



An  
Bord  
Pleanála

## Inspector's Report

### ABP-316155-23

|                                     |  |
|-------------------------------------|--|
| <b>Development</b>                  | Retention of existing extraction mechanisms and replacement of extraction fan with new system. |
| <b>Location</b>                     | Cinnamon Restaurant, 23 Monkstown Crescent, Monkstown, Co. Dublin                              |
| <b>Planning Authority</b>           | Dun Laoghaire Rathdown County Council  |
| <b>Planning Authority Reg. Ref.</b> | D22A/0597  |
| <b>Applicant</b>                    | Terry Doyle  |
| <b>Type of Application</b>          | Retention and Permission   |
| <b>Planning Authority Decision</b>  | Grant Retention and Permission   |
| <b>Type of Appeal</b>               | Third Party  |
| <b>Appellant(s)</b>                 | Longford Terrace Residents Association<br>Councillor Dave Quinn                                |
| <b>Observer(s)</b>                  | None   |
| <b>Date of Site Inspection</b>      | 31 <sup>st</sup> May 2024  |
| <b>Inspector</b>                    | Joe Bonner   |

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## 1.0 Site Location and Description

- 1.1. The appeal site which extends to 0.031575ha is part of a terrace of original south facing mews plots (Monkstown Crescent) associated with a terrace of three storey over basement houses (Longford Terrace), that face north overlooking Dublin Bay, and together form an urban block in Monkstown village, in southeastern County Dublin, c200m north of Monkstown Dart station. The mews buildings on Monkstown Crescent have been adapted/redeveloped over time to consist of a mix of commercial and residential uses at present.
- 1.2. Cinnamon Restaurant is located in the middle of the terrace and has a small seating area along the edge of the public footpath. The restaurant operates over the entire ground floor of the two-storey building with separate office use at first-floor level. A mews dwelling set back from the footpath is located to the immediate west, while offices, with a setback building line are located to the east. The rear garden of a residential property at No 23 Longford Terrace is located to the immediate north, with No 22A Monkstown Crescent to the west and No 24 Monkstown Crescent to the east. The ducting and condenser subject to the application are located to the rear of the property and are not visible from the street.
- 1.3. There is small yard to the rear occupied by ducting and waste storage bins. The site shares a boundary with the rear garden of the residential property at No 23 Longford Terrace to the rear (north), with No 22A Monkstown Crescent to the west and No 24 Monkstown Crescent to the east. The existing extract ducting and condenser subject to the application are located to the rear of the property and are not visible from the street.

## 2.0 Proposed Development

### 2.1. Application

- 2.1.1. The proposed development site is located in an architectural conservation area and the application as submitted to the planning authority was for:
  - Retention of existing roof plant; and Permission for 1) modification to the plant arrangement and positioning; 2) the existing kitchen extract duct to be replaced with the proposed Entropic Type K fan with dispersion system and vertical extract; and 3)

a new acoustic timber baffle to cover the existing condenser unit serving the cold room.

- 2.1.2. The application was accompanied by 1) a Noise Assessment; and 2) an Architectural Heritage & Visual impact Assessment.

## 2.2. Further Information

- 2.2.1. The request for further information addressed three items. The applicant responded to the request to explore alternatives to the existing plant arrangement, by stating:

- They had omitted the proposed kitchen extract, which was to exhaust above the 1st floor eaves level and they also proposed to
  - provide a new carbon filter and UV system all discharging at low level with the existing plant. The revised proposal was for an in-line odour tec system, with full electrical control and safety interlocking system that includes mesh pre-filters, UV system, odour scrubbing filters (carbon filters).
  - use a silencer / attenuator section to the existing kitchen extract to reduce noise from the extract fan.
  - install screens on the three sides of the flat roof to further block views of the plant from Longford Terrace.

- 2.2.2. Items 2 and 3 of the request for further information were not adequately addressed and a clarification of further information was issued.

## 2.3. Clarification of Further information

- 2.3.1. A Noise Assessment was submitted.

# 3.0 **Planning Authority Decision**

## 3.1. **Decision**

- 3.1.1. A decision to grant retention and grant permission was issued by Dun Laoghaire Rathdown County Council on the 3<sup>rd</sup> of March 2023, subject to the attachment of 3 conditions including:

- No 2 – (a) The ventilation system shall be regularly maintained and degreased as per manufacturers specification/guidelines. Records of same shall be maintained

and shall be provided to the Planning Authority (Environmental Health Office) upon request.

(b) Clearly audible impulsive or tonal noise at noise sensitive locations during evening and night shall be avoided irrespective of the level.

(c) Noise resulting from operations effecting nearby noise sensitive locations shall not exceed the background level by 10dB (A) or more or exceed the EPA's NG4 (Guidance Note for Noise: Licence Applications, Surveys and Assessments in Relation to Scheduled Activities) limits whichever is lesser (as measured from the façade of the nearest noise sensitive location).

(i) Daytime (07:00 to 19:00 hrs) - 55dB LAr, T

(ii) Evening (19:00 to 23:00 hrs) - 50dB LAr, T

(iii) Night-time (23:00 to 07:00 hrs) - 45dB LAeq, T As measured from the façade of the nearest noise sensitive locations.

**REASON:** To protect the residential amenities of property in the vicinity of the site.

- No 3 - No additional development shall take place above roof/ parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.

**REASON:** To protect the residential amenities of property in the vicinity and the visual amenities of the area.

### 3.2. Planning Authority Reports

#### First Planning Officer's Report – 6<sup>th</sup> October 2022

- 3.2.1. A letter of consent, stated to be from the owners of No 23 has been submitted, stating that they give consent for the making of the application for retention.
- 3.2.2. The Planning Officer references section 12.9.2 'Noise Pollution and Noise Nuisance' and section 12.9.3 'Noise, Odour and Vibration Generating Uses', from the development plan and states that while the site is relatively close to the adjoining rear gardens of Longford Terrace, mitigation measures are proposed for air conditioning and kitchen extract matters, in the form of the removal of one of the two

lines of horizontally laid external roof ducting, which would be replaced by the installation of a vertical ducting section/chimney on the rear elevation at first floor level adjacent to the existing ducting, timber screens would be used to mitigate the visual impact of the retained ducting, while planting would be added to screen the newly proposed vertical section.

3.2.3. They considered that the applicant has responded in this application to issues raised in the request for further information on a previous application P. A. Reg. Ref. D21A/0106 (an earlier application for the same development that was withdrawn).

3.2.4. While the principle of the changes to the ventilation was deemed acceptable, further information was sought in respect of:

- 1 - Given the site location within the Monkstown ACA, explore alternatives to the existing plant arrangement to the rear that will meet the needs of the restaurant while protecting the character of the ACA and reduce any impact from the upper floors of the protected structures.
- 2 - Update the 'Decibel Noise Control Report', and provide evidence of the effectiveness of the proposed mitigation measures set out in the EHO report which specifically stated that, noise resulting from operations affecting nearby noise sensitive locations does not exceed the background level by 10dB(A) or more or exceed the EPA's NG4 (Guidance Note for Noise: License Applications, Surveys and Assessments in Relation to Scheduled Activities) limits whichever is lesser (as measured from the facade of the nearest noise sensitive location).

- Daytime (07:00 to 19:00 hrs) - 55dB LAr, T
- (ii) Evening (19:00 to 23:00 hrs) - 50dB LAr, T
- (iii) Night-time (23:00 to 07:00 hrs) - 45dB LAeq, T

and avoidance of impulsive tones and noise sensitive locations during evening and nighttime.

- 3 - Shall the noise from the proposed kitchen extract fan be non-tonal and shall it exceed 54dBA.

3.2.5. **Other Technical Reports on initial application**

- Drainage Planning – August 2022 – No objection.

- EHO – September 2022 – No objection subject to conditions regarding noise levels, maintenance of extractor system and condenser unit, and the carrying out of a noise survey once the development is complete.
- Conservation Division – September 2022 – regard to be had to Policy HER13:ACA. Section 8.5.10 and 8.5.12 refer to external flues and ventilation pipes. Further information requested (see item 1 in 3.2.4 above).
- Transport Planning – October 2022 – No objection.
- Environment Section – October 2022 – Recommended both further information and a condition if permission is to be granted regarding day, evening and night time noise levels and avoidance of impulsive tones.

#### **3.2.6. Planning Officer's Report on response to further Information**

- The proposed omission of the vertical chimney was sufficient to consider item one of the request addressed satisfactorily.
- Items 2 and 3 of the request for further information were not addressed satisfactorily and clarification of the request for further information was required.

#### **3.2.7. Other Technical Reports on response to further Information**

- EHO – January 2023 – Unable to comment as they have not yet received the updated report requested by way of further information.

