



An
Bord
Pleanála

Inspector's Report 311544-21

Development

Retention of change of use from shop to restaurant; removal of 2 shipping containers; demolition of single-storey storeroom & WCs to rear. Permission for single-storey extension to side, internal alterations at ground floor & 2-storey extension to rear with reconfiguration & alterations of residential accommodation at upper floor levels.

Location

95 Ringsend Road, Dublin 4

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

3158/21

Applicant(s)

Basil Whelan

Type of Application

Retention Permission & Permission

Planning Authority Decision

Grant Permission

Type of Appeal

Third Party v. Decision

Appellant(s)

The Adjacent Residents Group

Observer(s)

None

Date of Site Inspection

2nd August 2022

Inspector

Louise Treacy

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 231.7 m² and is located at No. 95 Ringsend Road, Dublin 4. The site is located on the western side of the junction of Ringsend Road and South Lotts Road and accommodates a 2-storey, end-of-terrace property which is in commercial use at the ground floor level. The building is single-storey to the rear and this part of the building accommodates toilet facilities. The upper floor of the building accommodates a kitchen and living room.
- 1.2. A collection of single-storey structures is located to the side of the property, including 2 no. shipping containers which are used as a kitchen and an enclosed seating area. A further seating area adjoins that within the shipping container which is enclosed by a retractable canopy. A single-storey fridge and storeroom are located to the rear of the site, behind the enclosed seating area. All the single-storey structures to the side of the 2-storey building are screened from the front of the site by timber gates.
- 1.3. A further outdoor seating area is located to the front of the restaurant facing onto Ringsend Road and includes 2 no. seating pods which are weather protected by curved plastic screens. An enclosed bin store is located to the side of the outdoor seating area adjacent to the eastern site boundary.
- 1.4. The north / north- eastern site boundary facing onto South Lotts Road is characterised by wooden hoarding and a mature hedge which screens views into the site and extends around the rear / southern site boundary. A large advertising hoarding is in place on the gable elevation of the building facing South Lotts Road. A prominent flue structure extends above the kitchen and projects upwards towards the rear roof slope of the main building.
- 1.5. The adjoining development to the west of the site along Ringsend Road comprises a terrace of 2-storey dwellings. The neighbouring development to the rear of the site at Hastings Street also comprises a terrace of 2-storey dwellings. No. 2 Hastings Street is located directly to the rear of the southern site boundary and is an end-of-terrace dwelling with a 2-storey rear extension which abuts the subject site.
- 1.6. The Watermarque Building is a 5-storey office building located opposite the subject site on the eastern side of the junction of Ringsend Road and South Lotts Road. Shelbourne Park Greyhound Stadium is located to the rear of this office building. The

existing development on the northern side of Ringsend Road opposite the subject site includes office and residential blocks of 6-7 storeys in height, with a Dublin Bus depot adjoining to the north-west. A 3-storey office building, Riverbank House, is located opposite the subject site at the junction of South Dock Road and Ringsend Road.

2.0 Proposed Development

2.1. Retention permission is sought for:

- (i) A change of use from shop to restaurant.
- (ii) The removal of 2 no. twenty-foot shipping containers and demolition of the single-storey store-room and WCs to the rear of the property.

2.2. Planning permission is sought for:

- (i) A single-storey extension to the side (48.37 m²) with internal alterations at ground floor level and a 2-storey extension to the rear (22.15 m²), with the reconfiguration and alteration of residential accommodation at upper floor levels, with all associated site works and boundary treatments.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Notification of the Decision to Grant Planning Permission subject to 15 no. conditions issued on 7th September 2021.
- 3.1.2. Condition no. 3 states that the sale of any hot food for consumption off the premises shall be ancillary to the primary restaurant use; the restaurant shall not open / be used between the hours of 1800 and 0800 Monday to Sunday; any alteration to the internal layout shall be subject to the written agreement of the planning authority; and there shall be no reference to a takeaway use on the shopfront signage on the premises.
- 3.1.3. Condition no. 4 states that no speaker announcements, amplified music or other audible material shall be played or broadcast in the external seating area.

