

An
Bord
Pleanála

Inspector's Report ABP315509-23

Development

The extension of the Landmark Public House at no.1 Kevin Street Lower and no. 40 Wexford Street – a protected structure – by the amalgamation of the ground floor of no. 39 Wexford Street and the ground floor and part of the first floor of no.38 Wexford Street. Modifications to the ground floor layout of the Landmark Public House and demolition of part of the ground level walls and partition walls. Change of use of the premises at nos. 38 & 39 Wexford Street from retail use to public house. Installation of new shopfronts to both buildings at nos. 38 & 39 Wexford Street.

Location

The Landmark Public House, 1 Kevin Street Lower, Dublin 8, D08DX2A, 40 Wexford Street, Dublin 2, D02CH68, 39 Wexford Street, Dublin 2, D02Y389 and 38 Wexford Street, Dublin 2, D02Y389.

Planning Authority

Dublin City Council.

Planning Authority Reg. Ref.	5018/22.
Applicant(s)	Xavier Management Holdings Ltd.
Type of Application	Permission.
Planning Authority Decision	Refusal.
Type of Appeal	First Party
Appellant(s)	Xavier Management Holdings Ltd.
Observer(s)	None.
Date of Site Inspection	09/07/2023.
Inspector	Anthony Abbott King.

1.0 Site Location and Description

- 1.1. The applicant site comprises the Landmark Public House at no. 1 Kevin Street Lower & no. 40 Wexford Street and the adjoining properties at nos. 39 & 38 Wexford Street. Nos. 39 & 38 Wexford Street comprise a vacant retail unit previously accommodating a convenience store. The site comprises the Kevin Street Lower / Wexford Street corner defining the south west corner of the Cuffe Street / Redmond Hill / Kevin Street / Wexford Street junction. This prominent junction is heavily trafficked and is regulated by traffic lights.
- 1.2. The landmark Pubic House is a four-storey late nineteenth-century building circa. 1880 successfully articulating the Kevin Street / Wexford Street urban corner; the building presents a 4-bay elevation onto Wexford Street (no. 40 Wexford Street) and a 2-bay elevation onto Kevin Street Lower. This building has a regional rating on the published NIAH survey. The elevation is identical on both Kevin Street lower and Wexford Street.
- 1.3. The elevations present a red-brick finish with render detailing defining the window openings creating vertical bands modulating the elevation above a ground level arcaded Portland stone commercial frontage. There is a pronounced parapet and string course between the first and second floors both exhibiting a stone finish. The continuous commercial frontage at ground floor level is punctuated by entrances on both elevations; there is an active on-street out-door seating area located along the Wexford Street frontage.
- 1.4. The buildings at nos. 38 & 39 Wexford Street are located to the south of the Landmark Public House. They comprise the adjoining 3-storey 1-bay yellowish brick building at no. 39 Wexford Street circa. 1800's and the 4-storey 2-bay red brick building at no. 38 Wexford Street circa. 1900's. These buildings have been amalgamed and present as one commercial frontage at ground floor level with excised signage and closed roller shutters indicating vacancy. The vacant premises at ground floor level is visually negative to the street. There is residential use above ground floor level comprising 3 residential units located across both buildings.
- 1.5. The internal licensed floor area within the Landmark Public House comprises the ground floor and first floor - accessed via a flight of stairs located inside the Kevin Street Lower entrance.

- 1.6. The Landmark Public House is a protected structure (Item 8552 Volume 4 Dublin city Development Plan 2022-2028) within a designated conservation area. The adjoining nineteenth-century buildings at nos. 38 and 39 Wexford Street are not protected structures.

2.0 Proposed Development

- 2.1. The extension of the Landmark Public House at no.1 Kevin Street Lower and no. 40 Wexford Street – a protected structure – by the amalgamation of the ground floor of no. 39 Wexford Street and the ground floor and part of the first floor of no.38 Wexford Street. Modifications to the ground floor layout of the Landmark Public House and demolition of part of the ground level walls and partition walls. Change of use of the premises at nos. 38 & 39 Wexford Street from retail use to public house. Installation of new shopfronts to both buildings at nos. 38 & 39 Wexford Street.

3.0 Planning Authority Decision

3.1. Decision

Refusal of planning permission for the following 3 reasons:

1. Having regard to the scale of the existing public house / restaurant, at both ground and first floor level, and the ground floors of 40 Wexford Street, and the proposed new additional floor area proposed at ground floor level in the two adjoining properties at number 38 & 39 Wexford Street, it is considered that the proposed development would lead to a significant intensification of the existing use and that a licensed premises of this scale would have a detrimental impact on the historic fabric, grain and character of the streetscape. Furthermore, having regard to the resultant expansion of the public house / restaurant use into two properties on Wexford Street, it is considered that the proposed development would set an undesirable precedent for similar developments along the street, and would seriously injure the residential amenities of existing residents in the area, by reason of additional levels of noise and disturbance. The proposed development would,

therefore, be contrary to the proper planning and sustainable development of the area.

2. The proposed amalgamation of the ground floor of the Protected Structure and the adjoining buildings at Nos. 38 and 39, the proposed demolition of a substantial part of the party wall between the rear (west) of No. 39 and the 'annex' to the rear (south) of the Protected Structure, and the proposed demolition of part of the party wall between No. 39 and the southern staircase of the Protected Structure, along the adjacent entrance lobby walls, which align with the intact walls at third and second floor levels, and supporting piers at first floor level, would be contrary to Section 11.1.5.3 of the Dublin City Development Plan 2016-2022, whereby the planning authority requires interventions to Protected Structures to relate sensitively to, and complement the special character of, a protected structure. Furthermore, the proposed merging of two or more Protected Structures into one unit or building at ground floor level through the demolition of dividing walls or the provision of interconnecting doors or entranceways are only be permitted in exceptional circumstances, and it is considered that, in this instance, no such exceptional circumstance to warrant such intervention has been provided. Such an amalgamation would blur the understanding and legibility of the historic plots and urban grain of the Protected Structure and the adjoining (unprotected buildings) at No. 38 and 39, and would, therefore, contravene Policy CH2 of the Dublin City Development Plan 2016-2022.
3. Having regard to the design of the proposed shop fronts to numbers 38 and 39 Wexford Street, it is considered that this would constitute an inappropriate treatment for shop fronts in a designated conservation area, and would seriously injure the visual amenities of the area and would be contrary to the guidance set out in the Dublin City Councils 'Shopfront Design Guidelines' and contrary to Policy CHC1 which is 'to seek the preservation of the built heritage of the city that makes a positive contribution to the character, appearance and quality of local streetscapes and the sustainable development of the city.' The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The decision of the CEO of Dublin City Council reflects the recommendation of the planning case officer.