#### **3.2.8. Planning Officer's report on response to clarification of further information**

- Items 2 and 3 of the request for further information had been addressed satisfactorily and the planning authority decided to grant permission in accordance with the planning officer's recommendation.

#### **3.2.9. Other Technical Reports on response to clarification of further Information**

- EHO – February 2023 – Reviewed the noise assessment and no objection subject to conditions - reflected in condition No. 2 of the decision to grant permission.

### **3.3. Prescribed Bodies**

- None of file

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

3.4.1. Third party observations were received from the appellants 1) Longford Terrace Residents Association; and 2) Councillor Dave Quinn. A further five observations were received from parties that did not appeal the decision being; 3) Peter and Sarhan Woodcock; 4) Karen Ivory and Alan Boyne; 5) Martin V Canny; 6) Vincent Canny; 7) Adrienne Dempsey.

3.4.2. The grounds of the observations can reasonably be summarised as: -

- The application is invalid due to inconsistencies between the name of the applicant in the site and newspaper notices (Terry Doyle), in the planning application form (Bright Side Bars) and in the letter of consent (Dark Side Bars Ltd).
- The unit should be shut down as this is the 5th retention application. There is an abuse of process and the applications are designed to hamper enforcement proceedings that commenced in September 2019 and should be prosecuted immediately. The applicant is deliberately using the failed applications to slow down the enforcement process.
- 2019 reports commissioned by the objectors from engineering consultants and noise engineers, in respect of P.A. Reg. Ref. D19A/0845 (an earlier application for the site), found the existing plant was causing significant tonal nuisance for residents, was a potential fire risk and expelling grease laden air particles, with grease pooling on roofs and clogging drainpipes, contributing to the attraction of vermin. The HSE repeatedly lay poison and traps in the neighbouring back gardens. Noise from the existing plant is persistently above background noise levels and operates at up to 65dB.
- The Applicant's Architectural Heritage Assessment fails to mention or have regard to the requirements of Chapter 8 of the Architectural Heritage Protection Guidelines for Planning Authorities and amazingly concludes that the huge galvanized flues in existence and proposed are not visually obtrusive, as they cannot be seen from the street, despite being clearly visible by residents of the four storey homes/protected structures, on Longford Terrace.
- In granting permission for the restaurant in 2012 the planning authority did not condition noise or odour controls from the kitchen extraction and air handling fans

and failed to protect residents. During construction of the development, a steel structure was erected at the rear and the planning authority has claimed that it is exempted development ever since. The residents have been bombarded with noise, odour and visual nuisance since the development was implemented in 2013.

- The restaurant incorrectly claims that smoke emanating from the fans is steam.
- DLRCC is obliged to deal with noise issues under the EPA Act of 1992.
- UK planning authorities require restaurants/takeaways to prevent noise and odour impact. A condition that requires air handling units not to have a negative impact on residents would not be an undue burden of the restaurant operator.
- Most restaurants have no impact as they have correctly baffled and screened noise equipment below background levels at the boundaries with residential properties and filled filters to eliminate odours.
- As the area is dominated by residential properties, they do not agree with the applicants assertion that noise levels are high.
- The proposed noise levels would be contrary to Section 12.9 of the Development Plan regarding prevention or minimisation of noise. Regarding extraction exhaust systems, Section 12.9.2 requires acoustic barriers between a noise source and neighbours. The applicant simply states the plant will run at 54dBA and that is the definition of a noise nuisance. Further information should be sought to address the identified issues.
- Reference is made to a UK Technical Manual – ‘Control of Noise from Commercial Kitchen Extraction Exhaust Systems.’ The UK authorities refer applicants to this manual and there is no excuse for the EHO to not follow this guidance.
- DLRCC are operating below the standards set by CIEHO (Chartered Institute of Environmental Health Officers) and the applicants spoke to most local and national politicians in the area, who cannot understand why CIEHO standards are not applied in the county.
- A list is provided of proposed noise mitigation measures and their costs.
- Current DLRCC policy creates noise nuisance and will damage property values.

- Allowing noise levels 10db above all other noise is both a disgraceful and disgusting attack on the health of families.
- The EPA confirm conditions used by DLRCC referencing NG4 are contrary to the EPA's permitted use of the NG4 'Guidance Note for Noise: Licence Applications, Surveys and Assessments in Relation to Scheduled Activities'.
- The owners of Elephant and Castle (14/15 Monkstown Crescent), permitted under P.A. Reg. Ref. D21A/0869 (ABP-312286), met the residents and agreed to use techniques used by the CIEHO to ensure fans are inaudible.
- The applicant in P.A. Reg. Ref. D21A/1110 (20 Monkstown Crescent), outlined that their extraction system will have absolutely no noise or odour impacts and there is no reason this applicant cannot do the same.
- The appellant's submission includes an appended list of 91 planning permissions in DLRCC that they consider are defective as a result of the failure by the planning authority and/or the board to attach any conditions or to attach appropriate conditions to control noise and odour from similar premises.
- Guidance from Croydon Council in London is provided regarding requirements for extraction / ventilation systems for food and drink premises.

## 4.0 Planning History

4.1. The planning history outlined below refers to the site and to matters raised in the grounds of the third party appeals that refer to other nearby sites.

### 4.2. Application Site

- 4.2.1. **P.A. Reg. Ref. D21A/0106** – Application for same development as the current application lodged on the 10<sup>th</sup> of February 2021 by Dark Side Bars Limited, but deemed withdrawn on the 29<sup>th</sup> of October 2021, as no response was submitted to a request for further information. The request for further information included asking the applicant to submit a clear and detailed justification for the roof plant and to explore alternatives to the existing roof plant as a measure to reduce its visual impact. They were also asked to clarify the nature and extent of the as built works.

- 4.2.2. **P.A. Reg. Ref. D19A/0845** – Application lodged by Bright Side Bars Limited on the 1<sup>st</sup> of November 2019 for ‘retention of existing roof plant and modification to the plant arrangement and positioning’. It was withdrawn on the 17<sup>th</sup> of September 2020 as no response was submitting in respect of a clarification of further information.
- 4.2.3. **ABP-241026 (P.A. Reg. Ref. D12A/0232)** – Permission granted by the board on the 14<sup>th</sup> of January 2013 for a change of use from retail with ancillary cafe to cafe/restaurant with ancillary retail (235 sq.m) and associated amendment to the internal layout of the premises. The grant of permission included the following conditions:
- Condition No 4 - The restaurant shall not serve food after 2200 hours.  
**Reason:** In the interest of residential amenity.
  - Condition No 5 - Noise levels shall not exceed  $L_{Aeq,T(15)}$  value of 55 dB(A) at any point along the boundary of the site between the hours of 0900 and 2200 and an  $L_{Aeq,T(5)}$  value of 45 dB(A) at all other times.  
**Reason:** To protect the amenity of property in the vicinity.
- 4.2.4. The application plans did not show any rooftop equipment.
- 4.2.5. **ABP-230271 (P.A. Reg. Ref. D08A/0365)** – Permission granted by the board for change of use of an existing retail unit to retail use with ancillary café (39sqm) and off-license (19sqm). The application plans did not show any rooftop equipment.
- 4.2.6. **P.A. Reg. Ref. D07A/1002** – Permission granted by the planning authority on 19<sup>th</sup> of December 2007 for a single storey extension to the rear of an existing ground floor retail unit comprising of 32 sq.m. storage. The application plans did not show any rooftop equipment.
- 4.2.7. **PL.06D.208311(P.A. Reg. Ref. D04A/0586)** – Permission granted by the board on the 9<sup>th</sup> of December 2004 for a single storey rear extension to existing retail unit.
- 4.2.8. **PL.06D.128217 (P.A. Reg. Ref. D01A/1037)** – Permission granted by the board on the 3<sup>rd</sup> of July 2002 for retention of use of garden for customer access and display of landscaped materials and fountains.
- 4.2.9. **P.A. Reg. Ref. D98A/0263** – Permission granted on 21<sup>st</sup> of May 1998 for amendments to first floor offices permitted under D97A/1037

4.2.10. **P.A. Reg. Ref. D97A/0930** – Permission granted on the 2<sup>nd</sup> of April 1998 for the demolition of Retail/Commercial Premises and construction of new ground floor Retail Unit with office use to first floor level.

The application included a statement that the building had been in use for business purposes since 1975.

4.3. No. 21 Monkstown Crescent

- **ABP-305448-19 (P.A. Reg Ref. D19A/0247)** – Permission granted by the board on the 20<sup>th</sup> of January 2020 in respect of No 21 Monkstown Crescent for: Change of use from motor car servicing garage to restaurant/café (including take away coffee) and includes elements of demolition and extension.

