



An  
Bord  
Pleanála

## Inspector's Report

### ABP-311845-21

<b>Development</b>	PLANNING PERMISSION AND RETENTION PERMISSION of: 1. Retention of outdoor enclosed seating area and branded advertising to canopy and screens. 2. Provision of high-level facade signage to front of premises (Haddington Road entrance).
<b>Location</b>	Smyth's Pub, No. 10 Haddington Road, Dublin 4.
<b>Planning Authority</b>	Dublin City Council.
<b>Planning Authority Reg. Ref.</b>	2040/21.
<b>Applicant(s)</b>	Hugh Courtney.
<b>Type of Application</b>	Planning Permission & Retention Permission.
<b>Planning Authority Decision</b>	Refusal.
<b>Type of Appeal</b>	First Party.
<b>Appellant(s)</b>	Hugh Courtney.
<b>Observer(s)</b>	Mr. John McBratney.
<b>Date of Site Inspection</b>	21 <sup>st</sup> day of January, 2022.
<b>Inspector</b>	Patricia-Marie Young.

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## 1.0 Site Location and Description

1.1. 'Smyth's Pub', No. 10 Haddington Road, the appeal site is located on the northern side of Haddington Road, c134m to the north east of Haddington Roads junction with Baggot Street Upper and c210m to the south west of Haddington Roads junction with Haddington Place, in Dublin 4. The northern side of Haddington Road which Smyths Pub forms part of has a mixed -use character including at the time of my site inspection significant redevelopment of brownfield land. The opposite side of the road has a mature residential character which is afforded protection as a Residential Conservation Area under the Dublin City Development Plan, 2016-2022. The site is comprised of a 2-storey period in character building with an outdoor seating area (56m<sup>2</sup>) with canopy over immediately to the front. In addition to this there are tables placed in the adjoining public footpath. Photographs taken as part of my inspection are attached to file.

## 2.0 Proposed Development

2.1. By way of this application Planning Permission and Retention Permission is sought for a development that consists of the following:

1. Retention of outdoor enclosed seating area and branded advertising to canopy & screens at front of premises (Haddington Road entrance).
2. Permission for the provision of new high level facade signage to front of premises (Haddington Road entrance).

2.2. On the 9<sup>th</sup> day of September, 2021, the applicant submitted their further information response to the Planning Authority. This response included the setback by 500mm of the canopy enclosure structure and realignment of its front boundary to allow for more adequate space for pedestrians passing by. It confirms that all parts of the canopy structure are retractable; that the timber supports are in place to strengthen it; and, that a window has been removed to the front elevation to allow staff to serve the public safely. In relation to the removal of the front window it indicates that it is envisaged that it is envisaged that this alteration will revert to the previous arrangement. However, if social distancing remains an issue due to Covid it will be subject of a

separate application. In addition, it sets out the operational hours of the premises which it is indicated corresponds with the use of the outdoor seating area.

### 3.0 Planning Authority Decision

#### 3.1. Decision

3.1.1. On the 6<sup>th</sup> day of October, 2021, the Planning Authority decided to refuse the development sought under this application for the following stated reasons:

- “1. *Having regard to the encroachment of the additional canopy structure onto the public footpath, the need for it to be further reduced in extent, the visual impact of the raised plinth, screen and canopy, which appear as an extension, forward of the building line and obscuring the main façade and signage of the premises and requiring new high level signage, it is considered that the development proposed for retention would adversely impact on the streetscape along Haddington Road and the setting of the adjacent residential conservation area and St. Mary’s Church, a protected structure, thus being contrary to the provisions of the current Dublin City Development Plan (2016-22) and seriously injurious to the visual amenities and proper planning and sustainable development of the area.*
2. *The proposed high level signage would be contrary to the provisions of the current Dublin City Development Plan (2016-22) including Section 16.24.2 and 16.24.3 and the associated Shopfront Design Guide. When combined with the number of projecting signs and advertisements on the façade of the building and on the canopy, the proposed additional signage would contribute to visual clutter which, in itself and in the precedent it would set, would be seriously injurious to the visual amenities and the proper planning and sustainable development of the area.”*

#### 3.2. Planning Authority Reports

##### 3.2.1. Planning Reports

The **final Planning Officer’s report** dated the 6<sup>th</sup> day of October, 2021, is the basis of the Planning Authority’s decision. This report essentially considered that the

concerns raised in the further information request had not been adequately addressed, the additional canopy structure obscured the original façade and its signage in an adverse manner and the reduction of the canopy to an area that did not include the public domain footpath by way of condition would be tantamount to a refusal.

