



An  
Bord  
Pleanála

## Inspector's Report

### ABP315517-23

#### Development

Protected structure – permission to extend the opening hours (currently 9.30am to 5pm daily) to 9.30am to 5.30pm (Sunday to Tuesday) and 9.30am to 10.30pm (Wednesday to Saturday).

#### Location

31 Lennox Street, Portobello, Dublin 8

#### Planning Authority

Dublin City Council

#### Planning Authority Reg. Ref.

5047/22

#### Applicant(s)

Darren Costello

#### Type of Application

Permission

#### Planning Authority Decision

Refused

#### Type of Appeal

First Party

#### Appellant(s)

Darren Costello

#### Observer(s)

Majella O'Sullivan

Dr Roger McMorrow and Sara Spencer

Michael C O'Neill

Jim O'Callaghan, TD

Chris Andrews, TD

Jennifer Laughton

**Date of Site Inspection**

16 and 19<sup>th</sup> September 2023

**Inspector**

Vanessa Langheld

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## 1.0 Site Location and Description

- 1.1. The site is located at No. 31 Lennox Street, Portobello, Dublin 8.
- 1.2. The building is a Protected Structure. It is a three-storey red brick building, purported to be the oldest building on the street (built in 1837). The premises currently operates as a café / restaurant at first and second floor (145 sq m), and as a residence/flat at third floor (46 sq m).
- 1.3. The planning application documentation states that the building has always been in commercial use. Prior to 2007, it was in office use, and prior to that a dairy milk supplier, food wholesaler and antique shop amongst other uses.
- 1.4. The area is characterised by early 19<sup>th</sup> Century terraced brick-faced mainly two storey houses. The appeal building is adjoined by a terrace of such residential houses to the east. The premises is, however, slightly forward of the building line of those houses and is higher (three storey) than the adjoining two storey houses. There is a small outdoor terrace to the front, which is used for outdoor dining, and which is bounded on both sides by small walls and pillars.
- 1.5. No. 31, the appeal site, is adjoined by Lennox Terrace, a small pedestrian laneway on its western boundary. A side garden access to No. 33 and a door to the kitchen of No. 31 open onto the laneway. There are more houses located further south on Lennox Terrace.
- 1.6. The appeal site faces Synge Street and there are no houses directly facing it.
- 1.7. Lennox Street is primarily a residential road located off Richmond Street South, Dublin 8. There are some other commercial properties along the south side of Lennox Street, including the Bretzel Bakery and there is a small neighbourhood hub of commercial properties (a hairdresser, a grocery, a physio, a small café, and a branding and graphic design agency) on the opposite side (the north side) of Lennox Street.
- 1.8. There is paid street parking along the road and permit parking for residents.

## 2.0 Proposed Development

- 2.1. The existing hours of operation are from 9.30 am to 5 pm, Monday to Sunday. (These are less than the hours permitted by the Board in 2011. See Section 4.0 below.)

The proposal is to change the hours as follows:

- Sunday to Tuesday – hours of operation to remain the same from 9.30 am to 5 pm.
- Wednesday to Saturday – increase the opening hours to 9.30 am to 10.30 pm to provide evening dining.

The purpose of the extended hours is to provide an evening dining option. The owner has invested heavily in the business and find it difficult to meet their costs while closing daily at 5pm. There is local demand for a small restaurant serving dinner in the area, and the owners would like to provide this service.

## 3.0 Planning Authority Decision

### 3.1. Decision

Dublin City Council issued a Notification of Decision to Refuse Permission on 6 December 2022 for the following reason:

- '1. Having regard to the proposal to extend the opening hours, it is considered that this would have a detrimental impact on the adjoining properties in terms of general disturbance and late-night activity associated with the restaurant and would seriously injure the residential amenity of the adjoining residential properties. The proposed development would therefore be contrary to the Z1 zoning objective of the site, which is 'to protect, provide and improve residential amenities', and contrary to the proper planning and sustainable development of the area.'*

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The Planner states that the site is in the Z1 zone (to protect and improve residential amenities). It is noted that the building is a Protected Structure (Reference 4281.)

The Planning Report states that the Applicant has proffered no argument for extending the opening hours, and because of its location in a residential area the Planning Authority would have serious concerns about the residential amenity of the adjoining housing. Therefore, refusal of an extension to the business hours is recommended.

(I note that since the Planners Report was written, the Dublin City Development Plan, 2016-2022 is now superseded by the 2022-2028 Plan.)

### 3.2.2. Other Technical Reports

The only relevant issues raised was that of the Environmental Health Department, stating that the proprietor must use best practice to limit the impact of noise and air emissions on local amenity.

## 4.0 Planning History

The planning history is summarised as follows:

2007: Grant permission for change of use from office to café. (Register Reference 2151/07.)

