



An
Bord
Pleanála

Inspector's Report ABP-315616-23

Development	PROTECTED STRUCTURE: Change of use of commercial office to provide for a Howth Harbour Seafood and Fishing Interpretive Centre etc.
Location	Mariner's Hall, West Pier, Howth, County Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F22A/0344
Applicant(s)	M Wright and Sons Ltd.
Type of Application	Permission (s. 34)
Planning Authority Decision	Grant permission with conditions
Type of Appeal	Financial Condition (s. 48)
Appellant(s)	M Wright and Sons Ltd.
Observer(s)	None
Date of Site Inspection	15 th December 2023
Inspector	Philip Maguire

1.0 Site Location and Description

- 1.1. The appeal site is located on the West Pier in Howth, Co. Dublin, north of the town centre and some 340m northeast of the DART station. It consists of industrial-type marine uses including a Coast Guard Station in addition to commercial and retail uses.
- 1.2. The appeal site is flat and has a stated area of 0.0949ha. It consists of the former Mariner's Hall and an adjoining building which are ecclesiastical-type structures with pitched roofs, stone walls and pointed arched door and windows in the front elevations.
- 1.3. Mariner's Hall is listed in the Record of Protected Structures (ref. 0560) and described as a mid-19th century five-bay structure of Howth Stone, initially used for Presbyterian services for fishermen. The adjoining building, referred to as the Reading Room, is a two-bay structure and gabled towards the adjoining pier road. It has red brick window reveals. Mariner's Hall has generally buff brick window reveals, and the arch doorway is a mixture of both brick types. A flat roof extension adjoins these buildings to the rear. There is a single-storey structure to the west which was not part of the application.

2.0 Proposed Development

- 2.1. The proposal sought permission for the change of use of the existing commercial office building, a protected structure, to provide for a Howth Harbour Seafood and Fishing Interpretive Centre including a display area, interactive screens, coffee area and ancillary retail sales at ground floor level and seafood restaurant at first floor level, and an outdoor roof terrace to the rear for additional dining area for the first-floor restaurant.
- 2.2. Being a protected structure, planning permission was also sought for internal works, including new bathrooms, stock room, interactive wall, coffee sales area, shelves and kitchen area at ground floor and new kitchen and seating at first floor level.
- 2.3. The proposal also included landscaping, drainage and all ancillary works to facilitate the development including fire escape stairs to the rear of the existing structure.
- 2.4. Section 12 of the Planning Application Form indicates that the floor space of the existing buildings is 531sq.m. The floor space of the proposed works is stated as 531sq.m. In this regard, the proposal seeks to change the use of c. 531sq.m of the existing commercial office to an interpretive centre with ancillary sales and restaurant.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Permission was granted for the proposed development on 15th December 2022. Condition 7 is directly relevant to this appeal. It states:

Prior to Commencement of development the developer shall pay the sum of €50,312 (updated at date of commencement of development, in accordance with changes in the Tender Price Index) to the Planning Authority as a contribution towards expenditure that was and/or that is proposed to be incurred by the planning authority in respect of public infrastructure and facilities benefiting development in the area of the Authority, as provided for in the Contribution Scheme for Fingal County made by the Council. The phasing of payments shall be agreed in writing with the planning authority prior to the commencement of development.

Reason: *It is considered reasonable that the payment of a contribution be required in respect of the public infrastructure and facilities benefiting development in the area of the Planning Authority and which is provided, or which is intended to be provided by, or on behalf of the Local Authority.*

- 3.1.2. Condition 2 is also of note. It states:

The proposed Fish and Chip area as detailed on the plans submitted and more than 50% the ground floor area shall be given over for use as an interpretative centre to include an area for demonstrations relating to the fish industry. There shall be no facility for the sale of hot food for consumption off the premises without a separate grant of planning permission.

Reason: *To ensure that the development shall be in accordance with the permission, and that effective control be maintained.*

3.2. Planning Authority Reports

3.2.1. Planning Report dated 24th August 2022

- In terms of planning principle, it queried the nature of the proposal having regard to the area of floor space afforded to the interpretive centre compared to the retail and restaurant floor space, and recommended further information in this regard.

