



An  
Bord  
Pleanála

## Inspector's Report ABP-315733-23.

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<b>Development</b>	Change of use from existing retail at ground floor, storage at basement, first and second floors to a licenced restaurant at ground floor level and guest house on upper floors, including extension.
<b>Location</b>	1-4 Merchant's Arch, 15 Temple Bar, Dublin 8.
<b>Planning Authority</b>	Dublin City Council.
<b>Planning Authority Reg. Ref.</b>	5210/22.
<b>Applicant(s)</b>	Terry Doyle
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse.
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Terry Doyle
<b>Observer(s)</b>	Temple Bar Residents.
<b>Date of Site Inspection</b>	23/06/2023.
<b>Inspector</b>	A. Considine.

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## 1.0 Site Location and Description

- 1.1. The appeal site is located to the north of Temple Bar Square, Dublin City centre, and immediately adjacent to Merchant's Arch. The site fronts onto Wellington Quay overlooking the Liffey and the Ha'penny Bridge.
- 1.2. The site has a stated area of 0.0149 hectares and is currently occupied by a flat roofed, three-storey over basement building which forms the western wall of Merchants Arch which connects Wellington Quay with Temple Bar. The property is currently occupied by a retail store, with the basement and upper floors used for storage. The ground floor is noted to be the only floor in active use. The submitted information advises that the existing shoe shop, which has operated from the building for the past 30 years is due to cease trading. The access to the shoe shop is primarily via Merchant's Arch Lane.
- 1.3. The site lies within a Conservation Area with a number of protected structures in the area.

## 2.0 Proposed Development

- 2.1. Permission is sought, as per the public notices as follows:

PROTECTED STRUCTURE: the existing building is three storey facing Wellington Quay with a two-storey extension to the rear facing and set back from the adjoining Merchants Arch Laneway. Permission is sought to change the use of the building from existing retail on ground floor level, storage at basement, first floor, first floor return and second floor levels to a licensed restaurant at ground floor level, kitchen/toilets basement level and guest house comprising 3 bedrooms at first floor, 2 bedrooms in an extension of the first floor return and 3 bedrooms at second floor level - total 8 no double bedrooms with en-suite bathrooms.

Access to the restaurant will be as presently exists to the shop from both Wellington Quay and the laneway of Merchants Arch with minimal alterations to the existing shopfront and including a new fascia sign.

Access to the guesthouse will be from the existing door on Wellington Quay which presently serves the upper floors.

The building will be upgraded and refurbished internally with minimal external changes,

all at 47 Wellington Quay, Dublin 2.

2.2. The application included a number of supporting documents including as follows;

- Plans, particulars and completed planning application form
- Letter of consent from property owner
- Planning Report
- Conservation Method Statement
- Photographic Survey.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

The Planning Authority decided to refuse planning permission for the proposed development for the following three stated reasons:

1. Having regard to the Z5 zoning and proposed uses, there are significant concerns that the loss of retail and the provision of an additional licensed premises would negatively impact and further erode the variety and diversity of retail within the designated Temple Bar cultural and artistic quarter. The proposed licensed restaurant does not accord with the Z5 objective to provide a mix of uses in an area where there is already a significant quantum of licensed premises and does not accord with Objective CU017 which seeks to protect the variety and diversity of retail or Objective CU018 which seeks to avoid the overconcentration and further expansion of licensed premises within the Temple Bar Cultural Hub & Quarter. The development as proposed would result in the loss of available retail space in Temple Bar and would therefore set an undesirable precedent for similar type development and would materially contravene the Dublin City Council Development Plan 2022-2028 and the proper planning and sustainable development of the area.

