



An  
Bord  
Pleanála

## Inspector's Report

### ABP-309546-21

<b>Development</b>	Ancillary late-night use of the ground floor restaurant/bar for nightclub use, change of use of the rear first floor area from storage use to bar and seating area, change of use of private open space to a smoking area, and provision of complementary amenity space for existing apartments.
<b>Location</b>	36 Strand Street Great and rear of 39 Ormond Quay, Dublin 1.
<b>Planning Authority</b>	Dublin City Council
<b>Planning Authority Reg. Ref.</b>	3830/20
<b>Applicant(s)</b>	Yamamori Sushi Limited
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party vs. Grant
<b>Appellant(s)</b>	Butler Ormond Management Ltd

**Observer(s)**

Maura Gilroy

Bachelors Walk Management CLG

VLP

Anthony Boylan

Gráinne Shaffrey, Cíodhna Shaffrey &  
Stephen Gardner

Erwan Fouéré

**Date of Site Inspection**

11<sup>th</sup> May 2021

**Inspector**

Stephen Ward

## 1.0 Site Location and Description

- 1.1. The site is located in the north city centre and comprises two separate areas between Strand Street Great and Lower Ormond Quay. The larger plot (c. 207m<sup>2</sup>) to the north hosts 36 Strand Street Great, which comprises a 2-storey building with a bar/restaurant at ground floor and storage at first floor level. The ground floor level has double doors leading into a courtyard area to the south with a retractable roof. The courtyard is also accessible from the adjoining restaurant in 38/39 Ormond Quay.
- 1.2. The smaller plot (c. 31m<sup>2</sup>) is located to the rear (north) of 39 Ormond Quay and comprises a flat rooftop area above the existing ground-floor restaurant space. The rooftop area currently accommodates a kitchen exhaust vent but is otherwise unused.
- 1.3. The surrounding area is characterised by a mix of commercial and residential uses in buildings of varying scale. Strand Street Great is an area in transition, with large scale redevelopment experienced to the north and west of the site. Ormond Quay also contains a mix of uses, with a high incidence of residential uses over ground floor commercial units. A large hotel development has recently been completed on the site to the immediate west of 38 Ormond Quay.

## 2.0 Proposed Development

In summary, the proposed development comprises the following:

- The ancillary late-night use of the ground floor restaurant/bar at 36 Strand Street Great as a nightclub (c. 150 m<sup>2</sup>).
- Change of use of the first-floor area at 36 Strand Street Great from storage use to bar and seating area (c. 150 m<sup>2</sup> public space).
- Change of use of the private open space (c. 30m<sup>2</sup>) in the courtyard (originally designated for use associated with the apartments to the rear of 39 Ormond Quay) to a smoking area associated with the adjoining restaurant garden for day and night-time use.

- Provision of complementary amenity space (c. 31m<sup>2</sup>) for the existing apartments consisting of a seated roof space above the existing restaurant.
- Timber screening and one-way glazing will be installed opposite the windows of existing apartments that adjoin the proposed new roof terrace area.

### 3.0 Planning Authority Decision

#### 3.1. Decision

By order dated 29<sup>th</sup> January 2021, Dublin City Council (DCC) issued notification of the decision to grant permission for the development. Notable conditions of the permission can be summarised as follows:

*Condition 3 - The night club use shall be limited to the area shown.*

*Reason: To clarify the scope of the subject permission and to ensure a satisfactory standard of development.*

*Condition 4 – Details to be agreed regarding opening hours, waste management and servicing, the management/control of patrons outside the premises.*

*Reason: To ensure a satisfactory standard of development.*

*Condition 5 - No music shall be played on the first floor 'chill out' area; The first floor shall be acoustically treated to limit the breakout of noise; An audio limiting device shall be in place permanently on the ground floor sound system; The sound system on the ground floor must be located appropriately to limit the noise nuisance to the nearest noise sensitive location; There shall be no increase in noise levels at the nearest noise sensitive location when compared to noise levels when no entertainment is taking place; Regular monitoring during entertainment events shall be carried out, including monitoring to the nearest noise sensitive location to identify any breakout of noise from the premises.*

*Reason: To ensure a satisfactory standard of development.*

### 3.2. Planning Authority Reports

#### Planning Reports

3.2.1. The Planner's report can be summarised as follows:

- The proposed night club use is permitted in principle on lands zoned 'Z5'.
- There is a need to strike an appropriate balance between entertainment uses and other surrounding retail and residential uses, particularly regarding noise.
- The application includes noise reports which were assessed by a DCC Environmental Health Officer. There are no objections subject to conditions.
- The application has outlined that the development would not impact on the protected structures (38/39 Ormond Quay) and there are no objections in this regard.
- The proposal would provide a good quality communal space for the apartments to replace the loss of the existing space.
- The potential increase in anti-social behaviour does not warrant a refusal.
- A grant of permission was recommended, which forms the basis of the DCC notification of decision.