The grant of permission issued by the board included Condition No. 8, which states:

8. (a) During the operational phase of the proposed development, the noise level arising from the development, as measured at the nearest noise sensitive location or at any point along the boundary of the site shall not exceed: -

(i) An Leq, 1h value of 55 dB(A) during the period 0800 to 2200 hours from Monday to Sunday inclusive.

(ii) An Leq, 15 min value of 45 dB(A) at any other time. The noise at such time shall not contain a tonal component. At no time shall the noise generated on site result in an increase in noise level of more than 10 dB(A) above background levels at the boundary of the site.

(b) All sound measurement shall be carried out in accordance with ISO Recommendation 1996:2007: Acoustics – Description and Measurement of Environmental Noise.

**Reason:** To protect the residential amenities of property in the vicinity of the site.

The grant of permission has not been put into effect.

- **P.A. Reg Ref. D23A/0488** – Permission granted on the 4<sup>th</sup> of January 2024 in respect of No. 21 Monkstown Crescent for: Amendments and extensions to the

existing building to provide a commercial office and apartment. Works have commenced on foot of the grant of permission.

#### 4.4. No. 20 Monkstown Crescent

**P.A. Reg. Ref D21A/1110** – Permission granted on the 23<sup>rd</sup> of June 2022 for a change of use from residential use to cafe and retail at ground floor and resource facilities, including consultation rooms, for persons with autism at first floor level.

The grant of permission included the following conditions:

- No. 4 – opening hours 8am to 11pm.
- No. 7 – An Annual Service & Maintenance contract be made available to and shall be agreed in writing by the Planning Authority and shall ensure the following:
  - Noise from kitchen extractor fans, and the cumulative noise from the daily operation of the proposed overall development, shall not cause a noise nuisance to nearby residents / local businesses, or otherwise
  - noise levels shall not exceed the background level by 10dB (A) or more, or exceed NG4 limits whichever is lesser. Daytime (07:00 to 19:00 hrs)
  - 55dB Evening (19:00 to 23:00 hrs)
  - 50dB Night-time (23:00 to 07:00 hrs) – 45dB As measured from nearest noise sensitive location/s.

Clearly audible and impulsive tones at noise sensitive locations during evening and night shall be avoided irrespective of the noise level.

**REASON:** To protect the residential amenities of property in the vicinity of the site.

- 4.4.1. The grant of permission has not been put into effect but remains live until the 6<sup>th</sup> of August 2027.

## 5.0 Policy Context

### 5.1. Dun Laoghaire Rathdown Development Plan 2022-2028

- 5.1.1. The relevant Development Plan is the Dun Laoghaire Rathdown Development Plan 2022-2028, which came into effect on the 21<sup>st</sup> of April 2022. The application site and is zoned 'Objective NC' as are all of the buildings either side on Monkstown Crescent. The stated objective is 'to protect, provide for and-or improve mixed-use neighbourhood centre facilities'. 'Restaurant' is 'Permitted in Principle in 'NC' Neighbourhood Centre zoned areas. The houses on Longford Terrace, to the immediate north, are all protected structures and are zoned Objective A, the objective of which is 'to provide residential development and improve residential amenity while protecting the existing residential amenities'.
- 5.1.2. The site and all surrounding properties are located within the Monkstown Architectural Conservation Area, which was designated on the 10<sup>th</sup> of September 2012, by way of Variation No 7 to the 2010-2016 Development Plan.

#### Neighbourhood Centres

- Section 7.2.3.1 Policy Objective MFC1: Multifunctional Centres - supports the development of neighbourhood centres which provide a variety of uses that meet the needs of the community they serve.
- Section 7.5.4.1 Policy Objective RET7: Neighbourhood Centres - It is a Policy Objective of the Council to support the development of the Neighbourhood Centres ...subject to the protection of the residential amenities of the surrounding area.

#### Pollution

- 5.1.3. Section 10.4 sets out higher level strategic policies regarding air and noise pollution including 10.4.1 Policy Objective EI14: Air and Noise Pollution where - It is a Policy Objective:
- To implement...national and EU on air and noise pollution and other relevant legislative Directives requirements...to maintain and manage a Dublin County ambient air quality monitoring network in conjunction with the EPA and TII and...to support the implementation of objectives of the 'Dublin Agglomeration Environmental Noise Action Plan 2018-2023.

5.1.4. It notes that traffic noise is the main source of noise pollution and that the key objective of the Noise Action Plan is to avoid, prevent and reduce, where necessary, on a prioritised basis the harmful effects including annoyance, due to long-term exposure to environmental noise.

5.1.5. Section 12.9.2 'Noise Pollution and Noise Nuisance' states:

- The Planning Authority will have regard to the 'Dublin Agglomeration Environmental Noise Action Plan 2018-2023', when assessing planning applications along major road and rail transport corridors – the objective being to reduce noise from new sources and to identify and protect and create areas of low sound levels.

5.1.6. Section 12.9.2 continues by stating:

The Planning Authority will use the Development Management process for larger developments or developments close to residential developments:

- To attach planning conditions on relevant permissions granted to reduce or prevent the development from causing any noise or vibration that might give reasonable cause for annoyance to persons in any premises in the neighbourhood, as per Section 34(4)(c) of the Planning Act.
- To require developers to produce a Sound Impact Assessment and Mitigation Plan where a noise-generating use is proposed and specialist input is deemed necessary, for any new development that the Planning Authority considers will impact negatively on pre-existing environmental sound levels.
- To require developers to produce an Acoustic Design Assessment (informed by guidance such as is set out in 'ProPG Planning and Noise', 2018, as referenced in the 'Dublin Agglomeration Noise Action Plan 2018 – 2023'), where a noise-sensitive use is proposed in an area that may have high pre-existing environmental sound levels.
- To ensure that future developments are designed and constructed in such a way as to minimise noise disturbances and prevent noise nuisance.
- Placing acoustic barriers between the noise source and residential units.
- Avoid hard exterior surfaces such as concrete paving that reflect sound rather than absorbing it.

- Locating noise sources away from property boundaries and noise sensitive areas.

5.1.7. Section 12.9.3 'Noise, Odour and Vibration Generation Uses' continues by stating:

- In considering applications for development where the proposed use may cause noise, vibrations and air emissions (for example, gyms, public houses, leisure facilities, restaurants and retail) applicants will be required to demonstrate that consideration has been given to the ventilation strategy for buildings at the design stage, to prevent noise, to minimise the causing of any noise or vibration that might give reasonable cause for annoyance to persons in any premises in the neighbourhood, as per Section 34(4)(c) of the Planning Act, and air emissions that may cause nuisance from equipment and ducting. The design of buildings and services should consider and incorporate acoustic attenuation and mitigation as required, to ensure that the operational phase of the development does not generate unacceptable noise levels or odour nuisance within the receiving environment.
- Evidence of same by way of a noise assessment and/or any mitigation measures should be provided in any planning application. Assessments and mitigation measures should meet the requirements of the Environmental Health Officer and will be designed to prevent a Noise Nuisance. All sound measurement should be carried out in accordance with ISO Recommendation 1996:2008: Acoustics - Description and Measurement of Environmental Noise, or any subsequent superseding standards.
- In terms of the visual impact of positioning plant associated with mechanical extract ventilation/ ducting on the exterior of a building, such plant shall be detailed, as relevant, in the planning application, including any screening proposals.

#### Restaurant

5.1.8. Section 12.6.5 'Fast Food Outlets/Takeaways/ Restaurants' provides:

- The following criteria will be taken into account in the assessment of development proposals for fast food/takeaway outlets, including those with a drivethrough facility, and where relevant, for restaurants.
  - Location of vents and other external services and their impact on adjoining amenities in terms of noise/smell/visual impact.

## **Architectural Conservation Areas**

5.1.9. Section 11.4.2 addresses 'Architectural Conservation Areas' and includes:

- 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).

5.1.10. Section 12.11.4 'New development' within an ACA states that:

- Where proposals include modifications and/ or alterations, extensions, or roof alterations affecting structures within an ACA, these should be sensitively designed and sited appropriately, generally subsidiary to the main structure, and not constitute a visually obtrusive or dominant form of development, which would be detrimental to the character of either the structure, or its setting and context, within the ACA.

5.2. Section 13.1.2 'Transitional Zonal Areas' is relevant as the site immediately abuts a more sensitive Objective A zoned 'Residential' area to the immediate north. It states:

- The maps of the County Development Plan show the boundaries between zones... In dealing with development proposals in these contiguous transitional zonal areas, it is necessary to avoid developments which would be detrimental to the amenities of the more environmentally sensitive zone. For instance, in zones abutting 'residential areas' or abutting residential development within mixed-use zones, particular attention must be paid to the use, scale and density of development proposals in order to protect the amenities of these residential properties.