3.2.2. Other Technical Reports

- The conservation officer reported with a recommendation of refusal of planning permission.
- The Transport Planning Division have no objection to the proposed development subject to condition.
- TII have no objection to the proposed development subject to review of the application of the Section 49 Levy Scheme for Light Rail.
- The Air Quality Monitoring & Noise Control Unit has no objection to the proposed development subject to condition.

4.0 Planning History

- Planning permission was granted for change of use on ground floor (121.8 m²) and part first floor (22.47 m²) from existing retail use to takeaway restaurant with associated kitchen extract and ventilation equipment to rear, existing upper floors retained, all at nos. 38/39 Wexford Street, under Register Ref: 3880/20.
- Planning permission was granted for internal changes (including partitions and stairs) at ground and first floor levels, external works and signage all at no. 40 Wexford Street (and 1 Kevin Street), a protected structure, under Register Ref: 3332/18.

5.0 Policy and Context

5.1. Development Plan

The zoning objective is Z5 'City Centre' (Map E): *To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity.* Both public house and restaurant are permissible uses.

The city centre zoning Z5 objective is clarified as stated below:

The primary purpose of this use zone is to sustain life within the centre of the city through intensive mixed-use development..... As a balance, and in recognition of the growing residential communities in the city centre, adequate noise reduction measures must be incorporated into development, especially mixed-use development, and regard should be given to the hours of operation.....

Conservation Area Designation

The proposed development is located within a red-hatch conservation area.

Chapter 11 (Built Heritage and Archaeology) Section 11.5.3 (Built Heritage Assets of the City) is relevant in the matter of conservation area designation. The following is relevant with application to red-hatched conservation areas:

Chapter 11, Policy BHA9 (Conservation Areas) is relevant and states:

To protect the special interest and character of all Dublin's Conservation Areas – identified under Z8 and Z2 zoning objectives and denote by red line conservation hatching on the zoning maps. Development within or affecting a Conservation Area must contribute positively to its character and distinctiveness and take opportunities to protect and enhance the character and appearance of the area and its setting, wherever possible.

Enhancement opportunities may include:

Changes of use will be acceptable where in compliance with the zoning objectives and where they make a positive contribution to the character, function and

appearance of the Conservation Area and its setting. The Council will consider the contribution of the existing uses to the special interest of an area when assessing change of use applications, and will promote compatible uses which ensure future long-term viability.

Protected Structure(s)

The Landmark Public House, no.1 Kevin Street, is a Protected Structure (RPS Ref: no. 8552).

Chapter 15 (Development Standards), Section 15.15.2.3 (Protected Structures) of the Dublin City development Plan 2022-2028 states that: *the inclusion of a structure in the Record of Protected Structures does not prevent a change of use of the structure, and/or development of, and/or extension to the structure, provided that the impact of any proposed development does not adversely affect the character of the Protected Structure and its setting.*

Chapter 11 (Built Heritage) is relevant in the matter of the policy context regulating the development of protected structures, which *inter alia* states:

Historic Use

The historic use of the structure is part of its special interest and often the best use for a building will be that for which it was built. However, on occasion a change of use will be the best way to secure the long-term conservation of a structure. Where a change of use is proposed, the building should be capable of being converted into the new use without harmful extensions or modifications, such as the insertion of new openings, staircases, the substantial subdivision of historic floor plans and/or serious loss of historic fabric.

In the matter of the development of a protected structure(s), Policy Objective BHA2, Chapter 11 is relevant and states:

That development will conserve and enhance protected structures and their curtilage and will:

(a) Ensure that any development proposals to protected structures, their curtilage and setting shall have regard to the Architectural Heritage Protection Guidelines for

Planning Authorities (2011) published by the Department of Culture, Heritage and the Gaeltacht.

(b) Protect structures included on the RPS from any works that would negatively impact their special character and appearance.

(c) Ensure that works are carried out in line with best conservation practice as advised by a suitably qualified person with expertise in architectural conservation.

(d) Ensure that any development, modification, alteration, or extension affecting a protected structure and/or its setting is sensitively sited and designed, and is appropriate in terms of the proposed scale, mass, height, density, layout and materials.

(c) Ensure that the form and structural integrity of the protected structure is retained in any redevelopment and ensure that new development does not adversely impact the curtilage or the special character of the protected structure.

(d) Respect the historic fabric and the special interest of the interior, including its plan form, hierarchy of spaces, structure and architectural detail, fixtures and fittings and materials.

(e) Ensure that new and adapted uses are compatible with the architectural character and special interest(s) of the protected structure.

(f) Protect and retain important elements of built heritage including historic gardens, stone walls, entrance gates and piers and any other associated curtilage features.

(g) Ensure historic landscapes, gardens and trees (in good condition) associated with protected structures are protected from inappropriate development.

(h) Have regard to ecological considerations for example, protection of species such as bats.

Works to a protected structure should be carried out in accordance with the Architectural Heritage Protection Guidelines for Planning Authorities (2011) and the Conservation Advice Series published by the Department of Housing, Local Government and Heritage.

Period Building Stock

Chapter 11, Policy BHA11 (Rehabilitation and Reuse of Existing Older Buildings) is relevant and states:

- (a) *To retain, where appropriate, and encourage the rehabilitation and suitable adaptive reuse of existing older buildings/structures/features which make a positive contribution to the character and appearance of the area and streetscape, in preference to their demolition and redevelopment.....*

Chapter 11, Policy BHA25 (loss of upper floors) is relevant and states:

There will be a presumption against the loss of upper floor access to buildings from the street frontages, and the City Council will seek reinstatement of upper floor access points wherever possible from the street.