- In terms of conservation, it considered that the proposed internal layout would negatively impacts on the character of the ground floor space and on the pointed arch windows in particular and recommended further information in this regard.
- In terms of uses, it considered that the applicant should clarify whether takeaway services are proposed and recommended further information in this regard.
- In terms of visual impact and having regard to the proposed emergency access to the rear, it considered that the appearance of the western elevation will be as important as the frontage onto the pier and recommended further information in the form of a photomontage.
- In terms of traffic and transport, it considered that car parking in the harbour area is increasingly in demand and notes the Roads Section requirement for a mobility management plan focussing in particular on staff mobility.
- It considered that no AA/EIA issue arose.
- It concluded that a number of outstanding issues need to be addressed by way of further information prior to a final decision being made.

3.2.2. Planning Report dated 14th December 2022

- Basis for the Planning Authority decision.
- It considered that the proposal as an interpretative centre is still questionable and has the characteristics of a shop/takeaway and restaurant.
- It considered that the takeaway element should be omitted, and a much greater area used for additional space for the interpretative centre, demonstrations etc., and this should be dealt with by condition.
- It considered the applicant's response to concerns over visual impacts acceptable.
- It notes that the Roads Section verbally accepted the Mobility Management Plan.
- It considered that the applicant responded to all requested items and any outstanding issues could be dealt with by way of planning condition.
- It concluded that the proposed development was acceptable and consistent with the proper planning and sustainable development of the area.

3.2.3. **Other Technical Reports**

- Conservation (07/12/22): No objection
- Roads ('verbal'): No objection.
- Water (23/08/22): No objection subject to condition.

3.3. **Prescribed Bodies**

- Irish Water (23/08/22): No objection subject to condition.

3.4. **Third Party Observations**

3.4.1. Third-party submissions were received from:

- Ciara Ní Laoi on behalf of Hillwatch
- Michael O'Neill of O'Neill Town Planning

3.4.2. The observations raised concerns regarding the nature of the proposal having regard to the floor space afforded to the interpretive centre and the impact of the proposed development on the character of the building.

4.0 **Planning History**

4.1. Appeal site:

- 4.1.1. PA ref. F21A/0506 – permission granted in December 2021 for alterations to the rear elevation of the flat roof extension etc. No development contributions applied.
- 4.1.2. PA ref. F19A/0412 – permission granted in November 2019 for retention of works being an amendment to PA ref. F16A/0393 including a roller door and replacement of glazing with a dormer window and roof lights. No development contributions applied.
- 4.1.3. PA ref. F17A/0362 – permission granted in October 2017 for changes to the rear elevation permitted under PA ref. F16A/0393 including revisions to glazing etc. Condition 2 excluded use as a balcony/terrace. No development contributions applied.
- 4.1.4. PA ref. F16A/0393 – permission granted in December 2016 for the replacement of an asbestos roof with a slate roof, part demolition of single-storey extension, re-roofing of a Reading Room, boundary alterations etc. No development contributions applied.

4.2. Adjacent sites:

Howth Harbour Land Reclamation Project

- 4.2.1. PA ref. F21A/0368 – permission granted in December 2016 for dredging of harbour, reclamation of land, construction of slipway, construction of embarkment and rock armour etc. This permission is subject of a live appeal under ABP-314487-22.

4.3. Cited by applicant:

11 Strand Street, Skerries

- 4.3.1. PA ref. F20A/0679 – permission granted in March 2021 for a change of use from café/restaurant to dwellinghouse. I note that this building is listed in the Record of Protected Structures (ref. 0196) and was not subject to development contributions as per section 11(v) of the Development Contribution Scheme (DCS).

29 Drogheda Street, Balbriggan

- 4.3.2. PA ref. F21A/0289 – permission granted in March 2022 for a change of use from disused shop and store to bookmaker's shop with c. 152sq.m extension etc. I note that this building is listed in the Record of Protected Structures (ref. 0024) and was not subject to development contributions as per sections 11(p) and 11(v) of the DCS.

5.0 Policy Context

5.1. Development Contributions

- 5.1.1. Under Section 2 of the Development Contributions Guidelines (DECLG, January 2013), as amended, planning authorities are required to include specific exemptions and waivers in their Development Contribution Schemes, including waivers in the case of change of use permissions, where it does not lead to the need for new or upgraded infrastructure or significant intensification of demand placed on existing infrastructure (e.g. transport) and waivers in respect of works on protected structures where such works substantially contribute to the restoration or protection of the protected structure.