### **5.3. Monkstown Architectural Conservation Area Character Appraisal & Recommendations**

5.3.1. Monkstown Crescent is located in Area 1 'Monkstown Village', while the houses/protected structures located to the rear on Longford Terrace are located in a separate character area being Area 4 'Seapoint Terrace'.

5.3.2. Area 1, referring to the houses on the opposite side of Monkstown Crescent to Cinnamon Restaurant, states:

- The village remained relatively small up to the latter part of the 20th century when the mews houses to the rear of Longford Terrace acquired commercial uses, extending the village function along the Crescent. This mixture of commercial and

residential uses lends the village a unique character, which warrants consideration as a distinct character area.

5.3.3. Under the heading of 'Building Typologies' it states that:

- Mews lane development has evolved as a diversification where the carriage houses of the terraces were separated from their original holding. The conversion of the carriage houses to the rear of Longford Terrace has facilitated a broad range of commercial activities and given a sustainable critical mass to the village centre at Monkstown Crescent.

#### **5.4. Architectural Heritage Protection Guidelines**

5.4.1. Sections 8.5.10 to 8.5.13 'External plumbing, flues, vents and cabling' state:

- 8.5.10 - The appearance of many historic buildings will be marred by the addition of external plumbing, especially where it cuts through or across architectural features or disturbs the symmetry of an elevation. Planning applications for works to protected structures or buildings within ACAs should include on the drawings the location of all proposed external plumbing, flues, vents and cabling to allow for a complete assessment of the proposals. The planning authority should be aware that some proposed changes of use will require additional flues and pipework.
- 8.5.11 - Change of use or upgrading can lead to a proliferation of pipework associated with new kitchens or bathrooms. Every effort should be made to avoid the introduction of new external pipework or cabling, particularly on the primary elevations. Proposals that include kitchens and bathrooms on these elevations should therefore be discouraged, if the pipework cannot be satisfactorily accommodated internally.
- 8.5.12 - The addition of external flues should be avoided wherever possible and not be allowed to interrupt important elevations. Vent pipes should not generally be permitted on the roofs of principal elevations. In cases where new external pipework or flues are agreed, the additions should be painted to blend in with the wall surfaces so as to minimise their visual impact.
- 8.5.13 - Where the opportunity arises, the removal or rationalisation of any existing added pipework and cabling that disrupts architectural features or elevations should be considered.

## **5.5. Natural Heritage Designations**

- 5.5.1. The South Dublin Bay and River Tolka Estuary SPA (004024) is located c.170m north of the subject site, while South Dublin Bay SAC (000210) is located c300 northwest of the site.

## **5.6. EIA Screening**

- 5.6.1. The proposed development is not of a type of development that constitutes an EIA project and environmental impact assessment is not required.

## **6.0 The Appeal**

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

- 6.1.1. Two appeals were received in respect of the decision to grant permission from:

- Councillor Dave Quinn, 20 Longford Terrace
- Longford Terrace Residents Association

#### **6.1.2. Councillor Dave Quinn**

- The grounds of Councillor Quinn's appeal include the grounds of his original observation and I refer the board to Section 3.4.3 above. The grounds of the observation addressed issues of noise, odour and impact on the adjoining protected structures on Longford Terrace and stated that the application is invalid.
- He requested that an oral hearing take place.

#### **Identify of applicant – invalid application**

- Failure to identify the applicant invalidates the application and would create issues for enforcement. Neither Terry Doyle nor Bright Side Bars have consent to make the application and planning permission should be refused.

#### **Noise**

- Policy EI4 'Air and Noise Pollution' in section 10.4 of the development plan refers to the Dublin Agglomeration Environmental Noise Action Plan 2018-2023, and noise

from commercial premises comes within the scope of that document as well as EU Directive 2002/49/EC and the Environmental Noise Regulations 2006.

- Section 12.9.3 'Noise, Odour and Vibration and 12.6.5 'Fast Food Outlets/Takeaways/Restaurants' are relevant in respect of development minimizing and not generating unacceptable noise levels or odour nuisance and addressing potential impact on adjoining amenities in terms of noise/ smell and visual impact.
- The existing extractor results in significant noise nuisance for neighbors.
- The applicant's noise report dated the 20<sup>th</sup> of March 2020 states that the condenser emanates tonal noise and condition No 2 of the decision to grant permission will permit the continuation of that noise nuisance.
- The acoustic screen will reduce but not prevent tonal noise as the wording of the condition is not specific enough. Alternative wording to address tonal noise is suggested.
- Condition No 2 refers to EPA guidance that it is not referenced in the development plan and it is not clear why it is being applied in the assessment of noise impact from a commercial development in a residential area.
- The proposed development is not a scheduled activity and does not need an IPPC license, so the EPA's NG4 Guidance is not considered a suitable development in a Neighbourhood Centre. However, if NG4 is to be applied a much lower noise level should apply.
- As a restaurant is not a scheduled activity (to which NG4 would apply) practitioners tend to refer to BS4142 in assessing noise generated by commercial activities such as restaurants and was used by Dublin City Council in respect of P.A. Ref. Reg. 4425/18, which refers to a separate Cinnamon Restaurant in Ballsbridge.
- Permission should be refused as the applicant is seeking to retain plant and equipment that results in noise nuisance to neighbours, rather than replace it with equipment that does not result in either total or general noise nuisance, such as has been installed on other commercial residents operating in close proximity.

## Odour

- The existing ventilation system is a nuisance, which was pointed out in a report submitted with a previous application in respect of the same site in October 2019, and has caused rodent problems that the HSE has to deal with. However, this application does not include any Odour Impact Assessment or Odour Management Plan.
- It is proposed to provide a new ventilation system, but the application does not provide any evidence of the system, or that a suitably qualified and experienced person designed it, or that it would be adequate to prevent odour and nuisance share an appropriate level of residential amenity for neighbouring residents.
- Notwithstanding the absence of a risk impact assessment, should the board decide to grant permission a condition is suggested, to address odour and fumes.
- The existing equipment was never subject to a planning application and is the subject of enforcement proceedings, and while it is proposed to replace the kitchen extractor unit, the lack of technical details such as design specifications submitted with the application does not allow for a determination to be reached that the proposed development will address the appellants concerns and permission should be refused.

### 6.1.3. Longford Terrace Residents Association

#### Oral Hearing

- They requested that an oral hearing be held and set out reasons why, including how the EPA, Dublin City Council and UK authorities addressed noise, that noise emanating from the facility is causing physical and mental health issues, and that it is necessary to determine where liability lies for operating a planning condition which will severely damage the value of neighbouring properties and compromise public health including causing cancer.

#### Alternative conditions

- There is an enormous amount of evidence that proves DCC's planning conditions are the only sensible way to proceed and that DLRCC's continue to operate dangerously in these matters. Alternative noise and odour conditions are suggested.

### Legal view

- The board's 2012 decision which imposed a noise level of 55dB, failed to protect the resident amenities which existed before Cinnamon opened in accordance with Articles 40.3.2 and 43 of the Constitution and the EPA Act of 1992.
- Following the formation of the residents association in 2017 they met with a number of restaurant operators in the area, who immediately eliminated problems mainly by erecting acoustic screens, feeling baffles etc. or merely servicing and or changing worn parts. Cinnamon Restaurant did not do so.
- The residents association have appealed ABP-315821, which refers to the 'Construction of retractable roof, alterations to windows and all associated site works' at 8A Brasserie, 8A The Crescent, Monkstown, Co. Dublin.
- The applicants 2020 noise assessment that estimates the ambient noise level at between 44 and 50 decibels, cannot be deemed accurate with respect to background noise, as the applicant did not turn off their plant during the survey, while changes to traffic on Seafield Avenue/Longford Terrace to provide for a new cycle lane has resulted in lower ambient noise in Monkstown village.
- The second noise report from 2022 includes a noise measurement on Clifton Avenue of 45dB, which is much lower than the 2020 measurement range of 44-50dB.
- The planning authority ignored section 12.9 of the development plan that obliges them to explore all up-to-date noise and other mitigation measures on receipt of applications for air handling units. In fact the development plan names a number of mitigation measures which should be considered.
- The planning authority did not seek professional acoustic and mechanical/electrical engineering advice in respect of the engineering aspects of the application.
- The planning officer's report references the environment section common states that the submitted noise report indicates significant noise at periods which would have a significant environmental impact on nearby residential properties, The planning authority did not take the opportunity to address seek the optimum outcome for the residents and chose not to seek expert advice to assist them.

