to advise future occupants of the location within Noise Zone C and in proximity to the North Runway which is currently under construction.

This request, for the appropriate condition, is supported at all levels of planning policy and reflected in the National Planning Framework, and the RSES; both cited, as is objective DA07.

They request the Board to modify the decision to include by condition:

1. The existing and predicted noise environment of the site be fully assessed
2. The applicant should demonstrate that internal noise levels appropriate for habitable rooms within the proposed development can be achieved and maintained; and,
3. Appropriate noise mitigation measures should be proposed by the applicant and implemented.

A failure to appropriately insulate noise sensitive development within a noise zone would contravene National, regional and local policy, set a negative planning precedent for development within noise zones and put at risk decades of land use planning that has supported the sustainable growth and development of Dublin Airport.

## 6.2. Applicant Response

CDP Architecture on behalf of the applicant have responded to the appeals, including:

- Evan Duggan appeal:
  - Overlooking – the balconies are generously set back from the boundary, in the rear garden landscaping is proposed including a significant number of trees.
  - Smoking area - The smoking area was relocated to the front. It's use will be controlled by the management. Condition no. 15 will be complied with.
  - Daylight – addressed in additional information.

- Car parking – the development is easily accessible by a range of transport modes, there is sufficient good quality short stay car parking close to the core area, good transport linkages within the centre and efficient arrangements for delivery of goods, the number of spaces is deemed sufficient.
- Service entrance – the Environmental Division (Waste Management Section) did not raise any concerns.
- Ventilation and smells – drawings and mechanical and electrical planning report by RM Breen Associates were submitted as additional information.
- The elevation is overshadowed by the rear apartment section with the parapet to the rear higher than the north elevation – Conservation Officer - The design of the front elevation and front section is a reinterpretation of the forms of the existing building on the site and other buildings on The Mall with catslide roofs.
- DAA appeal –
  - FCC’s Environmental Health Air and Noise Unit did not report any concerns.
  - Report from iAcoustics shows that air traffic noise will not pose a nuisance or pose adverse health effects to future inhabitants with the implementation of the recommendations outlined.

6.2.1. The response includes a report titled Air Traffic Noise Impact Assessment, prepared by iAcoustics:

- They carried out a noise survey on 22<sup>nd</sup> January 2021, during the pandemic, the results of which are presented. The average background noise levels occurring at 55dB  $L_{Aeq}$ . One air traffic event was observed at a level of 71dB  $L_{AFmax}$ .
- The site is identified on the Dublin Airport Noise Contour Maps, Fingal County Development Plan 2017-2023 according to which air traffic noise levels are expected to occur between 48-63dB  $L_{Aeq}$ , being within zone C.
- A prudent approach is to assume that air traffic noise will occur at the upper limit of zone C. The single loudest instantaneous air traffic event is that measured at a level of 71dB  $L_{AFmax}$

- To ensure low noise levels inside the building, adequately robust windows are needed. Required are, a minimum window rating of 35dB Rw for bedrooms and 30dB Rw for living room/kitchen and compliance with WHO guidelines as set out in table 1 of the report. The ratings are typical of double or triple glazed windows.
- Different windows can have identical single-figure ratings but perform very differently at low frequencies in their attenuation of noise. As air traffic noise is characterised by low-frequency sound, the glazing configuration must be such that low frequencies are adequately attenuated.
- Selected windows must be per the required rating and be effective in adequately attenuating low frequencies.
- BS8233:2014 Guidance on sound insulation and noise insulation and noise reduction for buildings makes the recommendation for other additional ventilation methods so that windows can be closed, noise attenuated and rooms ventilated concurrently. This is achieved via acoustic air inlets rated at 33dB D<sub>n,e,w</sub>, or greater.
- Roofs and Façade – mineral wool will maximise sound insulation performance and in lightweight structures internal linings of two layers of plasterboard with rockwool behind, will mitigate against noise intrusion.
- Air traffic noise levels are no more impactful than road traffic and will not impact if advice is implemented.

### 6.3. Planning Authority Response

- 6.3.1. The planning authority have responded to the appeals stating that the Board should include a condition requiring the provision of noise mitigating insulation in accordance with objective DA07 of the development plan. They also request the inclusion of conditions nos 13, 25 and 26.

## 7.0 Assessment

- 7.1.1. The issues which arise in relation to this appeal are: screening for appropriate assessment, ACA and merit of existing building, residential amenity, car-parking and

deliveries, and air traffic noise and the following assessment is dealt with under those headings.

## **7.2. Appropriate Assessment**

- 7.2.1. Having regard to the nature and scale of the proposed development, I am satisfied that 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.