5.2. Development Contribution Scheme 2021-2025

- 5.2.1. The Planning Authority decision of 15th December 2022 was made under the Fingal County Council Development Contribution Scheme (DCS) 2021-2025 which came into effect on 1st January 2021. Section 17 states that this Scheme will remain effective until 31st December 2025 unless a new scheme is made in the interim.
- 5.2.2. Section 9 of the DCS relates to the 'level of contribution' and indicates that a rate of €76.69/sq.m will be applied to industrial/commercial class of development except where an exemption or reduction applies.
- 5.2.3. Section 9, Note 2 states that this rate was fixed from 1st January 2021 to 31st December 2021 and subject to indexation annually from 1st January 2022 in accordance with the Society of Chartered Surveyors of Ireland (SCSI) Tender Price Index. The Planning Authority website indicates that a rate of €94.75/sq.m for commercial development applies from 1st January 2023.
- 5.2.4. Section 9, Note 3 states that the floor area of proposed development where buildings are involved shall be calculated as the gross floor area. This means the gross floor area determined from the internal dimensions of the proposed buildings including the gross floor area of each floor including mezzanine floors¹.
- 5.2.5. Section 11 sets out various circumstances where exemptions and reductions apply.
- 5.2.6. Section 11(p) sets out an exemption for signage, shop fronts, entrance gates, railings, fencing, antenna structure, bus shelters, switch rooms, substations, power lines, gas skids, etc.
- 5.2.7. Section 11(t) states *inter alia* that renovations to restore/refurbish structures deemed to be "protected structures" in the Development Plan, where the Council is satisfied that works substantially contribute to the conservation or restoration of the structure, are exempt. It also notes that extensions to protected structures for commercial purposes are subject to a reduction of 50% of the appropriate rate.
- 5.2.8. Section 11(v) states that change of use applications are exempt, unless the revised usage constitutes a substantial intensification of use of the building or service.

¹ A similar definition is provided in article 3 of the Planning and Development Regulations 2001 (as amended) and specifically includes internal walls and partitions.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. A 1st Party appeal has been lodged by Hughes Planning on behalf of the applicants, M. Wright and Sons Ltd. The applicants are appealing against the development contribution of €50,312 being applied on the following grounds:

- It is submitted that the proposal relates to works to a protected structure that substantially contributes to the conservation and restoration of the structure.
- It is stated that Mariner's Hall is currently vacant, and the proposal is for a use that will conserve the architectural merit of the structure whilst restoring same and is therefore exempt from contributions in accordance with section 11(t) of the DCS.
- It is noted that previous permissions on site, detailed in section 4.3, were not subject to financial contributions in recognition of the exemption under the DCS.
- It sets out what it considers to be precedent cases where development contributions were not applied, as detailed in section 4.3. It considered the change of use to a bookmakers etc. represented a more significant intensification of use compared to the subject proposal.
- Referring to the Planning Authority's contention that the proposal represents a substantial intensification outside the scope of section 11(v) of the DCS, it is stated that the proposal is not a standard change of use application having regard to the costs involved in restoring a protected structure.
- It is submitted that the proposal does not involve a substantial intensification of use of the building due to the previous commercial office use and reduction in the number of employees, previously c. 50-60. It also notes the historical use of the building in this regard.
- It is contended that the intensification of use of a building does not take precedence over the exemption for protected structures.
- It concludes that the application of €50,312 in levies seriously jeopardises the viability of the proposal and requests the Board to remove Condition 7 in accordance with section 11(t) of the DCS.

6.2. Planning Authority Response

6.2.1. The Planning Authority's response can be summarised as follows:

- The development contribution was calculated as follows:

Change of use area	531sq.m
Outdoor terrace area	98sq.m
Outdoor area exemption 11(p)	– 98 sq.m
Area to be levied	531sq.m
531sq.m x €94.75 (commercial rate) = €50,312	

- It notes that there were three previous permissions granted for the appeal site in recent years with the applicant being the Minister for Agriculture, Food and Marine on each occasion.
- It summarises the development contribution assessment for each of these:
 - PA ref. F16A/0393 – exempt.
Reason: Works to restore/refurbish structure. Replacement roof, demolition and boundary alterations. No new floor area of intensification of use.
 - PA ref. F17A/0362 – exempt.
Reason: Works to restore/refurbish structure. Glazing and cladding, railings not measurable. No new floor area of intensification of use.
 - PA ref. F19A/0412– exempt.
Reason: Works to restore/refurbish structure. Glazing, roller door and roof lights not measurable. No new floor area of intensification of use.
- It states that the proposed works are for a change of use from commercial offices to an interpretive centre, restaurant and food hall and do not involve renovations to restore the protected structure. It also submits that the commercial offices have been vacant for over 10 years and therefore the proposal represents a substantial commercial intensification of use.
- It is requests that the terms of Condition 7 be upheld by the Board, subject to any applicable indexation provisions in the DCS.