- The applicant's starting point was to generate a noise output of 48 DB at the farthest point from the facades of the Longford Terrace. The planning authority strategy to allow the fans to operate at about up to 10 decibels above the background level of noise at the living room and kitchen bedroom windows means that the existing situation will be disapproved for the residents.
- A list of possible noise and odour mitigation measures are provided, that the appellants state they were advised of by mechanical and electrical engineers.
- The noise impact is exacerbated by the conservation office prohibiting the installation of glass thicker than 3mm or sound proofing in the windows of the houses Longford Terrace, and they provide little or no noise protection, even when closed.
- Unlike in the case of a previous application by the same applicant in Ballsbridge, this application lacks technical details and adequate drawings.
- The application should have been assessed under BS4142, which is considered to be one of the best practice noise nuisance identification and control measurement standards in the world and is used by UK authorities and Dublin City Council.
- The executive of DLRCC do not believe that Dublin city council's approach is legal or that the type of condition they attach is enforceable. Top lawyers and senior counsel, who live in Monkstown disagree.
- They reference a failed attempt to have a motion included as part of Section 12.9 of the development plan that would ensure restaurant fans would be designed to produce a noise level below the background level and would be inaudible to residents. It had the support of the councillors, but the executive stated it was unachievable, goes beyond the wording of the act and is unenforceable.
- Inserting a specific decibel level in a condition, to deal with fan noise, is incorrect, and the 2012 condition attached by the board, of 55dB, has endangered the health of the residents and severely damaged the value of their homes.
- An examination of planning files for the subject application and other similar developments in the Monkstown area indicated that they did not contain any drawings depicting extraction fans or dealt with ventilation strategies for the premises. The planning authority failed to require drawings or data on these matters in every single application. In granting permission and stating that development must

be carried out in accordance with plans and particulars submitted, in the absence of any data on the fans subsequently erected, these fans are unauthorised developers.

- The condition by the board in respect of No 21A Monkstown Crescent, was deemed by the residents acoustic engineers to create a noise nuisance. The appellants are critical that the board did not test on site and ignored the concerns that the 55dB cap in planning conditions would bring on a noise nuisance and was incapable of protecting residential amenities. It carried out an unprofessional and disgraceful fictionalised analysis, including assuming the former garage was a significant emitter of noise, which it was not.
- In a number of cases, due to the failure to attach appropriate conditions, the residents had to engage directly with restaurant owners to resolve noise issues. First There are examples in planning cases going back to the early 1990s showing how plant can be configured to be inaudible, but neither the planning authority nor the board seem capable of learning from how the industry works.
- The board should ensure staff are adequately trained to deal with noise issues.
- The EPA consider that their NG4 Guidelines are being misused, are only intended to be used for licenced activities such as chemical plants and was not designed or intended to be used for restaurants in residential settings.
- The subject site is located in the curtilage of a protected structure and board have never given residents a reason or proper actual explanation as to why the 3 tests in chapter 13 of the Architectural Heritage Guidelines are not applicable in Monkstown and have never once set out a scholarly and scientific analysis explaining how they reached their decision. An inspector came to the same conclusion in PL06D.219291, but their excellent analysis was dismissed by the Board.
- The appellants set out the basis from which they consider the site is a protected structure as it falls within the curtilage of one of the houses on Longford Terrace.
- The Architectural Heritage Guidelines are based on case law. and the appeal cites several UK cases and refers to a case taken regarding D03A/1038 (PL06D.205854) regarding 6-7A Monkstown Crescent, where the judge stated that there are substantial grounds for contending 6A is a structure which attracts the

status of a Protected structure by virtue of the definition set out in Section 2 of the Act of 2000.

- The condition is inadequate. and in order to understand how good it is you have to read the manual, which is not in the planning file. Therefore, the planning authority have no idea the standard of odour control that will apply. The manual may even allow the unit to run with no filter. The appellants suggest what they consider to be a more appropriate odour condition.

#### Appendix 1 - Engineering Report (March 2023)

- The appeal is appended by an Engineering Report that specifically focusses on condition no 2 of the decision to grant permission regarding odour and noise. It considers there is no reason why the applicant cannot design their ventilation system to achieve an acceptable noise level no greater than the background noise level.

While the use of NG4 is inappropriate, if it is to be used, it should be used correctly and, in that context, the Longford Terrace area would be defined as a quiet area and the noise level limit set out in table 1 of NG4 should apply, meaning that noise from the site should be at least 10dB below the average background noise level.

#### Appendix 2 - Noise and Vibration Consultants Report September 2019

- A report prepared in respect of an application at 21 Monkstown Crescent (D19A/0247) stated a noise study was conducted on the 6th of September 2019 in the rear garden of No 21 Longford Terrace, that the general arrangement of the rear garden areas are somewhat enclosed and protected from traffic noise and extraneous noise from both Monkstown Crescent and Longford Terrace, resulting in the creation of a partial enclosure like a courtyard that creates a quiet area to the rear of the residential properties. The measurements were taken between the hours of 1:00 PM and 11:00 PM, with daytime noise levels ranging between 42 and 43dB, LA90, 1 hour, and evening background noise measurements of between 41 and 42dB, LA90, 1 hour. It states that these levels are very low for an urban area.
- A 10dB increase in noise level equates to a near doubling of perceived loudness.
- The nighttime measurement of 42dB is already elevated dominated by commercial plant noise in the area from sources like commercial refrigeration units and extract fans

- While the site is not an EPA licenced site BS4142 referred to in the EPA's NG4 is considered the most appropriate measurement method to use.
- There has been a substantial increase in the number of commercial premises on Monkstown Crescent, which already impact other existing residential properties in the vicinity. Therefore, it is imperative that further adverse impact is not permitted.
- The appeal was also appended by information extracted from a number of Planning documents from the UK, setting out how they address noise and odour issues, including requirements for assessments before developments are permitted, as well as specifications of plant that may be installed, and that planning consent will not be given unless an applicant submits details setting out how they propose to achieve specific outcomes and then accept a planning condition to adhere to the requirements thereof.

#### **6.2. Applicant Response**

- None.

#### **6.3. Planning Authority Response**

- The planning authority considers that the grounds of appeal do not raise any new matters, which in the opinion of the planning authority would justify a change of attitude to the proposed development. The board is asked to refer to the previous planners report.

#### **6.4. Observations**

- None

#### **6.5. Further Responses**

- None

## 7.0 Assessment

### Introduction

7.1. Having examined the application details and all other documentation on file, including the response to further information and the clarification for further information and information received in relation to the appeal, having inspected the site, and having regard to relevant planning policies, I am satisfied that the main issues in this appeal can be dealt with under the following headings:

- Principle of Development
- Rooftop Extractor Fan
- Condenser Unit
- Validity of application / Legal Interest
- Protected Structure
- Architectural Conservation Area / Visual Amenity
- Residential Amenity
- Property Values
- Appropriate Assessment Screening

7.1.1. In the interest of clarity for the Board, I confirm that this assessment is based on the amended design, and associated plans and particulars submitted to the planning authority in response to the request for further information, as that revised design is the subject of both the decision to grant permission and the appeal.

7.1.2. At the outset is important to note, in light of some of the matters raised in the grounds of the appeals, that Section 34(2) of the Planning and Development Act 2000 (as amended) sets out that when making its decision in relation to an application under this section, the board shall be restricted to considering the proper planning and sustainable development of the area, having had regard to (i) the provisions of the development plan; (ia) any guidelines issued by the Minister under section 28, (iii) any European site or other area prescribed for the purposes of section 10(2)(c); (iv) where relevant, the policy of the Government, the Minister or any other Minister of the Government; (v) the matters referred to in subsection (4);

(va) previous developments by the applicant which have not been satisfactorily completed, (v1) any other relevant provision or requirement of this Act, and any regulations made thereunder.

- 7.1.3. Matters raised by the appellants relating to the making of the Dun Laoghaire County development plan, enforcement matters, or the functions of the EPA are not issues that fall to be considered in this assessment.

## **7.1. Principle of Development**

- 7.1.1. The proposed development consists of elements of retention and permission relating to existing roof plant in the form of a kitchen extract duct system and a fridge condenser unit on the side wall of the restaurant building, that was permitted in 2012. 'Restaurant' is 'Permitted in Principle in 'NC' Neighbourhood Centre zoned areas, while development plan policy supports a range of uses in this zoning subject to the protection of the residential amenities of the surrounding area. Subject to all other consideration, I am satisfied that the principle of a kitchen extraction system and refrigeration condenser unit would be acceptable in association with the permitted restaurant use on the site.