2. Having regard to Section 15.14.2 of the Development Plan and given the proximity to a number of existing guesthouses and short term rental accommodation within Temple Bar, there are significant concerns that the Guest House proposal does not accord with the Z5 zoning objective which seeks to provide a dynamic mix of uses which interact with each other and help create a sense of community. On balance, the proposed development would undermine the character of the subject site, the streetscape and the amenities of nearby residents, would result in an undesirable precedent for further such development, would depreciate the value of property in the vicinity and, as such, would be contrary to the proper planning and sustainable development of the area.
3. The proposed interventions required to accommodate the guesthouse would give rise to seriously adverse and injurious indirect and direct impacts on the architectural fabric and character of the Protected Structure and as a result require significant revisions. The proposed alterations to the interior of this Protected Structure and the significant increase in services do not relate sensitively to the architectural detail, scale, proportions and design of the original structure, nor are they sensitive to the historic fabric and special interest of the interior. The proposed development would result in an undesirable precedent for similar type development, would depreciate the value of property in the vicinity and would contravene Dublin City Council Policy BHA2 of the Dublin City Council Development Plan 2022-2028. The proposal would thereby be contrary to the proper planning and sustainable development of the area.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The Planning report considered the proposed development in the context of the details submitted with the application, internal technical reports, third party submissions, planning history and the City Development Plan policies and objectives. The report also includes a statement in terms of Appropriate Assessment and Environmental Impact Assessment.

The Planning Report concludes that the proposed development is not acceptable as it gives rise to significant issues relating to the proposed uses and the Z5 zoning objective within the Temple Bar Cultural Hub and artistic quarter. The Planning Officer recommends that permission be refused for the proposed development, for three stated reasons.

This Planning Report formed the basis of the Planning Authority's decision to refuse planning permission.

### 3.2.2. Other Technical Reports

**Drainage Division:** No objection subject to compliance with conditions.

**Conservation Officer:** The conservation method statement submitted with the application is limited and does not provide an appropriate assessment of the impact of the proposal.

The loss of the established retail use is regrettable and there is concern in terms of the increased wear and tear of sensitive historic fabric associated with the proposed guest house.

The proposed first floor extension is problematic, and the applicant has not sufficiently demonstrated that the existing two-storey return is not early/historic, and the impact and loss of historic fabric cannot be assessed. Further information required.

The proposed layout has resulted in the fragmentation of the historic layout and it is preferable that the first floor is revised to provide two bedrooms as would maintain the historic floor plan.

The proposed layout should have regard to the legibility of the former historic double door at first floor level.

Issues raised in terms of the proposed en-suite/bathrooms proposed as well as services proposed and amendments to the shop windows.

Further information is required.

### 3.2.3. Prescribed Bodies

**TII:** Recommends the inclusion of condition relating to Section 49 Supplementary Development Contribution Scheme – Luas Cross City (St. Stephen’s Green to Broombridge Line).

**An Taisce:** The submission raises concern in regard to the proposed licenced restaurant, on the basis of adding another restaurant in a location with many existing restaurants and the loss of a retail unit. The proliferation of such uses is having a negative effect on the ability of the area to function successfully as a mixed-use district. An Taisce strongly favours the retention of the retail use. Impacts on the conservation area and previous permission for the change of use of existing retail units to a restaurant on Merchant’s Arch Lane are also noted.

### 3.2.4. Third Party Submissions

There is 1 no. third party objection/submission noted on the planning authority file from Cllr. Mannix Flynn. The issues raised are summarised as follows:

- The application should be rejected entirely, as it is in clear breach of the principle of the Temple Bar area.
- Temple Bar is oversubscribed with public houses which has negative impacts on residents.
- While there is need for housing in the city, there is no need for further hotel rooms.
- A further licenced premises will add nothing to the cultural quarter and will undermine the cultural built heritage of the Merchant’s Arch area.

## 4.0 Planning History

The following is the relevant planning history pertaining to the subject site:

**PA ref: 4231/08:** Permission refused for the installation new gates within the railings to the front entrance of China Blue Stores at ground level and facing onto 47 Wellington Quay and follows on from recently completed repair and conservation works carried out on the external quayside elevation for the following reason:

1. The proposed development for the installation of new gates within the railings to the front entrance of 47 Wellington Quay is considered not be in keeping with the historic setting of the building or it's setting along the quays and would materially affect the special character of the protected structure and the conservation zoning objective of the quays and is therefore considered to be contrary to the proper planning and sustainable development of the area.

**PA ref: 1265/07:** Permission granted for development which consisted of repair and conservation works to the external quayside elevation including cleaning and repairs to stonework facade and render over, repainting of the facade, new external lighting, cleaning and repair of damaged railings and granite plinths, pavings and steps with new railings and granite plinths, steps and paving to match existing where the original is missing or where inappropriate modern materials are used, new signage over shopfront entrance and removal of defunct electrical wiring on facade.