Retail

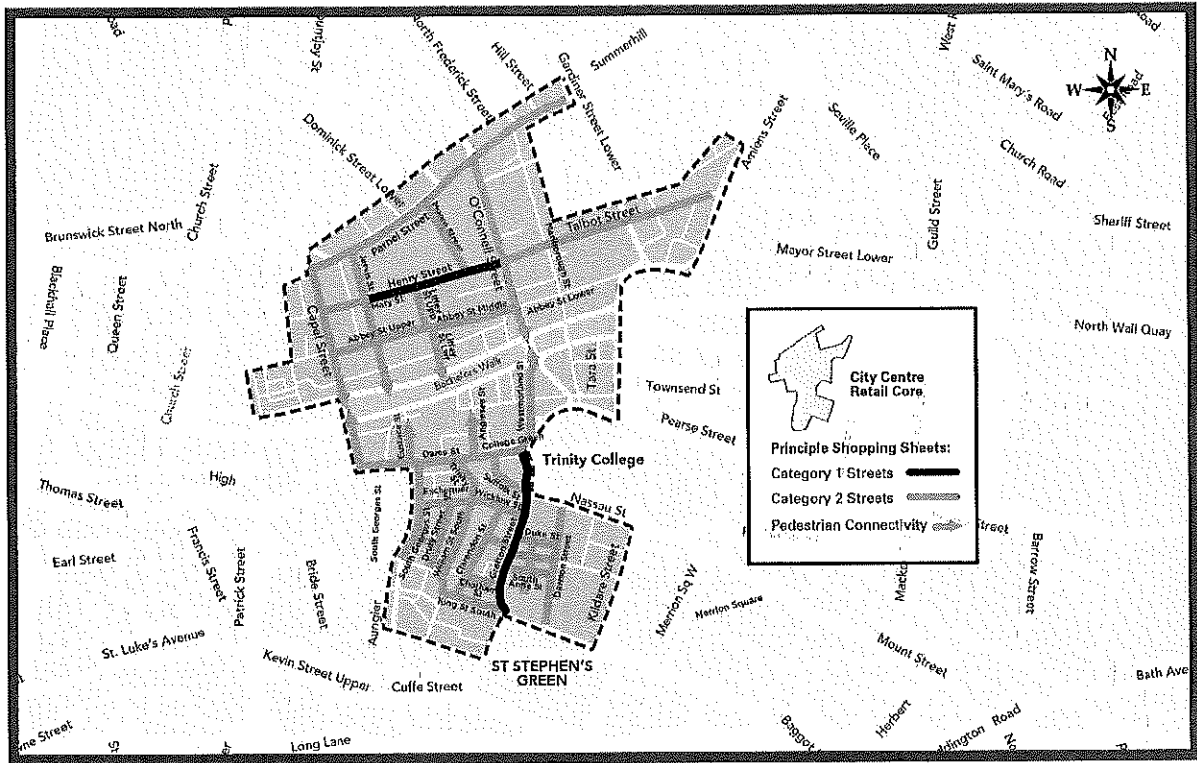
In regard to the existing and proposed use, Chapter 7 (Dublin City Development Plan 2022-2028 is relevant:

In the matter of vacant retail units, Chapter 7, Section 7.5 (retail) is relevant. Policy CCUV13 states:

To promote the temporary use of vacant premises in order to reduce the level of vacancy on streets in the city's urban centres including Key Urban Villages as this can compromise the vitality of urban centres. Temporary uses which can contribute to the economic, social and cultural vitality of the city centre , Key Urban Villages and other centres and which allow public access will be encouraged (pending permanent occupancy).

Figure 7.2: Dublin City Centre Retail Core, Principal Shopping Streets

The City Centre, Urban Villages and Retail | **Chapter 7**



Public House (Licensed Premises) / Restaurant-Cafe

Chapter 15 (, Section 15.14 (Commercial Development/Miscellaneous), Section 15.14.7.2 (Restaurants/Cafes) is relevant and states:

The positive contribution of café and restaurant uses and the clusters of such uses to the vitality of the city is recognised. In considering applications for restaurants, the following will be taken into consideration:

- *The effect of noise, general disturbance, hours of operation and fumes on the amenities of nearby residents.*
- *Traffic considerations.*
- *Waste storage facilities.*
- *Hours of operation.*
- *The number/frequency of restaurants and other retail services in the area.*
- *The contribution to the vitality and viability of the area.*

Section 15.14.12 (Night Clubs/Licensed Premises/Casinos/ Private Member Clubs)

is relevant in the matter of the extension of the licensed premises and states:

Dublin City Council will encourage entertainment/cultural/music uses which help create an exciting city for residents and tourists alike.

There is a need to strike an appropriate balance between the role of these entertainment uses in the economy of the city and the following:

- *To maintain high-quality retail functions on the primary city centre streets and ensure a balanced mix of uses.*
- *To protect the amenities of residents from an over-concentration of late night venues.*
- *Noise emanating from and at the boundaries of these establishments are issues which will need to be addressed in planning applications for such establishments. Noise insulation and reduction measures, especially relating to any mechanical ventilation or air-conditioning, will be required to be submitted with any such planning application.*
- *To minimise the impact and street presence of casinos / members clubs. Therefore, there will be a general presumption against inappropriate advertising for casinos / gambling/ members clubs.*

The development of 'superpubs' will be discouraged and the concentration of pubs will be restricted in certain areas of the city where there is a danger of overconcentration of these to the detriment of other uses. In cases where new uses, including uses such as casinos and private members' clubs, or extensions to the existing use are proposed, the onus is on the applicant to demonstrate that such proposed development will not be detrimental to the residential, environmental quality or the established character and function of the area.

Matters that shall be taken into account by the planning authority in assessing planning proposals for these uses and extensions to such uses include, but are not limited to the following:

- *The amenity of neighbouring residents and occupiers.*

- *Hours of operation.*
- *Traffic management.*
- *Shop frontage treatment and impact on streetscape.*
- *Proposed signage.*

Shopfronts

Section 15.17.5 (Shopfront and Facade Design) is relevant and states:

Shopfront design plays a key part in contribution to the quality of the public realm. Attractive facades and shopfronts have the ability to rejuvenate the streetscape and create an attractive public realm environment. The criteria to achieve good shopfront is set out in the development plan.

Proposals for shopfront signage shall have regard to the contents of the Retail Design Manual, 2012, Dublin City Council's Shopfront Design Guide, 2001 and the O'Connell Street Area Shopfront Design Guidelines, 2003, where appropriate.