- 3.1.4. Condition no. 5 states that no advertisements or advertising structure shall be erected or displayed on the building in such a manner as to be visible from outside the building unless authorised by a further grant of planning permission.
- 3.1.5. Condition no. 6 requires that, prior to the commencement of development, details of the proposed flue serving the restaurant shall be submitted to and agreed in writing with the planning authority.
- 3.1.6. Condition no. 9 requires that, prior to the commencement of development, the applicant shall submit details of the proposed boundary treatment along the southern boundary of the site for the written agreement of the planning authority. The boundary treatment and associated side gate shall not exceed 2 metres in height and shall not extend beyond the side (eastern) building line of the proposed restaurant extension.
- 3.1.7. Condition no. 10 requires the proposals for the management of delivery vehicles to and from the restaurant to be submitted for the written agreement of the planning authority.
- 3.1.8. All other conditions are generally standard in nature.

3.2. **Planning Authority Reports**

3.2.1. **Planning Reports**

3.2.2. Basis of Planning Authority's decision.

3.2.3. **Other Technical Reports**

3.2.4. **Engineering Department – Drainage Division:** No objection to the proposed development subject to conditions.

3.2.5. **Air Quality Monitoring & Noise Control Unit:** Recommends that Further Information be sought in relation to: (1) An Air Quality Management Plan to address mitigation measures to be put in place to prevent air pollution and odour nuisance associated with the use, in particular from the ventilation system serving the kitchen, (2) An Acoustic Consultants report to address the impact of noise associated with the use and the proposed mitigation measures to reduce noise levels.

3.3. **Prescribed Bodies**

3.4. **Irish Water:** None received.

3.5. **Irish Rail:** None received.

3.6. **Third Party Observations**

- 3.6.1. One third party observation was made on the application by The Adjacent Residents Group, No. 4 Hastings Street, Dublin 4. The issues which are raised can be summarised as follows: (1) the application is almost identical to planning reg. ref. 3926/20 which was refused permission, (2) the only minor change to the plans is a minimal set-back on the side elevation, which would increase outdoor seating and noise, and a minor height reduction on the proposed 2-storey extension, (3) inadequate development description on statutory notices, (4) overdevelopment of the site, (5) non-compliance with site's Z2 zoning objective, (6) noise and pollution impacts, (7) overshadowing from proposed 2-storey extension, (8) enforcement history on the site, (9) the existing restaurant is not a take-away service only as submitted and operates a delivery, take-away, dining-in and dining-out service, (9) non-compliance with development plan policy concerning restaurants, (10) side entrance on South Lotts Road will facilitate dumping and cause security risks for residents on Hastings Street

4.0 **Planning History**

- 4.1. **Planning Authority Reg. Ref. 3326/20:** Permission refused on 29th October 2020 for the retention of (1) the change use from shop to restaurant and (2) the removal of existing 2 no. twenty-foot shipping containers and the demolition of the single-storey storeroom and WC's to the rear of the property, and permission for a single-storey extension to side (61 m²) with internal alterations at ground floor level and a 2-storey extension to the rear (23 m²) with re-configuration and alterations of residential accommodation at upper floor levels with all associated site works and boundary treatments.
- 4.2. Permission was refused on the basis that the restaurant use, together with the alterations and extensions, would be out of keeping with the visual amenities of the

residential conservation area and would adversely impact on the residential amenities and character of the area.

- 4.3. **Planning Authority Reg. Ref. 3497/19; ABP Ref. 305564-19:** Planning permission granted by An Bord Pleanála on 21st January 2020 for alterations to internal layout including repositioning of internal stairs and new access door on the front elevation and permission refused for the retention of the restaurant use and associated development including the outdoor seating area, two twenty-foot containers, replacement chimney flue and boundary treatment.
- 4.4. Retention permission was refused on the basis that the development would, by virtue of its proximity to adjoining residential properties, give rise to unacceptable levels of noise and general disturbance and, as such, would seriously injure the amenities of residential property in the vicinity.
- 4.5. **Planning Authority Reg. Ref. 2360/19:** Retention permission sought for a change of use from shop to restaurant, including associated alterations, signage and shopfront at ground level and retention of 2 no. 20-foot shipping containers in place of original sheds, rear store/staff room, WC's, open seating area with canopy and bin store at front corner. Planning permission sought for the relocation and replacement of chimney flue, removal of painted timber panels to front boundary and replacement with boundary treatment with flower boxes, alterations to internal layout including repositioning of internal stairs and new access door to Ringsend Road for dwelling and associated works.
- 4.6. Retention permission was refused for this development on 18th April 2019 on the basis that the retention of the restaurant use and the associated development and its proximity to adjoining residential properties would, by reason of noise and general disturbance, seriously injure the amenities of properties in the vicinity and be in conflict with the site's Z2 zoning objective.
- 4.7. **Planning Authority Reg. Ref. 3959/18:** Retention permission refused on 8th November 2018 for change of use from shop to restaurant, including associated alterations, sign and shopfront at ground level, and the retention of 2 no. 20-foot shipping containers in place of original sheds, a sheeted timber framed structure with flat roof as storage and staff facilities to the rear, open outdoor seating to the front and a retractable canopied outdoor seating area to the side, a freestanding 8.3m