**PA ref: 2296/97:** Permission granted for 2 new ground level retail premises incorporating facade alterations to List 1 building at 47 Wellington Quay, Dublin 2, inclusive of new door opens to Merchants Arch and Wellington Quay, reinstatement of original sliding sash windows to first and second floors redecoration of facade to Wellington Quay and new single storey shop front to ancillary building to rear of 47 Wellington Quay fronting onto Merchants Arch.

**PA ref: 1680/96:** Permission granted for the refurbishment and change of use of second floor of list one building from office to residential use.

**PA ref: 1680/96:** Permission granted for the renovation, change of use from wholesale shop and storage to retail shop and storage and new shop fronts to ancillary building to rear of 47 Wellington Quay, and for change of use of ground floor of 47 Wellington Quay from wholesale shop to retail shop.



## 5.0 Policy and Context

### 5.1. Dublin City Development Plan 2022-2028

- 5.1.1. The application was lodged under the Dublin City Development Plan 2016 – 2022. However, by the time the application was assessed by Dublin City Council. The 2022-2028 City Development Plan was adopted at a Special Council meeting on the 2nd of November 2022. The plan came into effect on the 14th of December 2022.
- 5.1.2. The subject site is zoned Z5 City Centre, which has the stated objective ‘to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity’. Section 14.7.5 of the development plan states that the primary purpose of this use zone is to sustain life within the centre of the city through intensive mixed-use development. Permissible uses within the mixed use Z5 zone include both guest house and restaurant uses.
- 5.1.3. Development management standards for Z5 zones include an indicative plot ratio of 2.5-3.0 and indicative site coverage of 60-90%. However, within a Conservation Area these indicative figures reduce to 1.5-2.0 and 45-50% respectively.
- 5.1.4. Chapter 11 deals with Built Heritage and Archaeology. The subject building is a protected structure – ref 8374 and lies within a conservation area. In terms of change of use of historic buildings, the Plan provides that ‘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.’ The following policies and objectives are considered relevant to the subject site:
- BHA1:** Record of Protected Structures
- BHA2:** Development of Protected Structures
- BHA9:** Conservation Areas
- 5.1.5. Chapter 12 deals with Culture and Section 12.5.2 deals with Cultural Hubs and Quarters including Temple Bar. The following policies and objectives are considered relevant to the subject site:

**Policy CU10: Temple Bar Cultural Hub:** To support the role of Temple Bar as cultural hub within the south city and to prevent the erosion of the range of cultural and artist facilities and spaces and protect these for continued cultural purposes.

**Objective CU016:** Planning Applications within Temple Bar

**Objective CU017:** Variety and Diversity of Retail of Temple Bar

**Objective CU018:** Temple Bar as a Mixed-Use Cultural Quarter – which includes a statement noting that there will be a presumption against further expansion of floor space for licenced premises, or the sale of food or alcohol for consumption off the premises.

5.1.6. Chapter 15 deals with Development Standards and the following sections are considered relevant:

- 15.14.1.1 Hotel Development
- 15.14.2 Bed and Breakfast / Guesthouses
- 15.14.3 Short Term Tourist Rental Accommodation
- 15.14.7.2 Restaurants/Cafes
- 15.14.7.4 Noise, Odour, Ventilation for Restaurant / Café / Take-Away
- 15.15.2.2 Conservation Areas
- 15.15.2.3 Protected Structures

## 5.2. Natural Heritage Designations

The site is not located within or directly adjacent to any Natura 2000 sites. The South Dublin Bay and River Tolka Estuary SPA (site code 004024) is located 2.7km northeast of the site and South Dublin Bay SAC (site code 00210) is located 3.5km east of the site.

## 5.3. EIA Screening

5.3.1. Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:

Class 10(b)(iv): Urban development which would involve an area greater than 2ha in the case of a business district, 10ha in the case of other parts of a built-up area and 20ha elsewhere.

(In this paragraph, “business district” means a district within a city or town in which the predominant land use is retail or commercial use.)

Class 12(c): Holiday villages which would consist of more than 100 holiday homes outside built-up areas; hotel complexes outside built-up areas which would have an area of 20 hectares or more or an accommodation capacity exceeding 300 bedrooms.