## **7.3. ACA and Merit of Existing Building**

- 7.3.1. The grounds of appeal states that this building should be a protected structure, such that it should not be demolished.
- 7.3.2. The applicant's response refers to the Conservation Officer assessment that the design of the front elevation and front section is a reinterpretation of the forms of the existing building on the site and other buildings on The Mall with catslide roofs.
- 7.3.3. The merit of this building was considered previously by the Board in the cases of 303087-18 and 06F.221995 when demolition was part of the proposed development. Demolition was a reason for the Board's decisions to refuse.
- 7.3.4. In the current development the Conservation Officer states that the late 20th century structure mirrors some elements of the characteristic mid-20th century houses of The Rise and The Mall but is not as successfully executed. In particular, there are a variety of competing roof profiles and sizes on the front elevation for the roofs of the dormer windows, the breakfront projections and the porch. There is no objection in principle to the replacement of the existing building as long as the design of the new build is sympathetic to the setting.
- 7.3.5. The Conservation Officer considers the design and scale of the proposal as it presents onto The Mall to be more appropriate than previous applications. The design of the front elevation and front section is a reinterpretation of the forms of the existing building on the site and other buildings on The Mall with catslide roofs. Following minor amendments to the design in response to the further information

request: removal of elements projecting above the ridge line; the design was deemed acceptable.

- 7.3.6. The building is not a protected structure but it is located within the ACA Malahide Historic Core.
- 7.3.7. The existing building on the site is a two storey, red brick structure with bay windows and a mix of two hipped roof sections and a pitched roof with dormers. It is of no particular design merit and does not make any significant contribution to the character of the ACA. I consider its demolition is acceptable.
- 7.3.8. I am satisfied that the replacement structure respects the setting and character of the ACA.

#### **7.4. Residential Amenity**

- 7.4.1. The grounds of appeal states concerns regarding residential amenity.
- 7.4.2. Overlooking - The grounds of appeal is concerned about overlooking, that apartments 4, 5, 6 and 7 will directly overlook appellant's private amenity space from windows and balconies.
- 7.4.3. The applicant has responded that the balconies are generously set back from the boundary.
- 7.4.4. Units 3, 4, 5 and 6 have balconies facing towards the rear boundary. Units 1 and 2 have inset balconies open to the east and to the south towards a light well. These are approx. 1.2m from the common boundary.
- 7.4.5. In my opinion the proposed development does not give rise to undue overlooking.
- 7.4.6. Overshadowing is mentioned in the appeal, but in the context appears of the elevation of the rear building rising above the front. This was addressed in the planner's report which states that the flat roof section of the building sits approx. 100mm above the ridge level of the front section and is set back 9.4m from the front elevation, and having regard to the set back, together with the minimal increase in height, it was considered that the proposal will not be visually obtrusive in the streetscape. I concur with that assessment

- 7.4.7. Odour - The grounds of appeal is concerned about odour, stating that this is currently an issue, and that details of ventilation are required.
- 7.4.8. The applicant has responded referring to the drawings and mechanical and electrical planning report by RM Breen Associates, which were submitted as additional information.
- 7.4.9. The issue was also considered in relation to the smoking area, which was proposed to be located to the rear of the building and was moved to the front in response to the planning authority's further information request.
- 7.4.10. In my opinion the potential for odour impact has been adequately addressed and any pre-existing issues will be remediated by the proposed development.
- 7.5. Use or rear garden / amenity area - The grounds of appeal is concerned about use or rear garden / amenity area: that there is no amenity space for the restaurant, the small area 11.2m x 9m is inadequate and will affect the appellant, and proposed garden area will become a smoking area without proper controls.
- 7.5.1. In the response to the further information request it has been clarified that the use of the rear garden, is for residents of the apartments only. In my opinion this is an acceptable use of the area and this limit to its use should be reinforced by condition.
- 7.5.2. I consider that protection of the residential amenities of existing adjacent properties and of future residents of the apartments has been addressed in the design and the modifications made in response to the planning authority's further information request, and residential amenity should not be a reason to refuse or modify the proposed development.

## **7.6. Car-parking and Deliveries**

- 7.6.1. The grounds of appeal is concerned about the shortfall in car parking on site, with none for restaurant and a shortfall for the apartments. It is concerned that the provision for service deliveries is inadequate, requiring deliveries to be placed on the front driveway, and that inadequate bin storage is proposed, in the form of domestic sized bins, which it states are substandard.
- 7.6.2. The applicant's response is that the development is easily accessible by a range of transport modes, with sufficient good quality short stay car parking available, being

close to the core area. There are good transport linkages within the centre and efficient arrangements for delivery of goods, the number of spaces is deemed sufficient. Re the service entrance it states that the Environmental Division (Waste Management Section) did not raise any concerns.