high stainless steel flue, painted timber panel boundary wall (2.1m high) with bin store at front corner.

4.8. Retention permission was refused for 2 no. reasons including (1) that the development give rise to adverse visual, amenity and potential air quality impacts which would seriously injure the amenities of property in the vicinity and would therefore be contrary to the Z2 zoning objective for the area, and (2) the layout of the proposed development would seriously injure residential amenity having regard to the location of the residential access within the outdoor dining area of the restaurant.

4.9. **Planning Authority Reg. Ref. 3149/99; ABP Ref. PL29S.118141:** Planning permission refused by An Bord Pleanála on 30th May 2000 for a 6m x 3m tri-vision panel in lieu of existing static panel on the basis that the proposed development would materially contravene the residential conservation area zoning objective and would seriously injure the visual amenities of the area.

4.10. **Enforcement History**

4.10.1. **E0155/18:** Enforcement notice issued in respect of unauthorised restaurant use and associated structures. This notice was not complied with, and the development is subject to ongoing enforcement proceedings.

5.0 **Policy and Context**

5.1. **Dublin City Development Plan 2016-2022**

5.2. **Land Use Zoning**

5.2.1. The site is subject to land use zoning “Z2” (Residential Neighbourhoods - Conservation Areas) which has the objective “to protect and/or improve the amenities of residential conservation areas”. Residential uses are ‘permissible’ under this zoning objective, while restaurant uses are ‘open for consideration’.

5.2.2. Section 14.8.2 of the development plan states that the general objective for such areas is to protect them from unsuitable new developments or works that would have a negative impact on the amenity or architectural quality of the area. The principal land-use in residential conservation areas is housing but can include a limited range of other uses. In considering other uses, the guiding principle is to enhance the

architectural quality of the streetscape and the area, and to protect the residential character of the area.

5.3. Restaurants

- 5.3.1. The development management standards which will be taken into consideration in relation to applications for restaurants are set out in Section 16.29 of the development plan. Those which are relevant to this appeal case include: (1) the effect of noise, general disturbance, hours of operation and fumes on the amenities of nearby residents, (2) traffic considerations, (3) waste storage facilities.

5.4. Take-aways

- 5.4.1. The provision of such facilities will be strictly controlled, having regard to the following, where appropriate: (1) the effect of noise, general disturbance, hours of operation, litter and fumes on the amenities of nearby residents, (2) the need to safeguard the vitality and viability of shopping areas in the city and to maintain a suitable mix of retail uses, (3) traffic considerations, (4) the number/frequency of such facilities in the area, particularly in close proximity to schools, (5) that the operators come to a satisfactory arrangement with Dublin City Council in relation to litter control, (6) the need to integrate the design of ventilation systems into the design of the building, (7) that appropriate cleansing/anti-litter measurements be agreed with Dublin City Council prior to the granting of planning permission, (8) that all take-aways provide and maintain a suitable waste bin outside their premises during hours of business, (9) the number and frequency of such facilities within a 1 km radius of the proposed development.

5.5. Alterations and Extensions

- 5.5.1. The policy regarding extensions and alterations is set out in Sections 16.2.2.3 and 16.10.12 and in Appendix 17 of the Development Plan. In general, applications for planning permission to extend dwellings will only be granted where the planning authority is satisfied the proposal will: (1) not have an adverse impact on the scale and character of the dwelling, and (2) not adversely affect amenities enjoyed by the occupants of adjacent buildings in terms of privacy, access to daylight and sunlight.

5.6. Sustainable Urban Housing: Design Standards for New Apartments (December, 2020)

5.6.1. These Guidelines provide a target standard where existing buildings are to be wholly or partly redeveloped or refurbished for residential use that includes apartments. An overall floor space of 45 m² applies to 1-bedroom apartments. Full details of the minimum floor areas and standards are set out in Appendix 1 of the Guidelines.