7.0 Assessment

7.1. Preliminary Points

- 7.1.1. The appeal relates to Condition 7 only, which imposes a development contribution in accordance with the provisions of s. 48 of the Planning and Development Act 2000 (as amended) ('PDA') and as per the terms of the Fingal County Council DCS 2021-2025.
- 7.1.2. Section 48(10)(b) of the Planning Act makes provision for an appeal to be brought to the Board where an applicant considers that the terms of the relevant DCS have not been properly applied in respect of any condition laid down by the Planning Authority.
- 7.1.3. In that context, the Board is required to apply the scheme as adopted by the Planning Authority and not to evaluate the merits or otherwise of the scheme itself.
- 7.1.4. Furthermore, as this appeal relates to a development contribution only, the Board cannot determine the application as if it was made to it in the first instance and is confined to considering whether the terms of the Scheme have been properly applied.

7.2. Application of the Scheme

- 7.2.1. Condition 7 of PA ref. F22A/0344 requires the payment of the sum of €50,312 to Fingal County Council in respect of public infrastructure and facilities benefitting development in the area of the Planning Authority. The Planning Report of 14th December 2022, the basis for the decision, sets out a schedule of recommended conditions including Condition 7 which states the total development contribution due.
- 7.2.2. The calculation is set out in a document entitled 'Section 48 Assessment of Financial Contributions and Bonds' dated 15th December 2022. It indicates that the total levy due is €50,312 based on 531sq.m at a commercial rate of €94.75/sq.m. An exemption has been provided for 98sq.m of outdoor seating under section 11(p) of the DCS.
- 7.2.3. The Planning Authority's appeal submission indicates that the proposal is for a change of use from offices to an interpretive centre etc. and does not involve renovations to restore the protected structure. They also submit that the offices have been vacant for over 10 years and therefore the proposal is a substantial intensification of use.
- 7.2.4. The applicant considers that the proposal does contribute to the restoration of the protected structure and is therefore exempt from contributions under section 11(t) of the DCS. They also submit that the proposal is not a substantial intensification of use.

Renovations to restore/refurbish a Protected Structure

- 7.2.5. I have reviewed the documentation associated with the development permitted under PA ref. F22A/0344 and it is clear that the proposal relates to works to a protected structure. The exemption provided for under section 11(t) of the DCS, as cited above, is unambiguous and only applies “where the Council is satisfied” that the “works” “substantially” contribute to the “conservation or restoration” of a protected structure. The Planning Authority have indicated that they are not satisfied that this is the case.
- 7.2.6. In this regard, I note that the external walls, roof and historical window and door openings are in good condition as a result of restoration works which appear to have been executed under PA ref. F16A/0393, as amended. These works were exempt from development contributions on this basis, as submitted by the Planning Authority.
- 7.2.7. The proposed works primarily relate to the provision of an outdoor roof terrace and external fire escape, but also include internal partitions etc. to facilitate the proposed use. In this regard, I note that ‘works’ includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior of a protected structure, as per section 2 of the PDA 2000.
- 7.2.8. The applicant notes that the protected structure is currently vacant and submits that the proposal will conserve its architectural merit. I agree to an extent. Any active use of a protected structure is likely to conserve and preserve features of architectural merit. This scenario is infinitely better than a vacant building vulnerable to dereliction. However, I am not convinced that the proposed works ‘substantially’ contribute to the overall conservation effort having regard to the ordinary, natural meaning of the word.
- 7.2.9. Moreover, the proposed works do not, to my mind, equate to ‘renovations to restore or refurbish’ the structure and this is ultimately determinative irrespective of these works contributing to a degree of conservation. The external fabric of the structure is clearly in good condition and neither the external, nor indeed internal works, will further assist with restoration and I therefore agree with the Planning Authority in this regard.
- 7.2.10. It could also be argued that the test under section 11(t) of the DCS is purely a subjective one that lies squarely on the shoulders of the Council. In this regard, it is not the purpose of the legislation to look beyond the application of the terms of the scheme and to do otherwise may stray outside section 48(10)(b) of the Planning Act.