- 5.3.2. The proposed development comprises the change of use of an existing three storey building from retail and storage uses to licenced restaurant and guest house uses. The site has a stated area of 149m<sup>2</sup>. The site is located in an urban area that comes within the above definition of a “business district”. The site is below the threshold of 2 ha for a ‘business district’ location. In addition, the development proposes 8 guest house bedrooms in total. It is therefore considered that the development does not fall within the above classes of development and does not require mandatory EIA.
- 5.3.3. In accordance with section 172(1)(b) of the Planning and Development Act 2000 (as amended), EIA is required for applications for developments that are of a class specified in Part 1 or 2 of Schedule 5 of the 2001 Regulations but are sub-threshold where the Board determines that the proposed development is likely to have a significant effect on the environment. For all sub-threshold developments listed in Schedule 5 Part 2, where no EIAR is submitted or EIA determination requested, a screening determination is required to be undertaken by the competent authority unless, on preliminary examination it can be concluded that there is no real likelihood of significant effects on the environment.
- 5.3.4. Having regard to the nature and scale of the development, together with the urban / built nature of the site, 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

This is a first-party appeal against the decision of the Planning Authority to refuse planning permission for the proposed development. The appeal document sets out the details of the proposed development and the grounds of appeal are summarised as follows:

#### 6.1.1. Reason for Refusal No. 1:

- In terms of the loss of retail, it is submitted that:
  - there is a widespread loss of retail floor space generally and in particular in the city centre.
  - The PA is unable to hold back that tide of change and alternatives need to be embraced.
  - The PA is outdated in its thinking that the city is a place for retailing primarily.
  - City centres are meeting places for people and there is now a need to expand the number of café, restaurants, coffee shops etc.
- In terms of the provision of an additional licenced premises, it is stated that:
  - The PA seeks to designate this as a licensed premises rather than a restaurant with a licence.
  - A restaurant is an acceptable use.
  - The ground floor is proposed to comprise a coffee shop and a restaurant with a licence to serve wine and beer with meals, not a public house.
- In terms of the impact on the variety and diversity of retail units in Temple Bar it is stated:
  - There is no loss of culture or artistic floor area.
  - Temple Bar is the heartbeat of tourism in Dublin City. Although the loss of retail space is regrettable, the proposal will intensify the overall use of the building, consistent with the level of tourists visiting Temple Bar.

- In terms of concerns that there is already a significant quantum of licenced premises in the area, it is submitted that:
  - The proposal is for a restaurant and not a pub.

#### 6.1.2. Reason for Refusal No. 2:

- In terms of the proximity of existing guest houses / short term lets, it is submitted that:
  - Proximity to similar uses should not be a reason for refusal.
  - Tourist accommodation should be provided where the tourists area.
  - There is a shortfall of such accommodation in the city.
- In terms of the mix of uses, it is submitted that:
  - The use interacts with itself – guests will have the restaurant facility at ground floor level.
  - It is unclear how a dynamic mix of uses of this kind would disrupt the sense of community.
- In terms of impact on the character of the area and residents, it is submitted that:
  - The uses would be contained within the building.
  - The occupation of the building by a restaurant and semi-residential uses on the upper floors would not undermine the character of the building or the streetscape.
  - The development will not undermine the amenity of adjoining residents.
  - Temple Bar has a particular character and ‘hustle and bustle’ that contributes significantly to the tourism product. That character makes permanent residence in this area difficult.
  - The applicant decided not to provide full time residential use on the upper floors as short-term tourism use is more suited to the building and location.
- In terms of the contention that the development would depreciate the value of property in the area, it is submitted that no evidence to support this claim has been submitted.

6.1.3. Reason for Refusal No. 3:

- With regard to the proposed interventions to accommodate the guest house, it is submitted that:
  - It is not accepted that the proposed interventions will have an adverse impact on the architectural fabric and character of the building.
  - The heating of the rooms on the upper floors will protect the building from the current force of rain and cold on the outside of the building.
  - This consideration outweighs the concerns of the Conservation Division in relation to the internal works to the building.
- In terms of the concerns in relation to the sensitivity of the proposed alterations and additional services, it is submitted that:
  - Every effort has been made to ensure that the alterations and services proposed relate sensitively to the architectural interior of the building.
  - The further information sought by the CO, could be addressed by the Board.
- In terms of precedent, it is submitted that each application is judged on its merits and does not provide a precedent for future applications.
- It is submitted that no evidence to support the claim that the development would depreciate the value of property in the area has been submitted.