5.7. Natural Heritage Designations

5.7.1. None.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. A third-party appeal has been lodged against the Planning Authority's decision by the Adjoining Residents Group, c/o Nicola Quinn, 4 Hastings Street, Dublin 4. The grounds of appeal can be summarised as follows:

- The applicant has traded without planning permission since 2015 and first applied for retention permission in 2018, having received an enforcement notice which has not been complied with. It is considered that the applicant will not comply with the requirements of any associated conditions should planning permission be granted in this instance.
- The site is located in an area which is primarily a residential zone.
- The existing flue is a source of noxious odours and has had a very detrimental effect on adjoining properties. The drawings of the flue show its location in the communal chimney stack owned by Nos. 93 and 95 Ringsend Road. It is unclear if this arrangement has been approved by the owner of No. 93 Ringsend Road and the Fire and Planning Departments.
- The relocation of the flue onto Ringsend Road would reduce its impact on adjoining residential properties.
- The Air Quality Monitoring and Noise Control Unit had recommended that Further Information be requested in relation to an Air Quality Management

Plan and An Acoustic Report concerning the likely noise impact associated with the use and the mitigation measures proposed to reduce noise measures.

- The proposed 2-storey extension would restrict the amount of light received in the rear gardens of the houses on Ringsend Road, while the proposed rear passageway will be a security risk.
- The proposed bin collection location has not been clarified, with the footpath on South Lotts Road noted to be very narrow.
- The existing hedge boundaries to the site should be retained as they provide a pleasant visual aspect.
- The planning notices do not accurately describe the proposed development, in particular the location / relocation of the flue, which impacts on the entire neighbourhood.

6.2. Applicant Response

6.2.1. A response to the appeal was submitted by Hughes Planning & Development Consultants on behalf of the applicant on 1st November 2021, which can be summarised as follows:

- The subject building has been in commercial use and owned for decades by the applicant's family.
- The legitimacy of the appellant group is questioned, with the applicant receiving positive feedback on the application from a number of neighbours who form part of the Adjoining Residents Association.
- The applicant has liaised with the occupant of No. 2 Hastings Street, with the measures to reduce noise and odours being agreed with that occupant (letter of support provided as an appendix to the appeal response).
- The issue of potential non-compliance with planning conditions is not a relevant matter in the adjudication of this appeal case.

- Condition no. 3 of the Planning Authority's decision, which restricts the operation of the restaurant between the hours of 1800 and 0800 Monday to Sunday, is prejudicial to the longevity of the business.
- The business currently operates until 9pm from Sunday – Wednesday and until 10 pm from Thursday – Saturday. The restaurant does not result in any significant noise generation from audible material being played in the external seating area and does not contribute to the existing noise levels of the immediate surrounds.
- The site is located on a busy road junction which accommodates significant levels of traffic and associated noise. Significant noise is also generated by the neighbouring Shelbourne Park facility, which has later opening hours than the subject site, and the Dublin Bus depot.
- Dublin City Council's Strategic Noise Mapping places traffic levels at the site within the 70-74 dBA range, which is considered more of a nuisance than the level of noise provided by ambient music playing from speakers which may occur at a restaurant.
- A Noise Survey undertaken by the applicant in 2019 concluded that there was no significant noise attributable to the operation of the restaurant.
- As such, there will be no significant noise generated at the site which would result in a loss of residential amenity. The applicant will comply with any conditions attached by the Board in relation to opening hours and noise restrictions.
- The existing advertising structure on the gable elevation was correctly annotated on the planning drawings.
- The planning report submitted with the application contains a list of precedents whereby food outlets were previously granted within residential areas.
- While the subject site adjoins residential units, it is also a corner site at a prominent junction and there are existing office uses in the Watermarque building and the Arup Building. As such, the location is suitable to

accommodate the proposal and it would not result in an overconcentration of the use in this area.