#### Other Technical Reports

3.2.2. The following reports are included on file and can be summarised as follows:

- Drainage Division: No objections subject to standard conditions.
- Air Quality and Noise Monitoring Division: Although there is no copy of a report on file, the Planner's report states that the application was reviewed by the Environmental Health Officer and no objections were raised subject to conditions.
- Conservation Officer: No review of the file was carried out.

### 3.3. Prescribed Bodies

A submission was received from Transport Infrastructure Ireland which suggested that a Section 49 Supplementary Development Contribution may apply.

### 3.4. Submissions / observations

Seventeen third-party submissions were received on behalf of local property owners, residents, and residential management companies. The issues raised can be summarised as follows:

- Noise emanating from the night-club and associated activities
- The planning history of the site and enforcement of conditions
- Lack of engagement with residents
- The validity of the applicant's Noise Report by ICAN Acoustics
- Anti-social behaviour associated with the proposed development
- Adverse impacts on the amenity and value of property in the area
- Adverse impacts on the viability of city-centre living
- Impacts on Architectural Heritage
- Lack of available transport options for patrons

### 4.0 Planning History

The following is relevant to the application site:

**P.A. Ref. 4577/19:** Permission refused for the change of use of the ground floor dining area and first floor storage area of 36 Strand Street Great to a late-night bar and music venue. The reasons for refusal were as follows:

*1. The development by reason of its proximity to existing residential properties would impinge on the residential amenities by reason of noise. It is considered that the proposed development would impact adversely and seriously injure the amenities of residential property in the area and it is therefore considered that the proposed development is contrary to the proper planning and development of the area.*

*2. Under Reg. Ref. 2241/97 permission was granted for residential accommodation to the upper floors of No. 39 Ormond Quay and in an extension to the rear of No. 39 Ormond Quay. An open space area for the residents was shown in submitted plans at the rear of No. 39 Ormond Quay and condition no. 4 attached to the permission required its setting out on plans. Reg. Ref. 0027/99 showed access from the relevant apartments to the ground floor rear open space area. The development by reason of the use of the rear open space as an access to No. 36 Great Strand Street would*

*preclude the use of the rear space at No. 39 Ormond Quay by residents of that building for private amenity purposes. The proposed development would therefore seriously injure the amenities and depreciate the value of the residential property at No. 39 Ormond Quay. The proposed development would therefore be contrary to the proper planning and development of the area.*

**P.A. Ref. 2290/12:** A split decision issued as follows:

Permission was granted for the change of use of 36 Strand Street Great to provide a sushi bar and dining area on the ground floor and storage, toilets and office space at 1<sup>st</sup> floor level; the provision of an internal connection to the restaurant at 38 & 39 Ormond Quay; and for the reinstatement of the private open space in the courtyard for use in connection with the apartments in 39 Ormond Quay.

Permission was refused for the change of use of the approved ground floor retail unit at 35 Strand Street Great to a bicycle/refuse store on the grounds that it would cause a negative impact on the vitality and viability of the central shopping area.

**P.A. Ref. 3651/11:** Permission refused at 36 Strand Street Great for change of use from storage, office and workshop to storage, office, toilets, Sushi bar and dining area, and for the formation of an opening in the rear wall at ground floor level to connect to the existing courtyard of the adjoining 38-39 Lower Ormond Quay. The reasons for refusal were as follows:

*1. Under Reg. Ref. 2241/97 permission was granted for residential accommodation to the upper floors of No. 39 Ormond Quay and in an extension to the rear of No. 39 Ormond Quay. An open space area for the residents was shown in submitted plans at the rear of No. 39 Ormond Quay and condition no. 4 attached to the permission required its setting out on plans. Reg. Ref. 0027/99 showed access from the relevant apartments to the ground floor rear open space area. The proposed restaurant development / extension by reason of the use of the rear open space to the rear of No. 39 Ormond Quay as de-facto restaurant space and by reason of the proposed dining area at No. 36 Great Strand Street being directly linked to / accessed from that open space area, would preclude the use of the rear space at No. 39 Ormond Quay by residents of that building for private amenity purposes. The proposed development would therefore seriously injure the amenities and depreciate the value*

*of the residential property at No. 39 Ormond Quay. The proposed development would therefore be contrary to the proper planning and development of the area.*

*2. The proposed development by reason of its proximity to existing residential development to the south and west would impinge on the residential amenities of those properties by reason of noise. It is considered that the proposed development would impact adversely and seriously injure the amenities of residential property in the area and it is therefore considered that the proposed development is contrary to the proper planning and development of the area.*

**ABP Ref. PL 29N.118778:** Permission refused (12<sup>th</sup> October 2000) for change of use from light industrial at 36 & 37 Great Strand Street to provide a two storey extension to the existing licensed premises. The reason for refusal related to the intensification of late night activity which would seriously injure the residential amenities of an extensive number of residential units in the area.