Policy BHA11 is relevant and states:

The Rehabilitation and Reuse of Existing Older Buildings

1. (a) *To retain, where appropriate, and encourage the rehabilitation and suitable adaptive reuse of existing older buildings/structures/features which make a positive contribution to the character and appearance of the area and streetscape, in preference to their demolition and redevelopment.*
2. (b) *Encourage the retention and/or reinstatement of original fabric of our historic building stock such as windows, doors, roof coverings, shopfronts (including signage and associated features), pub fronts and other significant features.*
3. (c) *Ensure that appropriate materials are used to carry out any repairs to the historic fabric.*

Architectural Heritage Protection Guidelines

In terms of national guidance - Architectural Heritage Protection Guidelines for Planning Authorities (2011) published by the Department of Culture, Heritage and the Gaeltacht are relevant.

Further detail on the appropriateness of works *inter alia* to a protected structures is provided for in the Department of Environment, Heritage & Local Government – conservation advice series –

5.2. EIA Screening

The development is not in a class where EIA would apply.

6.0 The Appeal

6.1. Grounds of Appeal

- The proposal is considered to be an appropriate use of this well located and serviced site and consistent with the City centre zoning objective;
- The application does not involve an amalgamation between Protected Structures, as there is only one Protected Structure. It does not compromise the original plan form;
- The proposal has regard to the architectural fabric and fine grain of the traditional retail frontages;
- The proposal will provide for a more vibrant use in nos. 38 & 39 Wexford Street in the context of their vacancy and will provide a suitable use principally comprising a customer dining area;
- Planning permission was granted by Dublin City Council for the change of use of nos. 38 & 39 Wexford Street to restaurant / takeaway in 2021;
- 'Bricks & Mortar' retailing is in decline due to the pressure of on-line sales and the area contains a wide range of retail outlets;

- The example of an application at 'Merchants Arch' cited in the Planners Report is not relevant to the subject application as the circumstances are different;
- The proposed extended premises cannot be described as a 'Superpub' and the fact that no objections were lodged with the original application supports the view that the increase in floor area is modest in quantum;
- The appeal documentation includes an alternative shopfront design;
- The appeal documentation proposes omitting demolition along the boundary wall of the Protected Structure instead achieving access between the buildings by demolishing a wall within the plot of no. 39 Wexford Street, which is not a Protected Structure;
- The application is accompanied by a report from a Grade 1 conservation architect.

6.2. Applicant Response

N/A

6.3. Planning Authority Response

None

6.4. Observations

None

7.0 Assessment

- 7.1. The following assessment covers the points made in the appeal submission and encapsulates my *de novo* consideration of the application.
- 7.2. This appeal relates to the refusal of planning permission for the development of the Landmark Public House, at no.1 Kevin Street Lower and no. 40 Wexford Street, to incorporate the ground floor of the adjoining premises at nos. 39 Wexford Street and the ground floor and part of the first floor of no. 38 Wexford Street, to provide for the

extension and reconfiguration of an existing bar / restaurant. The Landmark Public House is a Protected Structure (Item 8552 Volume 4 Dublin city Development Plan 2022-2028). The development elements of the proposal are disaggregated below for clarity of assessment:

- Amalgamation of nos. 38 & 39 Wexford Street with the Landmark Public House – a protected structure;
- Change of use of nos. 38 & 39 Wexford Street from retail to public house / restaurant;
- Internal works to the Landmark Public House – a Protected Structure;
- New commercial frontage to nos. 38 & 39 Wexford Street;

The development elements are assessed with reference to the grounds of appeal and the reasons for refusal. It is considered that the development elements are not divisible as the whole comprises a comprehensive and integrated development proposal.

Intensification of use and amalgamation of nos. 38 and 39 Wexford Street

- 7.3. The first reason for refusal relates to the 'significant intensification of use' that would result from the amalgamation of the Landmark Public House with the adjoining premises at nos. 39 & 38 Wexford Street. The proposed pub / restaurant would comprise the existing licenced premises at the Landmark Public House, comprising both ground and first floor level trading areas, and the additional floor area that would be provided within the adjoining properties at nos. 38 & 39 Wexford Street. The total proposed additional trading floor area is given in the appeal statement as 127 sqm. It is noted that the Dublin City Council application form states an additional public house floor area of 144 sqm.
- 7.4. The internal trading floor area of the existing premises is 259 sqm., as given in the appeal statement, comprising the ground and first floor level trading area of the Landmark Public House. It is considered that the proposal to extend would represent an approximate 50-60% increase in trading floor area. The appellant states that the concept is a 'gastropub' and that the proposed additional floor area would accommodate customer dining (plus relocated toilets). The examples cited to support the concept are the 'gastropub' at the 'Old Spot', Ballsbridge, Dublin 4 and at

Eagle House, Glasthule, Co, Dublin both in the ownership of the Loyola Group (the appeal statement clarifies that the application entity, Xavier Management Holdings, is a company within the Loyola Group). The Landmark Public House provides at present both a lunch and dinner menu; the lunch menu is served 12.30-3 pm Monday-Friday and the dinner menu is served from 3pm, Monday-Friday, 12 pm Saturdays and 12.30 pm on Sundays. It is noted on the day of my site visit that the majority of indoor and outdoor customers were dinners.

7.5. I would consider that the proposed development represents a reasonable intensification of use given the ambition of the owners to trade as a 'gastropub'. I do not consider that the increased customer capacity in terms of the nature and scale of the extended floor area in combination with the existing trading area would represent a 'Superpub'. The appellant has clarified the nature of the proposed use with reference to the 'Superpub' moniker. There is no definition of a 'Superpub' contained within the development plan. However, Chapter 15, Section 15.14.12 (Night Clubs/Licensed Premises/Casinos/ Private Member Clubs) discourages the development of 'Superpubs'. The appeal statement includes the following establishment specific references to what might be generally considered a 'Superpub' and their associated floor areas, which are significantly greater in scale than the proposal:

- Café en Seine 2,447 sqm
- O'Neills Suffolk Street 1,840 sqm.
- Odeon Bar 1,386 sqm.
- Mercantile Bar 1,350 sqm.

