



An  
Bord  
Pleanála

## Inspector's Report

### ABP-315821-23

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<b>Development</b>	Construction of retractable roof, alterations to windows and all associated site works
<b>Location</b>	8A Brasserie, 8A The Crescent, Monkstown, Co. Dublin
<b>Planning Authority</b>	Dun Laoghaire Rathdown County Council
<b>Planning Authority Reg. Ref.</b>	D22A/0713
<b>Applicant(s)</b>	Murigan Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Longford Terrace Residents Association
<b>Observer(s)</b>	None on file.
<b>Date of Site Inspection</b>	03 June 2023
<b>Inspector</b>	Gillian Kane

## 1.0 Site Location and Description

- 1.1.1. The subject site is an existing café / restaurant within a two storey former mews building on Monkstown Crescent, in the south Dublin suburb of Monkstown.
- 1.1.2. An outdoor seating area is separated from the public footpath by a low boundary wall.
- 1.1.3. To the rear (north) of the mews terrace are the terraced dwellings of Longford Terrace. The mews terrace has long been established for commercial uses.

## 2.0 Proposed Development

- 2.1.1. On the 21<sup>st</sup> September 2022, planning permission was sought for the erection of 2 no. retractable fabric roofs over an existing outdoor ground floor seating area, the removal of an existing fixed window and its replacement with a bi-fold window.
- 2.1.2. The application was accompanied by a Conservation Statement.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. On the 20<sup>th</sup> January 2023, the Planning Authority issued a notification of their intention to GRANT permission subject to 3 no. conditions. Condition no. 3 requires details of the proposed fabric to be submitted to the Planning Authority for written agreement prior to the commencement of development.

### 3.2. Planning Authority Reports

- 3.2.1. **EHO:** No comment.
- 3.2.2. **Conservation:** Request clarification in the form of photomontages in order to assess the visual impact on the streetscape character of the ACA.
- 3.2.3. **Drainage:** No objection.
- 3.2.4. **Planning Report:** Proposed development would not adversely impact amenities of adjoining commercial properties. Proposed development not visible from properties to the rear, would not impact their residential amenity. FI requested on basis of Conservation Report.

- 3.2.5. **FI Request:** on the 11<sup>th</sup> November 2022, the Planning Authority requested the applicant to submit photomontages of the proposed retractable fabric roofs.
- 3.2.6. On the 15<sup>th</sup> December 2022, the applicant responded to the FI request with illustrations of the existing and proposed development.
- 3.2.7. **Planning Report:** Conservation Report dated 04/01/2023 states that photomontages appear to have been taken from an eye level perspective. Planner notes that there appears to be some questions over the fabric colour and detailing of the proposed fabric but that this can be resolved by way of condition. Planning Authority satisfied that proposed development is in keeping with the proper planning and sustainable development of the area. Recommendation to grant permission subject to conditions.

### 3.3. **Prescribed Bodies**

- 3.3.1. None one file.

### 3.4. **Third Party Observations**

- 3.4.1. Submissions to the Planning Authority raise the issue of unauthorised development, and impact on residential amenity from noise, odour and visual nuisance.

## 4.0 **Relevant Planning History**

- 4.1.1. Enf. EN.41519: Enforcement file closed (May 2022) regarding erection of extraction fans / ventilation units on roof.

## 5.0 **Policy Context**

### 5.1. **Architectural Heritage Protection – Guidelines for Planning Authorities**

- 5.1.1. This guidance, which is a material consideration in the determination of applications, sets out comprehensive guidance for development in conservation areas and affecting protected structures. It promotes the principal of minimum intervention (Para.7.7.1) and emphasises that additions and other interventions to protected structures should be sympathetic to the earlier structure and of quality in themselves and should not cause damage to the fabric of the structure, whether in the long or short term (7.2.2).
- 5.1.2. With regard to **ACA's**, section 3.10.1 refers to criteria for assessing proposals within an ACA.

## 5.2. **Dun Laoghaire Rathdown Development Plan 2022-2028**

- 5.2.1. The subject site is zoned 'NC Neighbourhood Centre' which has the stated objective to protect, provide for and/or improve mixed-use neighbourhood centre facilities.
- 5.2.2. The subject site is within the Monkstown ACA.
- 5.2.3. **Section 11.4.2.1 Policy Objective HER13: Architectural Conservation Areas** It is a Policy Objective to: i. Protect the character and special interest of an area which has been designated as an Architectural Conservation Area (ACA). Please refer to Appendix 4 for a full list of ACAs. ii. Ensure that all development proposals within an ACA be appropriate to the character of the area having regard to the Character Appraisals for each area. iii. Ensure that any new development or alteration of a building within an ACA or immediately adjoining an ACA is appropriate in terms of the proposed design, including scale, height, mass, density, building lines and materials. iv. Seek a high quality, sensitive design for any new development(s) that are complementary and/or sympathetic to their context and scale whilst simultaneously encouraging contemporary design which is in harmony with the area. Direction can also be taken from using traditional forms that are then expressed in a contemporary manner rather than a replica of a historic building style. v. Ensure street furniture is kept to a minimum, is of good design and any redundant street furniture removed. vi. Seek the retention of all features that contribute to the character of an ACA including boundary walls, railings, soft landscaping, traditional paving and street furniture.