2009: Permission refused to extend the hours to 10 pm everyday (detrimental to character of the area and injure residential amenities of adjoining residential properties). (Register Reference. 3126/09.)

2009: Grant permission for change of use of first floor from office to café. (Register Reference 3816/09.)

2010: Permission refused to extend the hours to 10.30 pm Wednesday to Sunday. (Detrimental impact on adjoining properties in terms of general disturbance and late-night activity / seriously injure residential amenity of adjoining properties.) (Register Reference 3202/10.)

2011: Permission granted by the Board to extend the hours. By condition, the hours were limited to Monday to Friday 8 am to 5.30 pm and Saturday and Sunday 9 am to 5.30 pm. (Register Reference 2397/11 / An Bord Pleanála Ref PL29S.239092.)

2014 – Permission for retention of modifications to Protected Structure (to include relocation of a toilet, removal of internal walls, repairs). (Register Reference 3420/14.)

## 5.0 Policy and Context

### 5.1. Development Plan

The Dublin City Development Plan, 2016-2022 was in place when the application was assessed by the Planning Authority. That Plan is now superseded by the 2022-2028 Dublin City Development Plan. Under both Plans, the site is zoned Z1. The latter Development Plan states the following regarding the Z1 zoning:

*'The vision for residential development in the city is one where a wide range of high-quality accommodation is available within sustainable communities, where residents are within easy reach of open space and amenities as well as facilities such as shops, education, leisure and community services.*

*The objective is to ensure that adequate public transport, in conjunction with enhanced pedestrian and cycling infrastructure, provides such residential communities good access to employment, the city centre and the key urban villages in order to align with the principles of the 15-minute city.*

*Chapter 5: Quality Housing and Sustainable Neighbourhoods, which deals with policies and objectives for residential development, making good neighbourhoods and standards, respectively, should be consulted to*

*inform any proposed residential development (see also Chapter 15: Development Standards).*

*In order to achieve a sustainable tenure, mix in neighbourhoods, the Build to Rent residential typology is predominantly in the open for consideration category.*

*In both new and established residential areas, there will be a range of uses that have the potential to foster the development of new residential communities.*

*These are using that benefit from a close relationship with the immediate community and have high standards of amenity, such as childcare facilities, schools, community facilities, personal services, local shops, open space, recreation and amenity uses.'*

Within the Z1 zone, restaurant use is 'Open for Consideration'.

Portobello is identified as a 'key neighbourhood' in the Development Plan. Section 5.5.3 of the Development Plan relates to 'Healthy Place making and the 15-minute City'. The objective of this policy is to strengthen the connection between people and the place in which they live to create liveable communities.

The Development Plan states that sustainable neighbourhoods (of which Portobello is one) serve as focal points for their surrounding communities providing a range of uses, housing tenures and typologies etc.

## **5.2. Natural Heritage Designations**

The appeal site is not located in or immediately adjacent to a designated European Site, a Natural Heritage Area (NHA) or a proposed NHA.

## **5.3. EIA Screening**

Having regard to the nature and scale of the development proposed, the site's location within an established built-up urban area, which is served by public



infrastructure and outside of any protected site or heritage designation, the nature of the receiving environment and the existing pattern of residential development in the vicinity, and the separation distance from the nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **6.0 The Appeal**

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

The appeal is submitted by the Applicant, Darren Costello, and is summarised as follows:

- The application is for indoor dining, the terrace will close at 8pm.
- For clarity, it is noted that the 10.30pm closing time allows time for cleanup and that the last table sitting would be 9pm.
- The applicant / appellant states that since opening the business in 2020 he has proven himself to be honest, hardworking and a reliable operator, and a Condition limiting the permission to his tenancy is acceptable. In this regard, several letters support the Application.
- The building, No. 31 Lennox Street was the first building on the street, built in 1837 and has always been in commercial use. Many of its former uses operated until 11pm.
- The applicant has spent €140,000.00 on improving the building to meet health and safety standards, noise and pollution mitigation and fire safety standards.
  - The noise-reducing improvements made include:
  - Sealing and slabbing between floors.
  - New cold room condensers and noise cancelling units.
  - Improved extraction and condensers boxed.

- New extraction and noise cancelling technology.
- A reduced outdoor area and serving times.
- The Applicant is party to multiple neighbourhood WhatsApp Groups (to ensure that the operator continues to make a positive contribution to the area), and the Applicant lives above the premises.
- There is ample parking in the area.
- A large hotel has recently been granted at the corner of Richmond Street and Lennox Street.
- The customer base is local, with some tourists coming from the city centre. Most of the customers arrive by foot.
- There is no takeaway or alcohol sold off the premiss.
- The Applicant states that he has a beautiful restaurant which is empty every evening, with huge operating costs, and the business employs 14 staff.
- Many neighbours have called in to offer their support for the Application to extend the opening hours. The Applicant states that most close neighbours support his Application.