The appellant has also provided analysis of the pubs / venues within the vicinity of the applicant site. There is a variation of focus and floor area in respect of pubs in the vicinity. The following pubs / venues in the Wexford Street area are included in the appeal statement with their associated floor areas:

- The Lucky Duck 354 sqm.
- Devitts 425 sqm.
- Flannerys 776 sqm.

- Opium 1,733 sqm.

It is considered that the extended Landmark Public House, which would comprise a trading floor area of approximately 400 sqm. would not constitute a 'Superpub' within the wider city context and would not constitute a 'Superpub' within the local context by reference to other licensed premises in the vicinity.

7.6. Furthermore, I have examined the planning refusal for the intensification of use at the Merchants Arch Bar at Ha'penny Lane, Dublin 2 (Dublin City Council Register Ref: 2547/18; ABP 301816-18) that supported the rationale, by example, for the first reason for refusal. Ha'penny Lane is zoned for city centre uses and is also located within a conservation area designation. However, the development proposal at the Merchants Arch Bar (48/49 Wellington Quay), extending into the adjoining premises at Nos. 1, 2, 3 and 4 Merchants Arch, that would have comprised an additional floor area of approximately 150 sqm., may not be applicable in terms of overall scale given that the floor area of the existing public house use at the Merchants Arch Bar is given in the application form as 563 sqm (submitted under Register Ref: 2547/18). The total proposed and extended floor area in the instance of the Landmark Public House is approximately 400 sqm.

7.7. The first reason for refusal also states that "*a licensed premises of this scale would have a detrimental impact on the historic fabric, grain and character of the streetscape*" blurring the legibility of the historic plots. I do not consider that the amalgamation of the adjoining properties at nos. 38 & 39 Wexford Street with the existing Landmark Public House would have a detrimental impact on the historic fabric, grain and character of the streetscape conditional on the internal and external development works being sensitive and complementary in nature.

The amalgamation of building plots to accommodate larger modern floor plates over two or more historic plots has been successfully achieved in multiple locations in Dublin City. The Dublin City Shopfront Design Guide (November 2001) provides guidance, and examples, where an understanding and legibility of the historic plots and urban grain have been achieved in development proposals that incorporate historic plot amalgamation (for example the Brown Thomas commercial frontage on Grafton Street, incorporating multiple buildings, is illustrated as an exemplar shop

front design). The proposed shop frontage to nos. 38 & 39 Wexford is assessed below.

- 7.8. The ground floor of nos. 38 & 39 Wexford Street and a storage room at first floor level to the rear of no. 38 Wexford Street form one commercial unit. The Planning Case Officer acknowledges that the amalgamation of the ground floor of nos. 38 & 39 has been achieved previously, which is confirmed by the AHIA. Therefore the assessment in the matter of opening works relates to the creation of an opening(s) between the Landmark Public House and nos. 38 & 39 Wexford Street only. It is considered that the intensification of land use that would be facilitated by the amalgamation would be acceptable in principle given the clarification provided by the appeal statement in regard to the scale and nature of the proposed bar / restaurant premises.

However, the comprehensive assessment of all proposed works to facilitate the intensification of use requires further interrogation. The proposed amalgamation of the ground floor of the Protected Structure and the adjoining buildings at nos. 38 & 39, including the proposed demolition of a substantial part of the party wall between the rear (west) of no. 39 and the 'annex' to the rear (south) of the Protected Structure, and the proposed demolition of part of the party wall between no. 39 and the southern staircase of the Protected Structure, is assessed in the paragraphs below.

Change of use of nos. 38 & 39 Wexford Street from retail to public house

- 7.9. In the matter of the change of use of nos. 38 & 39 Wexford Street (comprising part of the period building stock on the west side of Wexford Street) from retail use to use as a public house / restaurant, the use as a public house and as a restaurant are permissible uses under the Z5 zoning objective. It is noted that permission was granted for a change of use of nos. 38 & 39 Wexford Street at ground floor and part first floor level from retail use to takeaway restaurant under Register Ref: 3880/20 on 08/02/21.

Policy BHA11 (Rehabilitation and Reuse of Existing Older Buildings), Chapter 11 (Built Heritage) of the Dublin City Development Plan 2022-2028 seeks to retain and encourage the rehabilitation and suitable adaptive reuse of existing older buildings which make a positive contribution to the character and appearance of the area and

streetscape. Section 7.5, Chapter 7 (The City Centre, Urban Villages & Retail), Figure 7.2 (Dublin City Centre Retail Core), shows that Kevin Street / Wexford street are located outside the designated 'Dublin City Centre Retail Core; Wexford Street is not designated as either a Category 1 or Category 2 retail street. The Planning Case Officer cites the refusal of planning permission at the Merchants Arch Bar at Ha'penny Lane, Dublin 2 (Dublin City Council Register Ref: 2547/18; ABP 301816-18) in support of the refusal for intensification of use at the Landmark Public House including a change of use of nos. 38 & 39 Wexford Street from retail use to use as a public house.

- 7.10. It is noted that the first of the three reasons for refusal in the instance of the refusal of the extension of the Merchants Arch Bar was the erosion of the retail function. The Merchants Arch Bar is adjacent to Ha'penny Lane / Ha'penny Bridge, which is located along the alignment of the Liffey Street (a Category 2 shopping street) pedestrian route linking the Henry Street shopping district to the south city Grafton street shopping district and is centrally located within the 'Dublin City Centre Retail Core' (see Figure 7.2 – 'Dublin City Centre Retail Core' - of the Dublin City Development Plan 2022-2028). In comparison the subject development is located outside the 'City Centre Retail Core' within a mixed use street. It is considered that a change of use from retail to an alternative active use would be acceptable given the marginal retail location of the proposal and the negative presence on street of nos. 38 & 39 presenting as vacant and unkempt.
- 7.11. In the matter of conservation area designation, Policy BHA9 (Conservation Areas) Chapter 11 (Built Heritage) of the Dublin City Development Plan 2022-2028 provides that a change of use will be acceptable where it is in compliance with the zoning objectives and where it makes a positive contribution to the character, function and appearance of the conservation area and its setting. Furthermore, the Council will consider the contribution of the existing uses to the special interest of an area when assessing change of use applications, and will promote compatible uses which ensure future long-term viability. The appellant states that the retail unit at nos. 38 & 39 Wexford Street has been vacant for approximately two years. It is considered that the proposed development subject to the agreement of appropriate shop frontage has the potential to make a positive contribution to the character, function and

appearance of the conservation area and to provide a viable long-term sustainable use for the subject vacant unit(s) at nos. 38 & 39 Wexford Street.