6.1.4. The appeal sets out the policy background for the development and provides a general planning assessment under the headings of land use policy, built heritage, conservation conservations and AA.

6.1.5. The appeal includes a number of enclosures, and it is requested that permission be granted.

**6.2. Planning Authority Response**

None.

### 6.3. Observations

There is one third-party observation noted in relation to the subject appeal from Temple Bar Residents. The issues are summarised as follows:

- The residents fully support the decision of the PA to refuse permission.
- The group were gratified that several recommendations made in the submission to the Draft Dublin City Development Plan 2022 were reflected in Objectives CUO17 and CUO18.
- The proliferation of guesthouses, hotels and conversions of apartments in Temple Bar to short-term rentals is attested to and there is no credible argument that there is a need for another guesthouse in the area.
- There is a need to protect the retail use in Temple Bar and the applicants reading of the PAs reasons for refusal are misunderstood. The objectives seek to protect the variety and diversity of retail in Temple Bar which gives the hub its distinctive character.
- The loss of the retail unit would represent a further erosion of the variety and diversity of retail trade in the area, contrary to the CDP.
- There has been a 770% increase in the number of restaurants, cafés and takeaway units in Temple Bar between 1984 and 2019. The historic retail function of Merchant's Arch is being eroded.
- There are many examples of licenced restaurants now operating as pubs – without the benefit of planning permission.
- The observer emphatically rejects the appellants contention that the area 'has a particular character and a 'hustle and bustle' that contributes significantly to the tourism product but at the same time that character makes permanent residence in this area difficult'. This is the reason why the appellant did not propose full-time residential use on the upper floors.
- Residential use would provide a much more positive contribution to the area than another guest house.

- A grant of permission, in the context of the recently permitted restaurant and boutique hotel on the east side of Merchant's Arch Lane, would result in the irretrievable loss of the entire sense of place of Merchant's Arch.

It is requested that permission be refused.

## 7.0 Assessment

Having undertaken a site visit and having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site, the nature and scale of the proposed development and the nature of existing and permitted development in the immediate vicinity of the site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. Principle of the development & Planning History in the vicinity
2. The proposed use and impacts on the Temple Bar Area
3. Conservation Matters
4. Other Issues
5. Appropriate Assessment

### 7.1. Principle of the development

- 7.1.1. The subject site lies to the north of Temple Bar Square and fronting onto both Wellington Quay to the north and Merchant's Arch Lane to the east. The existing building rises primarily to three storeys in height onto Wellington Quay, with a two storey return onto Merchant's Arch Lane, and the existing ground floor retail unit extends the full length of the building with access points from Wellington Quay and Merchant's Arch Lane. The character of Merchant's Arch Lane is dominated by the small retail units which are accessed directly from the lane.
- 7.1.2. The subject site is located in an area covered by the Z5 zoning objective which has the stated objective 'to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and



dignity'. The principle of a restaurant and guesthouse development is acceptable and in accordance with the zoning objective for the subject site.