Several letters and a petition of support are attached with c. 100 signatures.

## 6.2. **Planning Authority Response**

There is no response on file from the Planning Authority to the First Party Appeal.

## 6.3. **Observations**

There are several Observers to the appeal, both in support of the refusal and in support of the Application. The issues raised are summarised below:

Observations supporting the Dublin City Council Decision to Refuse Permission.

(Lodged by Majella O'Sullivan, 41 Warren Street and Dr Roger McMorrow /Sara Spencer, 33 Lennox Street.)

- There is a long history of refusal of permission to extend the operating hours of this restaurant, principally due to zoning.
- An increase in hours would have a detrimental effect on the residential amenity of the adjoining residents, particularly in terms of noise, litter etc. and many of the neighbours are elderly.
- The area is a tranquil place to live away from the noise of the city.
- There are plenty of restaurants and bars nearby, along Richmond Street, on Camden Street and in nearby Rathmines.
- Concern regarding precedent of late-night activity for other commercial units on the street.
- During the Covid Lockdown period, the Applicant applied for outdoor dining and street furniture on the laneway and continues to operate this. Photographs showing the use of laneway for outdoor dining during Covid are attached.
- The proposed extension to the operating hours is largely the same as that refused by the Board and there have been no changes in circumstances since.

Observations supporting the Application.

Jennifer Laughton (Clontarf), Michael C O'Neill (Howth), Jim O'Callaghan TD and Chris Andrews TD.

- The Lennox Café is a charming café and an asset to Portobello.
- Evening opening would offer a healthy dining option in the area.
- The hospitality industry is under immense pressure and needs to be supported.
- Despite being a busy little café, the noise of chatter, and of comings and goings is very limited.

- The Applicant is a resident of the area and respects his neighbours and the Portobello Community generally.
- The restaurant enhances rather than disturbs this area.

## 7.0 **Assessment**

- 7.1. I have read the documentation attached to this file including the Appeal, the report of the Planning Authority and the Observations. In addition, I have visited the site.
- 7.2. The Appeal relates to the single issue of the extension to its opening hours, as considered under the following headings:
- Likely impacts arising from an extension to the opening hours.
  - Planning history of the site and compliance with the zoning and policy of the Dublin City Development Plan, 2022-2028.
  - Type of restaurant, and whether it provides a local service.
- 7.3 I note that the Observers raise issue of benches being placed on the laneway for further seating. A temporary licence was granted for this during the Covid Lockdown and has since expired. In this regard, I note that an application for a Street Furniture Licence (seating on the laneway) adjoining the premises is currently under appeal to the Board. At the time of writing this assessment, a decision by the Board on the concurrent Licensing Appeal had not been made. (Ref: LC29S.314661.)

### The likely impacts arising from an extension to the opening hours

- 7.4 This is an application to extend the opening hours of a small local café / restaurant, currently closing daily at 5 pm, to allow it to open for dinner Wednesday to Saturday, closing at 10.30 pm (with a last sitting at 9 pm.)
- 7.5 The small outdoor terrace to the front of the café will be closed by 8 pm on those days of extended opening.
- 7.6 I visited the café on a Saturday mid-morning. The café was busy, both inside and on the terrace. There was also notable other neighbourhood activity, but no

excessive noise and no obvious parking congestion etc to the front of the building.

- 7.7 I consider it normal enough for a road like Lennox Street - a residential road inside the Inner City boundary that there would have some activity until the early evening.
- 7.8 By 10.30 pm all customers and staff will have left the premises, and there should be no noise emanating from it. The outdoor terrace has only four double tables, seating a maximum of eight people so will also result in very little noise.
- 7.9 There is substantial support for this restaurant and the owner appears to be very involved in the local area. Whilst permission enures with the land, the owner has a direct interest in running his business in a way that does not have a material detrimental effect on the residential amenity of the adjoining properties. Local support for him suggests that he is already operating his business to a high standard.
- 7.10 Accordingly, I consider that the extended opening hours would not give rise to an unacceptable level of noise and disturbance, and would not injure the residential amenity of property in the vicinity.

The Planning History of the site and compliance with the Zoning and Policies of the Dublin City Development Plan, 2022-2028

- 7.11 There is a history of refusal of planning permission to extend the operating hours of the appeal café / restaurant by both Dublin City Council and by the Board.
- 7.12 Prior Refusals have related to conflict with the zoning (Z1 – to protect and improve residential amenity).
- 7.13 However, the material change in the intent of the Z1 zoning of the 2022-2028 Dublin City Development Plan is significant in assessing this application / appeal. The underlying Z1 (residential) zoning has been considerably expanded to acknowledge the importance of, and to provide for a range of uses to enhance neighbourhoods to create ‘liveable communities’.
- 7.14 This small café is located on a largely residential street in Portobello, minutes’ walk from the City Centre. Although it is principally a residential street, there are

other cafes, the Brezel Bakery (daytime only but attracting customers from a wider catchment) and Brindle (local catchment and opening from 7.30 am until 9 pm some evenings) on Lennox Street.