## **7.2. Rooftop Extractor Fan**

- 7.2.1. The application did not include any explanation or rationale why the current fan system that is subject to this application, was installed, in terms of its size or specifications of its constituent components and its location on the roof, rather than accommodating it internally within the existing building.
- 7.2.2. While the original application proposed to amend the existing ducting configuration, by removing one of the two sections of ducting, again no rationale was provided for choosing that alternative configuration for the ducting and no technical specifications were provided to enable either the planning authority or third parties to understand the nature of and potential impacts of either the existing development or proposed amended development on the residential amenity of neighbouring houses.
- 7.2.3. Finally, a revised ducting configuration was proposed in response to the request for further information, which is effectively the same layout as it currently on site, with several additions to the system annotated in the drawings that would assumedly reduce or eliminate odour and noise. While the written response to further

information states that the revised development will include an in-line odour treatment system, with full electrical controls and safety interlocking system that includes mesh pre-filters, UV system and odour scrubbing filters, no technical information has been provided of any of the above reference elements, and no explanation has been offered as to why this configuration is deemed suitable and the impact of the proposed additions to the system in terms on the residential amenity of neighbouring houses is not addressed.

7.2.4. While the applicant has provided an Architectural Heritage and Visual Impact assessment and two different noise assessments, they have not at any point in the application, sought to justify the need for an extraction system of the size or type existing or proposed.

7.2.5. While I accept that not every element of every application is fully addressed before a decision to grant permission is issued, and that certain issues may be addressed by way of post decision compliance, taking into consideration that this development is not about the principle of a restaurant, but exclusively about the nature and extent of the extraction mechanisms that would control both noise and odour from the restaurant, I am not satisfied that the applicant has provided sufficient information in respect of the application, to demonstrate that the proposed development would not be detrimental to the amenities of the more environmentally sensitive zone, which is the residential properties abutting the site and would protect the amenities of these residential properties.

### **7.3. Condenser Unit**

7.3.1. The drawings submitted with the application show the location of the existing condenser unit on the western wall of the rearmost extension of the building. The original noise assessment submitted with the application indicates that the condenser unit produces excess tonal noise and suggest three possible ways to address that noise, being, 1) replace the unit with quieter unit, 2) relocate the unit and provide a noise barrier to direct noise upwards; or 3) introduce a sound absorptive baffle over the face of the existing unit at its current location. The applicant chose option 3, but the only details provided in respect of the unit is wording on the application drawings.

- 7.3.2. The applicant's second noise assessment, submitted in response to the request for further information, in respect of the same condenser unit, stated that an analysis of the tonal character of the noise from the plant has been carried out and indicates that no prominent tonal characteristics are present. It indicates that the measurement was taken 1.5m above the flat roof but does not identify the location of the measurement. While the noise assessment provides a graphic representation of the results, it does not contain any figures to determine if the conclusion is correct and due to the scale, it is produced at it is impossible to read. The revised noise assessment does not address why the original noise assessment was incorrect or why such a different reading was got in respect of the second noise assessment.
- 7.3.3. On the occasion of the site visit, I also noted that an existing metal baffle is located on the western side of the existing condenser, while three other ventilation pipes are located on same wall as the condenser and are not shown in the application drawings. The purpose of the pipes is not explained in the application.
- 7.3.4. No information has been provided in respect of the specifications of the existing unit condenser unit, of the nature of the material to be used as a baffle, how it will be installed, how it will work to attenuate noise and how it will be capable of doing all of the above, while at the same time ensuring a sufficient flow of air will circulate around the unit to make sure it continues to operate as designed.
- 7.3.5. I consider that the extensive amount of information provided in the grounds of the appeal in opposition to the proposed development from a noise perspective is a consequence of the lack of information or conflicting information provided by the applicants and I also consider that the absence of specific information about many aspects of the development mean that it is not possible to know the exact nature and extent of the development proposed or of its impact on the amenities or adjacent residents.
- 7.3.6. In the absence of adequate information, I am not satisfied that the proposed development would not represent a noise nuisance for neighbours and I recommend that permission be refused.

#### **7.4. Validity of Application / Legal Interest**

##### Application Stage

- 7.4.1. In acknowledging the receipt of the application, the planning authority attributed the application to Terry Doyle and all correspondence thereafter indicated that Terry Doyle was the applicant for permission.
- 7.4.2. The grounds of the original submissions to the planning authority stated that the application is invalid as the owners letter of consent permits a company called Dark Side Bars Limited to submit a planning application, while the planning application form identifies the applicant as Bright Side Bars Limited, the site notice refers to Terry Doyle as the applicant and the newspaper notice states the applicant is Dark Side Bars Limited.
- 7.4.3. In summarizing the ground of the observations the planning officers report included 'Applicant name, ACA, and other details incorrect, invalid' and also stated that 'the planning issues raised will be taken into consideration in the assessment of the proposed development'. While making reference to the submissions in the assessment, the planning officer's report did not specifically address the concerns expressed regarding the validity of the application and the planning authority did not seek further information regarding the conflicting applicant names or consent.
- 7.4.4. The decision to grant permission was issued in the name of Terry Doyle.

Grounds of appeal regarding validity

- 7.4.5. In the grounds of appeal under the heading of 'Identify of Applicant Unknown' the appellants have again set out the reasons why they consider that the application should be invalid, including discrepancies between the applicants name throughout the application.
- 7.4.6. The applicant did not seek to clarify any of these matters throughout the application and did not respond to invitations to respond to the grounds of the two appeals.

Legislation

- 7.4.7. Article 18(1)(a) of the Planning and Development Regulations 2001, as amended, provides that a newspaper notice shall state 'the name of the applicant'. Article 19(1) provides that a Site Notice should take the form set out in Form No 1 of Schedule 3 or a form substantially to the like effect. Article 22(1) provides that a planning application under section 34 of the Act shall be in the form set out at Form No. 2 of Schedule 3, or a form substantially to the like effect and Article 22(2)(g) requires that

where the applicant is not the legal owner of the land or structure concerned that they provide the written consent of the owner to make the application.

- 7.4.8. The appellants state that the applicants have made five applications in relation to the development, and in their opinion, have used the planning process to avoid a number of enforcement cases being taken to the courts, and that the applications are a delay tactic.

#### Site and Newspaper Notices

- 7.4.9. The site notice follows the format of the sample site notice set out in Form 1 of Schedule 3 to the Planning and Development Regulations 2001 as amended, which includes directions for completing the notice including identifying where the name of the applicant is to be inserted, as per direction no 2.
- 7.4.10. The site and newspaper notices both use identical wording, which starts with 'I Terry Doyle intend to apply for retention permission' before describing the nature of the development which starts with 'the development will consist of...' and concludes with the words 'for Darkside Bars Limited'.
- 7.4.11. While Terry Doyle has been deemed by the planning authority to be the applicant, the wording in public notices can take different forms and applicants are not required to slavishly adhere to the templates provided in the Planning and Development Regulations. While the notice is poorly worded, I consider that the application has been submitted by Terry Doyle on behalf of, or for Dark Side Bars Limited, and that the applicant could be considered to be either Terry Doyle or Dark Side Bars Limited.
- 7.4.12. The issue of the name of the applicant, which has been identified by the appellants, has not caused any disadvantage to the appellants, as they made submissions to the planning authority and have also submitted appeals.

#### Planning Application Form

- 7.4.13. The instructions at the front of the DLRCC planning application form states that failure to attach the necessary documentation, or the submission of incorrect information or omission of required information will lead to the invalidation of your application.
- 7.4.14. The applicant is listed in question 3 of the planning application form as Bright Side Bars Limited, while question 4 is required to be completed only if the applicant is a

company and, in that respect, Terry Doyle is listed as company director of Bright Side Bars Limited which has a registered address at 7 Orwell Park, Rathgar, Dublin 6.

7.4.15. In question 8, the development description is the same as in the site and newspaper notices, and refers to Darkside Bars Limited, but does not refer to Terry Doyle.

7.4.16. I consider that the completion of question 4 indicates that Terry Doyle was not the applicant for permission and that Bright Side Bars is the stated applicant, which means that there are clear inconsistencies between the site/newspaper notice and the application form.

#### Letter of Consent

7.4.17. The letter of consent to make the application is dated 5<sup>th</sup> July 2022 and is stated to be from the owner of the property, being Cilted Limited. The letter states the company address is Jones Engineering House, 83, Pembroke Road, Dublin 4 and that they give consent to the application being lodged for the retention of works by Darkside Bars Limited but do not give consent to either Terry Doyle Bright Side Bars Limited.

#### Comment

7.4.18. The stated applicant on the application form, Bright Side Bars Limited (CRO No 485627) has a registered office at 3A Saint Mary's Road, Dublin 4, Dublin D04 X2F2 and not at Renvyle, 7 Orwell Park, Rathgar, Dublin 6, which is the registered company address provide in question 4 of the planning application form. The CRO records show that Renvyle is the address of the company directors. The company directors at the time that the application was lodged were stated to be Terry Doyle and Grainne Doyle.

7.4.19. Dark Side Bars Limited (CRO No 545471) also has a registered office at 3A Saint Mary's Road, Dublin 4, Dublin D04 X2F2. The company directors at the time that the application was lodged were stated to be Terry Doyle and Mairead Doyle.