- 7.1.3. The Board will note that this site, and building, has been the subject of a number of previous PA decisions, all of which primarily relate to the retail use of the building. The Merchant's Hall, which lies to the east of the Merchant's Arch and Merchant's Arch Lane, also a protected structure, has also been the subject of more recent Board decisions in 2018, 2019 and 2021, in terms of the use of that building, ABP-301816-18, ABP-305942-19 and ABP-309677-21 refer. These decisions relate to the southern area of the Merchant's Hall site.
- 7.1.4. Permission was refused under, ABP-301816-18 (PA ref: 2547/18), for the use of the ground and first floor levels as an enlarged restaurant / public house, connecting to the existing Merchants Arch bar on 48/49 Wellington Quay. The reasons for refusal related to the intensification of existing use and would lead to an over concentration of licenced premises in this area of the city with resulting impacts on existing residential amenity, as well as impacting on the Protected Structure.
- 7.1.5. With regard to ABP-305942-19 (PA ref: 3164/19), this proposed development sought the demolition of the existing building on the site and the construction of a 5 storey over basement building which included a single retail unit at ground and basement level while the upper floors will be used as a boutique hotel. The reasons for refusal related to issues with height, scale, massing and bulk being out of character with the pattern of development in the vicinity, would be contrary to Policy CHC4 of the CDP and the loss of the smaller retail premises fronting onto Merchants Arch which would have a detrimental impact on the scale, urban grain and vibrancy of the area.
- 7.1.6. Under ABP-309677-21, the Board granted planning permission for an amended version of the previous applications which excluded any internal connections to the existing adjacent public house to the north. As such, concerns around the potential scale of the restaurant / licenced premises or impacts to the historic fabric, character and essential qualities of the protected structure – and in particular the historic elliptical staircase, which is an important part of the special interest and character of the protected structure - did not arise. The Board decided to grant permission for the development which included the demolition of the existing building and the construction of a 4-storey building over basement with a restaurant at ground and

basement levels and hotel rooms on the upper floors. The grant of permission saw the removal of the existing small scale retail units on Merchant's Arch Lane.

## **7.2. The proposed use and impacts on the Temple Bar Area**

- 7.2.1. The Board will note that the proposed use as a restaurant and guest house are uses which accord with the zoning objective afforded to the site. The site fronts onto both Wellington Quay and Merchant's Arch Lane, which is identified as a universal access route and within an area of notable activity. Merchant's Arch Lane is a narrow but very busy pedestrian route from Henry Street shopping area north of the River Liffey via the Ha'penny Bridge to Temple Bar and onto Dame Street to the south. The lane includes the Merchant's Hall, Protected Structure, to the east and the subject building to the west and is very characterful, opening onto Temple Bar Square with the imposing Telephone Exchange Buildings in its vista. The area includes a large number and variety of bars, restaurants and cafes, all of which co-exists alongside small independent traders. This area of Dublin City Centre is immediately identifiable as a primary tourist destination in the city and was designated as a mixed-use cultural quarter over 30 years ago.
- 7.2.2. Chapter 12 of the Dublin City Development Plan 2022 deals with Culture, including Cultural Hubs and Quarters across the city and acknowledges the importance of Temple Bar as a key cultural, creative quarter of the city. Policy CU10 of the Plan seeks to support the role of Temple Bar as cultural hub within the south city. In addition, the Plan includes objectives which seek to protect the variety and diversity of retail of Temple Bar which gives this hub its distinctive character, CUO17 refers. In addition, objective CUO18 seeks to maintain the role of Temple Bar as a mixed-use cultural quarter and in particular, seeks to avoid the concentration of particular uses and retail facilities which would reinforce particular activities in the area to the detriment of the cultural, residential and social functions of the area. The objective also states that there will be a presumption against further expansion of floor space for licenced premises, or the sale of food or alcohol for consumption off the premises, and any application will have to demonstrate how such expansion will not have a detrimental impact on the character of the area.
- 7.2.3. Having regard to the location of the subject site, and in the context of the planning history of the area, it could not be argued that the area is lacking in restaurant / café

or other food outlets, or tourist accommodation. While I acknowledge the submission of the appellant in terms of retail within the city centre, I do not consider that an adequate justification to reduce the retail offer in Dublin City or at this location, has been put forward. As such, I do not consider that a grant of permission in this instance would be supported by the provisions of Objective CU017 with regard to protection of the variety and diversity of retail in Temple Bar which gives it its distinctive character. Given the extensive restaurant / café offer in the immediate vicinity of the site, as well as licenced premises with a food offer and the recent planning history of the area, I would agree with the Planning Authority that a grant of permission would result in the concentration of a particular use which would reinforce particular activities in the area to the detriment of the cultural, residential and social functions of the area, and would have a detrimental impact on the character of the area.