**P.A. Ref. 0027/99:** Permission granted to combine the restaurant premises at basement and ground floor levels of 38 Ormond Lower (previous plan ref. 2961/96) and 39 Ormond Quay Lower (previous plan ref. 2241/97) to one restaurant with previously approved retail use to 35 Great Strand Street.

**P.A. Ref. 2241/97:** Permission granted for restaurant at ground floor of 39 Ormond Quay and three apartments at the upper levels. Condition no. 4 of the permission required access for the residents to the rear garden.

**P.A. Ref. 2961/96:** Permission granted for restaurant at ground floor of 38 Ormond Quay and six apartments at the upper levels.

**P.A. Ref. E0055/19:** An enforcement case relating to the operation of the restaurant as a nightclub.

## **5.0 Policy Context**

### **5.1. Development Plan**

- 5.1.1. The operative Development Plan for the area is the Dublin City Development Plan 2016-2022. The site is zoned as 'Z5', the objective for which is '*To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen*

*and protect its civic design character and dignity*'. The primary purpose of this zone 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 interact with each other, help create a sense of community, and which sustain the vitality of the inner city both by day and night.

5.1.2. Chapter 5 outlines the Council's approach to the provision of quality housing and encourages a good mix of house types and sizes with a satisfactory level of residential amenity. Policy QH 24 supports proposals that retain or bring upper floors into residential use in order to revitalise the social and physical fabric of the city. Policy QH25 encourages the re-introduction of residential use in historic areas of the city.

5.1.3. Section 9.5.8 of the Plan deals with Noise Pollution and states that the planning system, can minimise the adverse impacts of noise pollution by controlling developments which are noise intensive away from more sensitive areas such as residential areas. Furthermore, where it is considered that a proposed development is likely to create disturbance due to noise, a condition can be imposed by the planning authority on any planning permission limiting the hours of operation and level of noise generation. Relevant policies and objectives include the following:

**SI25:** To seek to preserve and maintain air and noise quality in the city in accordance with good practice and relevant legislation.

**SIO26:** To protect residents of mixed-use developments from noise emanating from other uses such as shops, offices, nightclubs, late night busking, public houses and other night time uses through the planning system.

5.1.4. Chapter 11 of the Plan deals with Built Heritage and Culture and section 11.1.4 outlines a strategic approach to protecting and enhancing built heritage based on the existing and ongoing review of Protected Structures, ACA's, Conservation Areas and Conservation Zoning Objective Areas. In summary, relevant policies include:

**CHC1** Seek the preservation of the built heritage of the city.

**CHC2** Ensure that protected structures and their curtilage is protected.

**CHC4** To protect the special interest and character of all Conservation Areas

**CHC5** Protect protected structures and preserve the character of ACAs. It will resist substantial loss of fabric of building (either protected or not) within such areas unless public benefits outweigh the case for retention.

- 5.1.5. Section 16.32 provides assessment criteria for Licensed Premises among other late-night uses. It highlights the need to facilitate the concept of the 24-hour city, particularly in the city centre by encouraging entertainment/ cultural/ music uses which help create an exciting city for residents and tourists alike, while also protecting the amenities of residents and maintaining high-quality retail functions and a balanced mix of uses. The Plan highlights the need to avoid excessive noise levels and the over-concentration of certain uses that may be detrimental to the character or function of an area.

## 5.2 Natural Heritage Designations

The site is not located within or close to any European site.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- 6.1.1. The decision of DCC to grant permission has been appealed by a third party, namely Butler Ormond Management Ltd. It is stated that the appellants represent the owners and residents of Butler Court, 28 & 30-31 Lower Ormond Quay. The appeal submission highlights the extent of residential development that has occurred at this city centre location in accordance with local, regional and national policy. The grounds of appeal can be summarised as follows:

- The history of the nightclub development on site has been unsatisfactory and noise limit conditions attached to previous permissions have had limited enforcement success.
- There is a lack of confidence that noise control proposals will be implemented, and this will affect the amenity of residents.
- The proposed smoking area will cause break out noise from the night club.
- The proposal is likely to result in late night congregations of people and anti-social behaviour.
- The nightclub use may not be confined to the area indicated.