7.4.20. I am satisfied that Dark Side Bars Limited and Bright Side Bars Limited are different and separate legal entities to each other, and that while Terry Doyle is named as a director of both companies, he is separate and distinct person to the two companies.

- 7.4.21. For the purpose of lodging of a planning application, I am satisfied that Mr Doyle would have the capacity to submit a planning application on behalf of a company of which he is a director, although I note that a different persons is named as the agent for the applicant, indicating that the agent and not Mr Doyle submitted the application and all correspondence relating to the application was addressed to the agent.
- 7.4.22. The site of the proposed development is registered in the name of Cilted Limited, since the 8<sup>th</sup> of March 2022, that has an address at 83 Pembroke Road, Dublin 4. With respect to the letter of consent, the letter cites the name and address of the legal owner of the land but does not meet the requirements of a letter issued by a limited company when writing letters, including that is does not state the names of the company directors, of which there are more than one, or the company registration number. Although deficient in its form, I am satisfied that a letter of consent was issued by or on behalf of the named owner of the lands and if the board was minded to grant permission, if this was the only anomaly in the application, it could do so by reference to Section 34(13) of the Planning and Development Act 2000 (as amended) that provides that a person shall not be entitled solely by reason of a permission under this section to carry out any development.
- 7.4.23. While three persons are named in this application, being Terry Doyle (Site and Newspaper Notices), Bright Side Bars Limited (Application Form) and Dark Side Bars Limited (Letter of Consent) and reference is made in the site and newspaper notices to the development being for Dark Side Bars Limited, and there are clear links between the Mr Doyle and the two companies, the decision to grant permission was issued to Terry Doyle who did not have consent to make the application.
- 7.4.24. Following from the above, I am also mindful of Section 5.13 of the Section 28 Guidelines 'Development Management Guidelines for Planning Authorities' (DoEHLG 2007), which states that under the Planning Regulations as amended, a planning applicant who is not the legal owner of the land or structure in question must submit a letter of consent from the owner in order to make the planning application. Where an applicant is not the owner and does not submit such a letter of consent, the application must be invalidated....If, however, the terms of the application itself, or a submission made by a third party, or information which may otherwise reach the authority, raise doubts as to the sufficiency of the legal interest, further information may have to be sought under Article 33 of the Regulations. Only

where it is clear from the response that the applicant does not have sufficient legal interest should permission be refused on that basis. If notwithstanding the further information, some doubt still remains, the planning authority may decide to grant permission. However, such a grant of permission is subject to the provisions of section 34(13) of the Act, referred to above. In other words, the developer must be certain under civil law that he/she has all rights in the land to execute the grant of permission.

- 7.4.25. While the appellants have requested that the application be deemed invalid, they are also of the opinion that the applicants have made five applications, to avoid enforcement cases being taken to the courts, and that the applications are a delay tactic. In that regard I also note the significant amount of concerns raised in the grounds of appeal relating to noise and odour, and while the appellants have called for a refusal of permission or invalidation of the, such outcomes would result in further delay and would not ultimately benefit with the owner/operator of the application site or the appellants, who have also proposed alternative noise and odour conditions in lieu of the condition attached to the decision to grant permission, and I consider that to indicate that they are not entirely opposed to a remedy being found to address the concerns raised in the grounds of appeal.

#### Conclusions of validity of application

- 7.4.26. The planning authority did not seek further information regarding the identity of the applicant or to seek clarity as to the reason for three different names appearing on the site notice, newspaper notice, application form and letter of consent and if Terry Doyle is the correctly named applicant, while he did not provide a letter of consent from the owner of the land in his own name in order to make the application, at the time of lodging the application, he was a director of both Bright Side Bars Limited and Dark Side Bars Limited and in those circumstances, while there are errors in the names of the persons applying for permission between the public notice and application form, subject to the consideration of all other matters, the board may wish to seek further information regarding consent and the name of the applicant under Article 33 of the Regulations
- 7.4.27. An alternative interpretation could be that the reference to Dark Side Bars Limited in the site and newspaper notice mean that they rather than Terry Doyle was the

applicant, and that a valid letter of consent had been provided to the planning authority. However, it would then follow that the planning authority issued a decision to grant permission on a person other than the applicant (i.e. Terry Doyle) which would be contrary to Article 31 of the Planning and Development Regulations 2001 (as amended), which provides that notification of a decision by a planning authority shall be given to the applicant.

7.4.28. Dark Side Bars Limited and Bright Side Bars Limited are two separate and distinct legal entities, and are also separate and distinct from those persons who run the companies or are directors of the companies. Notwithstanding, the named director of the two companies is of the same name i.e. Terry Doyle, and that the companies share the same addresses, they are not one and the same person. Dark Side Bars Limited, Bright Side Bars Limited and Terry Doyle are three separate level persons.

7.4.29. While there are clearly deficiencies in the letter of consent submitted with the application, and a grant of permission in itself does not confer the right on the applicant to carry out a development and I considered that should be minded to grant permission that it could do so by reference to Section 34(13) of the Planning and Development Act or could seek further information in accordance with Article 33 of the Planning and Development Regulations. However, taking into consideration my concerns regarding the entire absence of technical information provided in respect of the ducting and the condenser unit, I would not recommend that further information is sought seeking clarity regarding the name of the applicant and consent from the landowner and I would recommend that permission is refused.

## **7.5. Protected Structure**

7.5.1. While the development plan confirms that the site is not a Protected Structure, the appellants have asserted that it is, due to its historic links to No 23 Longford Terrace, which is located to the immediate north of the site and the appellants consider it should be afforded the same level of protection as that of a protected structure. The appellants are correct that the properties were once part of the same landholding and the originally building on the site was a mews / coach house associated with No. 23 Longford Terrace.

7.5.2. The appellants continue by stating that the board has never give an adequate explanation why the three tests in chapter 13 of the Architectural Heritage Guidelines

for Planning Authorises have not been applied, and state that one inspector's assessment in that regard, with which they agree, was dismissed by the board in PL06D.219291.

- 7.5.3. I note that the board has considered the question of whether or not mews buildings on Monkstown Crescent fall within the curtilage of a protected structure in previous cases PL06D.219291 (No. 4), PL06D.220628 (No. 18A), PL06D.233343 (No.18A), PL06D.234290 (No. 13A), PL06D.246117 (No. 20) and most recently ABP.305448-10 (No 21). In those cases, the board has consistently taken the view that the former mews buildings on Monkstown Crescent are not protected structures and do not fall within the curtilage of the protected structures on Longford Terrace.
- 7.5.4. It is correct that there are historic links between the buildings on Monkstown Terrace and the houses on Longford Terrace, but I am satisfied that the application site is not located within the curtilage of No 23 Longford Terrace and is not a protected structure for the reasons set out in the following paragraphs.
- 7.5.5. By reference to the sites planning history (see Section 4.2 above) planning permission was granted in April 1998 (D97A/0930) for demolition of the then existing/original structure and construction of an entirely new building on the application site, which was built and has been extended on a number of occasions since. The 1997 application indicated that the original structure had been in commercial use since 1975 and this was not disputed by the planning authority. I am satisfied that the use of the building had been severed from No 23 Longford Terrace since 1975, which would be consistent with what is stated in the Monkstown ACA Character Appraisal and Recommendations (see section 5.2.2 above) and I am also satisfied that subject to the grant of permission under P.A Reg. Ref. D97A/0930 that no part of any original structures remained on the site thereafter.
- 7.5.6. Curtilage was first introduced in planning legislation in 1999, after the original development on the site had been removed and long after the association between the mews and No 23 Longford Terrace had been severed.
- 7.5.7. The three tests referenced by the appellants from Chapter 13 of the Architectural Heritage Guidelines for Planning Authorities are set out in paragraph 13.1.2., which states that mews may be considered to fall within the curtilage of a protected structure, even when it is in separate ownership. I am satisfied that the application

site does not meet the tests set out in 13.1.2 in that 1) the functional connection between the site and No 23 Longford Terrace has long since been severed; 2) The site has been in use for business purposes since 1975; 3) permission was granted to demolish the original buildings on site in 1998. All of the above occurred prior to the enactment of the Local Government (Planning and Development) Act 1999 in which introduction of the concept of curtilage into the planning system. In conclusion, I am satisfied that the application site is not within the curtilage of a protected structure.