- 7.2.4. In terms of the proposed tourist accommodation proposed, the Board will note the provisions of Section 15.4.3 of the 2022 City Development Plan which states that there is a general presumption against the provision of dedicated short term tourist rental accommodation in the city due to the impact on the availability of housing stock. In this context, I note that Temple Bar, while being one of the busiest tourist areas in Dublin City with numerous bars and restaurants, is also home to a large number of permanent residents. The impacts on the residents associated with the uses in the area are identified and articulated in the third-party observation.
- 7.2.5. Contrary to the contention of the first party that the ‘hustle and bustle’ character associated with the Temple Bar area makes permanent residences in the area difficult, the area is home to some 2,000 permanent residents. While I acknowledge that the existing building does not include a residential element, I am not satisfied that the residential amenity concerns raised in terms of noise and disturbance due to an intensification of evening activities, have been adequately addressed by the applicant. I consider it reasonable to conclude that the development of a further restaurant with licence and additional tourist accommodation, would give rise to an overconcentration of such uses and would lead to conditions which would seriously injure the residential amenities of existing residents in the area. The development would, therefore, be contrary to the provisions of Section 15.14.3 of the Dublin City Development Plan 2022-2028.

### 7.3. Conservation Matters

7.3.1. Chapter 11 deals with Built Heritage and Archaeology. The subject building is a protected structure – ref 8374 and lies within a conservation area. In terms of change of use of historic buildings, the Plan provides that ‘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.’ The following policies and objectives are considered relevant to the subject site:

**BHA1:** Record of Protected Structures

**BHA2:** Development of Protected Structures

**BHA9:** Conservation Areas

The Board will note that the appeal document submitted makes reference to the previous Dublin City Council Development Plan.

7.3.2. I note that site is located within a Conservation Area in the City Development Plan, and as such, the 2022 CDP, while noting that such areas do not have a statutory basis in the same manner as protected structures or ACAs, recognises these locations as areas that have conservation merit and importance and warrant protection through zoning and policy application. Therefore, all of these areas require special care in terms of development proposals. The City Council will encourage development which enhances the setting and character of Conservation Areas. 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. In this context, I would submit that the retail use on Merchant’s Arch Lane, together with the presence of the smaller independent traders to the south of the site and to the east of the lane, substantially contribute to the vibrancy and character of the Temple Bar area, and in particular, Merchant’s Arch Lane. The introduction of a further restaurant at this location, and the loss of the retail space, would further damage the diversity and uniqueness of the Merchant’s Arch laneway. I consider that if permitted, Merchant’s Arch Lane would be significantly negatively changed by the proposed development.

- 7.3.3. In terms of the proposed works to the building to accommodate the change of use of the upper floors, as well as the proposed amendments to the shopfront onto Merchant's Lane, the Board will note that the Planning Authority's Conservation Officer raised a number of concerns with regard to the impacts on the architectural fabric and character of the Protected Structure. The concerns arise primarily due to the proposed interventions associated with providing the accommodation on the upper floors of the building and associated bathrooms and services. In particular, concerns are noted in terms of the proposed first floor extension, floor layout plans, double doors, ensuite bathrooms & fitted furniture and the provision of services, as well as works to the shopfront onto Merchant's Lane.
- 7.3.4. I note the response of the applicant / appellant in relation to the above concerns, and reason for refusal no. 3, which submits that the issues raised by the Conservation Officer could be worked out in liaison with the applicants' architect. In addition, I note the submission of the appellants architect who advises that all existing period doors, architraves, ironmongery, skirting and ceiling covings will be retained and replicated. Confirmation that the first-floor return is not historic is also noted. It is submitted by the appellant, that the Conservation Officers requirements regarding room layouts is seeking to freeze the building, contrary to the provisions of the Architectural Heritage Protection Guidelines for Planning Authorities. I acknowledge the appellants agreement to address the concerns raised in terms of construction of the proposed first floor extension to remove the need for the piers at both basement and first floor levels, the provision of en-suite pods and retain the surviving architraves around the interconnecting double doors. In addition, it is agreed that the service risers should be kept to an absolute minimum.
- 7.3.5. Having regard to the information available to me and having regard to the provisions of the 2022 Dublin City Development Plan as it relates to Protected Structures, I am inclined to agree with the Dublin City Council Conservation Officer. Notwithstanding the appeal submission, which would require the submission of further information and details for agreement, I consider that the proposed works to the interior of the protected structure do not 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, and if permitted, would be contrary to Policy BHA2 of the 2022 Dublin City Development Plan.

## **7.4. Other Issues**

### **7.4.1. Development Contribution**

The subject development is liable to pay development contribution, a condition to this effect should be included in any grant of planning permission.