- Concerns are raised about the assumptions used in the applicant's acoustics report and that it does not reflect the real experience of nearby residents.
- The DCC decision is unbalanced in favour of the facilitation of a 24-hour city.

6.1.2. The appeal also highlights the contents of an accompanying report from Amplitude Acoustics as follows:

- The application does not include a Noise Impact Assessment (NIA) outlining an examination of the acoustic properties of the building and the potential for noise breakthrough. Concerns are raised about the suitability of the building to contain noise and noise generated by queuing patrons.
- There has been no modelling of crowd noise from the smoking area.
- There is no noise management plan or allocation of responsibilities.
- The applicant's survey results measured internally show a direct correlation with measurements at Butler Court. Results for the 63 Hz octave band show an increase of 6dB, which is of considerable concern.
- Regarding the noise impact of kitchen extraction equipment, the British Standard cited by the applicant is not appropriate and should be BS 4142:2014. In any case, if the extraction operates during the night-time it would be necessary to control the noise to a level where there would be no objectively detectable tonal characteristics. The application contains some information on controls but there is too much reliance on the applicant's assurances.
- The conditions attached by DCC require a lot of further information and robust arrangements for monitoring. A more precise definition is required for the 'nearest noise sensitive location'.
- The requirement for an audio limiting device is reasonable but requires engagement with DCC and strict commissioning by suitably qualified personnel.
- A full Noise Impact Assessment should be submitted to address:
  - Acoustic modelling of the outdoor smoking area to determine appropriate noise prevention/control measures.
  - The installation of a lobby at the double door access to the smoking area.

- Acoustic modelling of the ground floor night club area to determine appropriate building envelope upgrades.
- Submission of a detailed noise management plan including points of contact for residents and actions to be taken in response to noise nuisance.
- Identification of the nearest noise sensitive receiver and details of noise monitoring to be undertaken at that location.

6.1.3. The appeal concludes by requesting that the application should be refused in accordance with the reasons of P.A. Ref. 4577/19. If the Board is considering a grant of permission, further information should be sought in relation to the issues outlined in the appeal or stringent conditions should be applied as recommended in the Amplitude Acoustics report.

## 6.2. **Applicant Response**

6.2.1. The applicant's response to the appeal can be summarised as follows:

- The nightclub use is in accordance with the Z5 zoning for the site and will be appropriated contained and within the downstairs portion of the building.
- New construction between the site and the Butler Court apartments will obstruct noise impacts.
- There is another nightclub/live entertainment area in the immediate vicinity which has outdoor facilities greatly in excess of those proposed.
- The applicant has always acted in a professional manner and consulted with DCC in relation to noise control.

6.2.2. The response includes a report from ICAN Acoustics, which reviews the report by Amplitude Acoustics accompanying the appeal. The points raised can be summarised as follows:

- An ICAN report submitted with the application (dated 28<sup>th</sup> February 2019, but some typographical errors in the appeal response refer to 28<sup>th</sup> February 2021) does constitute a 'noise impact assessment'.

- The measurements of 23<sup>rd</sup> and 24<sup>th</sup> February 2019 were taken when DJs were operating at ground and 1<sup>st</sup> floor level and with the smoking area populated to capacity, thus representing a worst-case scenario.
- The appeal report does not refer to specific standards, while the applicant's report refers to DCC criteria and measures have been taken to limit noise.
- The applicant's approach to noise assessment is infinitely better and more accurate than a prediction approach.
- The impact of the smoking area was found to be insignificant at Butler Court. It is likely that the appeal has not considered the larger and more elevated smoking area serving the adjoining 'The Grand Social', where noise emissions would be roughly 5dB(A) higher than area in the appeal site.
- The applicant's report already acknowledged the correlation between noise in the nightclub and at Butler Court, which gave rise to the installation of a noise limiting device at 1<sup>st</sup> floor level shortly after the survey.
- The claim in the appeal report regarding the alleged increase of 1.4dB(A) cannot be attributed to the nightclub alone as 'The Grand Social' was also operating at the time. Low-frequency noise witnessed on the of the survey (prior to the opening of the nightclub at 23:00hrs) can definitively be attributed to 'The Grand Social'.
- The appeal report's reference to noise between 01:58hrs and 02:00hrs is an error and does not have any relevant noise assessment implications.
- The applicant's report and noise limiting mitigation measures were inspected and accepted by DCC Noise Control Unit.
- The British Standard referenced in the ICAN report of 27<sup>th</sup> October 2020 was BS8233:2014. The appeal report's suggestion that the kitchen extraction systems emit tonal sounds is incorrect. The applicant's measurements show that typical use of the actual kitchen fan (at 20Hz) is not tonal and the units will not run at night. The applicant's response includes 1/3 octave data which contends that the noise is not tonal.
- The standard BS8233:2014 is wholly appropriate for use in this case and it acknowledges that the guidelines are not always achievable in city centres.
- Many of the appeal requests regarding conditions would not be in keeping with other venues or professional advice. There are particular concerns about

the request for a permanent noise monitor within Butler Court as it is likely to measure noise from a variety of other surrounding sources.