The initial Planning Officers report dated the 10<sup>th</sup> day of March, 2021, concluded with a request for further information on the following matters:

1. The applicant was requested to address the Transportation Planning Division's concerns and to submit details to how they would address these concerns.
2. Concern is raised that the proposal effectively consists of a front extension to the premises rather than an outdoor seating area.
3. If the development is retained in the form proposed it would obscure the existing fascia and signage of the premises.
4. Clarification is sought to the amendments made to the front elevation.
5. Clarification is sought on whether any permission is in place for projecting signs on the façade of the premises.
6. Clarification is sought on the proposed hours in which the outdoor seating area will be in use.

### 3.3. Other Technical Reports

3.3.1. **Drainage:** No objection subject to safeguards.

3.3.2. **Transportation:** The final Transportation Planning Division report dated the 28<sup>th</sup> day of September, 2021, considered that the slight improvement for pedestrians by setting back the canopy structure by 500mm from the public footpath is noted. However, concern is raised that the revised alignment still includes an area of taken in charge public footpath which is maintained by the Councils Roads Maintenance Services, and which is subject to a public right of way. It is noted that there is evidence to support this, and the applicant should be therefore requested to setback their screens and canopy to be in line with the boundary to the east of the property and that it should not encroach on the public footpath as taken in charge. It concludes with no objection subject to a recommended conditions which reads:

- “1. *Within 6 months of the date of the decision, the seating area, associated screens and canopy shall be set back to be in line with the front boundary line set by the property to the east, Rawson Court and which aligns with the back of the taken in charge public footpath.*
2. *All costs incurred by Dublin City Council, including any repairs to the public road and services necessary as a result of the development, shall be at the expense of the developer.*
3. *The developer shall be obliged to comply with the requirements set out in the Code of Practice.”*

### **3.4. Prescribed Bodies**

- 3.4.1. None.

### **3.5. Third Party Observations**

- 3.5.1. During the course of the Planning Authority’s determination of this application they received four third party observations objecting to the proposed development on mainly visual amenity grounds. Other concerns are also raised including procedural matters, the developments encroachment onto the public footpath, visual intrusion and overbearance of the canopy structure on its streetscape scene, the lack of quality of the works carried out which diminish the subject premises and its streetscape setting.

## **4.0 Planning History**

### **4.1. Site & Setting**

- 4.1.1. The Planning Authority’s Planning Officer’s reports set out the planning history of the site and its setting. There are no recent and/or relevant similar appeal cases within the streetscape scene of the appeal site.

## 5.0 Policy & Context

### 5.1. Development Plan

- 5.1.1. The Dublin City Development Plan, 2016 to 2022, is the operative plan. Under this Development Plan the site is located in an area zoned 'Z4': *"to provide for and improve mixed-service facilities"*.
- 5.1.2. Policy SC 22 of the Development Plan states that the Planning Authority will: *"consider appropriately designed and located advertising structures primarily located with reference to the zoning objectives and permitted advertising uses with secondary consideration of the outdoor advertising strategy"*.
- 5.1.3. Policy RD 15 of the Development Plan states that the Planning Authority will: *"require a high quality of design and finish for new and replacement shopfronts, signage and advertising"* and that: *"it will actively promote the principles of good shopfront design as set out in Dublin City Council's Shopfront Design Guidelines"*.
- 5.1.4. Section 16.24.2 of the Development Plan deals with the matter of shopfronts.
- 5.1.5. Section 16.24.3 of the Development Plan deals with the matter of signs and shopfronts.
- 5.1.6. Section 16.30 of the Development Plan deals with the matter of street furniture.