- 7.12. Finally in the matter of change of use, the first reason for refusal of the subject development states that additional levels of noise and disturbance would result from the proposed intensification of use that would potentially seriously injure the residential amenities of existing residents in the area. The nearest residential units are located within the upper floors of nos. 38, 39 and 40 Wexford Street. Section 15.14.12 (*inter alia* Licenced Premises), Chapter 15, Dublin City Development Plan 2022-2028 provides that where extensions to existing entertainment / hospitality type uses are proposed, the onus is on the applicant to demonstrate that such proposed development will not be detrimental to the residential, environmental quality or the established character and function of the area.

The appellant has clarified that Landmark Public House would be a 'gastropub', which would in concept combine pub and restaurant functions with a focus on achieving a relaxed ambient experience for customers. I consider that the nature of the use and the regulation of that use to protect residential amenities and civic amenities generally as documented in the appeal statement has been demonstrated and would mitigate the negative precedent that might be set by a grant of planning permission for intensification of use of the existing public house. I do not consider that in the instance of the extension of the Landmark Public house for bar / restaurant use that an undesirable precedent would be set for similar such development on Wexford Street. It is considered that the intensification of land use would be acceptable in principle given the clarification provided by the appeal statement in regard to the scale, nature and operation of the proposed licensed premises. It is further considered that a condition can be attached to a grant of permission in order to restrict noise levels during the period 0800 to 2200 hours and to further restrict noise levels at any other time in the interests of residential amenity.

Development works to the protected structure at the Landmark Public House

- 7.13. In the matter of works proposed to no.1 Kevin Street Lower and no. 40 Wexford Street (Landmark Public House), which is a protected structure, the application is accompanied by an Architectural Heritage Impact Assessment Report. I have had regard to same. The AHIA report concludes that the works will not have a negative

impact on the special interest values of the protected structure and would provide for a sustainable long-term use for the currently vacant ground floor retail units at nos. 38 & 39 Wexford Street. The report recommends that certain conditions should be attached to any grant of permission.

The Dublin City Council conservation officer notes that the interior and exterior of the protected structure have '*undergone several campaigns of refurbishment and alterations since construction*' (Report dated 29/11/22). However, notwithstanding, the conservation officer recommends a refusal of planning permission *inter alia* on the grounds of amalgamation of historic building plots, removal of historic fabric, loss of building legibility and urban grain in the context of the protected structure status of the Landmark Public House and the conservation area status of the streetscape.

- 7.14. The second reason for refusal states: *the proposed merging of two or more Protected Structures into one unit or building at ground floor level through the demolition of dividing walls or the provision of interconnecting doors or entranceways are only be permitted in exceptional circumstances, and it is considered that, in this instance, no such exceptional circumstance to warrant such intervention has been provided.* The appellant clarifies that in the instance of the proposed development that the merging of the buildings at nos. 38 & 39 Wexford Street with the Landmark Public House solely involves one protected structure – The Landmark Public House at no.1 Kevin Street Lower and no. 40 Wexford Street.

I have had regard to the report of the Dublin City Council conservation officer. The conservation officer does not support the proposed amalgamation of the ground floor of the Protected Structure and the adjoining properties at nos. 38 & 39 Wexford Street and does not consider the proposed works to facilitate the amalgamation an appropriate intervention in architectural conservation terms. The conservation officer *inter alia* states: *to demolish a substantial part of the party wall between the rear (west) of No. 39 and the 'annex' to the rear (south) of the Protected Structure, and the proposed demolition of part of the party wall between No. 39 and the southern staircase of the Protected Structure, and the adjacent entrance lobby walls, which align with the intact walls at third and second floor levels, and supporting piers at first floor level, would be contrary to Section 11.1.5.3 of the Dublin City Development Plan 2016-2022, whereby the planning authority requires interventions to Protected*

Structures to relate sensitively to, and complement the special character of, a protected structure.

- 7.15. Policy Objective BHA2, Chapter 11 of the Dublin City Development Plan 2022-2028 *inter alia* provides that development works will conserve and enhance the protected structure respecting the historic fabric and the special interest of the interior, including its plan form, hierarchy of spaces, structure and architectural detail, fixtures and fittings and materials. In the instance of the subject proposal, the works to the protected structure involve the provision of a link at ground floor level between the Landmark Public House and no. 39 Wexford Street.

The appellant states *inter alia* in response to the rationale for the second reason for refusal that no. 39 Wexford Street (3-storey 1-bay red brick building) is an infill building, which is in the location of an original laneway between no. 40 Wexford Street and no. 38 Wexford Street (Design Rationale Document Appeal Submission to An Bord Pleanála dated January 2023). The subject laneway is shown on Roque's Map of 1756: *No. 39 is shown as a narrow laneway, leading to an enclosed yard to the rear of No. 38* (Architectural Heritage Impact Assessment Report dated 14th February, 2022). The appeal statement argues that the west elevation of no. 39 Wexford Street (in origin dating from the early to mid-nineteenth century when the laneway was infilled- AHIA), which is the east elevation of the south 'annex' of the Landmark Public House (no. 40 Wexford Street) is not part of the protected structure, which was constructed circa.1880.

- 7.16. The clarification provided by the appeal statement would explain the anomaly in the 3-storey height of no. 39 Wexford Street, sandwiched between two four storey buildings and the modest irregular plot width of no. 39 Wexford Street similar in extent to a laneway opening. The proposed link opening would be located in the western wall of the building that filled in the original laneway (see area A denoted on diagram(s) on P.5 of the Design Rationale Document). The submission also suggests that the party wall proper between the Landmark Public House (no. 40 Wexford Street) and no. 39 Wexford Street (originally an external wall forming part of the south elevation of no. 40 Wexford Street onto the laneway) can be substantially retained (see area B denoted on diagram(s) on P.5 of the Design Rationale Document).