### **6.3. Observations**

6.3.1. Six observations have been submitted in support of the 3<sup>rd</sup> party appeal, the content of which is generally covered in the grounds of appeal (section 6.1 above). Some additional matters are raised as follows:

- The wellbeing (health) impacts on local residents.
- The unsuitability of the building for adaption to nightclub use and the appropriate management and mitigation measures.
- Potential fire hazard.
- Insufficient noise conditions in the DCC decision.

## **7.0 Assessment**

### **7.1. Introduction**

7.1.1. Having considered the drawings and documentation on file, including all submissions received, and having inspected the site, I consider that the issues relating to this appeal are as follows:

- The proposed nightclub use
- Noise
- Built Heritage
- Private open space

### **7.2. Proposed nightclub use**

7.2.1. Section 14.8.5 of the Development Plan states that the primary purpose of the Z5 zoning 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 interact with each other, help create a sense of community, and which sustain the vitality of the inner city both by day and night. It is stated that adequate noise reduction measures must be incorporated into development. A 'nightclub' is included in the list of 'permissible uses' for the Z5 zoning objective, which is described in section 14.4 of

the Plan as one which is generally acceptable in principle subject to normal planning consideration, including policies and objectives outlined in the plan.

7.2.2. Section 16.32 of the Plan also recognises the need to facilitate the concept of the 24-hour city, particularly in the city centre, and states that appropriate proposals will be encouraged subject to protecting the amenities of residents and maintaining high-quality retail functions and a balanced mix of uses. The Plan highlights the need to avoid excessive noise levels and the over-concentration of certain uses that may be detrimental to the character or function of an area.

7.2.3. Having regard to the above, I consider that the proposed nightclub use is consistent with the Z5 zoning objective for the area and the policies of the Plan which seek to facilitate late-night entertainment uses in the city centre. Despite the location of 'The Grand Social' music venue on the adjoining site to the east, I do not consider that the proposal would result in an over-concentration of such uses. It should be noted that large-scale hotel developments have been recently constructed/permitted on the adjoining sites to the west and north of these lands. To the west (ABP Ref. No. 29N.249258) a new hotel has been completed encompassing no.'s 28-31 Strand Street Great and 34-37 Ormond Quay Lower. Another hotel has been permitted to the north of the appeal site, between Strand Street Great and Abbey Street (ABP. Ref. 305280-19). Having regard to existing and permitted development, I consider that a suitable mix of uses would be maintained which would not necessarily conflict with policies aimed at promoting city-centre living. Accordingly, I have no objection to the principle of the nightclub use subject to further assessment of impacts as discussed hereafter.

### 7.3. Noise

7.3.1. The application is accompanied by an ICAN Acoustics report (dated 28<sup>th</sup> February 2019) which was prepared in response to noise complaints received by DCC. The report outlines the results of surveys undertaken at Butler Court between 21:15 hrs Saturday 23<sup>rd</sup> Feb to 03:44hrs Sunday 24<sup>th</sup> February, when the nightclub was in full operation. The applicant's response to the appeal has clarified that this included the occupied smoking area and other sources of noise in the surrounding area. The report outlines that noise levels ranged between 53 to 57dB, LAeq,5mins over the entire observation period.