### 5.2. Natural Heritage Designations

- 5.2.1. The site is not located within or directly adjacent to any Natura 2000 sites. There are two designed sites just over 2km from the site. These are:
- South Dublin Bay SAC (site code 00210) is located 2km east of the site.
  - South Dublin Bay and River Tolka Estuary SPA (site code 004024) is located 2.1km east of the site.

### 5.3. EIA Screening

- 5.3.1. Having regard to the nature and scale of the development comprising a retention permission for an existing outdoor seating area and its canopy enclosure alongside planning permission for signage, the site's location in a built-up serviced area, lateral

separation distance between the site and the nearest Natura 2000 site and the intervening heavily developed urbanscape in between, the need for environmental impact assessment can be excluded at preliminary examination and a screening determination is not required.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

6.1.1. The grounds of appeal can be summarised as follows:

- The proposed development accords with similar developments in the area.
- The enclosure as originally proposed is located entirely within their land ownership. Despite this by way of their further information response this enclosure was setback by 500mm to that originally submitted in order to ensure a clear passage for pedestrians is provided along this part of Haddington Road. Although they remain slightly forward of the adjoining property to the east, it is considered that this matter could be more appropriately dealt with by way of condition requiring that a setback which is flush with this adjoining property at Rawson Court be provided.
- There is inadequate height available to reduce the height of the canopy to below the existing signage. The existing signage base is 2.5m above ground and this allows 2.4m in height for the canopy through to its structural supports to be provided.
- Although not a habitable area 2.4m is generally accepted to be good building practice floor to ceiling height.
- Given the uncertain times which Covid 19 has bestowed upon us and the unpredictable Irish weather, the proposed canopy covering, and its associated outdoor seating area allows for the existing business to trade and remain commercially viable.
- Retention permission was granted by the Planning Authority for the outdoor seating area and a terrace area of 45.5m<sup>2</sup> associated with the adjoining restaurant 'Asador' to the east under P.A. Ref. No. 2905/17.
- The subject premises is not a Protected Structure and is not in a conservation area.



- It is queried how this development would give rise to adverse visual amenity impacts to the adjacent Residential Conservation Area when similar provisions are already present within this streetscape setting.
- The canopy is fully retractable, and the outdoor area is of quality contemporary design typical to other similar provisions for licensed premises in Dublin city.
- No works were undertaken to alter the architectural detail of the façade.
- It is not accepted that the proposed signage would give rise to visual clutter.
- A condition could be attached for the removal of one of the projecting signs.
- The Board is requested to grant the development sought as revised.

## 6.2. Planning Authority Response

6.2.1. None received.

## 6.3. Observations

6.3.1. On the 29<sup>th</sup> day of November, 2021, the Board received an observation from a Mr. John McBratney. It can be summarised as follows:

- The reasons given by the Planning Authority to refuse this development are supported.
- Concerns are raised in relation to the alterations carried out to the façade of the building and the manner in which business is carried out at the subject premises.
- As a residential neighbour of the development, it is a concern that no consultation was had by the applicant with them.

## 7.0 Assessment

### 7.1. *Preliminary Comment*

7.1.1. I have carried out an inspection of the site and its setting, I have also examined all the plans, particulars, and documentation on file together with had regard to relevant planning policy provisions.

- 7.1.2. I also note that the development as sought under this application includes but is not limited to the retention of an outdoor seating area with branded advertisement canopy structure, screens and two metal railing pedestrian gates providing access into the seating area that extends the entire width of the appeal site fronting onto the northern side of Haddington Road.
- 7.1.3. I therefore consider it incumbent to note that as this application relates to retention of development and retention of use, that the Development Management Guidelines for Planning Authorities, 2007, make it clear that, in dealing with such applications, they must be considered "*as with any other application*". This is in accordance with planning law and with proper planning practice, in that all applications for retention should be assessed on the same basis as would apply if the development in question were proposed. Therefore, no account can, or should, be taken of the fact that the development has already taken place.
- 7.1.4. Further, the current Development Plan indicates where a development is neither listed as being 'permitted in principle' or 'not permitted' it should be assessed in terms of its contribution towards the achievement of the applicable zoning objective, the vision for the zoning objective and its compliance as well as consistency with the policies and objectives it contains as a land use which the applicable Development Plan.
- 7.1.5. In addition, regard also must be had to the transitional character of the site setting with the opposite side of Haddington Road zoned residential neighbourhoods (conservation areas) which are sensitive to visual, residential, and other change that could diminish their built heritage merit.
- 7.1.6. In my opinion the main issues arising in this appeal case are:
- Civil Matters
  - Principle of the Proposed Development
  - Visual Amenity Impact
  - Appropriate Assessment
- 7.1.7. For clarity I also note that my assessment below is based upon the revisions made by the applicant by way of their further information response submitted and received by the Planning Authority on the 9<sup>th</sup> day of September, 2021.