7.15 There are also other small retail and commercial uses in the neighbourhood hub across the road from the Lennox Café, and on the same side towards Richmond Street South. The character of the street is therefore largely residential; however there are a variety of other neighbourhood uses and services in the vicinity.

7.16 The Observers have said that there are other evening dining options on nearby streets such as Camden Street, Richmond Street South and in Rathmines, and accordingly there is no need to extend the opening hours of the Lennox Café. I consider that these other options are very different and are not comparable to the appeal site. Those locations are characterised by large restaurants, pubs, and late-night activity, and do not, in my opinion, offer a local dining experience such as that proposed.

7.16 It is noted that the group of shops and services on the other side of the road vary in opening times, all extending to the early evening. The hairdresser opens one evening a week until 8 pm; the Grocer closes at 7 pm or 8 pm( depending on the day of the week); the coffee and wine shop opens from 7.30 am daily and stays open until 9 pm Wednesday to Saturday; and the Physiotherapy practice operates from 7 am until 10 pm (Monday to Thursday).

7.17 All that activity takes place at a local level and appears to cause little or no disruption to the residential amenity of the nearby houses.

7.18 The Applicant has suggested that a Condition limiting this permission to his tenancy would be acceptable to him.

7.19 This would also go some way towards protecting the surrounding houses from any potential impact should a change of operator occur.

7.20 I consider that this is best achieved by recommending a temporary three-year permission that could be extended subject to planning. This would allow the Applicant time to build his business, but also allow the Planning Authority an opportunity to reassess any impact on the residential amenity in three years' time.

7.21 The potential loss of this small local café would in my opinion impact on the residential amenity of the area more than the extension of its opening hours.

The type of restaurant, and whether it provides a local service

7.22 The drawings submitted as part of the Application documentation do not show the number of tables in the restaurant; however, during the site visit I viewed the property and counted the covers. At full capacity, it would appear that there is seating for a maximum of 28 patrons upstairs, 12 downstairs and 8 on the front terrace.

7.23 The small terrace to the front of the café has four double tables only. There are walls on either side of the terrace reducing its impact both visually and in noise terms from nearby properties. The terrace will be closed by 8 pm to reduce further the possibility of noise negatively impacting on nearby residents.

7.24 The Lennox Café provides a local dining option. It has limited seating capacity and attracts mainly the local community. The Applicant has invested significantly in the premises and equipment to meet environmental and health requirements (including noise mitigation). Permitting this small café / restaurant to open for evening meals would not, in my opinion, give rise to undue noise or late-night activity.

7.25 It is considered that should this small café / restaurant be permitted to open in the evenings it would enhance the area and provide an important local service to its community. These small local services also enhance the passive surveillance of the street. I suggest that there should be no sale of hot food for consumption off the premises. This would address any noise issues arising from the delivery and collection of take away food which would be incompatible with the location of the appeal site on a residential road.

7.26 In the interest of clarity, I suggest the following opening times:

- Sunday, Monday and Tuesday, 9am to 5.30pm (i.e. the opening hours remain as previously permitted.)
- Wednesday to Saturday 9am to 10.30pm (with the outdoor terrace closing at 8 pm).

## 8 Recommendation

- 8.1 I recommend a grant of permission for the reasons and considerations and subject to the Conditions set out below.

## 9 Reasons and Considerations

- 9.1 Having regard to the scale and nature of the proposed development, it is considered that subject to compliance with the conditions set out below, the proposed development is compatible with the Dublin City Development Plan 2022-2028 Z1 Zoning and would not seriously injure the residential amenity of property in the vicinity.

### 10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>The hours of operation shall be as follows:</p> <p>Sunday, Monday and Tuesday 9am – 5.30pm.</p> <p>Wednesday to Saturday 9am to 10.30pm, with the outdoor terrace to the front closed at 8pm.</p> <p><b>Reason:</b> In the interest of the [residential] amenities of property in the vicinity.</p>
3.	<p>The opening of the café / restaurant past 5.30 pm shall cease on or before the expiration of a period of 3 year(s) from the date of this Order unless</p>



	<p>planning permission has been sought to extend the opening hours for a further period of time.</p> <p><b>Reason:</b> To protect the residential amenity of the adjoining properties.</p>
4.	<p>There shall no sale of hot food for consumption off the premises.</p> <p><b>Reason:</b> In the interest of the residential amenities of property in the vicinity and orderly development.</p>

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.

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Vanessa Langheld  
 Planning Inspector  
 25 September 2023