- Historically, the area has been commercial in nature with a wide variety of land uses including Boland's Mill, Heiton McFerrans (industrial use) and the Ray Armstrong site, which accommodated a car dealership. As such, the restaurant use is considered appropriate given the wider commercial context of the area.
- The full extent of the development has been accurately described on the planning notices, with full details provided on the drawings, plans and particulars.
- Dublin City Council's Planning Officer did not consider that the Further Information which was requested by the Air Quality Monitoring and Noise Control Unit was necessary and a condition was attached which required details of the proposed flue to be submitted and agreed with the Planning Authority. It is also required that the filtration system must neutralise odours prior to discharge. It is considered that this condition protects residential amenity, and it is requested that it be reattached by the Board should planning permission be granted for the proposed development.
- The Sunlight, Daylight & Shadow assessment which accompanied the application demonstrates that the proposed development will have an insignificant impact on the surrounding dwellings.
- It is not anticipated that the proposed development would result in antisocial behaviour as the use of the proposed rear passageway will be reserved solely for use by the residents of the unit or members of staff. The gates may be secured if required by An Bord Pleanála.
- The proposed development protects the residential amenity of the area, whilst regularising the planning status of the site. It is requested that the Board upholds the Planning Authority's decision to grant planning permission for the proposed development.

6.2.2. The appeal response includes a copy of a 2019 Noise Report which was prepared in relation to an earlier application on the site (DCC planning reg. ref. 2360/19) and a letter of support from the residents of No. 2 Hastings Street.

6.3. **Planning Authority Response**

6.3.1. None received.

6.4. **Observations**

6.4.1. None.

7.0 **Assessment**

7.1. I am satisfied that the main issues for consideration in this case include:

- Principle of the Development
- Impact on Residential Amenities
- Planning History
- Appropriate Assessment

7.2. Each of these issues is addressed in turn below.

7.3. **Principle of the Development**

7.3.1. The appellant identifies that, apart from the long-established petrol station at the opposite end of the terrace of houses on Ringsend Road, all streets to the rear of the site generally comprise dense terraces of 1 and 2-storey houses. The appellant notes that the applicant could only identify 3 no. food outlets in this densely populated area. In response to the foregoing, the applicant's agent submits that the subject building has been in commercial use and owned by the applicant's family for decades. Photographic evidence in support of the commercial use of the ground floor of the building since 2009 is included in the planning report and the appeal response. I note that 2 of the images date from the years 2017 and 2019, and as such, appear to illustrate the existing use which is subject to enforcement proceedings.

- 7.3.2. In considering the principle of the proposed development at this location, I note the site is located in a residential conservation area (land use zoning Z2), within which restaurant uses are 'open for consideration'. The general objective for such areas is to protect them from unsuitable new developments or works that would have a negative impact on the amenity or architectural quality of the area. In considering uses apart from residential, the guiding principle is to enhance the architectural quality of the streetscape and the area, and to protect the residential character of the area.
- 7.3.3. In my opinion, the location / design of the existing outdoor seating area to the front of the premises, the collection of single-storey structures to the side of the building and the quality of the materials which screen these structures, detract from the character of the site and the streetscape. I also consider that the disjointed boundary treatments which extend around the eastern site boundary onto South Lotts Road do not provide a high-quality design response at this prominent road junction.
- 7.3.4. In considering the impact of the proposed / retained development on the character of this residential conservation area, I note that it is proposed to demolish / remove the existing single-storey structures and to construct a new single-storey extension to the side of the building. The remaining space to the side of the proposed extension fronting onto South Lotts Road will serve as an outdoor seating area. New metal railings over a low block wall are also proposed in place of the existing hoarding at the north-eastern corner of the site. In my opinion, the proposed development would serve to improve the existing character of the site and would make a positive contribution to the architectural character of the area. As such, I am satisfied that the proposed development would be acceptable in principle at this location, subject to its compatibility with the neighbouring residential land uses.

7.4. Impact on Residential Amenities

- 7.4.1. The appellant's primary concerns in relation to the proposed development relate to its impact on the residential amenity of neighbouring properties on foot of odour/emissions, noise, the height of the 2-storey extension and security risks associated with the rear entrance to the property. These issues are considered in turn below.

- Odour / Emissions

7.4.2. The appellant submits that the existing flue is a source of noxious odours and has had a very detrimental effect on adjoining properties. Section 4.2.3 of the applicant's planning report states that the existing stand-alone flue chimney will be removed. A new flue will be contained within the existing chimney as annotated on Proposed Section A-A (Drawing No. 200 Rev. P1). As such, it is proposed to incorporate a full replacement chimney system and associated mechanical works. The proposed replacement comprises a twin insulated stainless steel chimney system which will include noise attenuation baffles and a scrubber to reduce soot and particulate matter discharge. I note that the appellant submits that the drawings of the proposed flue show its location within the communal chimney stack owned by Nos. 93 and 95 Ringsend Road. The appellant considers it is unclear if this arrangement has been approved by the owner of No. 93 Ringsend Road and the Fire and Planning Departments.