7.1.8. These revisions in my view make slight qualitative improvements to the development sought under this application. In particular they set the outdoor seating area and its associated canopy structure back from the pedestrian footpath. By so doing this has improved the width of the pedestrian footpath at this location for its users.

## 7.2. *Civil Matters - Landownership / Right-of-Way*

7.2.1. The Planning Authority raise concern that the outdoor seating area and its associated works, as revised, have significantly encroached onto land that is outside of the land-owners legal interest as well as effects lands that are taken in charge with also a right of way upon them.

7.2.2. The applicant by way of the documentation submitted with this application and on appeal to the Board have not demonstrated that this is not the case, and it would appear that the revised realignment of the seating area and its associated covering structure still includes an area of the public footpath and an area of land to which is subject to a right of way.

7.2.3. Further, there is no evidence of consent having been provided by the Planning Authority or any other party to the applicant for the development sought under this application.

7.2.4. While I consider that the Board has no statutory power to adjudicate upon matters relating to title and ownership of property raised in the grounds of appeal due to these matters being civil in nature and therefore can only be resolved by agreement between parties involved or the civil courts. With this being made clear under Section 5.13 of the Development Management Guidelines which state that "*the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution by the courts*".

7.2.5. Notwithstanding, consistent with the requirements of Section 22 of the Planning & Development Regulations, 2001, as amended, there is an onus on an applicant to submit the written consent of legal owner/legal owners as the case may be.

7.2.6. I am of the view that any decision on a planning application does not purport to determine the legal interests held by an applicant or indeed any other interested party; notwithstanding, I am not convinced based on the information provided and the concerns raised by the Planning Authority in relation to this matter that the applicant

has demonstrated sufficient interest in the lands to carry out the development sought or in the case retain the development subject to the revisions sought under this application. This in itself is sufficient reason to substantiate a refusal of permission and it is not a matter that can be dealt with by way of condition or indeed the attachment of an advisory note setting out Section 34(13) of the Planning & Development Act, 2000, as amended, i.e., that: *“a person shall not be entitled solely by reason of a permission or approval under this section to carry out a development”*.

### 7.3. Principle of the Proposed Development

- 7.3.1. The area of the site to which this application relates to land which under the Development Plan is unzoned due to it forming part of the public domain. It bounds on its northern side a parcel of urbanscape that is zoned Objective ‘Z4’ under the Development Plan. This land use zoning extends to encompass the buildings to the immediate east and west. As well as crucially including long established public house ‘Smyths Pub’ to the immediate north to which this application relates. The stated land use objective for such lands is: *“to provide for an improved mixed services”*.
- 7.3.2. The site is the location of an established public house which fronts onto the northern side of Haddington Road. On the opposite side of the road the land is zoned Objective ‘Z2’, i.e., Residential Conservation Area. The stated land use objective for such lands is: *“to protect and/or improve the amenities of residential conservation area”*.
- 7.3.3. The immediate visual setting also includes land zoned Objective ‘Z6’ i.e., Employment/Enterprise Zone and Objective ‘Z1’, i.e., Sustainable Residential Neighbourhoods.
- 7.3.4. As such the site setting in my view could be described as having a transitional character in terms of its land use zoning.
- 7.3.5. Section 14.7 sets out that: *“while the zoning objectives and development management standards indicate the different uses permitted in each zone, it is important to avoid abrupt transitions in scale and use zones”*. In relation to dealing with development proposals in such areas it states that: *“it is necessary to avoid developments that would be detrimental to the amenities of the more environmentally sensitive zones”*.
- 7.3.6. In terms of providing examples, it gives the following: *“in zones abutting residential areas or abutting residential development within predominantly mixed use zones,*