7.17. The appellant invites An Bord Pleanála to adjudicate in this matter at discretion. It is considered that the revised drawings do not constitute a material change from the proposed development as advertised. It is considered that the wall of the protected structure (at no. 40 Wexford Street) that would originally have presented as the southern elevation onto the laneway can be substantially retained based on the clarification of the appeal submission. While the creation of an appropriate and sensitive link, between nos. 38 & 39 Wexford Street and the Landmark Public House (no. 40 Wexford Street), is achievable by utilising the infill elevation of no. 39 Wexford Street (which is also the eastern elevation of the south 'Annex; of the Landmark Public House) to create the opening.

The toilets located in the south 'annex' of the Landmark Public House would be relocated to the rear of no. 38 Wexford Street and the residual floor area would form part of the bar / restaurant. Thus the opening in the party wall would be achieved obliquely preventing the creation of an interior vista through the party wall from nos. 38 & 39 Wexford Street through to the Landmark Public House. The AHIA notes that the early to mid-nineteenth-century infill building has an interior one-room deep. There is an angled wall in the (internal) north-west corner of the building at ground, first and second floor level; *this appears to be the chimney breast, constructed on the diagonal to make the most of the limited space within the building.* It is considered that the retention of the chimney breast within the configuration of the link opening would be desirable both in terms of the historic legibility of no.39 Wexford Street and in terms of the retention of historic fabric. This can be dealt with by way of condition.

Furthermore, the proposed demolition of that part of the party wall between No. 39 and the Landmark Public House (no. 40 Wexford Street) in the location of the southern staircase of the protected structure, and the adjacent entrance lobby walls, which align with the intact walls at third and second floor levels, and supporting piers at first floor level, can be obviated. This can be dealt with by way of condition.

New shop frontage to nos. 38 & 39 Wexford Street

7.18. In the matter of shop front design, the third reason for refusal states: *having regard to the design of the proposed shop fronts to numbers 38 and 39 Wexford street, it is considered that this would constitute an inappropriate treatment for shop fronts in a*

designated conservation area. The proposed development would replace the existing shop frontage at nos. 38 & 39 Wexford Street with new shop frontage. The appellant states that in the case of the subject site, the obvious is not to retain the existing shop frontage rather to replace with a contemporary design that would incorporate the guidelines for new shop fronts as provided for by the 'Dublin City Shop Front Design Guide' (2001). The AHIA states that the shop frontage shared between nos. 38 & 39 is modern and late twentieth century in origin. This modern shop frontage is of poor quality and does not contribute to the special interest of these buildings.

7.19. It is considered that the proposed new shop frontage to nos. 38 & 39 Wexford Street has merit in terms of the retention of the access to the upper floors and the visual reinstatement of the historic plots at ground floor level; the proposal would comply with Policy BHA25 (loss of upper floors), Chapter 11 of the Dublin City Development Plan 2022-2028. However, It is my opinion that the new shop frontage is neither bespoke for the individual buildings at no. 38 and no. 39, respectively, as it presents two identical frameworks of cornice, pilaster, fascia and stallriser, nor is it an integrated design solution providing for a continuous fascia incorporating the two shopfront openings and the entrance door to the upper floors of no. 38 / 39 Wexford Street. In specific, the existing entrance to the upper floors is an isolated opening sitting uncomfortably within a disjointed composition comprising the two new frameworks and the subject entrance.

7.20. On balance I would concur with the Planning Case Officer that the proposed commercial frontage to nos. 38 & 39 Wexford Street is inappropriate. The appellant has submitted an alternative shopfront design exhibiting a 'traditional style' in a contemporary idiom of glass and steel as part of the appeal submission (see Revision A within Appendix A) attached as an appendix to the 'Design Rationale Document Appeal Submission to An Bord Pleanála' dated January 2023. It is considered that the revised shopfront elevation does not constitute a material change from the proposed development as advertised.

The alternative design would comprise two shopfront frames, one of the frames would incorporate a customer entrance providing for a visually active frontage to the street, inserted within the existing openings in the frontage to nos. 38 & 39 Wexford Street and would incorporate simple LED lit fascia signage. It is considered that the

alternative proposal, presenting a contemporary, crisp and simple design solution, would be acceptable in principle subject to the integration of the entrance to the upper floors of no. 38 Wexford Street. This can be dealt with by way of condition.

Conclusion

7.21. In conclusion, the proposed development would represent a reasonable intensification of use of the existing pub / restaurant. It is considered that the scale (proposed trading floor area of approximately 400 sqm.), nature (as a gastropub), and operation of the pub / restaurant would not impact negatively on residential amenities within this city centre location and would not set a poor precedent for similar such development. Furthermore, the proposal would rehabilitate a vacant and unkempt retail unit providing for a new active commercial frontage to Wexford Street subject to the agreed detail design of the shop frontage by way of condition.

I conclude in the matter of development works to the protected structure, that the amalgamation of nos. 38 & 39 Wexford Street with the Landmark Public House – a protected structure – are acceptable in the instance of the proposed development given the modest intervention proposed in the west elevation of no. 39 Wexford Street / east elevation of no. 40 Wexford Street, the oblique nature of the link opening and the substantive retention of the historic party wall between nos. 38 & 39 Wexford Street and the Landmark Public House (no. 40 Wexford Street).

The proposed development is acceptable in principle subject to condition *inter alia* regulating operation noise levels, the agreed detail of the configuration of the opening between nos. 38 & 39 Wexford Street and the Landmark Public House, providing for the retention of the chimney breast in the north-west corner, the provision of photographic record(s) and the application of best conservation practice.

7.22. **Appropriate Assessment**

The proposed development comprises a change of use of existing buildings within an established urban area.

Having regard to the nature and scale of the proposed development it is possible to screen out the requirement for the submission of an NIS.