## 5.3. **Natural Heritage Designations**

- 5.3.1. The South Dublin Bay SAC (000210) and the South Dublin Bay and River Tolka Estuary SPA (004024) are to the north of the subject site.

## 5.4. **EIA Screening**

- 5.4.1. Having regard to nature and scale of the proposed development and the urban location 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

6.1.1. A third-party appeal of the decision of the Planning Authority to grant permission has been submitted by the Longford Terrace Residents Association. The grounds of the appeal can be summarised as follows:

- Permission should be refused until the applicant addresses the ongoing enforcement issues. There are several unauthorised developments on site leading to the residents to the rear being unable to enjoy their gardens.
- The Planning Authority's failure to address the unauthorised development by compelling the applicant to act is unacceptable. The position is that Dun Laoghaire Rathdown will ignore planning violations.
- Section 35 of the Planning and Development Act 2000, as amended permits a Planning Authority to refuse planning permission for a development because of past unauthorised development. There is no 7 year time limit on section 35.
- Enforcement action has been undertaken on a number of premises including the subject site.
- Neither Dun Laoghaire Rathdown nor the applicant have addressed the unauthorised development.
- Planning consultants have found the development not to be exempted developments.
- Many developments in Monkstown Village have resulted in unacceptable noise and odour impacts on surrounding families. The Planning Authority have failed to address this. This is contrary to the provisions of the Monkstown ACA and the Architectural Heritage Protection Guidelines.
- There have been repeated failures by the Planning Authority to address unauthorised development. This has been brought to the attention of the local elected officials, the CEO of Dun Laoghaire Rathdown and the planning Regulator.
- The erection of awnings, signage to canopies should not be permitted to adorn the front of the property.

- The Board are requested to refuse permission for the proposed development.

## 6.2. Applicant Response

- 6.2.1. The grounds of appeal do not relate to the proposed development. This was noted by the Planning Authority. The enforcement issue noted by the appellant was resolved on the 26<sup>th</sup> May 2020. Attached correspondence relating.

## 6.3. Planning Authority Response

- 6.3.1. The Board are referred to the previous Planner Report. The grounds of the appeal do not raise any new matter which in the opinion of the Planning Authority would justify a change in attitude to the proposed development.

## 7.0 Assessment

- 7.1.1. I note that in the planning report dated 20/01/2023, the Planner referred to a second Conservation report (dated 04/01/2023) received by the planning department after the submission of FI. This report is not on file and was requested by the Board on the 2nd March 2023. In their response to the Board (on the 6<sup>th</sup> March 2023) the Planning Authority referred to the first Conservation report (25/10/2023) and did not provide a second Conservation report. I do not consider this material and am satisfied that the appeal can be assessed by the Board.

- 7.1.2. I have examined the file and the planning history, considered national and local policies and guidance, the submissions of all parties and inspected the site. I have assessed the proposed development and I am satisfied that the single issue raised is that of the principle of the proposed development.

## 7.2. Principle of Development

- 7.2.1. The third-party appellant requests the Board to account into consideration what they consider to be a failure of the applicant to address what the appellant considers to be ongoing enforcement issues. They request the Board to refuse permission for the proposed development in accordance with section 35 of the Planning and Development Act 2000, as amended. I note that at no point in the appeal do the appellants object to, raise a concern about, or even mention the proposed development, namely 2 no. retractable fabric roofs and the replacement of an

existing fixed window with a bi-fold window. It can reasonably be presumed that the appellants do not object to those works in isolation, only their part in a larger development to which they object.

- 7.2.2. Section 35 of the Planning and Development Act 2000, as amended provides for refusing to grant permission to an applicant where information has been furnished or information is available to the Planning Authority about a previous planning permission, concerning a substantial unauthorised development, or a conviction for an offence under the Act, where there is a real and substantial risk that the development in respect of which permission is sought would not be completed in accordance with the permission or with a condition.
- 7.2.3. I note that the Planning Authority have issued the applicant with correspondence stating that their enforcement file is closed as no further action is available to the Planning Authority. Should the Board wish to explore this issue further, the provision is open to the Board under section 35(4) of the Act.
- 7.2.4. The proposed development for the replacement of an existing fixed window with a bi-folding window is acceptable. Likewise, the proposed retractable fabric roofs over the existing out door seating areas are acceptable. Neither works will detract from the visual amenity of the area or the character of the streetscape within the ACA. The visual impact of the two developments will largely be confined to the subject site, being behind the building line established by the adjoining premises. I note that a similar development has been successfully undertaken at a premises to the east of the subject site.
- 7.2.5. The proposed development is in keeping with the character of the area, and is considered to be in accordance with the proper planning and sustainable development of the area.

### 7.3. **Appropriate Assessment**

- 7.3.1. Having regard to the nature and scale of the proposed development to be retained in a fully serviced built-up urban area, no appropriate assessment issues arise, and it is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects, on a European site.

## 8.0 Recommendation

8.1. I recommend permission be GRANTED for the following reasons and considerations and subject to the following conditions:

## 9.0 Reasons and Considerations

9.1. Having regard to the zoning objective of the area, the design, layout and scale of the proposed development and the pattern of development in the area, it is considered that, subject to compliance with conditions below, the proposed window, would not seriously injure the visual amenities of the area or residential amenity of property in the vicinity. The proposed development for which permission is sought would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 15th day of December, 2022, 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>
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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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Gillian Kane  
Senior Planning Inspector

06 June 2023