7.4.3. The Air Quality Monitoring and Noise Control Unit of Dublin City Council had requested that Further Information be requested in relation to an Air Quality Management Plan, including mitigation measures to prevent air and odour nuisance. Dublin City Council's Planning Officer considered that this matter could be reasonably addressed by planning condition. I am also satisfied that this approach would be acceptable.

7.4.4. While the appellant's concerns in relation to the location of the flue have been considered, the chimney stack serving the subject property is identified as being within the applicant's control as illustrated on the planning application drawings. I also note that the owner of No. 93 Ringsend Road has not raised any objections to the proposed development. Notwithstanding the foregoing, I would draw the Board's attention to Section 34 (13) of the Planning and Development Act, 2000 (as amended) which states that a person shall not be entitled solely by reason of a permission under this section to carry out any development.

- Noise

7.4.5. The appellant's third-party submission highlighted concerns in relation to noise impacts arising from the restaurant use, including bottle breakage in the bin store, music, and from patrons talking / singing within the restaurant and on the street after

leaving the premises. It is submitted that these noise impacts are disruptive to local residents.

- 7.4.6. In response to the foregoing, the applicant's agent submits that the restaurant does not result in any significant noise generation from audible material being played in the external seating area and does not contribute to the existing noise levels of the immediate surrounds. It is submitted that the site is located on a busy road junction with significant levels of traffic and associated noise arising. It is further submitted that a Noise Survey undertaken by the applicant in 2019 concluded that there was no significant noise attributable to the operation of the restaurant. A copy of this survey is included with the applicant's appeal response.
- 7.4.7. The applicant's planning report also notes that an enclosed bin store is proposed to the rear of the site and that glass will not be disposed of in this area after 7 pm. The report also notes that restaurant customers are requested to leave and disperse quietly at closing time and that the outdoor seating area is now greatly reduced from previous proposals, which will reduce impacts to the amenity of surrounding residents. As such, it is considered that there will be no significant noise generated at the site which would result in a loss of residential amenity. The applicant will comply with any conditions attached by the Board in relation to opening hours and noise restrictions.
- 7.4.8. The Air Quality Monitoring and Noise Control Unit of Dublin City Council had also requested Further Information in relation to an Acoustic Report to address noise impacts associated with the use and mitigation measures to reduce noise levels. Dublin City Council's Planning Officer considered that this matter could be reasonably dealt with by way of planning condition.
- 7.4.9. I acknowledge that the proposed restaurant and take-away use has the potential to have negative impacts on the residential amenity of neighbouring properties by reason of potential noise impacts. However, the subject site and the adjoining residential properties are located on a busy thoroughfare within the city. While I note that the adjoining uses on Ringsend Road and to the rear at Hastings Street are residential in nature, I note that the subject site is located on the junction of Ringsend Road and South Lotts Road, which together with South Dock Road to the north, is mixed-use in character. Thus, having regard to the site location and context and the

scale of the proposed / retained development, I consider that should the Board grant planning permission in this instance, appropriate planning conditions can be attached in relation to noise to minimise negative impacts to neighbouring dwellings.

7.4.10. In reviewing the conditions which were attached to the Planning Authority's Notification of the Decision to Grant Permission I note that condition no. 3 requires, inter alia, that the restaurant shall not open / be used between the hours of 1800 and 0800 Monday to Sunday. The Planning Officer's justification for these opening hours was based on the residential nature of the area, the third-party observations in respect of the existing use and having regard to the conditions attached to a café / restaurant use at No. 10 Grand Canal Street Upper, Dublin 4. The applicant's appeal response states that the restricted opening hours would be prejudicial to the longevity of the business, with the restaurant and take-away use currently operating during the following hours:

- Monday: Closed
- Tuesday / Wednesday: 11 am – 9 pm
- Thursday / Friday: 11 am – 10 pm
- Saturday: 12 pm – 10 pm
- Sunday: 4 pm - 9 pm

7.4.11. In reviewing the precedent case at No. 10 Grand Canal Street Upper, Dublin 4 (planning reg. ref. 4594/17; ABP Ref. 301262-18) as referenced by Dublin City Council's Planning Officer, I note that this application sought, inter alia, an extension of the restaurant opening hours to 11.00 / 11.30 pm, which was reduced to 9.30 / 10 pm Wednesday – Saturday at appeal stage. The Board's Planning Inspector considered that the proposed increase in the hours of operation would give rise to significant negative impacts on the established residential amenity, contrary to the zoning objectives pertaining to the site (Z2) and the proper planning and sustainable development of the area.