8.0 Recommendation

8.1. I recommend a grant of planning permission subject to conditions.

9.0 Reasons and Considerations

Having regard to the reasons for refusal, the grounds of appeal, the city centre zoning objective, my site visit observations and the Dublin City Development Plan 2022-2028 policy framework, the proposed development would not have a negative impact on the special character and integrity of the protected structure at the Landmark Public House (No. 40 Wexford Street & no.1 Kevin Street Lower), on the individuality and distinctiveness of the conservation area and on residential amenity in the vicinity, and as such, would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application and as amended by the further plans and particulars submitted and received by An Bord Pleanála on the 10th day of January, 2023, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The proposed development shall be amended as follows:</p> <p>(a) The link opening between no. 39 Wexford Street and no. 40 Wexford Street (Landmark Public House) shall be as shown on the diagram(s) included in the 'Design Rationale Document Appeal Submission to An Bord Pleanála' (at P.5 of the Document), dated January 2023, submitted on the</p>

	<p>10th January, 2023 as part of the appeal documentation, which clearly shows the opening in the west boundary wall between no. 39 Wexford Street and no. 40 Wexford Street, denoted as Area A, and which clearly shows the retention of the south party wall between no. 39 Wexford Street and no. 40 Wexford Street (denoted as Area B);</p> <p>(b) the denoted Area A shall be amended in order to retain the angled wall in the (internal) north-west corner of no.39 Wexford Street at ground and first floor level (former chimney breast).</p> <p>Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interests of preserving the historic plots at nos. 38, 39 & 40 Wexford Street and in order to protect the special character and integrity of no. 40 Wexford Street (Landmark Public House) a Protected Structure.</p>
3.	<p>(a) A conservation expert shall be employed to manage, monitor and implement the works on the site and to ensure adequate protection of the retained and historic fabric during the works. In this regard, all permitted works shall be designed to cause minimum interference to the retained building and facades structure and/or fabric.</p> <p>(b) All repair works to the protected structure shall be carried out in accordance with best conservation practice as detailed in the application and the Architectural Heritage Protection Guidelines for Planning Authorities issued by the Department of Arts, Heritage and the Gaeltacht in 2011. The repair works shall retain the maximum amount of surviving historic fabric in situ, including structural elements, plasterwork (plain and decorative) and joinery and shall be designed to cause minimum interference to the building structure and/or fabric. Items that have to be removed for repair shall be recorded prior to removal, catalogued and numbered to allow for authentic re-instatement.</p>

	<p>(c) All existing original features, including interior and exterior fittings/features, joinery, plasterwork, features (including cornices and ceiling mouldings) staircases including balusters, handrail and skirting boards, shall be protected during the course of refurbishment.</p> <p>Reason: To ensure that the integrity of the retained structures is maintained and that the structures are protected from unnecessary damage or loss of fabric.</p>
4.	<p>All works to the protected structure, shall be carried out under the supervision of a qualified professional with specialised conservation expertise. The following recommendations of the Architectural Heritage Impact Assessment, dated 14th February, 2022, submitted to the Planning Authority as part of the planning application shall be adhered to in the implementation of the proposed development:</p> <ul style="list-style-type: none"> (i) The existing cast iron column, located on the left (south) side of the shop window of no. 38 Wexford Street is to be protected and retained as part of the development; (ii) A soft strip-out of the modern wall linings within the vacant shop unit at 39 Wexford Street, is to take place prior to the formation of the proposed opening. A detailed inspection and photographic survey of the east face of the existing wall will then be undertaken, during which any concealed features of interest are to be recorded. A photographic record of this survey together with a drawing setting out the final dimensions of the opening, and in compliance with Condition 2 above, shall be submitted to Dublin City Council for review and final agreement; (iii) A soft strip-out of the toilets (to the rear of no. 39 Wexford Street) is to take place prior to the formation of the new opening. A detailed inspection and photographic survey of the west face of the existing wall will then be undertaken. This photographic

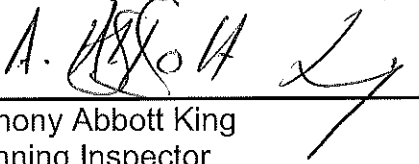
	<p>survey shall be forwarded to Dublin City Council in the event that concealed features of interest are uncovered.</p> <p>Reason: To secure the authentic preservation of the Protected Structure at no. 40 Wexford Street (and the adjoining early nineteenth-century building at no. 39 Wexford Street) and to ensure that the proposed works are carried out in accordance with best conservation practice.</p>
5.	<p>The proposed new shopfront to nos. 38 & 39 Wexford Street shall be in accordance with the following requirements:-</p> <p>(a) the shopfront design shall be as shown on Revision A, within Appendix A, of the 'Design Rationale Document Appeal Submission to An Bord Pleanála', dated January 2023, submitted on the 10th January, 2023 as part of the appeal documentation and shall be further revised to integrate the entrance to the upper floors of nos. 38 & 39 Wexford Street;</p> <p>(b) Detailed drawings (at minimum scale 1:20) of the proposed new shopfront, showing the materials, detailing, signage and colour scheme, shall be submitted to Dublin City Council prior to the commencement of development;</p> <p>(c) no awnings, canopies or projecting signs or other signs shall be erected on the premises without a prior grant of planning permission,</p> <p>(d) external roller shutter shall not be erected and any internal shutter shall be only of the perforated type, coloured to match the shopfront colour;</p> <p>(e) no adhesive material shall be affixed to the windows or the shopfront.</p> <p>Reason: In the interest of visual amenity and in order to protect the character (individuality and distinctiveness) and architectural integrity of this designated conservation area.</p>
6.	<p>(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</p>

	<p>occupied dwelling in the vicinity. The background noise level shall be taken as L90 and the specific noise shall be measured at LAeq.T.</p> <p>(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 exceedance criteria in relation to background noise levels as set out in (a) above. The background noise levels shall be measured at LAeqT.</p> <p>(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</p> <ul style="list-style-type: none"> (i) during a temporary shutdown of the specific noise source, or (ii) during a period immediately before or after the specific noise source operates. <p>(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.</p> <p>(e) Any measuring instrument shall be precision grade.</p> <p>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 commencement of development. An acoustical analysis shall be included with this submission to the planning authority.</p> <p>Reason: In order to protect the amenities of the residents of nos. 38,39 & 40 Wexford Street and residents of property in the vicinity having particular regard to the nuisance potential of low frequency sound emissions during night-time hours.</p>
7.	Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400

	<p>hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of the residents of nos. 38,39 & 40 Wexford Street and residents of property in the vicinity.</p>
8.	<p>The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.</p> <p>Reason: In the interests of public safety and residential amenity</p>
9.	<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. The contribution shall be paid prior to the 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 the Board 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 that a condition requiring a contribution in accordance with the</p>

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

"I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way".



Anthony Abbott King
Planning Inspector

12 July 2023