- 7.3.2. A signature analysis was carried out to compare a short sample of low frequency noise measured inside the 1<sup>st</sup> floor level of the nightclub and the noise climate at Butler Court. While the report acknowledges that it does show a positive link relating to low frequency noise breakout, it highlights that there are other sources of low frequency noise in the vicinity, including 'The Grand Social'. The report concludes that while the 5 min LAeq is not elevated during entertainment at the premises, the noise climate in the 63Hz to 125Hz bands is elevated and is influenced by the subject premises as well as other sources such as 'The Grand Social' venue.
- 7.3.3. In response to the grounds of appeal and supporting observations, I am satisfied that the details submitted by the applicant are sufficient to assess the noise impacts associated with the development. I would concur with the applicant's assertion that operational surveys are a more accurate assessment than a prediction approach and I am satisfied that the results accounted for noise from the smoking area and a 'worst-case scenario'. And while I acknowledge that the survey was carried out more than 2 years ago, it must be acknowledged that the venue has not been in use for the best part of the intervening period due to COVID-19 restrictions. A more recent survey has not, therefore, been possible.
- 7.3.4. In comparison to the applicant's survey conditions, which were undertaken when both floors were operating as a nightclub, I note that the application does not propose to use the 1<sup>st</sup> floor level as a nightclub or to include amplified music at this level. Furthermore, since the survey was carried out, and as previously outlined, a 6/7 storey hotel development (ABP Ref. No. 29N.249258) has been completed to the west of the appeal site encompassing no.'s 28-31 Strand Street Great and 34-37 Ormond Quay Lower. I consider that the omission of the 1<sup>st</sup> floor level nightclub use would significantly reduce noise levels and that the new hotel development to the west would provide a substantial noise buffer, particularly for properties further west, including Butler Court.
- 7.3.5. I would concur with the applicant's contentions that any correlation identified in the noise survey results must be considered in the context of various other noise sources at this city centre location. I would agree that 'The Grand Social' venue to the east of the site is likely to be a significant contributor, particularly in respect of other properties further east including the Bachelor's Walk apartments.

- 7.3.6. In conclusion, I am satisfied that the applicant has demonstrated that no unacceptable noise impacts can be solely attributed to the operation of the subject premises and I consider that the cessation of amplified music at 1<sup>st</sup> floor level will further improve the noise climate at this location. Ultimately, I consider that the imposition of suitable conditions on any permission is the most appropriate method of addressing this issue. This approach is consistent with the provisions of section 9.5.8 of the Development Plan regarding the control of noise and is consistent with the approach of the Planning Authority in granting permission subject to conditions. And while I acknowledge the concerns raised about compliance in the appeal, I consider that the imposition of such conditions and the subsequent enforcement responsibilities of the Planning Authority are common and inevitable features of the planning system. I am satisfied that appropriate procedures can be put in place to contain the night club use to the permitted areas, to apply mitigation measures such as noise-limiting devices, and to establish suitable monitoring and compliance procedures.
- 7.3.7. Consistent with the established practice of the Board in relation to such premises, my main concern is that noise associated with the development should not exceed the background noise level by more than 3 dB(A) during daytime or by 1 dB(A) at night-time. I am satisfied that detailed analysis and mitigation/monitoring proposals in this regard can be agreed with the Planning Authority and that the conditions suggested in the appeal are not necessary in this case. Given that the premises are not currently operating due to COVID-19 restrictions I do not consider that any further information request would provide more accurate or helpful information in this case and I do not consider that a modelling approach is preferable to the existing information on file.
- 7.3.8. Noise impacts relating to the proposed rooftop open space area are discussed separately in section 7.5 below.

#### **7.4. Built Heritage**

- 7.4.1. I note that 38 & 39 Ormond Quay Lower are included on the Record of Protected Structures and are described respectively as 'Front façade and roof profile' and 'Business premises'. The scope of works within or adjoining 38/39 is limited to the

proposed rooftop amenity space, which comprises the addition of a timber decking and associated landscaping and screening proposals.

- 7.4.2. I consider that the extent of proposed works is relatively minor and is easily reversible. Furthermore, the location of the proposed works at the rear of the structures concerns an area that is much changed, and no surviving fabric of architectural heritage interest will be adversely affected. Accordingly, I am satisfied that the proposed works would not detract from the value of these Protected Structures and I have no objection in this regard.

## **7.5. Communal Open Space**

- 7.5.1. I acknowledge that the planning history of the site required the provision of a 30m<sup>2</sup> communal open space area at ground floor level to serve the residents of the apartments in No. 39 Ormond Quay. The proposed smoking area involves the removal of that facility and it is proposed to compensate that loss by the creation of a new first-floor roof space of 31m<sup>2</sup>.
- 7.5.2. Despite the Planning Authority's historical requirement for the provision and retention of the existing ground floor space, it must be acknowledged that the existing space is of a substandard quality. It is not easily accessible from the existing apartments and is generally surrounded and overlooked by commercial spaces. I suspect that the space is not actually used by the residents and I would have no objection in principle to its replacement.
- 7.5.3. The proposed new rooftop space is generally consistent with the size of the existing space and is more easily accessible as it immediately adjoins the apartments. However, the proposed space is not without its drawbacks. It is largely enclosed and includes the existing kitchen extraction equipment. It is also directly overlooked by windows in the adjoining apartments. In mitigation the applicant proposes cladding for the kitchen plant and timber screens with 'one way glazed panels' will be erected to protect the privacy of the adjoining apartments' bedroom windows.
- 7.5.4. The application includes an assessment by ICAN Acoustics (dated 27<sup>th</sup> October 2020) of the noise climate at the proposed rooftop space. With all kitchen plant off, noise levels were found to be 51.4 dB(A), which would be relatively low as a daytime level in the city centre. With the extract fan controlled to a maximum of 30Hz to cater for the busiest restaurant periods, the report estimates the highest noise level to be