In addition, the site is located in an area which is subject to the Section 49 Supplementary Development Contribution Scheme – Luas Cross City (St. Stephen's Green to Broombridge Line). Should the Board be minded to grant permission in this instance, a condition to this effect should be included.

### **7.4.2. Future Use Concerns:**

I note the concerns of the third-party observer, and the documentary evidence provided which suggests that former restaurants in the Temple Bar area have been changed to fully licenced premises, with 7-day publicans licences issued through the courts, without the benefit of planning permission. There is a concern that this will happen in this case too. While I acknowledge the concerns, the Board will note that enforcement of planning decisions is a matter for the local authority and is outside the remit of the Board.

In addition, I would note that there is no current appeal before the Board for the use of the proposed restaurant as a public house / licenced premises, although I do accept that a restaurant is likely to hold an alcohol licence. However, I consider that it would be inappropriate to consider the possible future actions of the applicant as part of the subject application.

## **7.5. Appropriate Assessment**

- 7.5.1. The Board will note that the subject site comprises a developed site and that the proposed development seeks to change the use of the existing building on the site. The existing building on the site is connected to public services and I note the nominal scale of the proposed development in the context of the volume of wastewater arising, which will discharge through the public system to the Ringsend Wastewater Treatment Plant. This is the only hydraulic link to the designated sites located within Dublin Bay.

7.5.2. I have considered the short AA Screening section of the submitted Planning Report, together with the available information with respect to the Natura 2000 sites in the vicinity of the site, the NPWS website, aerial and satellite imagery, the scale of the proposed works, the nature of the Conservation Objectives, Qualifying and Special Qualifying Interests, the separation distances and I have had regard to the source-pathway-receptor model between the proposed works and the European Sites. It is reasonable to conclude that on the basis of the above, which I consider adequate in order to issue a screening determination, that the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on the European Sites identified within the zone of influence of the subject site. As such, and in view of these sites' Conservation Objectives a Stage 2 Appropriate Assessment is not required for these sites.

## 8.0 Recommendation

I recommend that planning permission be refused for the proposed development for the following stated reasons.

## 9.0 Reasons and Considerations

1. Having regard to the Z5 zoning and proposed uses, the Board is satisfied that the loss of retail and the provision of an additional restaurant with associated licence would negatively impact and further erode the variety and diversity of retail within the designated Temple Bar cultural and artistic quarter. The proposed guest house use and licensed restaurant, therefore, would not accord with the Z5 objective afforded to the subject site, to provide a mix of uses in an area where there is already a significant quantum of restaurants and licensed premises and does not accord with Objective CU017 which seeks to protect the variety and diversity of retail or Objective CU018 which seeks to avoid the overconcentration and further expansion of licensed premises within the Temple Bar Cultural Hub & Quarter.

The development as proposed would result in the loss of available retail space in Temple Bar and would therefore set an undesirable precedent for similar type development and would contravene the provisions of the current

Dublin City Council Development Plan 2022-2028 and would be contrary to the proper planning and sustainable development of the area.

2. Having regard to Section 15.14.3 of the Development Plan and given the proximity to a number of existing guesthouses and tourism related accommodation within Temple Bar, the Board is not satisfied that the proposed tourist accommodation use accords with the Z5 zoning objective which seeks to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity.

The Board considers that the development of a further tourist accommodation and restaurant, with associated licence, would result in the concentration of a particular use which would reinforce particular activities in the area which it is the policy of the planning authority to discourage and restrict, to the detriment of the cultural, residential and social functions of the area, and would have a detrimental impact on the character of the area and would seriously injure the residential amenities of existing residents in the area by reason of additional levels of noise and disturbance. The development would, therefore, be contrary to the proper planning and sustainable development of the area.

3. Notwithstanding the commitments in the appeal submission to the Board dated the 8<sup>th</sup> of February 2023, the Board is not satisfied that the proposed interventions required to accommodate the guesthouse use 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. The development as proposed would, therefore, contravene Policy BHA2 of the Dublin City Council Development Plan 2022-2028, and would be contrary to the proper planning and sustainable development of the area.

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A. Considine  
Planning Inspector  
25<sup>th</sup> June 2023