- 7.6.3. The planning authority have decided that the parking available on site should be dedicated to use by the apartment residents and two spaces should be available for staff of the restaurant. For the remainder of parking need they have decided that the location, availability of on street parking, public transport availability, and time of likely demand mean that the shortfall is acceptable.
- 7.6.4. The delivery arrangements are acceptable to the planning authority. The passages either side of the proposed building, to the west accessing the apartments, to the east accessing the restaurant service areas, are relatively narrow and will require goods to be carried or otherwise transported for a short distance from vehicles. This is not unusual or unduly onerous.
- 7.6.5. Commercial bins, which are substantially larger than domestic bins, are not to be used, rather the use of domestic scale bins is proposed which may arise from the passages' width restriction. In my opinion the size of bins and the overall capacity of the waste storage provision, and the frequency of waste collection, are all matters which the Environmental Division, Waste Management Section of Fingal County Council will address as necessary and should not be a reason to refuse or modify the proposed development.

## **7.7. Air Traffic Noise**

- 7.7.1. The third party appeal by the DAA refers to Noise Zone C and the need for appropriate noise mitigation measures.
- 7.7.2. The planning authority have responded to the appeal stating that the Board should include a condition requiring the provision of noise mitigating insulation in accordance with objective DA07 of the development plan.
- 7.7.3. The applicant's response includes a report titled Air Traffic Noise Impact Assessment, prepared by iAcoustics. The report includes a noise survey on 22<sup>nd</sup> January 2021. It refers to the need for adequately robust windows to ensure low noise levels inside the building. Noting that a minimum window rating of 35dB Rw for



bedrooms and 30dB Rw for living room/kitchen, and compliance with WHO guidelines, are requirements. Ratings typical of double or triple glazed windows, however the report states that different windows can have identical single-figure ratings but perform very differently at low frequencies in their attenuation of noise. As air traffic noise is characterised by low-frequency sound, the glazing configuration must be such that low frequencies are adequately attenuated. Selected windows must be per the required rating and be effective in adequately attenuating low frequencies. The report also refers to other necessary measures including insulation of roofs and façades and room ventilation concurrently.

- 7.7.4. In my opinion the applicant's response to the grounds of appeal deals adequately with this issue, which should be reinforced condition.

## **8.0 Recommendation**

- 8.1.1. In accordance with the foregoing I recommend that permission should be granted, for the following reasons and considerations and in accordance with the following conditions.

## **9.0 Reasons and Considerations**

- 9.1.1. The proposed mixed use development, in the centre of Malahide, would provide for additional mixed use development of a suitable scale and design to achieve a reasonable density of development on this centrally located site, would be appropriate to the general scale of the area, would not conflict with the character of the Architectural Conservation Area or be visually incongruous in the streetscape, would not be injurious to the residential amenities of adjoining properties or future residents, would enhance the visual amenities of the area and comply with the objectives of the Fingal Development Plan 2017-2023 and would, subject to the following conditions, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	<p>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 6th day of November 2020, and by the further plans and particulars received by An Bord Pleanála on the 1st day of February, 2021 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.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>Windows and doors shall be timber or metal and details of all materials and finishes shall otherwise be as per drawings submitted unless agreed in writing by the planning authority.</p> <p><b>Reason:</b> In the interest of visual amenity.</p>
3.	<p>The landscape plan submitted to the Planning Authority on the 6th November 2020 shall be implemented at the first planting season after the completion of construction.</p> <p><b>Reason:</b> In accordance with the proper planning and sustainable development of the area</p>
4.	<p>All bathroom / en suite windows shall be fitted and permanently maintained with obscure glass. The use of film is not acceptable.</p>

	<b>Reason:</b> In the interests of residential amenity.
5.	<p>Prior to the commencement of development the applicant shall submit an amended site layout plan for the written agreement of the Planning Authority indicating that 1 no. parking space is dedicated and reserved for each of the 6 no. apartment units and 2 no. parking spaces are dedicated and reserved for use by staff of the restaurant unit.</p> <p><b>Reason:</b> In the interest of clarity.</p>
6.	<p>Details of the 'access control to provide open area for residents only' shown at the eastern side of the building, to prevent restaurant patrons from accessing the garden, and ensure it's available for use by residents of the apartments only, shall be submitted to and agreed in writing with the Planning Authority, prior to commencement of development.</p> <p><b>Reason:</b> In the interest of residential amenity.</p>
7.	<p>The existing and predicted noise environment of the site be assessed with consideration for future airport growth; and appropriate noise mitigation measures shall be implemented as required by the Fingal Development Plan 2017-2023; details to be submitted for the written agreement of the Planning Authority prior to the commencement of development</p> <p><b>Reason:</b> In the interest of residential amenity.</p>
8.	<p>Prior to occupation of any part of the development, details of a Management Scheme providing adequate measures relating to the future maintenance of open spaces, roads, parking and communal areas in a</p>