*particular attention must be paid to the use, scale, density and design of development proposals” ... “in order to protect the amenities of residential areas”.*

- 7.3.7. Having visited the site I observed that the site adjoins residential properties on its eastern side and directly opposite on the southern side of Haddington Road there is a period terrace group of residential properties. A third-party observation has been received by the Board by a neighbouring residential property owner who essentially does not approve to the development now sought for retention permission.
- 7.3.8. I consider that there is potential for the proposed development to be adversely impacted by the extension of these commercial operations into the public domain by way of a significant outdoor covered seating area by way of noise, light pollution, reduced privacy and other nuisances. Alongside this area being used in parallel with the public house premises which have given opening trading hours of Monday to Thursday - 10:30am to 11:30pm; Friday & Saturday - 10:30am to 12:30am and Sunday 12:30pm to 11pm.
- 7.3.9. I note that the proposed seating area as revised has a given width of 12.603m and a tapering depth that increases from 4.962m at its western end to 6m at its eastern end. As such this outdoor seating area open throughout the applicants trading hours would effectively result in a significant increase in their commercial floor area.
- 7.3.10. Whilst I acknowledge that the site itself is located on a section of Haddington Road on its northern side close to the junction of Haddington Road and Baggot Street Upper that has a mixed-use character, notwithstanding, it is adjoined and neighboured by residential properties with such properties being highly sensitive to change. Given the significant opening hours into the evening and night time Monday to Sunday there would be little rest bite for adjoining and neighbouring properties from the nuisances that would arise from the outdoor covered seating area sought under this application. Further, the applicant proposes no mitigation measures in terms of the use or design of the additional seating area to ensure protection of adjoining and neighbouring residential amenities.
- 7.3.11. Though the outdoor covered seating area is associated with an existing public house, with this use forming part of a parcel of cityscape zoned for improved mixed services, given its significant nature, scale and functional use, if permitted as revised, would be

contrary to the proper planning and sustainable development by way of the serious injury that would arise to residential amenity of properties in the vicinity.

#### 7.4. *Visual Amenity Impact*

- 7.4.1. The development adjoins and is attached to the southern elevation of Smyth's Pub extending out into the pedestrian footpath. Smyth's Pub is not a 'Protected Structure', but it is located in the streetscape scene of a zoned residential conservation area as well as a streetscape scene that within its visual curtilage includes the prominent built feature of St. Mary's Church, a Protected Structure.
- 7.4.2. The existing structure which the applicant now proposes to slightly setback its current alignment with the pedestrian footpath of Haddington Road. This revision would give rise to a slight reduction in the floor area associated with the outdoor seating area is still a very prominent and visually highly dominant insertion to the front of Smyth's public house.
- 7.4.3. In terms of the height of the retractable canopy it obscures the original shopfront signage associated with this public house by way of its 3.525m height which slopes down to 2.688m at its lowest point adjoining the pedestrian footpath of Haddington Road. The retractable canopy contains large, branded advertising together with the branding continuing onto the lower side panels of the southern elevation.
- 7.4.4. The structure itself consists of heavy timbers and supports through to two metal rail gates for access. Additional signage is indicated at first floor level of the principal façade. This, however, is situated outside of the redline area which is indicated in the Site Layout/Contiguous Elevation drawing to which this application relates. With this drawing also showing two projecting signs at this level though three are currently present.
- 7.4.5. Of concern Section 16.24.2 of the Development Plan sets out that shopfronts are one of the most important elements in defining the character, quality, and image of streets in Dublin City.
- 7.4.6. It also sets out that the Council will seek to protect and retain traditional and original shopfronts and that alterations to shopfronts should relate satisfactorily to the design proportions, materials, and details of the upper parts of the building.

7.4.7. Moreover, it sets out that they should complement their context and not harm any architectural detailing.

7.4.8. This is also reiterated in Policy RD 15 of the Development Plan states that the Planning Authority will: *“require a high quality of design and finish for new and replacement shopfronts, signage and advertising”* and that: *“it will actively promote the principles of good shopfront design as set out in Dublin City Council’s Shopfront Design Guidelines”*.