59dB(A), while normal running of the extraction (at 20Hz) results in 56dB. The report uses BS8233:2014 'Guidance on sound insulation and noise reduction for buildings' to establish an upper guideline value of 55 dB LAeq,T. However, BS8233:2014 also acknowledges that these values are not always achievable in city centres and compromises may be warranted based on the achievement of lowest practicable levels. The report concludes that the exceedance of the design range (50-55dB) is only of marginal significance and that lowest practicable noise levels can be achieved in this case with the limiting of the extraction fan to a maximum of 30Hz.

- 7.5.5. I note that the appeal raises concerns regarding the application of BS8233:2014 but I am satisfied that section 7.7.3.2 of the document confirms that it is appropriately applicable to 'external areas that are used for amenity space, such as gardens and patios'. Furthermore, I acknowledge that elevated noise levels in excess of the 55dB guideline can be accommodated in city centre locations and I would concur that the extraction plant is likely to result in an exceedance of only marginal significance subject to compliance with the proposed mitigation measures. I am also satisfied that the noise emissions would not be tonal and would not occur at night-time.
- 7.5.6. As previously outlined, I note that the rooftop space is directly overlooked by bedroom windows to the north and south. The applicant has proposed to install timber screening with 'one way glazed panels' in order to protect the privacy of these rooms. And while I acknowledge that such glazing can successfully protect privacy while retaining an outlook for the occupants, and that the use of the bedrooms is generally unlikely to coincide with the use of the external amenity space, I would also consider that there would be some loss of amenity to the rooms as a result of the proposed amenity space and associated screening.
- 7.5.7. In conclusion, I acknowledge that the quality of the proposed rooftop amenity space is compromised by its enclosed nature and the noise levels associated with the extraction plant, and that the proposal would impact on the amenity value of the adjoining bedrooms. However, given that the existing ground floor amenity space is effectively obsolete, I consider that the proposed space would ultimately constitute an improvement on the overall amenity quality for all residents within the scheme, which would be acceptable notwithstanding the deficiencies identified. However, should the Board feel that the proposed space is not acceptable, I consider that the omission of the space by condition would be feasible having regard to section 4.12 of

'Sustainable Urban Housing: Design Standards for New Apartments (DHLGH December 2020)', which states that for building refurbishment schemes on sites of any size or urban infill schemes on sites of up to 0.25ha, communal amenity space may be relaxed in part or whole, on a case-by-case basis, subject to overall design quality. Therefore, given the size of the site and the nature of the development, a communal open space is not necessarily required in this case.

#### 7.6. Other matters

- 7.6.1. Although the subject venue has previously operated as a nightclub, I am conscious that the application for change of use is for 'permission' rather than 'retention permission'. However, it must be acknowledged that any use of the premises as a nightclub would have ceased since March 2020 in accordance with COVID-19 restrictions. Therefore, given that the nightclub use has ceased for a significant period of time, I am satisfied that an unauthorised use is no longer taking place and that the application for 'permission' is appropriate. However, should the Board have any concerns in this regard it may wish to consider the matter a **new issue**.
- 7.6.2. I note the concerns raised in the appeal regarding potential fire hazards. However, I am satisfied that compliance with fire safety regulations will be evaluated under a separate legal code and thus need not concern the Board for the purposes of this appeal.
- 7.6.3. The appeal raises various concerns regarding anti-social behaviour associated with patrons of the proposed development. This largely relates to alleged noise and other anti-social disturbances that may take place outside the venue. I would feel that the control of such activities is largely outside the scope of the planning process. However, I note that the Planning Authority decision (conditions no. 3) did refer to the management/control of patrons outside the premises and I am satisfied that any such requirements can be agreed with the Planning Authority by condition. Given the limited scale of the proposed development I consider it unlikely that large congregations will take place outside the premises and I have no objections in this regard.
- 7.6.4. Despite this being an application for change of use, I note that a development contribution was included in the conditions of the DCC decision. This would not normally apply to a change of commercial use and the Planning Authority documents

have not included an explanation of the basis of the calculation. There may be a valid basis for this charge, and I note that the applicant has not appealed the condition. I am satisfied that this matter can be agreed between the applicant and the Planning Authority, or in default by the Board.