Change of use applications

- 7.2.11. The exemption provided for under section 11(v) of the DCS, as cited above, is similarly unambiguous and applies to all change of use planning applications unless the new use constitutes a “substantial intensification of use”. Although unlike the exemption under section 11(t) of the DCS, this exemption appears to be more of an objective test.
- 7.2.12. Intensification of use is not defined in the Planning Act or Regulations but is to be found in planning case law whereby an intensification of use can result in a material change of use². This doctrine is only applicable in justifiable circumstances and the objective test requires the intensification to be significant from a planning viewpoint³. Significantly, it is also referenced in the Development Contribution Guidelines, as cited above, in respect of waivers for change of use permissions. In this regard, the Guidelines require waivers to be applied where no significant intensification of demand is placed on existing infrastructure including, for example, transport infrastructure.
- 7.2.13. The previous use as ‘commercial offices’ is common ground between the parties and the Planning Authority have not disputed the suggested number of employees. However, they have indicated that owing to the period of vacancy, stated as over 10 years, the proposal represents a ‘substantial commercial intensification of use’. Their position would appear to be predicated on the vacancy period and they have not offered any further justification regarding impacts on infrastructure such as transport.
- 7.2.14. The applicant suggests that the proposal will require less employees than the previous office use and having regard to the permitted floor plans I accept that this is likely to be the case. The proposal does however cater for c. 126 seated patrons which would be approximately twice the number of staff previously employed there, although I consider that maximum occupancy is likely to be the exception rather than the rule. Indeed, overall capacity is further controlled by virtue of Condition 2 which requires the fish and chip area and over 50% of the ground floor to be given over for use as an interpretative centre including an area for demonstrations relating to the fish industry.
- 7.2.15. Having regard to the submitted Mobility Management Plan and my general site observations, including the availability of public car parking and the nearby DART station, I do not consider the capacity of the permitted development to represent a

² See generally *Butler v Dublin Corporation* [1999] 1 I.R. 565.

³ *Galway County Council v Lackagh Rock Ltd* [1985] I.R. 120.

‘significant’ or indeed ‘substantial’ intensification of use on transport, or indeed any other infrastructure. In this regard, I note that none of the other conditions require infrastructure upgrades, and I am satisfied there is no significant intensification of use.

- 7.2.16. Nor do I consider the period of vacancy to be a material consideration as to whether the proposed use represents a ‘substantial intensification of use’. In this context, I also reject any inference of abandonment, noting specifically the judgement in *Westmeath County Council v Quirke & Sons*, where Budd J. commented that an existing user is a hardy beast⁴, this being a reference to English case law where existing use rights were described as hardy beasts with a great capacity for survival⁵.

Conclusion on Application of the Scheme

- 7.2.17. The Planning Authority have failed to identify what element of the proposal constitutes a “substantial intensification of use” and on what specific piece of existing infrastructure extra demand will be placed. I do not therefore consider it appropriate to apply development contributions to the permission granted under PA ref. F22A/0344.
- 7.2.18. The exemption under section 11(v) of the DCS therefore applies to this change of use.

8.0 Recommendation

- 8.1. I recommend that the Planning Authority be directed to **REMOVE** Condition 7 of PA ref. F22A/0344 for the reasons and considerations set out hereunder.

9.0 Reasons and Considerations

- 9.1. Having regard to the provisions of the Fingal County Council Development Contribution Scheme 2021-2025, section 48(10) of the Planning and Development Act 2000 (as amended) and the Development Contribution Guidelines, I consider that the terms of the Scheme have not been properly applied in respect of Condition 7. In calculating the area liable to development contributions and in the absence of any justification regarding the purported substantial intensification of use, the Planning Authority failed to apply the exemption under section 11(v) of the Development Contribution Scheme (DCS) for the area subject of the change of use i.e. 531sq.m.

⁴ Unreported, High Court, Budd J., 23 May 1996 at p.125.

⁵ *Pioneer Aggregates (UK) Ltd v Secretary of State for the Environment* [1985] A.C. 135.

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.

Philip Maguire

Planning Inspector

22nd December 2023