7.4.9. In this case, I consider that the canopy structure fails to accord with Section 16.24.2 of the Development Plan on these set out requirements. With this consideration based on a number of factors including it:

1) Obscuring the original signage associated with Smyths public house.

2) The inappropriate built form, scale, height, and volume.

3) The lack of a complimentary, respectful, and harmonious design resolution.

4) The solidity of the materials used in the structural supports and their visual overbearance on what is a modest period public house building when viewed from the public domain.

5) The designs effective dilution of the character by way of the canopy structure being the defining and most visible man-made feature/insertion to the front of this modest period public house building as appreciated from the public domain.

6) The extensive signage that covers the canopy’s sloping roof and panels in its southern elevation adds to this structure’s visual incongruity against its modest brick period façade with modest shopfront which effectively for the majority of the façade are no longer visible.

7) Further signage is proposed at first floor level outside of the redline area. This together with the level of signage associated with the canopy structure over the seating area together with the existing branded projecting signs diminishes the character of this building, diminishes its contribution to its streetscape setting and also diminishes the setting of the Residential Conservation Area opposite as well as the visual setting in which St. Mary’s Church, a prominent and notable in merit Protected Structure, which forms part of the site’s streetscape scene.

- 7.4.10. In so doing it fails to accord with Policy RD 15 of the Development Plan and also the principles of *good shopfront design as set out in Dublin City Council's Shopfront Design Guidelines* which in a similar manner seek high quality and site appropriate design responses for such proposals.
- 7.4.11. Of further note Section 16.30 of the Development Plan recognises that certain uses within the public realm including street furniture can lead to problems of visual clutter and obstruction of the public footpaths for pedestrians. In this regard even as revised this is the case with the area associated with the outdoor seating area and its associated canopy over for which retention is sought under this application.
- 7.4.12. In addition, Section 16.30 seeks to ensure a high-quality public domain and sets out that all outdoor provided by private operators including publicans be of good contemporary design as well as respect the overall character of the area and the quality of the public realm.
- 7.4.13. Further, the Development Plan under Section 4.5.6 of the Development Plan, on the matter of outdoor advertising it is set out that while commercial viability is a key consideration, it has to be balanced with the need of creating a high-quality public domain to safeguard as well as enhance sensitive areas and sites.
- 7.4.14. In addition, Policy SC22 of the Development Plan sets out that the Council will consider appropriately designed and located advertising structures primarily with reference to the zoning objectives and in all cases, it sets out that the structures must be of high-quality design, materials and must not obstruct or endanger road users or pedestrians or impede the free pedestrian movement as well as accessibility of the footpath or roadway.
- 7.4.15. In this regard, the advertising signage as a primary feature of the structure which covers the outdoor seating area and together with the additional signage proposed and existing at first floor level is excessive for this type of commercial operation at this location.
- 7.4.16. Further they form part of a poorly considered and quality design method of advertising that together with the poor use of materials is inappropriate to the main building they form part of and out of character with this buildings streetscape scene. Of further concern they form part of a covered outdoor seating provision that encroaches onto the pedestrian footpath of Haddington Road and in so doing reduces its effectiveness



for the safe movement of users of this footpath by reducing the space available to them.

7.4.17. In this case the outdoor furniture in tandem with the structure covering it is not of a high-quality design and as said fails to respect the overall character and quality of its public realm seating.

7.4.18. The appellant contends that the development sought under this application is consistent with other similar developments in the area. In relation to this I note that each application should be considered on their merits, the examples cited do not relate to decision by the Board and also those referred to are more qualitative, light weight interventions to exterior facades that allow more effective views of the commercial premises principal facade, they are not associated with significant branding/advertising visual clutter through to their scale and nature are not comparable to that sought under this application.