## **8.0 Appropriate Assessment**

- 8.1 The proposed development mainly involves the change of use of various elements of the site. Only minor associated works are proposed to facilitate the proposed changes of use.
- 8.2 The nearest Natura 2000 sites are in the Dublin Bay area and include the South Dublin Bay and River Tolka Estuary SPA (c. 2.5km to the northeast) and the South Dublin Bay SAC (c. 4km to the southeast). Having carried out AA screening for other developments in the city centre area I am conscious that the development is indirectly connected to the Natura 2000 sites within Dublin Bay via the surface water and foul water networks.
- 8.3 However, having regard to the minor scale of the proposed development, and to the location of the site in a serviced urban area and the separation distance to the nearest European sites, I conclude that the project, individually, or in combination with other plans or projects, would not be likely to give rise to significant effects on any European Sites in view of the sites' conservation objectives, and Appropriate Assessment including the submission of Natura Impact Statement is not, therefore, required.

## **9.0 Environmental Impact Assessment (EIA)**

The proposed development is not of a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations 2001 (as amended). Accordingly, I am satisfied that EIA or EIA screening is not required in this case.

## 10.0 Recommendation

I recommend that planning permission should be granted, subject to conditions, for the reasons and considerations outlined below.

## 11.0 Reasons and Considerations

Having regard to the pattern and character of existing development in the area, the planning history on the site and the provisions of the Dublin City Development Plan 2016-2022, it is considered that the proposed development, subject to compliance with the conditions set out below, would not detract from the mixed-use character of the area, would not detract from the residential amenity of adjoining properties, and would not detract from the character of the surrounding Protected Structures. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 12.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 27th 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. (a) Amplified music or other specific entertainment noise emissions from the premises shall not exceed the background noise level by more than 3 dB(A) during the period 0800 to 2200 hours and by more than 1 dB(A) at any other

time, when measured at any external position adjoining an occupied dwelling in the vicinity. The background noise level shall be taken as L90 and the specific noise shall be measured at LAeq.T.

(b) The octave band centre frequencies of noise emissions at 63 Hz and at 125 Hz shall be subject to the same locational and decibel exceedence criteria in relation to background noise levels as set out in (a) above. The background noise levels shall be measured at LAeqT.

(c) The background noise levels shall be measured in the absence of the specific noise, on days and at times when the specific noise source would normally be operating; either

- (i) during a temporary shutdown of the specific noise source, or
- (ii) during a period immediately before or after the specific noise source operates.

(d) When measuring the specific noise, the time (T) shall be any five minute period during which the sound emission from the premises is at its maximum level.

(e) Any measuring instrument shall be precision grade.

Detailed plans and particulars indicating sound-proofing or other measures to ensure compliance with this condition shall be submitted to, and agreed in writing with, the planning authority prior to use of the premises. An acoustical analysis shall be included with this submission to the planning authority.

**Reason:** In order to protect the amenities of residential property in the vicinity having particular regard to the nuisance potential of low frequency sound emissions during night-time hours.

3. Noise from the kitchen extraction fan at the proposed rooftop amenity space shall be controlled in accordance with the mitigation measures contained in the ICAN Acoustics report dated 27<sup>th</sup> October 2020.

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

4. The operation of the proposed nightclub shall be limited to the ground floor area of 36 Strand Street Great only and no amplified music shall be played at the first-floor level of the property.

**Reason:** In the interests of clarity and protecting the residential amenity of properties in the vicinity of the site.

5. Detailed plans and particulars in respect of the following shall be submitted to, and agreed in writing with, the planning authority prior to use of the premises:

- (a) Proposed opening hours;
- (b) Waste management and servicing;
- (c) Management and control of patrons outside the premises.

**Reason:** In the interests of orderly development and to protect the residential amenities of properties in the vicinity.

6. Water supply and drainage arrangements, including the disposal of surface water from the site, shall be in accordance with the detailed requirements of the Planning Authority

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

7. Site development and building works shall be carried out only between the hours of 0700 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

8. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, as amended, and any statutory provision replacing or amending them, no additional plant, machinery or telecommunications structures shall be erected on the roof of the building nor shall any external fans, louvres or ducts be installed without a prior grant of planning permission.

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

9. No signage, advertising structures/advertisements, security shutters or other projecting elements, including flagpoles, shall be erected on the building or within the site unless authorised by a further grant of planning permission.

**Reason:** To protect the visual amenities of the area.

10. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning

authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission

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Stephen Ward  
Senior Planning Inspector

10th September 2021