	<p>satisfactory manner shall be submitted to and agreed in writing with the Planning Authority.</p> <p><b>Reason:</b> To ensure the adequate future maintenance of this development in the interest of residential amenity.</p>
9.	<p>The hours of operation of the proposed restaurant shall be from 0900 to 2400 Monday to Sunday including Bank Holidays unless otherwise agreed in writing by the planning authority.</p> <p><b>Reason:</b> In the interest of residential amenity.</p>
10.	<p>Goods deliveries to the restaurant hereby permitted shall not be carried out between the hours of 2300 and 0700.</p> <p><b>Reason:</b> To protect the amenities of the area.</p>
11.	<p>No music or to other amplified sound shall be broadcast externally. Noise emanating from the premises shall be such as not to cause nuisance to the occupants of adjacent properties and users of the public road.</p> <p><b>Reason:</b> To protect the amenities of the area.</p>
12.	<p>The following requirements shall be complied with in full:</p> <p>(i) The development hereby permitted shall not cause a noise nuisance to nearby noise sensitive locations and shall not exceed the background level by 10 dB(A) or more or exceed NG4 limits whichever is lesser. Daytime (07:00 to 19:00 hrs) – 55dB Evening (19:00 to 23:00 hrs) – 50dB Night-time (23:00 to 07:00 hrs) – 45dB - measured from the nearest noise sensitive locations(s).</p>

	<p>(ii) Clearly audible and impulsive tones at noise sensitive locations during evening and night shall be avoided irrespective of the noise level.</p> <p>(iii) The development hereby permitted shall be so operated that there will be no emissions of malodours, gas, dust, fumes or other deleterious materials, no noise vibration on site as would give reasonable cause for annoyance to any person in any residence, adjoining unit or public place in the vicinity.</p> <p><b>Reason:</b> To protect the amenities of the area.</p>
13.	<p>No additional advertising signs or structures shall be erected externally or on the front façade of the premises except those which are exempted development, without the prior written approval of the Planning Authority</p> <p><b>Reason:</b> In the interest of the proper planning and sustainable development of the area.</p>
14.	<p>Windows shall be clear and devoid of window graphics and shall comprise clear glazing, except where otherwise required by condition or agreed in writing with the Planning Authority prior to commencement of development.</p> <p><b>Reason:</b> In the interest of the proper planning and sustainable development of the area.</p>
15.	<p>An acceptable naming and apartment numbering scheme be submitted to the Council for written agreement prior to the commencement of any works on site.</p> <p><b>Reason:</b> In the interest of the proper planning and sustainable development of the area.</p>

16.	<p>Site development and building works shall be carried out only between the hours of 0800 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.</p> <p><b>Reason:</b> In order to safeguard the amenities of property in the vicinity.</p>
17.	<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, noise management measures and off-site disposal of construction/demolition waste.</p> <p><b>Reason:</b> In the interests of public safety and amenity.</p>
18.	<p>Prior to commencement of development, the developer shall enter into water and waste water connection agreements with Irish Water.</p> <p><b>Reason:</b> In the interest of public health.</p>
19.	<p>Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p><b>Reason:</b> In the interest of public health and to ensure a proper standard of development.</p>

20.	<p>All public services to the proposed development, including electrical, telephone cables and associated equipment be located underground throughout the entire site.</p> <p><b>Reason:</b> In the interest of amenity.</p>
21.	<p>The applicant is required to make up the shortfall of 225m<sup>2</sup> of public open space by way of a financial contribution of €13,206 in accordance with section 48 of the Planning &amp; Development Act 2000.</p> <p><b>REASON:</b> In accordance with the proper planning and sustainable development of the area.</p>
22.	<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 be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p><b>Reason:</b> It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the</p>

	Development Contribution Scheme made under section 48 of the Act be applied to the permission.
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Planning Inspector

16 March 2021

### **Appendices**

Appendix 1: photographs

Appendix 2: Fingal Development Plan 2017-2023, as varied, extract.