7.4.19. In relation to the comments about Covid, it is appreciated that this has brought particular difficulties to commercial enterprises like the appellants. Notwithstanding, this type of commercial operation can now operate with little restrictions in place and the development sought is not temporary in nature but is a permanent significant extension to the commercial floor area of the applicant's premises. It is also apparent that significant encroachment in the form of outdoor seating and covered outdoor seating occurred many years at the subject premises pre-Covid. It is a type of development for which the Development Plan provides clear standards, polices and guidance on. Covid is not a reason in itself to justify not having regard to these planning provisions as part of such an application with a site that is situated on a busy Dublin thoroughfare with also a busy and qualitative public realm.

7.4.20. It is a development that also seeks significant branded advertising to be permitted at the expense of its own principal shopfront signage through to it proposes a significant heavy weight and poor quality in material structure to cover the extended outdoor seating area with this in turn diminishing the character of this two-storey period commercial property within its streetscape scene.

7.4.21. In addition, as discussed, the chosen design approach and use of materials obscures the principal façade of this commercial property and its positive attributes that more positively contributed to its visual setting with the extent and materials associated with

the covered outdoor seating area encroaching into the public realm. In so doing diminishing the quality of the public realm along Haddington Road. As such the development sought is not in accordance with the provisions of the Development Plan for this type of development.

- 7.4.22. Based on the above considerations I consider that both reasons given by the Planning Authority to refuse retention permission are with basis and to permit the development as proposed would be contrary to the proper planning and sustainable development of the area. Alongside would give rise to an undesirable precedent for similar proposals that would result in poor quality public realm outcomes as well as erosion of vibrancy and vitality of city streetscape scenes alongside diminish the intrinsic character and quality of built heritage within the site's streetscape scene that in themselves are afforded protection from inappropriate developments that have capacity to erode the visual amenity of their settings by way of the provisions set out in the Development Plan relating to Conservation Areas and Protected Structures.

## 8.0 **Appropriate Assessment**

- 8.1. Having regard to the modest nature and scale of the development sought under this application, the brownfield and serviced nature of the site's setting, the significant lateral separation distance between the site and the nearest European site, the lack of any connectivity between the two together with the nature of the receiving environment, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 9.0 **Recommendation**

- 9.1. I recommend that retention permission and planning permission be **refused** for the reasons and considerations set out hereunder.

## 10.0 Reasons and Considerations

1. On the basis of the submissions made in connection with the planning application and appeal, the Board is not satisfied that the application has been made by a person who has:
  - (a) sufficient legal estate or interest in the land the subject of the application to enable the person to carry out the proposed development sought under this application on the land, or
  - (b) the approval of the person who has such sufficient legal estate or interest.In these circumstances, it is considered that the Board is precluded from giving further consideration to the granting of permission for the development the subject of the application.
  
2. The development sought under this application would be contrary to the provisions of Dublin City Development Plan, 2016 to 2022. In particular Sections 4.5.6, 14.7, 16.24.2, 16.30, Policy RD 15, Policy SC 22 as well as the *Dublin City Council's Shopfront Design Guidelines*".

Together these essentially seek a high-quality design and finish as well as an outcome that respects the character of the main building and that harmonises with its streetscape scene in a positive manner.

They also seek to avoid branded advertising and visual clutter arising from signs and advertising in their various forms. Through to they seek qualitative outcomes for the public realm including where outdoor seating and the like are proposed. These policy provisions are considered to be reasonable.

Given the poor quality in design, built form and palette of materials of the development sought together with the intensification of use that would arise from it, the lack of mitigation measures to ensure no undue nuisance arises for residential properties in its vicinity, the excessive use of branded signage, the excessive clutter that would arise from this development when taken together with the encroachment of this development onto the public realm of the adjoining stretch of Haddington Road pedestrian footpath, it is considered that the development would give rise to adverse visual impact on its setting by way

of its visual overbearance, visual incongruity through to the visual clutter that would arise from excessive signage and advertising.

It would also diminish the contribution of the subject building to the streetscape scene of Haddington Road, a streetscape scene which includes in its immediate proximity on the opposite side of the public road a Residential Conservation Area as well as St. Mary's Church in close proximity alongside diminish the quality and function of its public realm.

Thus, the development sought under this application would seriously injure the amenities of the area, would set an undesirable precedent as well as would be contrary to the proper planning and sustainable development of the area.

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Patricia-Marie Young  
Planning Inspector

31<sup>st</sup> day of January, 2022.