## **7.6. Architectural Conservation Area / Visual Impact**

- 7.6.1. Having reviewed the documentation on file, it appears that the existing rooftop ducting was installed 2012/2013 and has been the subject of enforcement proceedings and numerous planning applications that were later deemed withdrawn.
- 7.6.2. The applicant originally proposed removing one of the two existing horizontally laid ducting elements and replacing it with vertical extract duct. However, in response to the request for further information the applicant revised proposals are almost identical to what is already in situ on the flat roof, while it is proposed to install a baffle over the condenser unit on the side of the rear extension.
- 7.6.3. Neither the ducting nor the condenser unit would not be visible from any public road or street, but would be visible from the upper floors at the rear of the protected structures on Longford Terrace.
- 7.6.4. The ducting is significant in its size and I have stated earlier that no justification has been provide for the ducting in terms of its size or location and I do not consider that the ducting has been sensitively designed, given the location of the site in an ACA, while no consideration was given to an alternative siting to the ducting internally within the building. That said, the applicant has proposed to screen the ducting by what is shown in the drawing to a picket fence. Such a fence would not adequately screen the ducting from the upper floors of the adjacent protected structures, as the two runs of rooftop ducting are proposed to be retained. However, if the board was minded to grant permission for the current proposal, a condition could be attached that the nature of the screening be agreed with the planning authority. I would also recommend that the screening would double as an acoustic barrier to further reduce noise impact from the rooftop fan system on adjacent residential properties.

- 7.6.5. Subject to such conditions I am satisfied that the proposed rooftop fan and condenser unit would not have a negative visual impact and would not negatively affect the character of the Monkstown Architectural Conservation Area.

#### **7.7. Residential Amenity**

- 7.7.1. Matters pertaining to residential amenity as set out in the grounds of appeal refer to noise and odour impact.
- 7.7.2. As stated in the preceding sections of this assessment, I am not satisfied that given the transitional zone nature the site, that the applicant has not set any rationale or justification for the existing system that is installed and has not provided any technical specification in respect on the various elements of development referred to in the application plans or in the response to the request for further information. I do not consider that the applicant has demonstrated that the proposed development does not or would not have a negative impact on the residential amenity of surrounding residential properties.
- 7.7.3. While the site is already the subject of a 2012 grant of permission for a restaurant to which an condition was attached limiting noise levels along the site boundary to a value of 55dB(A)  $L_{Aeq, T(5)}$  between 0900 and 2200 and 45dB(A)  $L_{Aeq, T(5)}$  at all other times, in the absence of specific details regarding of the nature of the plant that is in situ and of what is proposed, and the lack of explanation for the different results achieved in the two noise assessment, and while it could be argued that a grant of permission, subject to a similar condition that to that attached by the board in 2012 will protect the amenities of adjacent residents, I am not satisfied on the basis of the information provided by the applicant that tonal noise will be adequately addressed and that there would be no adverse impacts on the amenity of the neighbouring properties.
- 7.7.4. While the appellants suggest a number of alternative odour and noise conditions, they too are seeking to impose conditions where an absence of information exists.
- 7.7.5. Any grant of permission would require the submission of significant amounts of information that waws not previously before the planning authority or the board and was not available for review by the appellants and in that case, I do not consider that it has been satisfactorily demonstrated that the development for while retention and

permission is sought would not have a significant negative impact on the residential amenities of neighbouring properties by reason to noise and odour.

## **7.8. Property Values**

- 7.8.1. While this application is for ancillary elements to an existing restaurant, the appellants have made several references throughout the grounds of appeal that the existing premises had a significant and detrimental effect on the value of property on Longford Terrace and a grant of permission will continue that trend. However, only substantive evidence has not been provided to support their claim. I have examined the online property price register and I note that two house on Longford Terrace have sold twice in the period from 2010 to 2024, which is the period in which the property price register has been published. No. 5 Longford Terrace was sold in September 2014 for €2.2 million and was sold again in November 2020 for €3.25 million representing an increase of €1.05m or 47% in 6 years, all while the Cinnamon restaurant fans and the condenser unit were in operation. No 26 Longford Terrace, which is located approximate to the rear of the application site was sold in September 2021 for €2.3 million and were sold only ten months later for €2.5 million representing an increase in value of 13.6% in 10 months. I am satisfied that there is no evidence to demonstrate that the existing restaurant including the existing ducting and condenser unit has had a negative impact on the value of property in the vicinity or would be likely to result in the depreciation of property values in the vicinity.

## **7.9. Appropriate Assessment Screening**

- 7.9.1. I have considered the proposed development that includes elements of retention and permission in light of the requirements S177U of the Planning and Development Act 2000 as amended.
- 7.9.2. The development would be retained and carried out both on a flat roof at the rear and on a rear wall of the subject site (Cinnamon restaurant) that is located c.170m south of South Dublin Bay and River Tolka Estuary SPA (004024), while South Dublin Bay SAC (000210) is located c300 northwest of the site.
- 7.9.3. The proposed development comprises retention of existing extraction mechanisms and replacement of extraction fan with new system. I have provided a more detailed description of the proposal in Section 2 of my report.

- 7.9.4. No nature conservation concerns were raised in the planning appeal.
- 7.9.5. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion is as follows [insert as relevant:
- The small scale and nature of the development
  - The built up nature of the site, and the lack of connections to the nearest European sites
  - Taking into account AA screening conclusion of the planning authority.
- 7.9.6. I conclude that on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.
- 7.9.7. Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

## **8.0 Recommendation**

- 8.1. I recommend that permission is refused for the following reasons.

## **9.0 Reasons**

- 1 The site subject to the appeal is located on lands zoned 'NC' in the Dun Laoghaire Rathdown Development Plan, 2022-2028, where neighbourhood centre development is supported in Policy RET7 subject to the protection of the amenities of the surrounding areas. The site is also located immediately adjacent to lands zoned Objective A, the objective of which includes to protect the existing residential amenity. The site is therefore a transitional zoned area where as per section 13.1.2 of the development plan it is necessary to avoid developments which would be detrimental to the amenities of the more environmentally sensitive zone and in zones abutting 'residential areas', particular attention must be paid to the use, scale and density of development proposals in order to protect the amenities of these residential properties. On the basis of the lack of justification for an extractor fan system of the size

proposed and a lack of technical information regarding both the proposed extractor fan system and the existing condenser unit and to the conflicting information provided in the initial noise assessment and in the revised noise assessment regarding tonal noise emanating from the condenser unit, the Board is not satisfied that a clear rationale for the scale, design and layout of the extractor fan system for which retention permission and permission for amendments is sought or for the location of the condenser unit, has been established and is not satisfied that the development would not seriously injure the amenities of surrounding properties, or that it would not be prejudicial to public health by reason of generating cause for annoyance to persons resident nearby such that it would be contrary to the Section 12.9.2 'Noise Pollution and Noise Nuisance' and to Section 12.9.3 'Noise, Odour and Ventilation generation uses' of the development plan. Therefore, the proposed development would be contrary to the proper planning and sustainable development of the area.

- 2 On the basis of the conflicting information provided in respect of the name of the applicant in the planning application form, the site and newspaper notices and the letter of consent, and to submissions made in connection with the planning application and appeal, the Board is not satisfied that the application meets the requirement of Articles 18(1), 19(1) 22(1) and 22(2)(g) of the Planning and Development Regulations 2001 (as amended). In these circumstances, it is considered that the Board is precluded from giving further consideration to the granting of permission for the development the subject of the application.

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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Joe Bonner  
Senior Planning Inspector

17<sup>th</sup> June 2024

## Appendix 1 - Form 1

### EIA Pre-Screening [EIAR not submitted]

|   |  |                                      |                                       |
|---|--|--------------------------------------|---------------------------------------|
| <b>An Bord Pleanála<br/>Case Reference</b>  | ABP-316155-23  |                                      |                                       |
| <b>Proposed Development<br/>Summary</b>   | Retention of existing extraction mechanisms and replacement of extraction fan with new system. |                                      |                                       |
| <b>Development Address</b>  | Cinnamon Restaurant, 23 Monkstown Crescent, Monkstown, Co. Dublin                              |                                      |                                       |
| <b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b><br>(that is involving construction works, demolition, or interventions in the natural surroundings)  |  | <b>Yes</b>                           | <b>X</b>                              |
|   |  | <b>No</b>                            |                                       |
| <b>2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>   |  |                                      |                                       |
| <b>Yes</b>  |  |                                      | EIA Mandatory / EIAR required         |
| <b>No</b>   | <b>X</b>   |                                      | Proceed to Q.3                        |
| <b>3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?</b> |  |                                      |                                       |
|   |  | <b>Threshold</b>                     | <b>Comment<br/>(if relevant)</b>      |
| <b>No</b>   | <b>X</b>   | N/A                                  | Not a specified class of development. |
| <b>Yes</b>  |  |                                      | Proceed to Q.4                        |
| <b>4. Has Schedule 7A information been submitted?</b>   |  |                                      |                                       |
| <b>No</b>   | <b>X</b>   | Preliminary Examination not required |                                       |
| <b>Yes</b>  |  |                                      |                                       |

Inspector: \_\_\_\_\_ Date: \_\_\_\_\_