7.4.12. While I have considered this precedent case, I also note that each application must be adjudicated on its merits. In my opinion, the opening hours which the Planning Authority has imposed on the restaurant use under condition no. 3 are somewhat unreasonable. In my opinion, a closing time of 2100 could be considered for the

operation of a restaurant use in an end-of-terrace property on a busy street within the city. This matter can be addressed by planning condition should the Board decide to grant planning permission for the proposed development.

7.4.13. While the appellant has raised concerns that the applicant will not adhere to the requirements of planning conditions that may attach to a permission, I note that this matter is not open for consideration under this appeal case and that any such matters arising would be dealt with separately under the enforcement provisions of Part VIII of the Planning and Development Act, 2000 (as amended).

- Rear Extension

7.4.14. The appellant submits that the proposed 2-storey rear extension would restrict the amount of light received in the rear gardens of the houses on Ringsend Road. The applicant's agent submits that the Sunlight, Daylight & Shadow assessment which accompanied the application demonstrates that the proposed development will have an insignificant impact on the surrounding dwellings.

7.4.15. The proposed ground floor rear extension will replace the existing building footprint at this level and will accommodate a store and toilet facilities for the restaurant use. The proposed 1st floor extension to the rear will accommodate a kitchen for the upper floor residential use and will project 3.35 m beyond the existing rear building line at a set back of 1.39 m from the rear site boundary. The planning application includes computer generated images of the proposed rear extension, shadow analysis diagrams and a Sunlight, Daylight and Shadow Assessment.

7.4.16. The shadow analysis diagrams illustrate the impact of the existing and proposed development at 0800, 1100, 1400 and 1800 hours on 21st March, 21st June and 21st Dec. Having reviewed the foregoing, I note that the proposed extension would have some overshadowing impacts on the return of the adjoining property at No. 93 Ringsend Road at 1100 on 21st March and 0800 and 1100 on 21st June. Some minor additional overshadowing of No. 91 Ringsend Road would also occur at 0800 on 21st June. In my opinion, the extent of overshadowing which would occur would not be sufficient to warrant the amendment of the development or the refusal of permission for the proposed rear extension.

7.4.17. The Sunlight, Daylight and Shadow Assessment has been prepared in accordance with Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice and

BS 8206 Lighting for Buildings, Part 2: Code of Practice for Daylighting. The assessment considers the impact of the proposed development on neighbouring properties at No. 93 Ringsend Road and No. 2 Hastings Street for skylight (vertical sky component – VSC), probable sunlight hours (Annual Probable Sunlight Hours – APSH and Winter Probable Sunlight Hours – WPSH) and sunlight/shadow on amenity spaces. The results of this assessment identify that all but one window passed the relevant VSC checks. The window which did not meet the required ratio of 0.8, achieved a marginal result of 0.78. All tested windows passed the relevant APSH, WPSH or overall sunlight checks. The small courtyard remaining at the back of the extension of No. 93 Ringsend Road is not impacted in terms of sunlight/shadow on 21st March. Having considered the foregoing, I am satisfied that the proposed development would have no unacceptable sunlight, daylight or shadow impacts on neighbouring properties.

7.4.18. The only window which is proposed at 1st floor level within the proposed extension is orientated in an easterly direction towards South Lotts Road. The 2-storey extension of No. 2 Hastings Street directly to the rear, has no fenestration at the 1st floor level facing the subject site. As such, I am satisfied that no overlooking of any neighbouring property would occur on foot of the proposed rear extension. I also note that the occupants of No. 2 Hastings Street have submitted a letter in support of the proposed development with the applicant's appeal response.

7.4.19. In conclusion, I am satisfied that the proposed / retained development, subject to its compliance with appropriate planning conditions, would have no significant negative impact on the residential amenity of adjoining properties which would warrant a refusal of planning permission in this instance.

7.4.20. For the avoidance of doubt, I note that the stated floor area of the upper floor residential use (67.32 m²) exceeds the minimum overall requirement for a 1-bedroom apartment unit and that the alterations which are proposed, will improve the existing standard of residential accommodation on the site.

- Rear Entrance

7.4.21. The appellant submits that the proposed rear passageway will be a security risk to residents on Hastings Street as it will allow easy access to the rear of their properties. The applicant's agent does not anticipate that the proposed development

would result in antisocial behaviour as the use of the passageway will be reserved solely for use by residents or members of staff. The applicant's agent confirms that the gates may be secured if required by An Bord Pleanála.

- 7.4.22. In my opinion, this is a management issue which can be controlled by the developer during the operational phase of the development. As such, I do not consider that the attachment of a planning condition in relation to this matter is warranted should the Board decide to grant permission for the proposed / retained development.

7.5. **Planning History**

- 7.5.1. I acknowledge that planning / retention permission has been refused for a restaurant use on the site on 4 no. previous occasions. However, having reviewed the planning history for the site, I consider that the current proposal would be in accordance with the proper planning and sustainable development of the area based on the reduced scale of development proposed, the repositioned outdoor seating area to the side of the premises, the removal of the 2 no. shipping containers and ancillary single-storey structures and the improved design response of the proposed single-storey extension to the side of the building. As such, I am satisfied that the current application has successfully addressed the previous refusals of permission for a restaurant use on the site.

7.6. **Appropriate Assessment**

- 7.6.1. Having regard to the nature and scale of the proposed / retained development and its location relative to Natura 2000 sites, no appropriate assessment issues arise, and it is not considered that the proposed / retained development would be likely to have a significant effect, either individually or in combination with other plans or projects, on a European site.

8.0 **Recommendation**

- 8.1. I recommend that retention permission and planning permission be granted in this instance.

9.0 Reasons and Considerations

- 9.1. Having regard to the nature and scale of the retained and proposed development, and the site location and context, it is considered that, subject to compliance with the conditions set out below, the development would not seriously injure the residential or visual amenities of this residential conservation area or of property in the vicinity. The development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out, completed and retained in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to the commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The 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>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>
3.	<p>(a) The sale of any hot food for consumption off the premises shall be ancillary to the primary restaurant use.</p> <p>(b) The hours of operation of the restaurant / take-away use shall be restricted to 0800 – 2100 hours Monday to Sunday.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
4.	<p>A scheme for the effective control of odour, fumes and noise from the restaurant use, shall be submitted to, and agreed in writing with, the planning authority within 3 months of the date of this Order and thereafter shall be permanently maintained.</p> <p>Reason: To ensure a satisfactory standard of development.</p>
5.	<p>(a) Details of the materials, colours and textures of all the external finishes, including the shopfront signage, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>(b) Details of the proposed boundary treatments shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of visual amenity.</p>
6.	<p>Litter in the vicinity of the premises shall be controlled in accordance with a scheme of litter control which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the provision of litter bins and refuse storage facilities.</p> <p>Reason: In the interest of visual amenity.</p>
7.	<p>Notwithstanding the provisions of the Planning and Development Regulations, 2001, or any statutory provision amending or replacing them, no advertising signs (including signs installed to be visible through the</p>

	<p>windows), advertisement structures, banners, canopies, flags, or other projecting elements shall be displayed or erected on the building, unless authorised by a further grant of planning permission.</p> <p>Reason: To protect the visual amenities of the area.</p>
8.	<p>(a) The sound from any loudspeaker announcements, music or other material projected in or from the ground floor premises shall be controlled so as to ensure the sound is not audible in adjoining premises or at two metres from the frontage.</p> <p>(b) No speaker announcements, amplified music or other audible material shall be played or broadcast in the outdoor seating area.</p> <p>Reason: In the interest of environmental amenity.</p>
9.	<p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health.</p>
10.	<p>Prior to the commencement of development, the developer shall enter into water and/or wastewater connection agreement(s) with Irish Water.</p> <p>Reason: In the interest of public health.</p>
11.	<p>Site development and building works shall be carried out only between the hours of 0700 to 1800 Mondays to Fridays inclusive, 0800 to 1400 on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>

Louise Treacy
Planning Inspector

5th August 2022